
Cultures, Citizenship and Human Rights

In *Cultures, Citizenship and Human Rights* the combined analytical efforts of the fields of human rights law, conflict studies, anthropology, history, media studies, gender studies, and critical race and postcolonial studies raise a comprehensive understanding of the discursive and visual mediation of migration and manifestations of belonging and citizenship.

More insight into the convergence – but also the tensions – between the cultural and the legal foundations of citizenship, has proven to be vital to the understanding of societies past and present, especially to assess processes of inclusion and exclusion. Citizenship is more than a collection of rights and privileges held by the individual members of a state but involves cultural and historical interpretations, legal contestation and regulation, as well as an active engagement with national, regional, and local state and other institutions about the boundaries of those (implicitly gendered and raced) rights and privileges.

Highlighting and assessing the transformations of what citizenship entails today is crucially important to the future of Europe, which both as an idea and as a practical project faces challenges that range from the crisis of legitimacy to the problems posed by mass migration. Many of the issues addressed in this book, however, also play out in other parts of the world, as several of the chapters reflect.

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Edited by
Rosemarie Buikema, Antoine Buyse
and Antonius C.G.M. Robben



Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2020

by Routledge

2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge

52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

A catalog record for this book has been requested

ISBN: 978-0-367-18561-9 (hbk)

ISBN: 978-0-429-19858-8 (ebk)

Typeset in Times New Roman

by Apex CoVantage, LLC

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Acknowledgments

If blog posts are the sprints of academia, then edited books are the marathons. Anyone who has been involved in them knows that they are projects for the long haul. It requires not just a conviction that a project is worthwhile and exciting but also convincing power and perseverance to keep all those involved on board all along the journey. This is all the more the case for a multidisciplinary volume that spans very different types of research, methodologies, and research traditions. We are therefore very happy that this book has reached the safe harbor of publication and will hopefully inspire many of its readers to look across the boundaries of disciplines. We wholeheartedly thank all contributing authors for having made this journey possible.

This book was born out of our own long-standing cooperation in the research focus area “Cultures, Citizenship and Human Rights” at Utrecht University. It is one of the initiatives in which the university sought to foster cooperation in research, in this case between the faculties of the humanities; the social sciences; and law, economics, and governance. We are very grateful to the university for enabling us to foster and fund many of the initiatives that different generations of researchers proposed over the last five years. It yielded many books, articles, workshops, and conferences, including the one from which the current book evolved.

We would like to thank our publisher, Routledge, for embarking upon this adventure of a multidisciplinary volume with us and for the trust that we would bring this project to fruition. In spite of all the talk that multidisciplinary and even interdisciplinary work is the future, research review often still tends to get stuck within separate disciplines. It is a testimony to our publisher’s open mind that it welcomed and accepted our idea for this volume. And it is not just about open minds but also about open access. We are proud that this entire book will be available online in open access, enabling researchers across the globe, irrespective of financial resources, to access the knowledge encapsulated in it.

There is one person in particular that we would like to thank. Without her this book would not exist: Simone Jobig. She has been the most effective, organized, and kind research assistant we could have wished for. Not only has she supported the research focus area as a whole for several years, she has been instrumental in

keeping this book project going, from planning, language editing, contacts with the publisher and authors to, most importantly, keeping the three of us on track to deliver. It has been a pleasure to work with her and we have no doubt that she has a bright future ahead. Thank you so much, Simone!

One of the most gratifying initiatives that sprung forth from “Cultures, Citizenship and Human Rights” is the cooperation set up by and among promising PhD researchers from the different faculties. They trained each other in research methodologies, exchanged research ideas, and cooperated in many new ways, truly leading the way for the multidisciplinary academia of the future. It is to them that we dedicate this book.

Rosemarie Buikema, Antoine Buyse and Antonius C.G.M. Robben
Utrecht, 2019

Introduction

Rosemarie Buikema, Antoine Buyse
and Antonius C.G.M. Robben

This edited volume, entitled *Cultures, Citizenship and Human Rights*, aims to present a multidisciplinary perspective on the interconnected topics of cultures, citizenship, and human rights. In twelve chapters it elaborates on the engineering of citizenship in Europe and globally today and in the past by identifying the specific factors that are shaping it. More insight into the convergence, but also the tensions between the cultural and the legal foundations of citizenship, has proven to be vital to the understanding of societies past and present, especially to assess processes of inclusion and exclusion. Citizenship is more than a collection of rights and privileges held by the individual members of a state but involves cultural and historical interpretations, legal contestation and regulation, as well as an active engagement with national, regional, and local state and other institutions about the boundaries of those (implicitly gendered and raced) rights and privileges.

Highlighting and assessing the transformations of what citizenship entails today is crucially important to the future of Europe, which both as an idea and as a practical project faces challenges that range from the crisis of legitimacy to the problems posed by mass migration. But many of the issues addressed in this book also play out in other parts of the world, as several of the chapters reflect. The combined analytical efforts of the fields of human rights law, conflict resolution, anthropology, history, media studies, gender studies, and critical race and postcolonial studies raise a different and more comprehensive understanding of the discursive and visual mediation of irregular migration and/or new manifestations of belonging and citizenship than any of these disciplines can on their own. Many of the researchers involved were part of a multi-year interdisciplinary research cooperation at Utrecht University, in which they tested their ideas, engaged actively with other disciplines, and thereby were able to bring insights from different fields into their contributions to this book.

This book, like the research collaboration on which it is based, brings together the following three thematic concepts (which correspond to the book's sections) and their attendant questions:

Mediation: how have media, past and present, generated patterns of identification, of inclusion and exclusion? How do they produce legitimacy as

well as critical reflection? What cultural and media literacies are needed to participate fully in public life? How are the cultural differences arising from migration negotiated in a highly mediated public sphere? What has been the role of the arts in generating and contesting shared narratives?

Sovereignty: how are the borders between the rights of individuals, states, and supranational bodies defined and when do they shift? Do new forms of governance generate new notions and practices of citizenship? Why has a gap emerged between Europe as an institutional project and the willingness of citizens to identify with it? How have cultural habits informed the discourse and exercise of human rights, especially of vulnerable people?

Contestation: through what cultural and legal practices are dissent and claim-making performed? Do the arts play a role in channeling contestation? Which cultural factors are involved when (legal) contestation turns into (violent) conflict, and how do human rights fuel and/or channel such contestations? When does collective memory and cultural identity become a divisive issue in the public sphere, and why?

The first part of the book focuses on mediation. Not only in Europe but also globally, migration, global communication, and transnational integration are calling into question the assumed convergence between cultural and political belonging that has underpinned citizenship within the framework of the nation-state. Citizenship is established in a public arena in which law and culture interact. It offers a forum where diverging values encounter one other; where culture influences the way human rights are constituted both locally and globally; where the question of who belongs, who is protected by the law, and whose voice counts are subject to renegotiation and redefinition using both cultural and legal resources.

Digital technologies and social media have become instrumental in creating an awareness of the unequal distribution of human rights. Shifting the focus from the “institution of citizenship” towards performative “acts of citizenship,” social media and community media have the possibility to create awareness about a wide variety of civic engagement practices in which communities engage, as is both claimed and demonstrated in the first two chapters of this volume. The power of social media to create a new sense of belonging and sharing is demonstrated among others by the recent #BlackLivesMatter movement whose protests started online and created worldwide effects both online and in the streets. #BlackLivesMatter’s activism was in particular geared towards the visualization of the unequal distribution of the right to appear, i.e., of the ability or possibility of citizens to have unquestioned access to public spaces. In “Persistent Looking in the Space of Appearance #BlackLivesMatter,” Nicholas Mirzoeff follows the ways in which the movement deploys a plethora of online and offline media platforms to disseminate information and perform a kind of blackness that is not codified by white supremacy. The freedom of appearance, he argues, is a practice whereby we make ourselves visible to each other and create the space and the time to listen to what has not yet been adequately inserted into the hegemonic structures of our

symbolical systems. Throughout his chapter Mirzoeff demonstrates a methodology of persistent looking, meaning a refusal to look away from what is kept out of sight, off stage, and out of view, as an exercise to feel the presence of absent bodies both online and offline.

The question how community media mediate difference and inclusive citizenship is central to “Community Media Makers and the Mediation of Difference: Claiming Citizenship and Belongingness” by Lola de Koning, Elaine Noltén, and Koen Leurs. In seeking to allow marginalized voices to be heard, community media foster alternative formations of citizenship from below. But are these alternatives inherently inclusionary, or do community media also prioritize, ignore, or exclude particular experiences? Focusing on a case study of two groups of community media makers in the Netherlands (local public broadcasters and feminist podcasters), this chapter explores how these community media makers mediate difference and strive for the recognition and inclusion of a multiplicity of voices in the hierarchical media landscape. The authors clarify that while community media have always existed in a wide variety of forms, their position in an increasingly fragmented and digitized landscape is changing. Their plea is that given the current ‘democratic hiatus’ media find themselves in, and to counter the bubblification of fragmented communities, the future potential of community media to maintain stronger inclusion and recognition of different voices should be cherished.

The way in which mainstream media create in- and outgroups is convincingly demonstrated in the third chapter of this section, entitled “On this Path to Europe: The Symbolic Role of the ‘Balkan Corridor’ in the European Migration Debate” by Milica Trakilović. Drawing on postcolonial and psychoanalytic theories, this chapter studies the mediatization of the Balkan passage in a European context. By focusing on political and news rhetoric, Trakilović demonstrates how the Balkans represent the shifting boundary between an ‘authentic’ European space and a more compromised, less civilized Europe. Neither fully inside nor fully outside, they represent a grey zone in which the borders of Europe continue to be contested and redrawn. For a brief period of time, between September 2015 and March 2016, the ‘Balkan passage’ or ‘Balkan corridor’ served as the main and preferred route to and through Europe before the EU-Turkey deal came into force. In this case, the Balkans were, and continue to be, ambiguously placed within the European spatial ordering and imaginary (not least because the Hungary/Serbia as well as the Serbia/Croatia border demarcates spaces within and outside of the EU). The chapter claims that in light of Europe’s migration crisis, the notion of the Balkan corridor can be understood as acceleration and amplification of anxieties surrounding the securitization of Europe’s identitarian and spatial boundaries because of the Balkans’ liminal role in Europe. Meanwhile, the influx of undesirable Others that find their way through this passage became a force of abjection that threatens Europe’s integrity.

In “Recycling the Christian Past. The Heritagization of Christianity and National Identity in the Netherlands,” Birgit Meyer foregrounds the relation

between culture, citizenship, and religion. Across the Netherlands – and Northern Europe – Christianity is in decline and, so she argues, this is a material process, in the course of which churches and objects lose their religious function, churches are repurposed or destroyed, and Christian material objects are set adrift. The guiding proposition of this fourth chapter is that a focus on the material dimension of de-churching and the debates ensued by it offers a productive empirical and conceptual entry point into the transforming dynamics of religion in the public domain and its perceived malaise. While Christian buildings and objects once operated as media that made tangible the divine, in the process of de-churching and the concomitant heritagization of Christianity, they are reframed as art and cultural heritage mediating the culturalization of citizenship which implies that cultural identity, rather than civil rights, features as a prime marker of citizenship.

The second part of the book looks at sovereignty and citizenship as intertwined concepts that share a relation to authority. As citizens, we are subject to an authority's exercise of power and force, but as sovereign human beings we retain or may claim a degree of autonomy. This tension between authorities and individuals is unsolvable and leads therefore inevitably to conflicts in society. Such conflicts emerge from continuously shifting power configurations among individuals, communities, cities, regions, national states, and supranational unions. These dynamic relations are manifested in laws, political engagements, and cultural practices that transform through ongoing contestations. The four chapters in Part II demonstrate this contestation over the enactment of sovereignty and citizenship, in which the national state figures prominently as the principal place and subject of dispute.

The conceptual latitude of sovereignty is analyzed by Gregory Feldman in his challenging comparison of sovereignty and love. He departs from the assumption that human beings share the need to *be* and to *become*, namely to establish their existence in the world and at the same time strive for a new existence in the future. For Feldman, the concept of sovereignty is not limited to the modern state, and certainly not defined by its power to kill its citizens during a state of exception, as Foucault, Agamben, and Mbembe have argued. Instead, he draws on Hannah Arendt's understanding of sovereignty as people's general condition as free human beings who can act together for a new beginning. Sovereignty shares with love people's social need to be with others. The personal and political selves are mirrored in other human beings, and love and sovereignty articulate people's innate sociality in interconnected ways of being and becoming. These ways emerge in three fundamental human activities. First, the effort by parents to help realize their children's potential and talents beyond their own, just as the reigning political generation believes that its ideals will eventually be achieved by an inspired youth that avoids their own political failures and shortcomings. Second, the erotic love between two individuals resembles the elation felt at political rallies and protests. The desire for a transformative communion, physical and spiritual, draws people together in bodily intimate or close relations. Couples are reunited into an original one, as Socrates believed, and crowds experience a sociality which Emile Durkheim called social effervescence, and Elias Canetti understood as a spiritual and

corporeal sensation of social equality. Such sense of boundlessness can transfer to a third human activity of love and sovereignty, namely the open-ended lives of people in love, and the expectations of a political future that satisfies yet unrealized imaginaries. Solidarity among different beings, mutual recognition founded on equality, and trust based on the suspension of doubt about others, hold lovers and political agents together in their faith about a future whose ever-expanding horizon can never be attained.

Martijn Oosterbaan and Carly Machado reveal another side of the urban contestation of national sovereignty. Rio de Janeiro is an extremely violent city in which criminal organizations involved in the drug trade controlled, and in certain areas still control, the *favelas* (shantytowns) that house millions of impoverished people. These gangs provided security to the *favelas*, dealt out their own kind of justice, and selectively dispensed social services. This fragmentation of national sovereignty made the state station troops in Rio's *favelas* that are constitutionally entrusted with protecting Brazil's outer borders. This deployment differs from the repressive operations against so-called internal enemies during the military dictatorship of 1964–1985 because of the present alliance with local religious leaders who help identify community members believed to pose a security threat. The authors speak of a political theology that justifies the pact of military forces and churches to reestablish state sovereignty in the *favelas*. Rio de Janeiro's organization of large sport events, such as the World Football Cup tournament in 2014 and the Olympic Games in 2016, prompted in 2008 the implementation of a Pacification Policy. This comprehensive security plan consisted of a dominating military presence in the *favelas*, the establishment of permanent police units, and the creation of social programs to provide public services and utilities to poor residents in an effort to capture their hearts and minds. The social programs have been run mainly by Pentecostal organizations because the state's social welfare was privatized under the reigning neoliberal climate. The intertwining of state and religious institutions in Rio de Janeiro's pacification program is framed in a religious language and manifested in music festivals, television shows, video games, rehabilitation clinics, and exorcism rituals for repentant criminals. National sovereignty has thus been reclaimed in some *favelas* as if by a divine pact between church and state reinforced by legal provisions and cultural practices.

Barbara Oomen demonstrates in her chapter that cities of refuge contest the state's monopoly on sovereign power. Such cities have existed since biblical times and were prominent throughout the Middle Ages and into the Renaissance until the treaties of Westphalia in 1648 recognized the territorial integrity of the participating countries and made the nation-state the hegemonic political institution in Europe. In the 2010s, large numbers of refugees and undocumented migrants arrived in Europe. They had succeeded in fleeing mass violence and poverty in the Middle East and Africa. Many fellow travelers had drowned during the perilous journey across the Mediterranean Sea and caused a contestation of national sovereignty by rebellious cities. These cities offered hospitality to people whose refugee status had been refused by the state authorities, and were thus regarded

as irregular residents. The cities referred to international refugee laws and universal human rights to give a sanctuary that the European states were unwilling to offer and reinforced their efforts and negotiation power through transnational city networks. Oomen shows how cities of refuge justify their defiance of national laws and policies in moral, legal, and cultural ways to create a more inclusive citizenship. This inclusive citizenship or, as Oomen prefers to call it, cosmopolitan citizenship, consists of making city services available, such as housing, schooling, work, health benefits, and even local political rights. Cities of refuge also foster urban cultures of hospitality, diversity, and artistic expression that respect people's human rights and treat them as equal citizens of the world, irrespective of nationality or legal status. This localized cosmopolitanism is challenging taken-for-granted assumptions about the state that may result in a redefinition of national sovereignty.

This open-endedness of sovereignty, both national and individual, is also shown by Hanneke van Eijken and Sybe de Vries, who describe its changing legal interpretation in the European Union. The Union's Treaties (since 1992), Charter of Fundamental Rights (since 2009), and laws and secondary legislation have defined the fundamental rights of its citizens, such as free movement, non-discrimination, and equal pay for men and women, while the judicial decisions of the European Court of Justice have served to establish their legal reach. Initially, the protection of the fundamental rights of European citizens applied exclusively to their vertical relationship with national states but increasingly began to refer also to horizontal relationships among individuals and between corporations and private persons. This extension occurred especially when national laws did not implement the Union's laws or uphold fundamental rights that had been agreed upon within the European Union. Individuals living in another member state than their own have been successful in making legal claims about the violation of fundamental rights by states, corporations, and citizens on the basis of fundamental human rights and their privileges as European citizens. Clearly, sovereignty in the European Union has multiple manifestations because its legal implementation is a dynamic process that depends on the state of the European Union and its ongoing contestation by different stakeholders that include individuals, corporations, and cities.

In the third part of this book, the focus shifts to contestation. Citizenship and human rights are not just assumed, but negotiated, fought over, and can be deeply divisive or unifying. They offer concrete advantages and opportunities to people and therefore the drawing of boundaries of whom may benefit from them is rife with contestation. Cultural differences may both be used as tools to intensify these contestations and can also facilitate the realization of citizenship. Culture is also a defining element of how the in-group, the citizen in both a legal and a metaphorical sense, can be defined.

In her contribution on child and youth mobility, Jacqueline Bhabha takes the dire situation of what she calls "the self-propelled unaccompanied migration of young people contesting the structure in which they have been placed" as an entry point

for the discussion on insiders and outsiders in the migration discussion, specifically in Europe. Those who do not flee war or famine rather try to escape situations without a future, due to the lack of educational or employment opportunities or because of domestic abuse. Bhabha points out that current legal protection mechanisms barely address the problems these children face. In the so-called European migration or refugee crisis of recent years, proponents and opponents of migration have laid bare deep contestations of what Europe and the European Union represent. Rather than settling for the current chasm between pronounced European ideals and lack of protection in practice, Bhabha points to innovative solutions, such as the Global Compact on Migration. Yet, she also suggests truly addressing the underlying lack of opportunities in many places outside Europe by proposing a global and large-scale extension of Europe's famous Erasmus program.

Julie Fraser focuses on contestation around human rights implementation. She points out that culture and human rights have often been presented as opposites, with perceived backward cultures impeding full realization of human rights. Many of the most poignant critiques of the idea of universal human rights have indeed built on the idea of cultural diversity and the legitimacy of the local. By contrast, Fraser explores how local cultural norms and actors can be perceived as partners rather than opponents in human rights implementation. Through the case study of the role of Islam in family planning discussion in Indonesia, she shows that religious groups and institutions are no monoliths, but that there is internal contestation about appropriate norms. Cultures and religions are constantly changing, in this case by the increased presence of women's voices in the debate. Fraser points out that if countries want to further human rights they should partner with rather than antagonize such non-state local actors. Human rights allow for cultural diversity and for a role for actors beyond the state. Thus, by showing the diversity of voices within religion, she shows how culture can influence the potential for success of human rights realization.

The contribution of Dirk van Miert takes up the gender perspective as well, but brings us further back in time. He delves into one of the earliest examples of a self-perceived community of transnational citizenship, that of the Republic of Letters of scholars in Early Modernity. His contribution shows how this virtual republic and this practical network of exchange of knowledge was overwhelmingly a male endeavor. Using insights from citizenship studies which show that this notion is influenced by the four dimensions of the family, the market, the state and the voluntary association, Van Miert analyzes how the participants in the Republic of Letters marked its boundaries. The participation and role of women remained fragile because of contestation of their 'citizenship' of this Republic in all those four dimensions. A 'culture' of what it meant to be participating in the Republic in fact excluded large parts of society, most notably women. This dimension of gender sheds new light on the dynamics of participation in the Republic of Letters but also on the historiography of this phenomenon. It also shows that battles of contestation of citizenship do not only center around states, but can also take place in highly decentralized networks.

Taking us back to the present day, the final contribution, by Sandra Ponzanesi, centers on one of the most contested contemporary artists, Ai Weiwei. This ‘rebel with a cause,’ as she dubs him, has both become a cultural icon himself as well as a very vocal critic of human rights violations. Through his versatile and effective use of both artistic forms and social media, he has brought culture as a medium of contestation sharply to the fore. Being both an outsider to the states he criticizes and to many of the countries he works in, he is at the same time an insider, making full use of the modern art market dynamics. He thereby deftly navigates between the margins and the center. Both in his personification of the artist as an intellectual and in that of the intellectual as an artist, he has engaged with some of the core themes of modern citizenship and insider-outsider tensions, such as the global migration crisis. His work, both self-centered and outward-looking at the same time, has created new spaces for contestation of political power structures through art.

Together, these contributions offer a wide panorama on the issues around cultures, citizenship, and human rights. They show how the interlinkages between these themes can be more studied with more depth, when various disciplines come together. They show that the tensions inherent in these notions are not confined to present-day Europe, but that a wider view, both geographically and temporally, enriches our understanding.

Part I

Mediation

Persistent looking in the space of appearance #BlackLivesMatter

Nicholas Mirzoeff

Police killings captured on cell-phone video or photographs and the protests that resulted have become the defining feature of present-day United States visual culture. The 1960s, in all their complex contradictions, have come to be known by a handful of photographs of protest and the Vietnam War. So too have these low-resolution scenes become definitive. What these photographs and videos have revealed is the operations of the maintenance of a law-and-order society that inflicts violence on Black people. The America that is seen here is at the intersection of three streams of manifestation. First, there are the witnessing of these scenes, depicted in cell-phone videos and photographs. These are supplemented by machine-generated imagery, taken by body cameras, dash cams, and CCTV footage. Next, there are the embodied protests and actions taken to claim justice and to make injustice visible. Finally, there is the sharing of these images and actions by social media that in turn have made their way into mainstream media. These appearances take place in specific spaces. People are being killed in racialized spaces – housing projects and urban neighborhoods that are marked racially by the visible lack of care. The Black Lives Matter protests reclaim spaces of connection – roads, transport, infrastructure, malls, intersections, train stations, political rallies, concert halls, sports arenas, libraries, and lecture halls. It is the function of the police and the prison industrial complex, the infrastructures of white supremacy, to keep such spaces separate, which is to say, segregated. By articulating racialized space with spaces of connection in protest at police violence, Black Lives Matter created a new means to prefigure a different “America,” one in which it might finally be possible for citizens of all kinds to appear to each other. America instead chose to make itself “great again,” meaning, as everyone understood, “white again.”

These, then, are not just images. Nor are they just images (in the sense of justice) by themselves. Like any other fragment recuperated from the totalizing ambition of the carceral state, they need to be activated, forced out of the continuum of capitalism’s ever-advancing time, so as to be collectively inhabited and experienced by means of re-enactment. I want to appropriate Hannah Arendt’s evocative phrase “the space of appearance” (199) to describe the doubled experience of revealed police violence and subsequent protests in the same or similar

spaces. I will be using it in a very different way. Arendt situated this space in the ancient Greek city state, or *polis*, which was founded (as she herself attests) on the exclusion of women, children, non-Greeks, and enslaved human beings. It was more exactly a space of representation because those admitted represented the category of free male citizens. In keeping with one thread of Arendt scholarship, it can be said that the space of appearance was understood this way as an articulation (conscious or not) of white supremacy (Bernasconi 169–187; Allen; Gines). Appearance is not representation, neither in the political nor cultural sense, but is the very possibility of appearing directly.¹ In her recent reconsideration of Arendt, through which I have thought this piece, Judith Butler claims a “right to appear” (26) that is nonetheless at once constrained by “norms of recognition that are themselves hierarchical and exclusionary” (38). Black Lives Matter protests are instead an example of what she calls “anarchist moments or anarchist passages . . . [which] lay claim to the public in a way that is not yet codified into law and that can never be fully codified into law” (75). The anarchism of these moments is not just the suspension of law but the pre-figuration of the very possibility of appearing as Black in a way that is not codified by white supremacy. In so doing, it reveals what Fred Moten has called “the constitutive disorder of the *polis*,” (205) in which who can appear and who cannot and why are the proper political questions. Who has the right to appear in urban space? “Whose streets?” people ask on protests. This is what it now means to be intersectional: who gets to hold the intersection?

At present to be in any American jurisdiction and to be visibly identifiable by the police as Black is to be subject to an extensive code of regulated appearance, as defined by the writer Garnette Cadogan for his walks in New York City:

no running especially at night; no sudden movements; no hoodies; no objects – especially shiny ones – in hand; no waiting for friends on street corners, lest I be mistaken for a drug dealer; no standing near a corner on the cell phone (same reason).

(139)

Any person, like myself, who can do any of these things without being stopped by the police is “white,” regardless of skin tone. The archive of violent encounters with police created by Black Lives Matter has led the poet Claudia Rankine to create another such list of unpermitted behavior for Black people:

no hands in your pockets, no playing music, no sudden movements, no driving your car, no walking at night, no walking in the day, no turning onto this street, no entering this building, no standing your ground, no standing here, no standing there, no talking back, no playing with toy guns, no living while black.

(146)

Taken together, these vernacular regulations, a governmentality for the racialized, demonstrate the quotidian operations of anti-blackness. In turn, as a person not subject to these regulations, I am not attempting to speak for Black experience but against such forms of anti-blackness to articulate an anti-anti-blackness.

In this context, “blackness” is a specific formation of the visible and the sayable, produced by the connection of particular but not essential components. As Alexander Weheliye usefully defines it, “blackness designates a changing system of unequal power structures that apportion and delimit which humans can lay claim to full human status and which humans cannot” (3). Those with full human status are designated white, a category that is not always correlated to skin pigmentation. Further, because these relations are articulated across the span of the human, limitations on those designated Black limit everyone. As Alicia Garza, co-founder of the #BlackLivesMatter project with Opal Tometi and Patrisse Kahn-Cullors, has put it:

When we are able to end hyper-criminalization and sexualization of Black people and end the poverty, control, and surveillance of Black people, every single person in this world has a better shot at getting and staying free. When Black people get free, everybody gets free (2014).

Which means that unless Black people get free, nobody gets free. Or put more directly, in the words of Fred Moten and Stephano Harney, “The coalition emerges out of your recognition that it’s fucked up for you, in the same way that we’ve already recognized that it’s fucked up for us” (140). This is solidarity, Afro-pessimism style.

Persistent looking

The prohibitions and exclusions that constitute white supremacy have been challenged during the Black Lives Matter movement by persistent looking, meaning a refusal to look away from what is kept out of sight, off stage, and out of view. This look is sustained by long histories of resistance. It is comprised of a set of grounded, distributed, repeated but not traumatic actions, whose persistence is enabled in part by social media. It calls for us to see what there is to see, to be vulnerable, but not to be traumatized. Looking here is both witnessing and the embodied engagement with space. Such performances of looking are about the recurring present that people choose not to escape and continue to record in digital media. Persistently, they choose to keep looking against the prohibitions of the carceral state and to feel the presence of the absent bodies of those fallen from Michael Brown and Eric Garner to Sandra Bland, Alton Sterling, and Philando Castile – and so many more. In that repeated present, the presence of the future can be felt. Repetition matters here, as a means both of instilling the urgency of

the situation in others and for the participants to overcome their first shock in order to understand what has actually happened. The formal similarity and repetition of the actions moves them from being simply protests – meaning an indexical call to the state or other authority to remedy a wrong – and become instead invocations of articulated assemblage (Weheliye 42–53).

There is a history of slavery in the Americas within this looking. Slavery sustained its regime by what I have elsewhere called “oversight,” the felt surveillance of the overseer over enslaved human beings. While this regime was ultimately enabled by spectacular violence, it allowed for the quotidian performance of complicated labor, often not under direct supervision. A French planter from Saint-Domingue mourned after the revolution that created Haiti the passing of

the variety of magic, which gave the empire of opinion to whiteness, and made it so that three or four Whites could sleep in all security, with their doors open, on a property where four or five hundred blacks were subjected to a more or less grievous labor.

(*De Saint-Domingue* 16)

Under US slavery, the look of the enslaved at an overseer or owner was known as “eye service,” (Johnson 168) and was immediately punishable. It was a particular feature of being “reckless,” any activity by the enslaved that might bring them to the attention and violence of the overseer and his drivers (Cervenak 66–67).

In order to sustain the Haitian revolution, this racialized looking had to be undone. In abolishing slavery, Haiti abolished the primary political distinction between “free” and “slave” that had persisted in the West since Antiquity. What names were the non-enslaveable now to have? In the 1804 Constitution, Haiti made itself into the scandal of modernity by decreeing in Article 12:

No whiteman of whatever nation he may be, shall put his foot on this territory with the title of master or proprietor, neither shall he in future acquire any property therein.

This clause undid colonialism and sought to foreclose any future possibility of white supremacy, neo-colonialism, or segregation. The constitution insisted, against the racialized hierarchy of miscegenation created by slavery, that all persons living in Haiti were to “be known only by the generic appellation of Blacks,” using the term *Noir* rather than the colonial *Nègre*. To be present in the decolonial space was to be Black (*noir*), regardless of past personal histories, rewriting blackness as revolutionary affiliation and as abolition democracy. Since abolition democracy had claimed blackness, visibility as a means of political ordering has since seen its others as “black” (*nègre*) from then on. In this frame, the colonized Irish were black, so too the radical *sans-culottes* of the French Revolution and the Paris Commune. But as Thomas Carlyle, the inventor of the concept of visibility in English, put it, the Haitians were “Black beyond remedy” (Mirzoeff 13). That

is to say, to revolt is to be Black in a hierarchical system of human difference (Rodriguez qtd. in Weheliye 3). To revolt and be Black (*Noir*) is to be beyond all recognition and all claim to personhood in this colonial frame. The re-memory of Haiti was present in the Charleston massacre at the African Methodist Episcopal Church on June 17, 2015, just as a number of victims of police killing have been of Caribbean descent, like Akai Gurley, killed on the staircase of his apartment building in East New York on November 20, 2014.

During the Jim Crow period, looking across the color line became by condensation “reckless eyeballing,” with the added connotation of forbidden desire that authorized fatal violence in response. Although it was never formally part of the legal code, such looking was used to aggravate assault charges to rape as recently as 1952 in the case of Matt Ingram (Berry 227–230). However, after pressure from the NAACP and African-American media like *Ebony*, the state supreme court vacated the conviction because: “it cannot be said that a pedestrian may be assaulted by a look, however frightening, from a person riding in an automobile some distance away. . . . He may have looked with lustful eyes but there was the absence of any overt act” (State v. Ingram qtd. in Berry 232). That look no longer represented grounds for conviction. “Reckless eyeballing” nonetheless remains part of the informal codes of the prison industrial complex both inside institutions and as part of law enforcement. To cite just one example, in a 2013 case in Florida, a man’s conviction was upheld on appeal in part because a female corrections officer testified that he had performed reckless eyeballing against her.² Remember Freddie Gray in Baltimore. His only offence was that he met the look of a police officer in the eye, leading to an assumption of guilt for which he ended up dead. He appeared always already marked in the space where police believed themselves to be sovereign. To meet the police gaze was *lèse-majesté* in the language of sovereignty but, as bell hooks named it, simply “uppity” in language of racialized encounters (hooks 168). All the trials of the police officers involved in the death of Freddie Gray resulted in acquittals, with subsequent charges being dropped, as if no one but Gray could be responsible for his death.

Notably, Black Lives Matter protestors have described the experience of the movement as a coming-to-meet the police gaze. In Ferguson, Missouri, Johnetta Elzie (qtd. in K.-Y. Taylor), who tweeted as @Netaaaaaaa and became a key voice in the movement, described how:

I decided to dare the police to look at the faces of the babies and children their dogs were so ready to chase down. As more people began to look directly at the police and yell their grievances, the more aggravated they became.

(156)

As can be seen in official scene of the crime photographs, St. Louis police used police dogs within hours of Michael Brown’s death to deter protestors, so Elie’s look back was not a metaphor.



Figure 1.1 St Louis Police Department (08/09/14).

Source: Photo entered into evidence in *State of Missouri v. Darren Wilson*. Released into public domain 11/25/2014.

That look was directly recorded when in November 2015 photographer John J. Kim took a picture of then-sixteen-year-old protestor Lamon Reccord confronting a police sergeant in Chicago. Each stares at the other, directly in the eye. Reccord stands fully committed to his right to engage the police as public servants. Despite his age, Reccord is claiming full citizenship, something that the equally engaged return look of the police seeks to deny him. That police is African American, just as three of the six police responsible for the death of Freddie Gray happened to be. For Keeanga-Yamahtta Taylor, the moment challenges what she calls “the new Black political elite” in the era of Obama (77). The point is that systemic racism operates above and beyond the imputed but not actually existing race of each individual within it in order to situate the place from which it is possible to look. Persistent looking has rendered that system visible in and of itself.

Copresence

This possibility was enabled because the spaces of appearance created by protests and vigils are newly visible, or more exactly networked, via cellphone video, Facebook, Instagram, Snapchat, Twitter, and Vine in a set of interactive

and intersensory relays, which create a co-presence between physical and digital spaces. The “space” in which we might want to appear has at least two modalities in a common temporality. In this sense, the long-standing sociological concept of co-presence, meaning face-to-face interaction, has been updated for the digital era (Zhao 445–455). Such digital co-presence has been defined as “the diverse ways in which people maintain a sense of ‘being there’ for each other across distance” (Baldassar et al. 134). There are now multiple spaces in which we can appear while also maintaining a sense of presence. The report *Beyond the Hashtag* showed that #BlackLivesMatter focused on disseminating news (Freelon et al. 15–17). As a formal movement, #BlackLivesMatter began online, when people located each other using the hashtag. And then it became interactive between online information sharing and physical actions in the streets. Activist DeRay Mckesson described what followed:

In those early days, we were united by #Ferguson on Twitter. . . . And once the protests began to spread, we became aware of something compelling and concise, something that provided common language to describe the protests: the hashtag #BlackLivesMatter. . . . Many of us became friends digitally, first. And then we, the protestors, met in person

(Mckesson)

This possibility was an articulation of the way in which Twitter, in the words of communications scholar André Brock, enables “a discursive, public performance of Black identity” (Brock 537). In this sense, engaging in protest was in part the outcome of participating in Black Twitter (Freelon et al. 35).

The use of the hashtags as horizontal identifiers enabled people to find each other and to begin physical encounters and actions. This co-presence made it possible to form a space of freedom, which can engender others, sometimes with surprising speed and reach. The limited space of appearance becomes an open place of interaction. It is what Negar Mottahedeh has called “collective sensorial solidarity online” (Mottahedeh 16), which is not utopian but site specific as in #Ferguson, which was used an astonishing 21.6 million times from June 2014—May 2015 (Freelon et al. 21). Because it makes common a way to be in the future, outside the enclosure, it is always becoming, always in formation, while being site-specific. That the moments keep coming in which the energy contained in social and visual frames breaks out of the restraints imposed by and as the society of control, which is itself now notably out of control, I take to be the condition of the present space(s) of appearance and the hope for future years ahead.

The space of appearance where Black lives matter in the Americas from the killings of Eric Garner and Michael Brown in the summer of 2014 to the inauguration of Donald Trump was that place where the Black person and those in revolutionary affiliation with blackness might see each other and invent each other in a dialogic imagination that forms a right to appear. The freedom of appearance is a practice, whereby we make ourselves visible to each other. The person designated

white appears only to listen to what the other designated Black might have to say, otherwise hierarchy will reassert itself. The construction of this common sensation of Black and blackness has been persistently produced when bodies deemed Black position themselves in spaces deemed white. To take one action among many: on Martin Luther King Day 2016, protestors in San Francisco shut down the Oakland Bridge by chaining themselves together through a line of vehicles. There was no call for legislation. There was relatively little national media coverage. It was not, in short, an action claiming recognition. By contrast, a mass demonstration makes a demand of state authority. But since the mass anti-war demonstrations of 2003 were dismissed by President George W. Bush as a “focus group,” such demands have been largely ignored in the United States. On the Oakland Bridge, there was a reversal, whereby those whose negotiation of space is usually unhindered and under benevolent supervision found themselves instead inconvenienced by having to experience people, both Black and white, refusing blocking traffic to make the disruptive claim that Black lives matter appear. The protestors’ chains forced the police into a visible reversal whereby the police had to cut the shackles of Black people. The experience of a space of appearance is thereby uneven, depending on how and why you have entered it. While mediated co-presence makes these spaces persist and resonate, they cannot be sustained or developed online.

Hands up, don’t shoot

The Black Lives Matter movement has mobilized political bodies from vulnerable bodies in order to sustain spaces in which its claim can appear. Ruth Wilson Gilmore has defined racism as the “production and exploitation of group-differentiated vulnerability to premature death” (28). The two signature gestures of the post-Ferguson movement were the new action “Hands Up, Don’t Shoot” and the appropriation of the older tactic of the mass die-in. By appropriative reversal of vulnerability, these embodied performances reclaim the right to existence. This vulnerable movement creates a dynamic whereby those following or watching feel actively engaged, whether online or locally. It calls to the witness and the watcher to become engaged first through bodily mimesis and then by making your body political. Political bodies oppose themselves by these repetitions to the representation of the state by the police.

“Hands Up, Don’t Shoot” transformed the existing vernacular of Black protest into the signature of a movement. In 2013, Los Angeles residents took to wearing T-shirts saying “Don’t Shoot Me, I’m Not Chris Dorner,” referring to the shootings of three civilians by the LAPD during the pursuit of their former officer.³ A year later, in February 2014, *Washington Post* columnist Eugene Robinson wrote a widely circulated piece under the headline “I’m Black, Please Don’t Shoot Me” in response to the shooting of Jordan Davis by Michael Dunn because the latter found Davis’s music to be too loud. At Eric Garner’s funeral on July 23, 2014, mourners wore T-shirts reading “Don’t Shoot Me, I’m Black,” although

Garner was not shot but strangled by police.⁴ The events in Ferguson transformed this set of associations into a new form of embodied protest. Although “Hands Up” flowed from what was believed to have happened, it was not a simple recreation of the scene of the murder. Leaving aside the question of whether Michael Brown raised his hands (a possibility complicated by the fact his right arm was broken by a bullet before he turned around), the gesture of raised hands did imitate those made at the scene, such as those of a white contractor, caught on a cell-phone video.⁵ He stood with his hands raised in a gesture that clearly asks: “why did you shoot, his hands were up?” It expresses puzzlement and confusion as much as rejection. On the first evening after the shooting, protestors at the scene came together to hold a vigil at the request of Michael Brown’s mother Lesley McFadden. Confronted by police with dogs, as if it was suddenly Birmingham in 1963, they responded by raising their hands, documented in a Vine videoclip posted by Antonio French, a local councilor.⁶ The action was a montage of the isolated and vulnerable body of Michael Brown and their own resistance into a common identification – for they knew that any one of them could have been killed as Brown had been. The next day, the chant “don’t shoot,” attributed by then to Michael Brown, was added to the gesture and performed by itself at the Canfield Green housing complex as part of the ongoing protests, again captured by Councilor French on a Vine. A press photograph taken by Scott Olsen of a protest on the following day, shows a handwritten poster displayed in front of Ferguson police station, in which the phrase “Hands Up” was added to create the full statement. Three days after Michael Brown’s death, activists were already circulating printed flyers with the slogan “Hands Up, Don’t Shoot,” seen in press photographs from Ferguson.

These words were combined with the action of raising hands as a call-and-response marching action: “Hands up?” “Don’t Shoot!” It calls to people to join in, to become part of the action. I have never experienced a more effective and affective embodied political protest. When it was first seen in New York on August 14, 2014, people rushed out of buildings to share the gesture or join the march. At the same time, “Hands Up” is a command to the police that says “when people have their hands up, don’t shoot.” In itself, this would be – or should be – an unremarkable statement. But it follows: “our hands are up, you don’t dare to shoot.” By not only displaying vulnerability but admitting to it and doing so in numbers, the performance gains a paradoxical strength. “Hands Up” was not in this sense addressed to the police at all but to the protestors, naming political bodies that can be wounded, even die, but do not submit and are open to others. The feminist implication of this vulnerability as strength became clear when women formed the #SayHerName project. Because the conventional space of representation is normatively masculine, there was an unequal response at first to the deaths of African American women at the hands of the police. Protestors took the appearance of the sexualized female body and rendered it political. Naked to the waist in articulated affiliation with West African traditions, Black women blocked traffic in San Francisco with their bodies to force the connection between their visibility

and the forgotten names of women killed by police: Rekia Boyd, Sandra Bland, Keyla Moore, Shelley Frey, Joyce Curren, and so many more.

“Hands Up, Don’t Shoot” pauses the action at the crucial moment, when any “reasonable person” (to use the legal phrase) would have ceased firing at a wounded, surrendering child. It concentrates our attention on the vital moment (in the sense of living as well as essential) *before* the definitive violence. The action prevents the media from its usual call for closure, healing, and moving on. Protestors choose to remain in that moment that is not singular but has already been repeated. It is said that Roman gladiators addressed the Emperor: “Those who are about to die salute you.” Those performing “Hands Up,” as if about to die, do not salute the sovereign power of the police, and do not accept their right to kill. They refuse for those people who have died to die again and prohibit any future shots. “Hands Up, Don’t Shoot” is the first product of the interaction of the Snapchat/Selfie generation with direct action in the streets because it created a new self-image of the protestor.⁷ It is not a simple reenactment. It is a protest at the killing of an unarmed child and all the other operations of the prison industrial complex by those who in fact have most to fear from it: people placing themselves in situations that can be deemed non-compliant, allowing the police to claim the right to shoot.

The Die-In

Political bodies in the space of appearance are not eternal like the body of the king, and so they have suspended death in the die-in. This counter-body politic is dying but not dead. Because death is the sanction applied by the carceral state and white supremacy for non-compliance, the new civil rights movement, like many before it from feminism to ACT UP and the environmental movement, has reclaimed it as means to disrupt commercial space and divert it into becoming a temporary commons. Greenham Common women performed die-ins in protest against cruise missiles stationed at the US Airforce base in Britain, while ACT UP activists staged a now-legendary die-in on Wall Street in 1987 to protest the lack of AIDS treatment. In the recent protests, resistance took over the spaces of circulation and consumption. In November 2014, one of the first mass die-ins in New York took over Grand Central Station during the evening rush hour, causing a dramatic response online. Protests continued every week in Grand Central for a year and continue to take place as of this writing. Online activism generated solidarity actions worldwide, such as a British “I Can’t Breathe” die-in at the Australian-owned Westfield Mall in London. Rather than restage one death at a time, there have been mass die-ins, making it clear that all who might fail to comply are all potential targets. When counter-body politics die in, the non-places of shopping malls and transport hubs become visible as the spatial component of the policed society, the only public spaces we are supposed to inhabit. Performed death surrenders to visuality’s dominant viewpoint from above, making each person vulnerable, but creates a sense of freedom as you rest your body with others in spaces where you never normally are at rest. You experience solidarity as the

collective body dying in. You may close your eyes, listen to the silence, broken only by counting that does not enumerate value but re-performs the eleven statements: “I Can’t Breathe,” the last words of Eric Garner, the body of the commons dying and yet refusing to depart. In dying but not transitioning into death, the die-in prevents the circulation of commodities. There is within these movements what Diana Taylor would call a repertoire, not an archive (20–23). From such repertoires, it becomes possible to create a space of appearance outside norms. The political body in movement opens the way to overwrite spaces of owned and militarized appearance in order to constitute a different ground for politics.

Redacted spaces of non-appearance

The repertoire can also be assembled from the new range of machine-generated visual materials recording the repeated police killings, what we might call the machine repertoire in assemblage of persistent looking. These are the videos from dash cams, body cameras, CCTV, and other forms of surveillance of and by the police. Politicians and some activist groups like Campaign Zero often propose these devices as a solution for the problem of police violence. From Eric Garner to Sandra Bland, Alton Sterling, and Tamir Rice (among many others), it is clear that the existence of such materials does not lead to indictments, let alone convictions, despite the apparent neutrality of the recording machines. Like any other device, the machines can be manipulated. The International Association of Police Chiefs reported on in-car cameras in 2006, concluding “If the officers believe that the cameras are being installed strictly for the purpose of disciplinary actions, the agency’s program will be plagued with broken equipment and little support from the rank and file.”⁸ That is exactly what has happened: for example, both officers involved in the death of Alton Sterling on July 5, 2016 had body cameras that somehow became “dislodged.”

How can we (not) look at these images and the seemingly endless stream of videos of police killings in another way? For many people, looking over and over again at broken Black and brown bodies has become intolerable, especially after the concurrent deaths of Alton Sterling and Philando Castile (Juhasz). Such sentiment has been building for some time. For example, Michael Brown’s family objected to a white artist Ti-Rock Moore making a (somewhat inaccurate) life-size recreation of his dead body for a Chicago exhibition in 2015.⁹ Perhaps they can be used to show the space of non-appearance, the no one’s land where people die. Located in between private and corporate property, this space of non-appearance has become a featureless killing zone.¹⁰ This zone is an index of state violence without making a spectacle of the deaths that are and have always been the gross product of the settler state. In order to make this zone of non-appearance visible, all one needs to do is crop a still image taken from the video to exclude the fallen or about-to-be-wounded person.¹¹ Christina Sharpe has called such tactics “Black visual/textual annotation and redaction” (117). This redaction is a tactical form of visual refusal.

Far from being censorship – the complete images still being widely available – this is a coming-into-visibility of what is otherwise not seen or ignored – the space of non-appearance. Let us give that space a name: America. The name is meant to convey an ideology, not a geography, the militarized white supremacy of the settler colony.

Below I have edited the dash cam video that shows the fatal police shooting in 2014 of teenager Laquan McDonald in Chicago to exclude his body. There was a year-long dispute over the release of this video, which clearly demonstrates that Officer Jason van Dyke shot McDonald when he posed no threat. What is most appalling and heartbreaking about the video is that Laquan was left entirely alone after being shot no less than 16 times, even though he still seems to be alive. It is unbearable. However, in the long dispute over the video's release, his family argued against making it public. They would have known that 46 of 70 people killed by Chicago Police Department from 2010–2014 were Black.¹² That of 400 shootings, fatal and non-fatal from 2007–2015, the Independent Police Review Authority found only one to be unjustified. And no doubt, like the Ferguson community, they feared reprisals. Note that everything was done by Chicago police to prevent the scene from being recorded. Only one of the five police vehicles at the scene recorded video. All failed to record any sound, which is important for determining the pattern of shots.



Figure 1.2 Redacted still from Laquan McDonald dash cam video (10/20/2014). Released into public domain by Chicago Police Department (11/24/2015).

What do we now see of the America where Laquan McDonald died? A chain link fence. A billboard announcing to no one whatever real estate development is intended to take over the space. A deserted bus stop. Weeds taking over the sidewalk. The image conveys a terrible loneliness, the awful meaninglessness of the scene. Corporate space dazzles with halogen lighting and video displays. Private houses lurk behind their alarms and CCTV. In between is no one's land, the killing zone. This bleak capturing of United States reality is common to these videos that have become the hallmark of US visual culture.

Consider this still from the police dash cam video that shows the scene where Sandra Bland was stopped in Texas on July 10, 2015 for failing to signal a lane change, a stop that was to cost her her life.¹³ A country road. Trees. Evening. The space is again featureless. A broad, deserted road with no visible markings. To whom, we might ask, did Bland need to signal her lane change? Utility wires dangle, awaiting the next storm to fall. The hazy white sky of climate-changed Southern summer. It is no one's responsibility to maintain or enhance non-private property in the United States and so no one does. No one's land. No one cares. Someone dies. This is the space of non-appearance. In *Waiting for Godot* (whose stage directions are evoked here), Lucky, a slave-driver, arrives instead of Godot and terrorizes them. Today in no one's land, America, the unlucky residents await the arrival of the police at any time whatever, on any day whatever.

The emptiness of these American spaces is formally analogous to the mind-destroying cells of the prison-industrial complex. Shown on the next page is an edited still from the video showing the tasing of Philip Coleman, an African American graduate of the University of Chicago, who was incarcerated on December 12,



Figure 1.3 Redacted still from Sandra Bland dash cam video (07/10/2015). Released into public domain by Texas Department of Public Safety (07/21/2015).

2012 after suffering a psychotic episode at his mother's house (Lighty and Mills). Arrested for assault because he spat at police, he was ultimately tased 13 times before his arraignment. The incident ended with his death from an adverse reaction to anti-psychotic medication. The image shows the cell adjacent to Coleman's, visible in the video and identical to his in every way. The cell is so devoid of features as to defy verbal description. A blue shelf to place the body of the incarcerated. White walls. Bars. You can almost see the claustrophobia, the insufferable boredom, the discomfort, and the smell. These are the spaces in which the United States confines its mentally ill. According to the Treatment Advocacy Center, in 2012 there were an estimated 356,268 inmates with severe mental illness in prisons and jails, ten times the number of such patients in state psychiatric hospitals ("Executive Summary"). There is a further mirroring of abandoned urban spaces and the deserted rural locations where prisons are built, as Gilmore



Figure 1.4 Redacted still from Philip Coleman CCTV video (12/12/2012). Released into public domain by Chicago Police Department (12/08/2015).

has pointed out: “These forgotten places, and their urban counterparts, can be understood to form one political world, abandoned but hardly defeated” (247). They form the present day “carceral landscape,” first formed in slavery, modified under Jim Crow, and rendered into spaces of non-appearance under the present regime of mass incarceration (Gilmore 210 ff.).

Antigone in St. Paul

The machine-generated image-stream and the digital co-presence of Black Lives Matter actions converged in the self-broadcast by Diamond Reynolds at the scene of the killing of her boyfriend Philando Castile in a suburb of St. Paul MN on July 6, 2016. The police thought Castile’s “wide-set nose” matched that of a robbery suspect, a description that could encompass most African American men. For Mr. Castile, this was the 53rd and last such stop he had endured in the area for driving while Black. The cop told Mr. Castile to produce his license and registration. In an excess of caution, he responded that he was carrying a weapon, for which he had a permit. When Mr. Castile reached for his wallet to produce his documents, the panicked police shot him several times, leading to his death.

At this moment Diamond Reynolds began broadcasting networked video on Facebook Live. Showing astonishing composure, she describes what has just happened in detail, calling the police officer, who visibly continues to point his weapon at her, “Sir.” Her face is composed, elegant, perhaps elegiac. The phone



Figure 1.5 Redacted still from Diamond Reynolds’ Facebook Live post (07/06/2016)

camera makes her appear blue, unintentionally evoking that articulation of Black and blue from Miles Davis to David Hammons. Realizing that Castile has passed, she repeatedly asks: “Please don’t tell me that he’s gone.”

Reynolds calls on the law not to break its own promise to protect and to serve. She speaks of Castile’s compliance with the officer’s request and of the breach of procedure – her term. In Sophocles’ tragedy, Antigone defies the state by burying her slain rebel brother against a royal prohibition. She puts justice and the sibling bond above process of law, for which she dies a living death, buried alive. Reynolds speaks to the law and demands that it not speak of what it has done. In that silence, Castile will not yet have died. All the while she is live, Facebook Live, and alive but under threat of death from the gun.

For minutes, what we see is a static view. A suburban road. Wires. Evening. The messy physicality of the network that enables us to see her. It becomes our view because she is being arrested, apparently for the offence of being present. Her camera, lying on the ground as if in a die-in for machines, continues to stream live. Like Antigone, Reynolds’ speech act has not prevented the law from its enactment of death. Antigone in St. Paul. Who, as Saul, was stopped on the road to Damascus of all places, accused by Jesus of persecution. But he was not frisked and he was not shot. As Paul, he went on to write the one piece of scripture mis-cited by Trump during the election campaign as Two Corinthians (usually known as Second Corinthians but written 2 Corinthians).



Figure 1.6 Redacted still from Diamond Reynolds’ Facebook Live post (07/06/2016)

Reynolds was unaccountably not released until 5 a.m. the following day. Just days after the presidential election, as if to keep the case out of the public eye, charges were finally filed against Officer Jeronimo Yanez.¹⁴ He was later acquitted of all charges. Reynolds herself continues to live with difficulty in the precarious margins of white Minnesota.¹⁵ In this video, she has created a tragic form for our fragmented time. A moment in which Vine, the then-popular but now-discontinued six-second video formant created new narratives, and in which the 140-character character assassination won the presidency. Her ten-minute film has unity of time, place, and action. It has loss. It is not about the hero. It expresses the fundamental separation and antagonism of white supremacy and opens a space of appearance to claim justice.

What matters now?

It used to be said of liberty that once seen, you could never go back. I'm not so certain of that now. What has happened is a double negative. For those that did not fully know, but should have known, the span of death and legal process that goes from Eric Garner and Michael Brown, via Sandra Bland and Rekia Boyd, to Alton Sterling and Philando Castile (July 2014–December 2016) has been the time to learn to unsee the unseeing imposed on the space of appearance by white supremacy. It renders blackness visible as what Simone Browne calls “that nonnameable matter that matters the racialized disciplinary society” (9). For Black lives to matter, that matter must be the point of departure for how we see America. Until and unless all persons are considered “levelly” human, as the Combahee River Collective put it, there is no possibility for human rights. When it is clear that the police respond differently according to their judgment of a person's appearance, there is no equal citizenship.

Black Lives Matter is a dialogic formation; Black people hear it as affirmation, while for white people is an enjoinder and reminder. On January 20, 2017, Trump ended that dialog from his new position as the President of the United States. His inaugural address contrasted his belief in “America first,” widely understood to be a reference to 1930s era white supremacy, with “American carnage.” This dog-whistle phrase combined a disparaging reference to black-on-black crime, with an allusion to the number of police allegedly being killed by Black people as a result of the so-called Ferguson effect. Under the new regime, Black Lives Matter finds itself “in the wake,” to use Sharpe's trenchant phrase. In the wake of Black Lives Matter, the movement has been driven from its intended course by the intensification of white supremacy. There is a wake of militancy and mourning for Black Lives Matter, a remembering of its intentions and energies with a determination that its goals not be lost. And there is a recoil, the third meaning of the word *wake*. For Trump voters it takes the form of a “whitelash,” meaning a rejection of what Black Lives Matter stands for. For its supporters, the recoil comes in learning how much racism and racial hatred constitutes the peculiar state of the union. At time of writing, police in St. Louis, three years after the death of Michael Brown,

celebrated the acquittal of yet another officer for shooting a Black man by chanting “Whose streets? Our streets.” The wake continues.

Notes

- 1 Alexander R. Galloway “Black Box, Black Bloc” A lecture given at the New School in New York City on Apr. 12, 2010. Posted at: <http://cultureandcommunication.org/galloway/pdf/Galloway,%20Black%20Box%20Black%20Bloc,%20New%20School.pdf>
- 2 KEITH LAMONT PETERS, Appellant, v. STATE OF FLORIDA, Appellee. No. 4D11-607
- 3 <http://newsone.com/2204122/dorner-signs/>
- 4 Photographed by Caleb Ferguson for the *Village Voice* (July 24, 2014) at www.villagevoice.com/slideshow/eric-garners-funeral-draws-police-and-protesters-6314853/5
- 5 For a full account of the events at the scene, see Nicholas Mirzoeff. “The Murder of Michael Brown: Reading the Grand Jury Transcript,” *Social Text* 126 (Spring 2016): 46–71.
- 6 Social media collected by DeRay Mckesson in #Ferguson at <https://storify.com/deray/ferguson-beginning>.
- 7 On the selfie, see Nicholas Mirzoeff, *How to See The World: An Introduction to Images from Selfies to Self-Portraits, Maps to Movies and More* (New York: Basic Books, 2016), 29–69.
- 8 International Association of Police Chiefs, “In Car Cameras” (2006), 67. www.theiacp.org/portals/0/pdfs/incarcamera.pdf
- 9 See www.cbsnews.com/news/michael-brown-father-chicago-art-exhibit-on-ferguson-teens-death-disgusting/
- 10 I have in mind here Eugène Atget’s 1913 album of photographs of the Paris underclass and their non-spaces, *Vues et types de la zone militaire de Paris* (Bibliothèque nationale de France).
- 11 This simple tactic is derived from many more sophisticated contemporary art projects, such as Ken Gonzales-Day’s “Erased Lynchings” (2002) kengonzalesday.com/projects/erased-lynchings/; and the collaboration between Claudia Rankine and John Lucas in *Citizen: An American Lyric* (Minneapolis: Graywolf Press, 2014), which removed the victim’s bodies from the infamous lynching photograph taken in Marion IN in 1930.
- 12 <http://chicago.suntimes.com/news/chicago-tops-in-fatal-police-shootings-among-big-u-s-cities/>
- 13 A video shot by Sandra Bland herself emerged in May 2019 after this piece was written www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html
- 14 www.nytimes.com/2016/11/17/us/philando-castile-shooting-minnesota.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news&_r=0
- 15 www.washingtonpost.com/national/stay-calm-be-patient/2016/09/10/ec4ec3f2-7452-11e6-8149-b8d05321db62_story.html

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Community media makers and the mediation of difference

Claiming citizenship and belongingness

Lola de Koning, Elaine Nolten and Koen Leurs

Introduction

When you are looking at SALTO, as a TV channel, you actually become a sort of shop window of the city. And the city is so multifaceted – from your own position it’s difficult to relate to everything that is going on. All those ethnicities, all those different social groups. At SALTO, you actually see a sort of carousel of diversity pass by. And what you get, then, is that people also in this contemporary moment can get to know other people’s bubble. That is where the inspiration lies.

– Willem (SALTO)

SALTO is Amsterdam’s community media organization. It enables the city’s communities to broadcast their material on local TV, radio and online channels to Amsterdam audiences. SALTO’s programming aims to establish new connections between different urban groups, illustrating how cultural difference is “always-already mediated, that is, constructed (re)presented, and experienced through the media of communication” (Siapera 5). However, in emergent discussions on the growing cultural and political polarization in Netherlands, Europe and beyond, there is much attention for how contemporary media platforms and social media may function as filter bubbles, as they allow users to connect only with like-minded people and encounter perspectives that confirm their own worldviews. As community media philosophies commonly reflect commitments to public participation, civic engagement, accountability and the promotion of a plurality of social, cultural and religious ideas (Buckley) there is particular urgency to uncover the potential of community media to promote audiences to move outside of their bubbles. The question therefore arises: how do community media mediate difference and inclusive citizenship? In aiming to provide community-oriented alternatives, are they inherently inclusionary, or do community media also prioritize, ignore or exclude particular experiences?

From SALTO’s approach to community media, it appears a key imperative is establishing a “discursive space” for diverse communities, on the basis of the twin principles of “participation” and “access” to accommodate “those voices, interests, and perspectives . . . typically marginalized in mainstream media discourse”

(Howley 818). Furthermore, in seeking to allow marginalized voices to be heard, community media foster alternative formations of citizenship from below.

Unlike community formation, the workings of citizenship are dominantly understood from top-down, institutional and legal perspectives that emphasize one-directional and relatively passive processes like paying taxes and voting. From this perspective, a small group of elites decides about the rights and obligations of a majority. When shifting the focus from the “institution of citizenship” towards performative “acts of citizenship”, “that is, collective or individual deeds that rupture social-historical patterns” (Isin and Nielsen 2), we can create awareness about the wide variety of civic engagement practices communities engage in and the role of media in sustaining these practices. The struggle for socio-cultural recognition (Honneth and Anderson) of minority communities – besides legal recognition – is fundamental for striving towards just and inclusive societies. Moreover, to be able to attend to citizenship claims it is important to understand how communities see themselves and how they see themselves as part of wider societies. Community media are important actors in acknowledging, enabling and amplifying such claims from below. Although policies, NGOs, the World Bank and scholars’ historical conceptions of community media predominantly originate from the Global North, community media in the West are understudied. As Bart Cammaerts diagnoses, community media “discourses, theories and policies are oriented towards developing countries and emerging democracies”, while paradoxically community media “in the West are often forced to operate in the margins” (635) as a result of neoliberal policies and budget-cuts.

This chapter sheds light on the mediatedness of citizenship and difference, by focusing on a case study of two groups of community media makers in the Netherlands: local public broadcasters and feminist podcasters. Each of these community media makers is distinctly situated and functions according to a specific logic of mediation and understanding of difference and citizenship. While now commonly institutionalized and subsidized, local public broadcasting emerged during an era of analogue media shaped by a pirate-broadcasting ethos. Feminist podcast makers are grassroots and cherish the medium-specific affordances that have emerged in the recent digital era. Both share a commitment towards increased access to information and strive towards a more inclusive representation of different voices and communities. As community media, both disrupt the common binary opposition between amateur and canonized professional media practice, and call into being non-mainstream counterpublics (Felski; Fraser). Challenging the view from the national center, local public broadcasters orient themselves to their local audiences and their concerns, while feminist podcast makers construct publics around their topical focus and ideological commitment. Both offer spaces of community withdrawal, differential identification and mediated belonging, but they also have to relate to the mainstream public sphere and remain aware of their distinct status (Warner). In mediating community voices, community media thus navigate between hegemony and counter-hegemony, inclusion and exclusion as “the power asymmetries of mediation map onto the pre-existing and deeply seated asymmetries” (Madianou 6) of for example race, ethnicity, gender, sexuality, and class.

Field and focus

Community media mediate citizenship claims and co-shape difference; in their mediation they “produce and subsequently control a certain version of it. However, this very mediation simultaneously undermines such efforts by inserting a degree of instability, thereby keeping open the process of mediation” (Siapera 6). In this chapter, we focus on the practices of fifteen community media makers for mediating difference and citizenship. Interviewees represent local public broadcasters and feminist podcasters (see Table 2.1).¹

Table 2.1 Overview of interviewees and media outlets they represent.

<i>Local public Focus broadcaster</i>		<i>Podcast</i>	<i>Focus</i>
NLPO	“The Dutch Local Public Broadcasting Foundation (NLPO) is the cooperation and coordination body for local public broadcasting in the Netherlands. The foundation supports local public broadcasters in various fields to further professionalize the sector and to improve the quality of the productions of local broadcasters, so that they can meet the legal requirements of a Local Adequate Media Offering” (NLPO, 2019).	Bloed aan de Muur (Blood on the Wall)	“A podcast with anarchy-feminist touch. With recommendations, current events, good books, stories, poems and all those things that you do not necessarily want to hear” (Bloed aan de Muur, 2019).
REGIO8	“REGIO8 is a multimedia platform with a professional news editorial office of young and ambitious journalists and program makers. The news editorial team wants to inform Achterhoekers and involve them in current events in society. REGIO8, however, does not only focus on reporting regional news in a journalistic way, but also offers scope for positive developments in the Achterhoek” (REGIO 8, 2019).	Dipsaus (Dip)	“DIPSAUS is the bi-weekly podcast by and for women of color and anyone interested in a different sound” (Dipsaus 2019)

(Continued)

Table 2.1 (Continued)

<i>Local public broadcaster</i>	<i>Focus</i>	<i>Podcast</i>	<i>Focus</i>
Salto	<p>“The Netherlands is the country of opinions. And Amsterdam is its capital. This is where most opinions come together. Where you can you say what you want. We are proud of that. Put those elements together and you get what SALTO stands for: everyone’s proud and free opinions” (Salto 2019).</p>	<p>De Schemerzone (The Twilight Zone)</p>	<p>“In De Schemerzone Elias Mazian and Emma van Meyeren enter the border between the night and the day. They have a conversation twice a month about everything that has to do with nightlife with the people they love sharing the dance floor with” (De Schemerzone, 2019).</p>
OOG (EYE)	<p>“Omroep Organisatie Groningen is the local public multimedia institution for all residents of the municipality of Groningen. OOG stands for its journalistic principles, but also wants to be opinionated and non-conformist. OOG wants to inform citizens about everything that happens in the city” (OOG 2019).</p>	<p>Vuile Lakens (Dirty Sheets)</p>	<p>“Vuile Lakens (Dirty Sheets) is a podcast about sex, body and everything you dare not talk about in delicate company. Gender expert Anaïs Van Ertvelde and writer Heleen Debruyne venture into wet areas.” (Vuile Lakens 2019).</p>
DUIC	<p>De Utrechtse Internet Courant, (The Utrecht Internet Newspaper) is “Utrecht’s own, innovative news platform with daily general, cultural and municipal news from the city of Utrecht. By and for people in Utrecht” (DUIC 2019).</p>	<p>De Oppas en ik; lets doen, hoe doe je dat; Liefs van Woord; Het Mannenprobleem (The Babysitter and I; Doing Something, how do you do that?; Love, Word; The Men Problem) ZOUT. (SALT)</p>	<p>Variety of radio documentaries, covering topics like masculinity, activism, sexual harassment, gender, and love. “Podcast which features four Cultural Studies students starting a conversation about intersectional feminism” (ZOUT. 2019).</p>

Following dominant patterns emerging from our analysis of interview narratives, in this chapter, we discuss three dimensions of mediation (Martín-Barbero): institutionality, technicity and sociality. We highlight therefore community media's institutional context, their technological infrastructure and their contribution to community formation and claiming citizenship.

Legally, public broadcasters have the task to perform independent journalism that gives audiences access to information, education and culture, via all available channels, including TV, radio and online. The role of local public broadcasters is described in the 2008 Article 2 of the Mediawet (Dutch national media legislation), which requires a balanced and multi-perspectival offering of high journalistic quality, targeting both a general audience as well as specialized ages and societal groups, autonomous from commercial or governmental influences and which is "accessible to all" ("voor iedereen toegankelijk"). Local public broadcasters are expected to offer a Locally Sufficient Media Offering (Article 2.170b) through broadcasting. In contrast, podcasts narrowcast and publish audio files that listeners can access digitally via their digital device or computer. The feminist podcasts included here address questions of (in)equality, processes of inclusion and exclusion, and discrimination, thereby explicitly or implicitly working to contribute to the dismantlement of Dutch imperialist, white-supremacist, capitalist and patriarchal norms.

Institutionality

Community media function in a media landscape dominated by powerful gate-keeping institutions that co-shape mechanisms of in- and exclusion, thereby ensuring that mediated participation in the public sphere is generally reserved for elites, commonly middle-class, white, European men. Against this inaccessible dominant public, community media position themselves as counterpublics, "parallel discursive arenas where members of subordinate groups invent and circulate counterdiscourses to formulate oppositional interpretations of their identities, interests, and needs" (Fraser 67). However, in this arena, bottom-up and grassroots community media initiatives also operate as media makers, albeit from the fringes, thus occupying a position of power and having a particular responsibility and answerability towards their audiences. When engaging with community media practices and their mediations of difference, the institutional context in which they operate must be taken into account. Institutions mediate different opposite modes of "civility", meaning state-run communication media as a "public service" and "freedom expression" mediated through free trade (Martín-Barbero 288). These lines are increasingly blurred and impact "production processes and cultural matrices, i.e. practices and conventions, to produce social structures" (Lievrouw 228).

Both groups of community makers explicitly present themselves as offering a platform for unheard voices and covering under-represented experiences within and against a media landscape characterized by exclusion, gatekeeping

and increased commercialization. Local broadcasters offer platforms to seek recognition for people and local struggles not commonly covered on the national news or mainstream talk shows, while feminist podcasts draw attention to people who cannot or do not want to relate to mainstream normative frameworks of gender, race and sexuality, as they commonly want to maintain their own niche and establish their own feminist, anti-racist and queer reference points. As such, they highlight what differentiates them from norm-setting mainstream media.

Local public broadcasters claim awareness of the lived experiences of those living in close proximity. Marc (NLPO) notes that “everyone pretends to be in the capillaries of society, the regional broadcasters increasingly use that term and even the national public television. But I think that with a local broadcaster that really is the case”. Evert (OOG) emphasizes this sense of proximity: “We are also a social institute, which I think is equally important [. . .] It’s not comparable to the national level. It’s more fundamental, it’s closer to people”. In contrast to feminist podcasts, which are generally more grassroots initiatives, local broadcasters work within dominant institutions, albeit in the margins, and are recognized as such. As such, acts of locally engaged citizenship are performed within institutionally recognized frameworks, rather than outside them.

Local broadcasters, which with national and provincial broadcasters make up the public broadcasting services, receive significantly less financial support than broadcasting services on the provincial or national level. Here we observe a catch-22 situation: local public broadcasters are expected to professionalize in order to survive in the current media landscape, but the required investments to do so are missing for a substantial number of organizations. As Joost (REGIO8) explains, this lack of recognition and support threatens ambitions for professionalization:

Every municipality has its own local broadcaster, gives a little subsidy to it and in principle it is hobby-financing of the people who like to be involved. That certainly has its function. It creates a certain bond with your municipality, with your region, you hear people you know from the street, you hear them on the radio. . . . But, the substantive side got a bit of lost. The journalistic goal of the local, government-subsidized broadcaster has watered down.

The impetus of professionalization emerged from a new commitment to maintaining journalism standards necessary for safeguarding local democratic processes and standards. In order to sustain their broadcasting services financially, local broadcasters must reconsider their practices and their position in the media landscape. Professionalization is key, as well as the journalistic answerability broadcasting services have towards their communities. For some local broadcasters, moving towards professionalization means working increasingly with professional journalists and other media makers, using predominantly established journalistic practices (Joost, REGIO8). In contrast, Willem (SALTO) acknowledges the (financial) necessity of professionalization, but emphasizes that it is not his

goal in itself. A movement towards professionalization can impede the sense of belongingness community media offer communities. As local broadcasters are able to provide a platform for various communities, they mediate difference and constitute community members as citizens who are “beings with claims” (Isin and Nielsen 8). Sustaining local broadcasting is therefore increasingly important, not just in order to allow media makers to continue to do their work, but specifically because of the ways their work mediates difference and performs community-driven acts of citizenship. As community media, local broadcasters offer local communities recognition, connection and belonging.

According to Marc (NLPO), there is a “democratic hiatus” looming. Decisions about funding are made at the local level of municipalities. Municipalities receive state funding and are themselves in charge of allocating funding to specific services, local public broadcasting media being one of them, alongside road repair, schools etc. This is worrisome, given how journalism in the Netherlands is under threat. According to Leen D’Haenens et al., “what was once a tight network of local ‘watchdogs’ was slowly but surely being replaced by an accumulating number of ‘blind spots’ and ‘missing links’ in municipalities no longer covered by a professional journalistic presence” (“The Missing Link” 142). This development occurs in tandem with a recent decentralization of policy and governmental mandates. Thus, local municipalities have increasing power, but the local journalism that is supposed to control municipalities is waning. Representatives of community media have arrived at a crucial crossroads: either the law has to be changed so that the journalistic requirement of local public broadcasters would be removed, which means local public broadcasters would enter the domain of social work, or the infrastructure will have to be professionalized in order for community media to remain democratic safeguards at the local level. As an antidote, NLPO lobbies for extra subsidies on the basis of securing a future-proof community-driven perspective. Marc (NLPO) notes, “We said, let us start not from the administrative lines that exist, but from the perception of citizens. This we have sought to capture in the [notion of the] natural habitat. What is the natural habitat of people?” The question arises how an awareness of the local situatedness of audiences will suffice to ensure community media can continue their roles as “watchdogs” or whether observed decline of attention for citizen’s voices and participation will further exacerbate the local “democratic deficit” (Moore).

While volunteers and paid professionals work for local public broadcasters, the political economy and institutional position of podcasts differs, as they are mostly the result of unpaid labor. The topics podcasts center on often cannot find their way into the dominant public sphere. As a result, podcasters create content that attracts a small, but heavily invested audience. For independent podcasters, their desire to create content for an underserved, niche audience is an important motivation to start and continue their work (Markman). When connected to feminist podcasts, this motivation is more politicized: feminist podcasters “take up sonic space” by discussing topics that are often excluded from and/or misrepresented in mainstream media, and thereby challenge the processes of in- and exclusion of

dominant publics (Tiffe and Hoffman 116). Moreover, to claim this sonic space is a particularly radical act for those whose voices are considered too nice, specific, loud or angry to be included in mainstream media. As Nikki ('Mijn babysitter en ik' i.a.) illustratively notes: "Simply by letting so many women speak you can see it as an intervention, [by] letting people with a different experience be heard". Seeking to challenge structures of inequality with their work, feminist podcasters include multiple (often underrepresented) voices and perspectives from (recurring) guests. This multivocal representation allows feminist podcasts to be a platform from which to enact, express and explore different acts of citizenship. The mediation of difference is key here: with the deliberate inclusion of perspectives different than their own, feminist podcasters present difference as a key motivation for creating and sustaining the podcast. As Floor (ZOUT.) summarizes:

[We invite] people who then bring in perspectives that we simply do not know, because they experience the world in a totally different way because they have a slightly different background. [. . .] They then have stories that we do not know yet, and then we come to new conclusions again.

By making other opinions heard and building in space for critical reflection and answerability, podcasts connect mediated, political, ethical and aesthetic acts of citizenship.

Conceptualizing podcasters' practices in terms of counterpublics is particularly apt, as a counterpublic characteristically fundamentally maintains "at some level, conscious or not, an awareness of its subordinate status. The cultural horizon against which it marks itself off is not just a general or wider public but a dominant one" (Warner 119). Moreover, the lack of inclusion and representation in mainstream media can be an impetus for podcasters (and community media makers in general) to initiate alternatives to this dominant public sphere. As Anaïs (Vuile Lakens) notes:

We actually started with the podcast because we noticed that we had created our very own vocabulary, or our own manners of speaking about sexuality and about our bodies, but [that we say] that reflected very little in mainstream media. [. . .] We thought: maybe we need to do something with this, maybe there are even more people interested.

For Vuile Lakens, the ultimate goal of the podcast is to provide a space for this new vocabulary and to thereby attempt to push the boundaries of the ways in which sexuality, gender and bodies are discussed in the public sphere.

Importantly, podcasting allows community media makers to work independently, to work and create content on their own terms and thereby to circumvent the exclusivity of mainstream, institutionalized media platforms. In reference to discussing the podcast and its core topics in more mainstream, mass-audience outlets, Anaïs (Vuile Lakens) describes:

With a podcast, you can perfectly bring what you want to say. [. . .] But on the other hand [in mainstream media] you often encounter a sort of simplified version of yourself [. . .] and part of the revolutionary potential of what

you're sharing gets lost. Because it does get incorporated really easily into the interpretative framework that was already in place. While actually what you want to do is to break through that framework, and make it more diverse, or more fragmented, and that is really difficult.

The “revolutionary potential” that the articulation of a new vocabulary in podcasts offers, therefore, gets lost as its message is enveloped in the already-existing interpretative framework. By being situated on the edges of the Dutch mainstream media landscape, feminist podcasters are able to articulate a different vocabulary with which to create new, critical narratives that can transform these structures or, in Anaïs’ words, “at the very least pull a little or something, to break [norms] open slightly” (Vuile Lakens). Moreover, rather than being under- or misrepresented in mainstream media, feminist podcasters create their own platforms and infrastructures within which to articulate difference and citizenship.

Feminist podcasters do not only aim to provide an inclusive platform where their ideas and voices can take up (sonic) space, but also expect receptive and engaged audiences. As Mariam (Dipsaus) explained: “What I like best, or what we really wanted, is that after such an episode you start thinking for yourself. So that something is triggered that makes you think”. As community media, both local broadcasting services and feminist podcasters provide a platform from which to address topics and issues that in mainstream media would be considered too “niche” or radical. While local broadcasting services do so within a state-subsidized institutionalized context, both examples of community media follow from the idea that there might be an “untapped or underserved audience ‘out there’, waiting for the kind of content [community media] could deliver” (Markman 556).

Feminist podcasters highlight the opportunity grassroots community media have to push back against the boundaries of the public sphere and the distinct potential for transformative mediations. Moreover, as they develop, feminist podcasters become increasingly more visible as media platforms in the public sphere. While most feminist podcasts are not institutionalized in the same ways local broadcasters are, they do operate as media makers and as such have the power and responsibility that come with that position. This, in turn, affects their practices. As Mariam (Dipsaus) explained:

We are media now. [. . .] We have our blind spots, and we have to think about that and we have to be strict with that and see to that. [. . .] You have [blind spots] when you yourself are not in that position. [. . .] The funny thing is: we know that. That’s why it’s called a blind spot: before you know it, you’re doing it.

Recognizing and remedying such blind spots is a key practice both local broadcasters and feminist podcasters strive to employ to guarantee the inclusivity of their platforms. It highlights the power community media have as institutions: even in a public sphere dominated by bigger, more exclusionary media institutions, community media too occupy a position of power. By using this power

to circumvent and challenge media conventions, community media establish a discursive space from which marginalized communities can perform acts of citizenship. As such, community media give audiences and media makers a platform that gives space to the “revolutionary potential” of transformative mediations of difference and acts of citizenship.

Technicity

As community media, local broadcasters and podcasters use technologies to build connections among and within communities and can function as spaces for cohesion for both local and transnational diasporic communities. The technologies used impact upon the particular ways in which citizenship is mediated within the fringes of the media landscape and the forms of connectedness and belonging this mediation provides audiences. Community media operate in a media landscape characterized by socio-technical “disruption” as a result of media convergence, participation and interaction (Deuze and Prenger), which results in a “lively and contentious cycle of capture, co-optation, and subversion of [. . .] system architecture” that both shapes the dominant mainstream and expands the fringes of media culture (Lievrouw 2). The concept of technicity “mediates between production and industrial ‘formats’, generating new techniques and methods” (Lievrouw 228) and thus “refers more to the design of new practices than to technological devices” only (Martín-Barbero 289).

There are distinct media-specific differences between local broadcasting services and podcasts. Local broadcasting services are institutionally recognized media platforms that must conform to the Dutch ‘Mediawet’, providing a balanced, diverse offering that simultaneously targets general audiences and specialized communities. Many local broadcasting services are simultaneously accessible via television, radio, digital platforms or even hard-copy newspapers. Through cross-platform-programming they strive to be “accessible to all”. As Joost (REGIO8) summarizes:

Yes, definitely, you 100% have to present everywhere. And you have to distinguish yourself in that and build an identity for the region. And show that everywhere, in order for the region to also feel connected to you. So you can achieve a sense of trust.

Accessibility generates connectedness on a local level: audiences and community media makers share a sense of belonging and recognition by being both physically present and visibly/audibly present in the region. For REGIO8, for example, Joost states:

After four years I know almost all roads in the entire Achterhoek, and I think that’s important. This way, you come everywhere and we try to make

a connection with all the people from those places, who also know these streets, and we try to foreground that.

Moreover, as Willem (SALTO) describes, the local connectedness among community members has outgrown its geographical limits and has developed into an example of transnational community media:

The community aspect has outgrown the territorial aspect. So the fact that this is the only channel which is so Surinamese, has a stronger attraction than the fact that it is an Amsterdam-based channel. I think the same holds for the Ghanaian television.

Communities abroad tuning in to local broadcasting services engage in transnational citizenship formation and allow for the formation of diaspora belongingness (Georgiou, "Diaspora in the Digital Era").

Connections among and within audiences are facilitated in part by the technological infrastructure local broadcasters use: by combining various technological formats and uniting them under the umbrella of one local broadcasting service, broadcasters are able to create new production formats that highlight accessibility and community participation. Local broadcasters can build in room for participation by allowing and encouraging community members to create their own programs, giving them time, space and resources to "speak in their own voice", thereby "simultaneously constructing and expressing one's cultural identity through idiom and style" (Fraser 69). The technologies used offer both community media makers and audiences an opportunity to disrupt and subvert dominant technological infrastructures. This distinguishes local broadcasting services greatly from national or provincial broadcasters, as it means that those who make media are not necessarily always professional and experienced journalists, but often community members with ideas and a desire to express and share them.

With this significant difference from provincial and national broadcasters, local broadcasting must be regarded through a different lens. As Willem (SALTO) argues:

If you create community media, do not critique those people as if they are a [mainstream] radio- or television channel. So do not judge them on the quality of the program. The quality does not lie in the objective quality of the images or whatever. The quality lies in the participation. In diversity. So in being present in the system in the first place. That is a quality.

SALTO works to ensure this quality by offering an open access media platform to various communities who want to broadcast their media, which, for Willem, "also means that if you open the gate to everyone, then you shouldn't start worrying about quality". Community media must therefore be considered on its own

terms, rather than by constant comparison to professional or corporate mainstream broadcasting services.

Similarly, podcasting pushes against the boundaries of what are considered to be “good” audio productions. Notably, early studies on podcasts and podcasting emphasized the medium’s relation to radio, examining in what ways podcasts are drawing on and/or re-shaping the conventions and practices of traditional radio (Berry). However, given the continuous growth and increased popularity of the medium, podcasting must now be considered on its own terms in order to articulate a sense of “podcastness” that incorporates its medium-specific allowances, limits and transformative potential (Berry 29). Similar to local broadcasting services, podcasts are characterized by, and often described in terms of, accessibility: by creating a podcast, media makers are able to circumvent the restrictions and gatekeepers of dominant media institutions. Podcast listeners create their own libraries of podcasts they want to listen to, voices they want to hear and topics they are interested in. As podcasts are delivered regularly into a listener’s podcast library, a sense of connection and belonging is created: listening to another person’s voice becomes a ritual that is “hyper-intimate”, and where “listeners can feel deeply engaged with both the process of listening and the material to which they listen” (Berry 20). For podcasters, the ritualized intimacy of podcast listening ideally results in the start of a conversation, the articulation of ideas or that, as Mariam (Dipsaus) states, “you start thinking for yourself”. A key aspect of that process is representation and recognition, which Johanna (ZOUT.) explains, is one of the main goals of the podcast: “If we can at least help one person, or that a person sees themselves represented, or that a person maybe learns something, then we have actually achieved our goal and was it worth it”.

Community recognition and inclusivity is practiced structurally and by virtue of community media’s technological infrastructures. Willem (SALTO) conceptualizes this practice on SALTO’s open access platform as “acknowledgement through recognition”. For example, the Arabic community was initially under-represented in SALTO’s programming compared to the community’s numerical presence in Amsterdam. In SALTO’s philosophy, it is expected that when communities structurally feel acknowledged they are more inclined to feel at home. In order to attract media producers from the Arabic community, SALTO made sure to add more Arabic music to their programming. This policy has proven successful and resulted in an increased volume of Arabic media producers at SALTO. Such mediating practices allow both local broadcasters and feminist podcasters to establish a ritual connection with their audiences. The establishment of regular patterns – of inclusive programming, of producing content, of sparking debate and dialogue – results from intersections between technological and industrial formats and audiences’ ability to receive and access these media and encounter other communities. This results in an inclusive accessibility that allows community media makers to disrupt the existing frameworks of mediation and to construct citizenship on a community level. Through co-opting and re-imagining technological

possibilities, community media create new possibilities which affect how acts of citizenship may be performed. In the use of accessible technologies and increasingly open-access platforms, local broadcasters and feminist podcasters can disrupt social-historical patterns of exclusion.

Sociality

In combination with institutionality and technicity, the mediation of citizenship is shaped by sociality. In the notion of sociality people's competences, preferences and cultural interests "on which they base the primary processes of articulation and constitution of social subjects and identities" (Martín-Barbero) are combined. As such, community media's sociality connects the ways in which community media create a sense of belonging for marginalized communities via a specific and strategically disruptive use of technologies and highlights how these practices contribute to the formation of communities through mediations of difference. While the local broadcasting sector mainly focuses on creating content tailored towards a specific geographical area (D'Haenens et al.), the target audience is mostly community-driven. Joost (REGIO8) argues:

We strive to represent a good balance between all societal layers of society. We do not only have an eye for politics, we also look out for what else is going on. Whether it's covering the local summer school or talking about a migrant issue.

Within this conceptualization, the mediating properties of community media focus on fostering connections through updating people about local affairs. Circulating local, community-specific cultural expressions potentially acts as a social glue for local communities, as D'Haenens et al. confirm:

Through consuming audio, video and web content, audience members may imagine themselves as part of a larger local audience. They play a significant role, because when a community loses its local news media, it also loses an institutional memory needed to maintain or raise the profile of the community, to inform citizens and to campaign on issues of local relevance.

(144)

In recognizing audiences as members of distinct communities, community media makers create belongingness that moves beyond formal and institutional forms of citizenship. As Willem (SALTO) describes:

The first step is acknowledgement through recognition. . . . In times of bubblification, when everyone finds their own news channels and their own sources, at SALTO you encounter these different connections which offers a source of inspiration. [. . .] That is where introductions lie. That is where all

those buzzwords politics are looking for lie to keep society afloat. Interest in the other. Connection between different bubbles.

Local broadcasters like SALTO Amsterdam actively mediate difference in response to communities who are increasingly speaking to themselves in parallel echo chambers. They respond to the “bubblication” of communities by connecting different audiences in their programming. Because the city and its potential audiences are multi-faceted, they feel this needs to be reflected in their programming. Local broadcasting stations can serve an important role as the physical and symbolic space where different communities and generations of broadcasters come together. Inclusive and democratic programming can introduce audiences to content and perspectives they might not encounter otherwise. Notably, this is different for feminist podcasters. Rather than audiences ‘automatically’ being exposed to difference, podcast listeners choose to download and listen to a podcast. For feminist podcasters, a key practice is therefore including a multiplicity of perspectives within their programs, in order for listeners to simultaneously recognize themselves and be exposed to and challenged by different voices.

While most local broadcasters strive to be inclusive organizations, practicing this inclusivity remains difficult. Institutionalization and a focus on professionalization and quality have the potential to serve as an exclusionary mechanism to various groups of media producers and consequently to various audiences. It is important for media makers to question what kind of audiences they imagine they cater to and if their programming reflects those audiences. Ethnic diversity is one of the key ways in which in- and exclusion are addressed by broadcasters within their programming. The following target groups were highlighted among local public broadcasters: the white expat and international student community, the Surinamese, Caribbean, Somali, Arabic, Bhagwan and migrant communities. However, local broadcasters generally fail to approach diversity as an intersectional practice by disproportionately emphasizing race and ethnicity. In local broadcasts the voices within different programs do not often join within a single show (unlike in feminist podcasts where multivocal representation is a key practice within each program). In times of increased digital mediatization, a diversification of platforms creates opportunities for different voices to perform acts of citizenship. Yet, struggles for power also take place within those particularistic media environments. Thus, particularistic media alone are not enough for addressing issues associated with inclusion and participation in the media: “voice does not guarantee recognition” (Georgiou, “Does the subaltern speak?” 45). In the case of local broadcaster SALTO, a remarkable percentage of 2.5% of visitors originate from Paramaribo (SALTO 2019). The same holds for Osho, which addresses the transnational Bhagwan community: from audience statistics SALTO knows this is one of their most popular internet channels. The channel is viewed from various geographical locations including Italy, Egypt and India, illustrating again the potential of diasporic groups to claim community across national borders.

This contrasts sharply with the audiences of other local broadcasters, mostly originating from the local or bordering municipalities. For example, while OOG includes programming in English to cater to the international student community, it previously also featured Somali-language programming which has recently been abandoned, to avoid alienating Dutch speaking audiences. The inclusivity broadcasters present is therefore inherently limited: diversity is often limited to catering to ethnic, social or religious groups as separate categories. An intersectional approach that addresses multiple axes of identity is not reflected in their programming. In opposition to the local broadcasting networks, podcasting seems to be a format through which intersectional feminist identities are able to represent themselves. We see this tension reflected in community media makers' self-definitions. SALTO's slogan *verbind Amsterdam* ("connect Amsterdam") explicitly focuses on the social and connective bridge they seek to establish between communities. Feminist podcasts like *Dipsaus voor en door vrouwen van kleur* (for and by women of color) specifically position themselves towards their audiences based on specific interests or intersectional identities.

Both feminist podcasters and local broadcasters seek to answer to demands from communities they serve. Nevertheless, their inclusivity is limited. As all acts of citizenship, community media "emerge from the paradox between universal inclusion in the language of rights and cosmopolitanism, on the one hand, and the inevitable exclusion in the language of community and particularity on the other" (Isin and Nielsen 11). Community media are not able to recognize and address every member of their community, but through mediating difference and performing intersectionality as practice, they can open up the parameters of who is and is not included in the public sphere. In order to fulfil their connective potential, community media must continue to re-evaluate their imagined audience and the audiences they truly manage to reach. Key practices that community media can and must deploy are therefore not only open and democratic programming and "acknowledgement through recognition", but also an awareness of potential representational blind spots and an openness to create space for underrepresented community members. Through this ongoing process, community media can become and remain open and inclusive and allow citizenship claims to come forth in the mediation of difference.

Conclusions

In providing a community-based platform for unheard voices, community media are able to circumvent the traditional conventions of institutionalized mainstream media practices. In the Netherlands, both local broadcasters and feminist podcasters – two distinct community media under study in this chapter – perceive a representational void in mainstream media and seek to fill this on their own terms. As community media, they are invested in providing accessible platforms for marginalized communities, where community members can present themselves on their own terms and recognize themselves in others. In pursuing a more

inclusive politics of representation, community media provide communities with opportunities for actively claiming citizenship and belonging from below. Community media's practices highlight the levels of institutionality, technicity and sociality that co-shape the mediation of difference. From an institutional perspective, community media challenge and transform the mainstream public sphere and current media landscape, while remaining aware of their position of power as media makers within that landscape. Through co-opting disruptive technologies and rethinking the technological architecture through which the mediation of difference occurs, community media strive towards inclusivity, accessibility and a new appreciation of the particular aesthetic, ethical and political qualities community media offer in performing acts of citizenship. In the notion of sociality, institutionality and technicity are brought together: via democratic programming and an openness to inclusive participation and representation, community media build and sustain marginalized communities and their acts of citizenship.

Community media's mediations of difference, we argue, are acts of citizenship that contrast with both the gatekeeping institutions dominating the current media landscape and the common conceptualization of citizenship from a top-down rather than a community-driven perspective. Local public broadcasters and feminist podcasts demonstrate how the mediation of difference is a multi-layered and contested terrain as it offers the possibility for transformation within and outside of institutions. Both groups of media makers position themselves outside of and as alternatives to the mainstream public sphere. The community media makers discussed how they mediate difference by representing difference and how they use various strategies to do so. Examples of such strategies are "acknowledgement through recognition", a multi-media approach to broad- or narrowcasting, and actively working to define and remedy media makers' representational "blind spots". Our alternative interpretive and evaluative framework of community media champions a multiplicity of voices and bridges diverse communities, which is pivotal in our contemporary increasingly bubbled, scattered media landscape where filter bubbles proliferate. In practicing "acknowledgement through recognition" community media create space for an exchange of perspectives. Mediating differences among and within communities demonstrates how community media enable active acts of citizenship, which demands greater scrutiny alongside the legal and ontological dimensions of both institutionalized citizenship and recognition.

Through drawing on alternative theoretical understandings of citizenship, this chapter explored community media as examples of doing citizenship from below as an active practice. We have analyzed how these media makers mediate difference and strive for the recognition and inclusion of a multiplicity of voices in the hierarchical media landscape. While community media have always been around in a wide variety of forms, their position in an increasingly fragmented and digitized landscape is changing. Moreover, given the current "democratic hiatus" media find themselves in, and to counter the bubblicization of fragmented communities, the future potential of community media to maintain stronger inclusion and recognition of different voices should be warmly embraced.

Acknowledgments

The research with local public broadcasters was commissioned by COMMIT *das Community Medien Institut für Weiterbildung, Forschung und Beratung* on behalf of the Council of Europe and was conducted by all three co-authors collectively (winter 2018–2019). We are grateful to the five representatives from local public broadcasting organizations for sharing their views. The authors would also like to acknowledge the feedback and support by Helmut Peissl, Nadia Bellardi and Judith Purkarthofer. The empirical research with feminist podcast makers was conducted by lead author Lola de Koning, under supervision of prof. dr. Bertheke Waaldijk, as part of her thesis work for the gender studies research master at Utrecht University (spring–summer 2018).

Note

- 1 The empirical analysis draws from two periods of fieldwork: in winter 2018–2019, in-depth interviews with five representatives of institutionalized local public broadcasters have been conducted as part of a Council of Europe study on community media, COMMIT *das Community Medien Institut für Weiterbildung, Forschung und Beratung* (*Across Generations*, forthcoming). In spring–summer 2018, eleven independent feminist media makers that represent six feminist podcasts have been interviewed as part of fieldwork conducted for a gender studies master thesis (De Koning).

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“On this path to Europe” – the symbolic role of the ‘Balkan corridor’ in the European migration debate

Milica Trakilović

Introduction

Addressing the European Committee of the Regions on October 10, 2017, Donald Tusk, President of the European Council proclaimed: “By ordering the closure of the Western Balkan route and improving our cooperation with Turkey, the flows of irregular migrants on this path to Europe were stemmed by 98 per cent” (*Address by President*). The Western Balkan route, more popularly known as the Balkan corridor, was a relatively short-lived phenomenon and represented a part of an unofficial migration route for refugees forced migrants traveling from Turkey and Greece to countries in Western Europe (mainly Germany) from autumn 2015 until spring 2016. The route, starting in Turkey, went through Greece and Macedonia after which followed the Balkan corridor – consisting of different points in Serbia, Hungary, Croatia and Slovenia – and from there it continued into Austria, Germany and other countries in Western Europe that represented (more) permanent points of arrival (Arsenijević et al. 2). In this respect, Tusk’s statement highlights the idea that the countries on this particular migration route, and especially the countries that made up the Balkan corridor, do not constitute Europe per se but rather represent an entry point *to* Europe. Being Europe-adjacent, these countries represent a frontier of sorts, a contested terrain where notions of Europeanness are unstable and unstraightforward. Tusk’s statement implies that the countries that made up the Balkan corridor do not belong properly to Europe, but neither are they fully outside of Europe. The idea that the countries in the Western Balkans take up an ambivalent position in the European imaginary was amplified when the Balkan corridor was in full effect, as it represented an influx of Otherness in symbolic and concrete terms.

At the outset, the route along the Balkan corridor had a relatively open character, and it was unique in the sense that the movement of forced migrants and refugees was not regulated by human smugglers but by the EU and non-EU states that found themselves on the route. Although not in compliance with EU law¹, the formation of a relatively safe passage through the Western Balkans to other destinations in Western Europe was supported by the EC and many EU countries initially, and it was understood that the countries along the route would not

represent places of permanent settlement but rather that they would have a transitory character (Sardelić 3). However, quickly after it was established, the route saw increasing institutionalization from the countries that made up the corridor, as well as the militarization of borders and segregation policies that were to distinguish between ‘legitimate’ and ‘illegitimate’ refugees (“The long year of migration”). On March 18, 2016, the EU-Turkey Statement² was introduced, effectively shutting down the migration route through the Western Balkans and the Balkan corridor as such. The introduction of the EU-Turkey Statement is presented by the European Commission as a means to “to end the flow of irregular migration from Turkey to the EU and replace it with organised, safe and legal channels to Europe” (EU-Turkey Statement: One Year On). This statement highlights the notion that the Balkan corridor was an aberration from the (presumably more organized) management of migration in Europe since 2015; moreover, the Balkan corridor is brought into connection with everything that the EU is not: unsafety, illegality and disorganization. These ideas are not new; in fact, there is a large discursive and historical repository of discourses which connect the idea of Western Europe with progress and civilization, whereas the notion of Europe’s East, and especially the Balkan region, is envisaged as backwards and inferior (Todorova). The short existence of the Balkan corridor and the subsequent measures taken to halt its operation cannot be viewed separately from the ideological framework that posits the West as “Europe proper” and the East together with the Balkans as “the Other within” (Todorova). Indeed, I argue that the Balkans’ ambiguous position in the European imaginary needs to be taken into account in understanding the character of, and the response to, the migration phenomenon that took place between autumn 2015 and spring 2016 with the emergence and subsequent shut-down of the Balkan corridor. This situation needs to be placed in the wider context of the European ‘migration debate’ and the accompanying anxieties around the assumed influx of cultural others, as well as the fortification of borders and migration policies. The Balkan corridor, I argue, brought with it an amplification of these anxieties due to the Balkans’ liminal role in the European imaginary, since a discourse of (cultural, racial, ethnic) Otherness vis-à-vis the ‘true’ Europe already characterizes this region. The Balkan corridor therefore needs to be assessed as a symbolic phenomenon as well, giving rise to unconscious fears of abjection by representing a potential rupture in the fiction of a unified European self, an idea that is reiterated in the sensationalist mediatization of the phenomenon and in political discourse.

Europe and the other Europe

This chapter looks at Europe through a critical lens, rejecting the notion that the *idea* of Europe simply coincides with the geographic location of the continent. Rather, Europe is considered in its geopolitical and symbolic dimension as an idea or even a quality of sorts: situations, places and phenomena can be more or less ‘European,’ depending on the extent to which they conform to a dominant

yet underacknowledged conception of Europe. Étienne Balibar has written about Europe as comprised of three concentric circles, the inner core representing the founding nations of the EU that share a single currency, while the more peripheral regions, outside of the EU, subsequently have an ambivalent placing in the idea of Europe (“Europe as Borderland” 199). Importantly, the countries representing the European nucleus have a political and historical affinity, and so the countries that find themselves at the peripheries of Europe are not just there because of pure spatial distance but due to a cultural, political and historical difference as well, which Balibar calls a “political distance” (“Europe as Borderland” 199). Europe is therefore not a purely geographic entity, nor is it a unitary one, being made up by a multiplicity of internal divisions.

In studying the phenomenon of the Balkan corridor, in this chapter I am primarily interested in the division that splits Europe into East and West. This division did not come into being naturally nor arbitrarily but, as Larry Wolff has pointed out, it needed to be invented. Whereas prior to the Enlightenment, during the Renaissance and before, Europe was commonly understood through a North/South division, this boundary shifted to East/West and propagated a civilizational model according to which the “intellectual centers” were found in Western Europe while Eastern Europe was emerged as “shadowed lands of backwardness, even barbarism” (Wolff 4). Yet, being part of the same continent, the East/West division never was fully cemented and in fact resulted in the ambiguous situation in which Eastern Europe had the double position of being simultaneously Europe and not-Europe. Similar to the workings of Orientalism (Said), the invention of Eastern Europe defined and legitimized the West first and foremost, but it was symbolically placed in a position between the West and the Orient. And so, as Wolff himself says “one might describe the invention of Eastern Europe as an intellectual project of demi-Orientalization” (Wolff 7). Others have critically engaged with the discursive creation of Eastern Europe, notably Maria Todorova, who rejected the notion of Orientalism but theorized a more specific concept of Balkanism, explaining how a specific discourse of inferiority and backwardness was projected by the West onto the Balkan region (Todorova). Elsewhere, I have written about the Balkans representing a ‘failed Self,’ a symbolic and discursive entity projected by the West onto this region in Southeast Europe that operates according to an uncomfortable tension between proximity and distance, inside and outside, being neither fully inside Europe nor fully outside it (Trakilović). The core of Europe then comes to be represented by the West, while its Eastern and Southern parts only partially correspond to this idea. This liminal position in the European imaginary, I argue, gained prominence during the period when the Balkan corridor was in effect, prompting its speedy and efficient closure in March 2016.

However, Europe is not only shaped by this symbolic division between the East and West. David Theo Goldberg argues that the idea of Europe is upheld by the belief that Europeans are (predominantly) white and Christian peoples (352). Moreover, he posits that Europe is built on a “historical amnesia” (337)

which disavows how European colonial histories have had and continue to have a profound effect on European cultures and politics today. Furthermore, this historical amnesia is strengthened by the belief that the Holocaust was the pinnacle of racial violence, which happened on European soil. The Holocaust is singled out as the defining moment of racist transgression, which effectively renders other racial practices, past and present, unmentionable and invisible (336). This means that there is a blind spot in European societies to other, and particularly ‘newer’ forms of racial discrimination that are not recognized as such because of Europe’s supposed internal homogeneity and race-free character. This does not stand in contradiction with the internal division between East and West in Europe; what is more, it supports it. Critical attention has been paid to how the supposed East/West dichotomy in Europe becomes internalized by Southeast European regions that end up reproducing this logic within their own societies, according to “internalized racial hierarchies” that target minority populations like the Roma (Rucker-Chang 857). Additionally, the concept of nesting Orientalisms explains how regions in Southeast Europe reproduce the tendency to Orientalize their neighbors, those who find themselves geographically and symbolically more towards the East, in an attempt to gain legitimacy in Europe proper (Bakić-Hayden). Effectively, this means that while Orientalist discourses are projected onto Southeast Europe by the West, within the region itself various discursive racializations are being played out as well. I understand racialization here as the social, cultural, political and spatial creation and subsequent exclusion of Otherness, in line with what Balibar has termed “essentializing cultural difference” (“La Construction” 3). This practice re-inscribes the idea that Europe is a dominantly white and Christian race-free space, which legitimizes racialized discourses that are not recognized as such. Of note here is that the history of colonialism and its racial formations which shape the dominant idea of Europe have not bypassed the postsocialist sphere, even if it had a different historical and political formation. It is important to configure race and racialization in the critical understanding of the Balkan corridor and the responses to it not only by the West/EU, but also by the Southeast European nations that found themselves on the route. In other words, if the phenomenon of migration along the Balkan corridor is to be critically assessed, one must account for “racialization *of* the Balkans” as well as “racialization *in* the Balkans” (Baker 769). This is important because it helps contextualize not only the framing of the Western Balkans according to a dominant (Western) European discourse, but also the various responses to the migration phenomenon by the countries that found themselves along the migration route of the Balkan corridor, such as Hungary and Serbia. In their various responses (whether exclusionary or benevolent) to the refugees making their way through this region, the countries often reproduced a racialized and culturalist idea of what ‘proper’ Europe is and who can and cannot belong, thereby reinstating the East/West binary.³

Responses to the Balkan corridor

Although the migratory trajectories in the Western Balkans in late 2015 and early 2016 are popularly referred to as a singular passage, this is an incorrect term. As Ferruccio Pastore points out, the journey through the Western Balkans could and did take different directions, and two main routes actually emerged, both starting in Turkey but diverging in either Macedonia, Bulgaria or Serbia (19). These divergent routes were largely dependent on Bulgaria and Hungary sealing off their borders in August and September 2015, respectively, which re-directed the trajectory through the former Yugoslav republics of Serbia, Bosnia and Herzegovina, Croatia and Slovenia. Pastore describes this mediation of the route in terms of a “reckless domino game, based on a chain of ‘beggar-thy-neighbour’” (20). The ‘beggar-thy-neighbour’ idiom, which describes a situation in which a country tries to resolve an economic issue of their own to the detriment or through the exploitation of their neighbor(s), is significant here and needs to be assessed in dialogue with the notion of nesting Orientalisms (Bakić-Hayden), which explains how countries in Southeast Europe come to stereotype their neighbors in order to secure a claim to Europe proper. Hungary and Bulgaria became EU member states in 2004 and 2007, respectively. Croatia’s joining is more recent, since it became a member in 2013, while Serbia is at the moment a candidate country, and Bosnia and Herzegovina only a potential candidate. During the time when the Balkan corridor was in effect, Hungary was the preferred country of transit since it is also part of the Schengen area. (Župarić-Iljić and Valenta) Hungary’s closing of the Hungarian-Serbian border through the building of a 4-meter fence was set into motion by Hungary’s right-wing Prime Minister Viktor Orbán, who justified the closure of the border as a means of keeping Europe culturally and ideologically pure: “Those arriving have been raised in another religion, and represent a radically different culture. Most of them are not Christians, but Muslims. This is an important question, because Europe and European identity is rooted in Christianity” (Traynor).

Orbán’s quote here not only reiterates the idea that Europe is a homogenous, Christian continent, but also invokes the image of the racialized Other through the figure of the Muslim, a figure that stands in stark contradiction to a dominant European self-conception. The Muslim is “the quintessential outsider, ordinarily strange in ways, habits, and ability to self-govern, aggressive, emotional, and conniving in contrast with the European’s urbanity, rationality, and spirituality” (Goldberg 345). Orbán’s statement reinforces the belief that the Muslim cannot belong in Europe due to a cultural incompatibility, and this serves as a justification for removing Hungary from the Balkan corridor migration route. By closing off the Hungarian border, the migration trajectory in the Western Balkans was thus re-directed, mainly through the former Yugoslav states. This re-routing is thus ideologically motivated, and it also carries a symbolic dimension, as it directs the ‘flow of Otherness’ to the more southern states, away from Hungary,

and in so doing, it also emphasizes the idea that Hungary is closer to Europe by having controlled the migrating mass and moved it away from its soil. Since the ‘migration crisis’ in Europe is routinely represented through the ‘invading’ figure of the Muslim, the potential invasion is now halted in Hungary and moved toward the south, to former Yugoslav states that represent even more ambiguous entities in Europe. Through the phenomenon of nesting Orientalisms, these states are re-Orientalized by having the invading figure on their soil in the first place, and secondly by not being able or willing to halt or control the Westward movement of migration through their territories – like Hungary did.

While Hungary adopted a strict policy in keeping its border secure during this time, other states along the migration route in the West Balkans were, perhaps surprisingly, more lenient. Serbia’s Prime Minister Aleksandar Vučić’s response to Hungary’s border closure was one of shock and dismay, stating that, contrary to what Orbán had proclaimed, the building of the fence was expressly anti-European:

We will not allow anyone to humiliate us. I call on the European Union to react, for its members to behave in line with European values. If the EU does not react, we will find a way to protect our borders and European values as well.

(Kingsley)

Both Prime Ministers call on the protection of European values, but they also position themselves at different ends of the argument. Orbán makes the call from a more central position *in* Europe, while Vučić makes an appeal *to* Europe. Hungary’s status as EU and Schengen-zone member lends Hungary a more internal position in the European imaginary, while Serbia’s status as EU candidate marks the country as more external to Europe proper. This is why the prime ministers make appeals to different European values and characteristics: Orbán’s focus is on safeguarding the supposed racial and religious homogeneity of Europe, while Vučić speaks of hospitality and tolerance of Otherness as a European trait that should be upheld in the migration debate. This may come as somewhat of a surprise, since the disintegration of Yugoslavia in the early 1990s was characterized by very strong ethno-nationalist sentiments in the resulting nation states; in Serbia in particular, an explicit anti-Muslim rhetoric was mobilized to justify the violent conflict with Bosnia and Herzegovina and later on Kosovo as well. However, this rhetoric was notably absent in Serbia’s official response to the migration corridor in the Western Balkans, while it was explicitly present in Hungary’s attitude. Tomislav Z. Longinović astutely assesses this puzzling situation:

Through this sudden role reversal, the symbolic boundary supposedly representing “Christian values” has been moved to the north, where the Hungarian border functions as the European one. Paradoxically, it appears that being part of Europe proper gives license to its constituents for xenophobia

and racism, while being at the very threshold of the EU pushes its potential members to display adherence to alleged European ideals and values, forcing them to perform (if frequently inauthentic) openness and humanity towards all nations and religions.

(897)

Although they found themselves along the same migration route, there was a difference in how each nation in question responded to the phenomenon. Consequently, Hungary could permit to close its borders and express anti-migrant sentiment because it is part of the official European framework, as represented by the EU and the Schengen-zone. On the other hand, Serbia and similar non-EU countries could not permit to express anti-migrant sentiment because of their precarious position in the official European political structures, and therefore they performed an openness to difference in accordance with supposed core European values as well. What should be kept in mind here is that both responses may have a very similar discursive effect: namely, reinstating the idea of Europe as a unique and privileged place, a civilizational model. While their rhetoric differs, both Hungary and Serbia are performing Europeanness in an attempt to come closer to Europe proper, which is always already located elsewhere, namely in the West. Once again, “The fate of European identity as a whole is being played out in Yugoslavia and more generally in the Balkans (even if this is not the only site of its trial)” (Balibar “At the Borders” 6).

The Balkan corridor as a confrontation with abjection

The phenomenon of the Balkan corridor, characterized by “irregular” migration, was treated as a state of alarm during the time that it was still in operation. This is evidenced by the emergency meeting that was held in Brussels on October 20, 2015, at which eight EU member states and three candidates were present in order to draw up a plan of action that would manage and control the Westward migration movement. With time passing, the passage through the corridor became more and more regulated and controlled, whether through the closing of physical borders (such as the Hungary-Serbia case) or whether it was through the management and control of the unruly migrating mass. In November 2015, states began to segregate the migrating groups into ‘legitimate’ (Syrians, Afghans and Iraqis) and ‘illegitimate’ migrants. Those deemed illegitimate were no longer allowed access through the corridor (“The long year of migration”). In other words, border management was introduced on several interconnected levels in order to halt the progression of the corridor. Ponzanesi and Blaagaard have argued that in present-day Europe, borders are undergoing a shift,

moving from physical (the gate to European territories and citizenship) and symbolic (the myth of Europe and its idea of superiority) to material

borders (the marked body of foreigners, immigrants and asylums seekers) which become “border” figurations (construction of otherness, foreignness, alienness).

(3)

In the case of the Balkan corridor, the border was indeed enacted upon those moving subjects who were racialized as Other and therefore as a threat to Europe. At the same time, I believe that a more complete understanding of the phenomenon of the Balkan corridor needs to consider the interconnected ways in which physical, symbolic and material borders emerged simultaneously and co-constructed each other. Thus, the erecting of physical borders was a result of the desire to maintain symbolic borders of Europe that were seen to be under threat by the invading figure of the migrant Other, representing the material border. The complex ways in which border management was enacted within the phenomenon of the Balkan corridor needs to be understood in symbolic terms as well as a confrontation with abjection.

In popular and political discourse, migration in Europe is frequently framed as a threat and the migrant subject is considered as an Other to the European identity. This figure is racialized and popularly imagined as the Muslim Other, which becomes a trope that is meant to distinguish between Europeans and migrants (El-Tayeb xxx); the workings of this trope were clearly visible in the previously discussed quote by Viktor Orbán. Moreover, in the current political moment, it is quite common to envision migration in terms of metaphors denoting a natural phenomenon, as a wave or a stream that intrudes upon the continent. Framing migration in such a way, as David Cisneros points out, is a selective process, representing both a “*reflection*” and “*deflection*” of reality; thus, metaphors of immigration close off other possibilities for understanding immigration” (592). I mention these examples because they are, as I will further argue and expand on, the workings of abjection; an obsessive need to characterize the Other *as* Other in order to justify its removal from European soil.

Feminist psychoanalyst Julia Kristeva (1982) has theorized the abject as that which threatens to collapse the borders that hold the self together. However, the abject should not be understood as being *external* to the self. Rather, the self can only exist as such by expelling the abject from its own being, thereby maintaining the illusion of separation and a unitary identity. And yet, the self can only exist by virtue of the abject, which it consequently needs to expel in order to establish the ultimately porous boundaries of its identity. Identity, individual and collective, is in this sense configured due to the constant externalization of an undesirable element that, once expelled, is then made into an absolute Other: the abject. The process of abjection is never finished and what is more, a unitary idea of identity is only possible due to the continual externalization of an abject that ultimately delineates the borders of that very same identity. The Self then only comes into being by virtue of the difference that is established through abjection; the implication being that the idea of the Self would not exist *in itself* since it is dependent

first and foremost on the idea of the Other (who comes into being through the process of abjection) against which it can measure itself. The Self needs the Other to exist, in other words, but it also needs to keep the Other at bay, since its assimilation would threaten the very conception of identity that the Self has established. The notion of the abject signifies this constant process of externalization through which the Other comes into being, but also the porosity of the borders around the Self.⁴ The abject therefore constantly threatens to collapse the walls upon which the idea of the self is built and, most importantly, the self needs to operate according to the illusion of control over the abject in order to establish its identity. The abject is invoked in those instances when the supposed borders around identity are threatened to be compromised. According to Kristeva, the abject is that which “disturbs identity, system, order. What does not respect borders, positions, rules. The in-between, the ambiguous, the composite” (4). I propose the theory of abjection as a key concept in assessing Europe’s response to the ‘migration crisis’ in relation to the phenomenon of the Balkan corridor. Abjection in this case was present in two interrelated ways: through the liminal position of the Balkans in the European imaginary and through the large number of non-European migrants and refugees that made use of the Balkan corridor. Both represented a threat, or a looming collapse of the European identity.

Kaiama Glover, writing on the ‘zombification’ of Third World subjects, with a focus on Haitians and Sub-Saharan Africans, explains how popular and political discourse creates the figure of the First World citizen as ontologically different and distanced from a pathologized Third World subject. Moreover, she considers how this distancing mechanism works through the principle of abjection that is predicated on making foreign certain groups and peoples whose removal is subsequently legitimized. She says:

While we tend to attribute our obsessive literal and metaphorical wall building to xenophobia, that is, an irrational fear of the foreign, it is perhaps more accurate to understand the effortful dissociation of the First World “self” from the Third World “other” as a perfectly rational fear of the same.

(Glover 250)

Drawing on the theory of abjection as well, Glover makes the point that abjection as a process, according to Kristeva, never actually consists of the subject’s complete separation from that which it seeks to expel. Rather, abjection exists in the subject’s continuous state of anxiety over the perceived threat of its autonomy by the abject, and this anxious state then justifies the borders it erects in an attempt to lay claims to a singular identity (249). In the context of today’s Europe, the abject is constituted by migration, which represents a threat to the idea of Europe and prompts the reaction of “repeatedly making the Different different so as to sustain the Same” (Goldberg 357). Pathologizing the migrant as deviant and culturally different is then an attempt to erect an image of the self that is elevated and enlightened. Moreover, in order to protect the European identity, myriad infrastructural

control mechanisms are introduced in order to manage and control the perceived threat of migration. In the context of the Balkan corridor, this was evidenced by the fact that the emergency summit in Brussels in October 2015 resulted in a 17-point action plan, put forward by the leaders of the European countries affected by the route. This plan consisted of multiple strategies aimed at curbing, controlling, managing and monitoring the migration flow through the Western Balkans; the action point that was the most extensive consisted of different strategies aimed to “Increase efforts to manage borders” (*Meeting on the Western Balkans*). All of this was aimed at getting a grip over the migrating subjects making their way through the Western Balkans to the more Westward destinations in Europe. Migrants in Europe today are to a large extent subjected to “abjectification [. . .] the state of often marginalised groups, bodies excluded by law and through law, who eventually become repulsive to society at large” (Lazaridis 7). The mechanisms of Othering that were placed upon the migrating subjects through discursive (narratives of inferiority, difference and pathology) and institutional/structural means (border control and management) were all mobilized in order to protect and highlight the idea of Europe, an elevated and culturally specific European identity. As Kristeva argues, “abject and abjection are my safeguards. The primers of my culture” (2). The idea of Europe never emerges as strongly as when its existence is perceived as being threatened by the abject migrant.

However, my argument is not only based on understanding migration as a confrontation with abjection in Europe in light of the migration crisis. Abjection is also to be understood in light of the fact that the migration route through the Western Balkans occurred on a territory that already has an ambiguous position in the European imaginary, neither fully inside nor fully outside Europe. The Balkans already represent a liminal entity in Europe and therefore arguably a confrontation with abjection, which was only amplified further by the migrating subjects who made their way through this region on their way to Europe. Previously, I had written about the Balkans ambiguous positioning in the European framework turning the traditional Orientalist binary of Self-Other into a more complex configuration of “the other within” (Todorova) or the “failed Self” (Trakilović). This position of being in-between, at once inside and outside of Europe, can have a critical potential for interrogating the boundaries (symbolic, material, institutional) that make up Europe in the first place. (Trakilović). Importantly, the Balkans are not a set place that one can point to: this is where Europe ends and the ‘other Europe’ begins. Rather, it is the unclear and constantly shifting boundary between Europe and not-quite-Europe, as represented by the Balkans, that characterizes the workings of abjection. As Kristeva⁵ notes: “We may call it a border; abjection is above all ambiguity. Because, while releasing a hold, it does not radically cut off the subject from what threatens it – on the contrary, abjection acknowledges it to be in perpetual danger” (9). The Balkans therefore are not just ambiguously placed in the European imaginary, but they signify a cultural and civilizational inferiority that could spread to, and subsequently corrupt Europe proper. This idea is of course only amplified by the ‘invasion’

that irregular and uncontrolled migration along the Balkan corridor represents; a double threat. With the implementation of the EU-Turkey deal, the workings of abjection as represented by both the figure of the migrant and the space of the Balkans were not halted but rather separated from functioning *together*, and in this way they were ‘diffused.’ However, the migrant and the Balkans both remain peripheral and thus abject configurations in the dominant European imaginary, which remains largely unchallenged.

Conclusion

This chapter has outlined how the highly mediatized and politicized phenomenon of the 2015–2016 Balkan corridor functioned in its symbolic dimension as an accelerated confrontation with abjection. Focusing on the symbolic role of the Balkan passage in particular and the European migration ‘crisis’ in general is useful in understanding the oftentimes competing political discourses (focused on openness and tolerance of difference on the one hand, and exclusion and cultural and border protection on the other hand) as ultimately reproducing the same idea of European/EU exceptionalism. While the chapter has mainly focused on political discourse and actions, these need to be understood as always already intimately intertwined with processes of mediatization. Indeed, as Michał Krzyżanowski et al. argue, the notion of the “refugee crisis,” politicized and mediatized as it has been in recent years, is not an arbitrary construct but one that mobilizes political, institutional and economic infrastructures in Europe towards securitization (3). Moreover, the overwhelming politicization of (im)migration in Europe goes hand in hand with the mediatization of politics, which results in a situation of “mediated hegemonic political control” (6).

This political control is exercised through a bordering process that is both material (consisting of the implementation of ‘actual’ borders and border mechanisms) and discursive (symbolic processes of othering). Due to the ambiguous position that the Balkans hold in the Europe, the aforementioned politicization of the refugee ‘crisis’ was accelerated in the debate surrounding the phenomenon of the Balkan corridor as it represented an amplified confrontation with Otherness. Considering the anxious reactions to, and subsequent shutdown of, the Balkan corridor through the theory of abjection helps to understand the underlying desires and drives that facilitated the foreclosure of this particular migration route as “psychosocial fantasies of distance in the midst of proximity” (Glover 249). A particular idea of Europe, largely coinciding with the EU/the West, emerges as a configuration of Self against which an abject Other is posited: disavowing this Other from European soil nevertheless does not destroy the *idea* of the Other, since its configuration is necessary for the Self to define itself against. The figure of the migrant and the imagined space of the Balkans are examples of such objectified entities. If abjection is the “primer of my culture” (Kristeva 2), which culture are we talking about then? What emerges from this analysis is an Eurocentric ideal that can manifest in different discursive tropes.

One of these discursive tropes is Balkanism, which posits that the region corresponding to the Balkans represents an undesirable, backwards and culturally inferior entity in Europe and therefore does not properly belong to Europe. This is echoed in Donald Tusk's proclamation that the Western Balkans migration route represents a path "to" rather than in Europe. As Catherine Baker notes: "Time's arrow, in these symbolic geographies, should typically be pointing the region toward 'Europe,' where it can leave the Balkans behind" (761). The Balkans are spatially and temporally 'behind' Europe proper, which is signified by the West/the EU. This sentiment is also echoed in the fact that the Western Balkans migration route was popularly and colloquially referred to as the Balkan 'passage' or 'corridor,' signifying the transitory character of the region as a stepping stone to Europe. Furthermore, these sentiments were echoed in the various statements that were made by the political leaders of the countries that were along the Western Balkans migration route and in the subsequent strategies that were adopted for the purposes of controlling or keeping out migrants and refugees on the route. Their responses are intimately connected to the position that the countries they represent already hold in the official European framework, so that "Central European countries were embracing xenophobia and open racism, while the countries on the outskirts of the European Union were, at least officially, perpetuating 'European' principles of universal human rights" (Longinović 904). Ultimately, however, these discourses reinstate the idea of European exceptionalism and mobilize it through the racialized figure of the migrant as culturally inferior, and therefore exterior to Europe. The emergence of the migration route along the Balkan corridor and the frenzied reaction it prompted therefore need to be understood as a re-inscription of the idea of a European Self in relation to this phenomenon.

Notes

- 1 The Balkan corridor phenomenon stood in contradiction with the Dublin III regulation, which stipulates that member states are responsible for those asylum seekers who submit their asylum claim within the member state to which they first arrive in Europe. The Balkan corridor phenomenon was unique because the countries that found themselves along the route were understood to be a passage towards more Westward countries, like Austria and Germany, and thus the asylum seekers who took the route through the Western Balkans largely did not submit asylum claims (Sardelić 3). After the shutdown of the Balkan route, the CJEU (Court of Justice of the European Union) would retrospectively decide that this previously tolerated passage had no legal basis in EU law (Sardelić).
- 2 The EU-Turkey Statement stipulates that all irregular migrants making their way from Turkey to Greece are to return to Turkey; in turn, the EU will provide funds to manage the larger number of refugees that find themselves in Turkey.
- 3 Sara Pistotnik and David Alexander Brown ("Race in the Balkans") have noted that Slovenia's response to migration in 2015 – characterized by exclusionary measures through the implementation of barbed wire and fences – is intimately connected to what is referred to as the Erasure. In 1992, when Yugoslavia was disintegrating, Slovenia effectively erased some 25,000 people (mostly people from other Yugoslav republics) from its register of permanent residence, thereby stripping these people of citizenship and rights. The authors note how this measure was not just a way of establishing

national boundaries in Slovenia but also a way of Europeanizing the country by implementing European migration policies. The Erasure is then a racial(izing) practice, and set a precedent for the measures Slovenia would implement and the position it would adopt with regard to the migration ‘crisis’ in 2015 when the Western Balkan migration route emerged. This development has larger implications, however. As Dušan Bjelić points out:

Underneath the EU sovereign unity looms an administrative war on immigrants as spatial – racial enemies in which the Balkans holds the frontline. By becoming a part of the EU’s legal system, the Balkans cannot any longer claim colonial and racial exceptionalism.

(“Toward a Genealogy” 907)

Thus, the newest EU states become somewhat of a frontline of Europe where spatial and identarian boundaries are invoked most fiercely, and they thereby participate in reproducing dominant racial ideologies that have colonial roots.

- 4 Abjection can also be understood as a bodily dynamic. In that sense, the Self is first and foremost a body that can be hurt, invaded and diseased by the workings of abjection. The configuration is a trope that is often used in nationalist discourse: envisaging the nation as a body that can be potentially compromised. As Gaia Guiliani writes, “The (human) body as well as the body politic are in danger and need to be eugenically preserved from hordes of aliens that, like a mortal disease, have to be eradicated from the healthy corpus of European nations” (99). The Self–Other dynamic according to which abjection functions becomes even more evocative through the metaphor of the (European) nation as a healthy body and the migrant as an invading disease.
- 5 Dušan I. Bjelić has developed a critical argument on Kristeva’s own political positioning as being predicated on a pathologization of the Balkans, especially her native Bulgaria, in order to align herself better with the cosmopolitan West, particularly France, where she completed her academic trajectory (“Immigrants” 499). Kristeva has also been known to express anti-migrant sentiment in the French context, disregarding the complex history of French coloniality. Interestingly, Kristeva’s personal positioning involved an abjectification of both the Balkans and immigrants in an attempt to embody ‘proper’ European (read: Western) subjectivity. The importance of her theory of abjection notwithstanding, Kristeva’s own rhetoric and political alignment shows how the Balkans and the migrant are already abject configurations in the dominant European imaginary.

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Recycling the Christian past

The heritagization of Christianity and national identity in the Netherlands¹

Birgit Meyer

Across Northern Europe, Christianity is on the decline. Churches, especially in the Protestant and Catholic mainstream, are losing members on a massive scale. In the Netherlands, currently just 49% of the population claims to be part of a religious group (of which 24% are Catholic, 15% Protestant, 5% Muslim, 6% other).² In public debates, this decreasing affiliation with Christianity is often taken as an index of increasing personal freedom and a successful liberation from the straitjackets imposed by religion. This stance is mobilized not only by Dutch people looking back to the Christian past, but also vis-à-vis religious others – especially Muslims (Veer). The Netherlands have a plural religious environment, which includes Christians (many with a migration background and embracing Pentecostalism), Muslims, Hindus, Buddhists, Winti-worshippers, as well as all sorts of non-affiliated spiritual seekers. The achieved freedom *from* religion cherished by those who left Christianity behind often stands in tension with the legal freedom *of* religion guaranteed by the constitution.³ This tension indicates a clash between a “culturalist secularism”, according to which religion in general and Islam in particular should withdraw from the public domain, and a “constitutional secularism” that protects the rights of Dutch Christians, Muslims, and members of other faiths (Tamimi Arab; Verkaaik and Tamimi Arab) to live their religion, albeit within the frame set by law. For, of course, in a democratic and open society a secular constitution does not intend the abolishment of religion, but its regulation and protection by the state within a legal frame.

Much research on religious plurality in European societies focuses on how the arrival of relatively recent newcomers in the religious field is regulated and debated, identifying the specific regimes for ordering how a religion is present in a particular society (and how not). The fact that the accommodation of religious newcomers implies frequent frictions – especially, but not only with regard to, Islam – indicates that the established modes of regulating, protecting, and “tolerating” religion on the part of the secular state and in society are challenged.⁴ As noted, secularism may be profiled in a “culturalist” manner that ventures a dismissal of religion as backward and seeks to ban it from the public domain, or may be taken in legal, “constitutional” terms. These positions are negotiated in the

political arena, where decisions are taken with regard to the space granted to the public manifestation of various religious groups.

In public debates, (urban) policy making, and scholarly research, much attention is paid to material items and related practices and ideas associated with the presence of Muslims. However, the heightened attention paid to issues regarding the regulation of the public presence of Islam – regarding the construction of mosques, the sounding of the *azan*, the wearing of niqab, halal slaughter, and the like – in mainstream public debates should not make us overlook the massive presence of the material culture of Christianity that bears such a strong historical imprint on public spaces. The decline of Christianity as a lived religion has remarkable material implications, with churches being closed at rapid speed, and objects from Christian material culture being set afloat, ending up, via second-hand shops and flea markets, as fancy items in restaurants and shops or as creative materials in the sphere of art (see Figures 4.1 and 4.2).

In this process Christianity is being refashioned as cultural – or even religious – heritage and thus as a valuable resource to be remembered. This also plays out in frequent references to Judeo-Christian tradition as the cradle of Dutch – and European – culture, that is often recurred to in nativist formulations of identity and citizenship.

The guiding proposition of this chapter is that a focus on the material dimension of de-churching and the debates ensued by it offers a productive empirical and conceptual entry point into the transforming dynamics of religion in the public domain and its perceived malaise. Spotlighting various ways of dealing with the material remains of de-churching against the horizon of the broader plural religious environment is helpful to grasp current dynamics. I approach these remains as religious media that once were part of authorized mediation practices through which Christians link up with and render present the divine. Following the trajectory of these religious media into non-Christian, secular settings and modes of use offers insight into the ways in which these media are eventually reframed as art or cultural heritage and may even be made to mediate a shared past that is taken as the roots of a Dutch national or European identity.

Sketching the main concerns of a material approach to religion as a practice of mediation, in the first part I address the materialization of the sacred in things, spaces, and bodies. While the second part focuses on Christian material media such as abandoned buildings and (sacred) objects (including images), some of which are becoming reframed as cultural heritage, the third part turns to the exhibition *Verspijkerd & Verzaagd* (*Spiked and Sawn*) which showcased the re-use of devotional images in the frame of art (Noordbrabants Museum 18 February–5 June 2017). Fourth, by way of conclusion, I discuss how insights gained into the social dynamics of religious plurality from the angle of recycled Christian materials and the “heritagization” of Christianity relate to the “culturalization” of citizenship (Tonkens and Duyvendak). The central point I want to make is that, by turning attention to the material dimension of de-churching, the process of secularization appears as tangible and concrete.



Figure 4.1 Crosses (photo by Jojada Verrips)

Material media of Christianity

Emphasizing the materiality of religion may seem obvious, but it is not. The modern understanding of religion that arose in the 19th century in the midst of debates about (scientific and dialectical) materialism, and the theories and methods employed, bore the legacy of idealism and were inflected with a mentalist bias that befitted a bourgeois Protestant post-enlightenment religiosity and its anti-Catholic polemics. Religion was understood as the domain of meaning making par excellence, and its material and corporeal dimensions were held to be secondary



Figure 4.2 Crucifix at Van Dijk & Co, Amsterdam (photo by Jojada Verrips)

and thus were largely neglected. This legacy is the target of the material turn in the study of religion that started to develop since the early 21st century (Bräunlein; Houtman and Meyer; Morgan, *Religion and Material Culture*; Vásquez). It is intended as a provocative corrective of the relative neglect of religious material culture and corporeality in favor of belief:

A materialized study of religion begins with the assumption that things, their use, their valuation, and their appeal are not something added to a religion,

but rather inextricable from it [. . .]. Religion is not a pure realm of ideas or beliefs that are translated into material signs. The material study of religion avoids reifications that identify ideas or dogmas or individual people as the irreducible core of religion. Instead, a religion is inseparable from a matrix or network of components that consist of people, divine beings or forces, institutions, things, places.

(Meyer et al., “Materializing Religion” 209)

Pursuing this line, one of the main concerns of the material turn is to approach religion as a mundane endeavor, emphasizing, in the footsteps of Feuerbach, that it is humans who *do* religion with their bodies, senses, and objects. The point is to take religion seriously as a social-cultural phenomenon that “matters” in the world through gathering people around a shared imaginary, which points beyond the here-and-now, and yet is present in the world by materializing through all sorts of material items which are perceived, sensed, acted with, and thought about. So, religion refers to human ideas and practices with regard to another, professed, non-empirical sphere, a “beyond”, which can only be rendered tangible through mediation, and thus requires sensing, experiencing bodies and material harbingers of transcendence.

Acknowledging the material and corporeal dimension of religion is not only important for the study of how people live and practice Islam, Christianity, and other religious traditions, but also for the study of de-churching. The bias towards belief informed not only modern understandings of religion but also of secularization. As a result, research on the decline of religion in modern societies in the framework of secularization is marked by a relative disinterest in the Christian material culture that became superfluous with, and yet remained present in the wake of, de-churching. By contrast, a material approach to Christianity as a declining religious tradition asks explicitly about this material culture. One important question is what happens to this material culture when it is no longer part and parcel of the “networks and components” of lived religion, but is rendered superfluous and set afloat in secular settings. To what extent does the former religious use of artifacts as buildings, objects and images still cling to their present use? To what extent have they been stripped of their initial role as mediators of the divine and mediate something else?

As noted, I understand religion as a practice of mediation between humans and a professed unseen, to which multiple material media (understood in a broad sense that includes buildings, objects, images, and so on) are intrinsic (Meyer *Mediation and the Genesis*; Meyer “Material Mediations”). Embedded in authorized practices of mediation, such artefacts may become profiled as portals that open up to a professed unseen and that convey a sense of divine presence and transcendence to their beholders and users. Of course, these artifacts do not do so by themselves, but in the frame of particular human-object entanglements that are foregrounded and lived within a religious tradition. While being physical (and often human-made) objects in the ordinary world, they are framed and experienced as extra-ordinary

and sacred.⁵ Treated by believers with care and caution, and by obeying certain restrictions, they are all the more prone to be desecrated by outsiders involuntarily or through aggressive acts.

The buildings, objects, and images that become obsolete in the wake of de-churching come from Protestantism and Catholicism. In a theological sense, for Protestants buildings and objects are not considered as sacred and the important role attributed to sacred images and relics in Catholic religious life is looked at with suspicion. Divine presence is held to not thrive in such material forms. Nonetheless also in everyday Protestant practice, buildings and objects are experienced as special and are cared for (Kuyk; Pons-de Wit et al.; Smit 2009), and this implies that certain uses of formerly religious buildings and objects are considered inappropriate and unworthy. Catholicism espouses an explicit theology of mediation, according to which churches and certain objects and images are vested with sacrality through authorizing rites and performances, turning them into media that operate as harbingers of the divine (Butticci 2016). This sacrality appears to become so much engrained with such buildings and objects that it cannot easily be shed off again. What happens when a religious medium such as a Catholic church is closed down and demolished, or gets another purpose, and the objects it contained are to move out? What happens when these objects lose their function as authorized religious media, and become what Irene Stengs calls “sacred waste” (Stengs), that is, objects that no longer have a religious use, and yet are difficult to be simply discarded into the secular realm?

Repurposing Christian matters

According to a recent research by the Christian newspaper *Trouw* (25–06–2019),⁶ one-fifth of all still existing church buildings in the Netherlands (about 1400 out of roughly 6900) are no longer in use as churches, serving as apartments, offices, restaurants, and for various cultural and commercial purposes. Of the 1200 churches built before 1800 (most of them listed), about 20% have been given new purposes, while 25% of the 4600 churches built between 1800 and 1970 were repurposed.⁷ Of the 1,000 churches built since the 1970s, the time in which pronounced de-churching set in, a very small percentage (3%) has been repurposed. For the future, many more churches are expected to close down. *Trouw* refers to the much-discussed forecast by the Cardinal Van Eijk, that in 2028 only 15 of the 280 churches in the archdiocese of Utrecht will remain in use. The ecumenical CIO-K (Interkerkelijk contact in overheidszaken – Kerkgebouwen) also expects a significant reduction (between 30% and 80%) of churches in use for religious purposes. The closing down of churches has become a broadly debated matter of concern in Dutch society. Interestingly, this does not only worry the congregations and parishes that are no longer able to maintain their buildings due to membership decline. Also, people who do not regard themselves as Christians appreciate church buildings and have emotional bonds with them (Beekers, “De waarde”). They do not like these churches to be closed, let alone be destroyed.

The closing down of churches due to declining church membership and lack of funds for maintenance raises many questions about the possibility to retain at least some of them as cultural heritage. These questions are addressed by several organizations and initiatives on the provincial, national, and European level that deal with Christianity as cultural heritage for the future.⁸ As part of a general investment of 325 million € in the maintenance of cultural heritage in 2018, the Ministry of Education, Culture and Science allocates funds to the restoration of monumental churches and reserves 13 million € to support cities and churches to develop a vision for the future of church buildings.⁹ Asked whether the support for maintenance of church buildings would not rather be a concern for a Christian party, Minister van Engelshoven (OCW, and herself a member of the liberal party D66) stated:

Churches play a huge role with regard to heritage in relation to the recognizability of the landscape. When you go for a walk, and I do so very much, you often walk from church to church. It's a matter of combining investment in art and culture and in heritage. If you know where you come from in our time, and you have this firmly under your feet, as a society you are able to cope better with innovation.

(NRC 12–03–2018, translation BM)¹⁰

These initiatives partake in the articulation of a new heritage regime, through which Christianity is recast as cultural heritage that matters for broader society (see also Astor et al.). This has implications for the proverbial separation of state and church, that *de facto* never fully materialized, but is an important trope in public debates, especially in stances favoring culturalist secularism. May the state at all interfere in and support – and if so under what conditions – the maintenance of defunct churches? Addressing the collaboration of state and churches in the preservation of religious heritage in the OCW report *Bouwstenen voor een kerkenvisie* (2019), the theologian (and mayor of Woudrichem) Frank Petter¹¹ aptly points out that the secularization thesis failed to acknowledge the public importance of church buildings. He argues that the decline of Christian belief and institutions does not imply a decline of value bestowed on these buildings as religious heritage. So, interestingly, the use of heritage as a secular frame for bestowing value on (certain) churches restates the importance of Christianity outside of the religious sphere and legitimates sustained collaboration of church and state in their upkeep. Religious media that pointed towards the presence of God are now recast as secular media that convey a sense of a shared Christian past.

While cleavages between various strands of Christianity – between Protestants and Catholics, and within Protestantism – shaped the religious domain in the Netherlands, yielding the pillarization of society (roughly between 1880–1970) along religious convictions and world-views, the re-framing of Christian material

culture – and even Christianity as a whole – as heritage transcends these differences in favor of an appreciation of churches as monumental witnesses of the nation’s once Christian past.¹² In this vein, the Museum Catharijneconvent (Utrecht) has launched the project Dutch Museum Churches (containing fourteen monumental churches and two synagogues). Showcased as national milestones and tourist attractions, these iconic buildings and their “hidden treasures” are profiled as a spectacular cultural-historical phenomenon expected to appeal to a broad, de-churched audience.¹³

The revaluation of Christian buildings and objects as religious heritage implies their desacralization and secularization. This is a highly intriguing process through which the material manifestations of Christianity become a valuable resource material for (re)imaging national identity and the Dutch past. The fact that these manifestations are often referred to as *religious* heritage does not imply that they retain a religious function; instead the qualifier “religious” indicates that Christianity itself is subject to heritagization and culturalization. Such a process may appear as relatively smooth and easy from a distance – and it is intriguing to see how many non- and post-Christians are prepared to embrace it – but for the former Christian users of these buildings and objects, the process may be quite painful and complex, as they may be found to have become “matter out of place” (Douglas) in new secular settings.

In his ethnographic research on the repurposing of churches Daan Beekers studied the closing and transformation of three Catholic churches: the St Ignatiuskerk (Rozengracht, Amsterdam) that was transformed into the Fatih mosque in the 1980s, the Onze-Lieve-Vrouw van Altijddurende Bijstand kerk alias Chassékerk (Baarsjes, Amsterdam) that became a dance studio, hotel, and grand café (1998–2017), and the Jacobuskerk (Zuilen, Utrecht) that was sold to an evangelical church (2018) (Beekers, “The Matter of Home”). The transformation of the St Ignatiuskerk into a mosque involved a swapping of the interior space, in that the initial spatial axis from the main entrance to the altar at the rear had to be reverted, so as to make it possible to pray (and place the qibla) in the direction of Mecca. As for this reconfiguration, the main entrance had to be closed and the space under the portal was rented out to shops; the mosque became virtually invisible to passers-by (Beekers, “Rode burcht”; Beekers and Tamimi Arab, “Dreams of an Iconic Mosque”). Following the dismantling of the church interior of the Chassé church in detail, Beekers (“The Matter of Home”) noticed that the diocese of Haarlem-Amsterdam, under whose authority this church fell, required that items such as a mosaic showing John the Baptist and Mary, or the signs of crosses on containers for holy water, were no longer visible. The mosaic was covered with plaster, while the signs of the cross were redesigned beyond recognition. Clearly, unmovable artifacts that indexed a Catholic sacred were not to be unleashed into the new secularized space. This betrays a concern on the part of Catholic authorities to prevent the display of religious objects in a potentially inappropriate, worldly setting after the formal deconsecration of a church building

by decree and rite. With the increasing closing of churches, a protocol was developed that stipulates how the movable and immovable church objects are to be handled (Cuperus). In the case of the Jacobuskerk, objects were removed and classified according to this protocol, and eventually a heavy tabernacle, that was initially to be sent to Sri Lanka but proved impossible to be moved, was destroyed so as to prevent potential sacrilegious use (Cuperus 40–41). These examples show that, certainly with regard to Catholicism, the material implications of de-churching, which involve the deconsecration of churches and their interiors, generate anxieties about the proper use and abuse of once devotional objects especially among believers.¹⁴

While the closing down of churches occurs in a structured and controlled manner in line with detailed protocols (albeit, for obvious reasons, more elaborate with regard to Catholic churches than to churches in the Protestant spectrum),¹⁵ the cleaning up of the houses of deceased parents and grandparents puts in circulation images of Jesus, Mary, and Saints in all sorts of venues. Second-hand stores and flea-markets feature a – to some extent surreal – display of images of Jesus and Mary (Figures 4.3 and 4.4).

Placed in the strange company of other, mundane objects, these images and figures appear to me as excellent examples of “matter out of place”. They invite us to trace “the Afterlife and continued effects of past patterns of interpretation, image forms and codes as they are discussed in current image practices and debates around them” (Weigel, “Blasphemy and Infamy” 25). Before being offered as second-hand goods, they were part of a devotional practice common in Dutch Catholicism (Margry, *Sakrale materielle Kultur*; Margry, “Societal Change”). They are now leftovers from *het rijke roomsche leven* (the rich Roman-Catholic life) that was gradually abandoned, not only because people were leaving the church, but also due to transformations of Catholic devotional practices in the aftermath of Vaticanum II and subsequent aesthetic shifts in the 1960s (Palm; De Wal).

The Catholic images and figures that are now floating in secular environments belong to the category of devotional images that emerged in the 13th century and were characterized by a new affective quality (Weigel, *Grammatologie* 412). Images and sculptures of Mary and the suffering Christ invited beholders to feel empathy and operated as religious media through which the nearbyness and presence of the divine could be felt. As art historian Klaus Krüger explains, such images were liminal objects that mark and transcend a boundary between the here-and-now in which the image is situated as a physical picture and a beyond to which the depiction points. The 16th-century Calvinist *beeldenstorm* in the aftermath of the Reformation attacked such images and sculptures and cleansed many churches and houses of their presence and replaced them by a strong focus on the word and privileged the medium of the book. However, with the counterreformation and the baroque, images of Mary and Jesus made a big return in Catholic devotional practice, culminating in the devotion of the Sacred Heart of Jesus and Mary (Morgan *The Sacred Heart of Jesus*).



Figure 4.3 Jesus with tropical helmet and type-writer, Van Dijk & Co, Amsterdam (photo by Jojada Verrips)

As pointed out by David Morgan, believers' engagement with such images may well be captured by the notion of visual piety. Developed since the late Middle Ages, visual piety was

that cultural operation whereby images were transformed into something revelatory. The act of identifying one's sensations with those of a depiction relied on the body as an organ of knowing, the visceral bridge between self



Figure 4.4 Pieta, Van Dijk & Co, Amsterdam (photo by Jojada Verrips)

and other. Empathy was the visceral instrument of such knowledge. The knowledge the devout sought was the body's knowledge, expressed in the language of enfleshed sensations. The body of the believer became a powerful organ of religious knowing in late medieval visual piety.

(Visual Piety 66)

And, as Morgan also asserts, “empathy remained the principal emotional framework in the devotional lives of many Christians in Europe and North America from the sixteenth to the nineteenth century” (*Visual Piety* 66). As his book shows, repercussions of this stance can be found in forms of visual piety up to our time. Much more could be said about the role of images in (Dutch) Catholic devotional practices, but my point here is to highlight their current appearance in secular settings as “matter out of place.” As “sacred waste”, they are now objects severed from the earlier “network of components” in which they functioned. Their capacity to mediate between the here-and-now and a beyond and to induce empathy is curtailed as they are put adrift and appear in new environments, in which their mediatory role is subverted and yet, as we will see, still haunting their appearance. What are they made to mediate in the secular frames of art and heritage?

Recycling devotional images

To understand the array of responses these discarded images evoke, I want to turn to the exhibition *Verspijkerd and verzaagd* held in the Noordbrabants Museum ‘s-Hertogenbosch in the spring of 2017. This exhibition was devoted to the “recycling” of devotional images in the sphere of art after they were deemed to be of no use anymore in Catholic churches and homes.¹⁶ The museum director Charles de Mooij stated poignantly:

The exhibition is not a parade of derision and blasphemy; on the contrary, it shows on the basis of reused devotional images how our view of Christianity changed over the past 50 years. Many Dutch will still know and recognize the original devotional images, and even though the time is ripe for this exhibition, we are aware that such an overview may still evoke divergent emotions. At the same time, it appears that our Christian heritage here is retained in other ways than we are usually inclined to think.

(Voorwoord 7, translation BM)¹⁷

This is an intriguing statement for it hints at the already mentioned process of churches closing down and their dismantling, which sets free an excess of objects. “The time is ripe for this exhibition”, because in the wake of the steady process of de-churching Christian material culture is secularized, and in the case of Catholicism, even officially deconsecrated (and potentially desecrated through illicit use). Once secularization is no longer mistaken as a mere process of decline in church membership and attendance, discarded Christian material culture becomes an intriguing focus for research. Objects of Catholic provenance, in particular, may still evoke memories of their devotional use, and trigger a sense of them still containing a “sacred residue” (Beekers, “Sacred Residue” and “De waarde”).

The shift of once sacred objects into the sphere of art is not necessarily smooth. Msg de Korte, bishop of Den Bosch, points out in an interview with Wout Herfkens and Joost de Wal the exhibition catalogue:

If you believe that God came to us in Jesus, such an image [as displayed in the exhibition, BM] can easily be interpreted as blasphemous by believers. But Christians will not quickly throw bombs. No, you need not be afraid that the museum will be attacked.

(Verspijkerd en verzaagd 31, translation BM)¹⁸

He explains that both theology and art are entitled to create salubrious confusion, but there is also non-salubrious confusion – this is what can be called “blasphemy, albeit from the perspective of the believers” (30). According to the Bishop, those who know less about theology and art may be more inclined to charge an artwork as blasphemous than those who know about the difference between art and religion. His statement fits in with an overall trend on the part of Catholic and Protestant churches to embrace art and to reposition themselves in the current highly secular context of Northern Europe (Oliphant). His explicit acknowledgement that some art works may be perceived as blasphemous and that people might feel offended is a significant statement made, I think, against the backdrop of all recent commotion regarding representations of the prophet Muhammad in cartoons and other images taken to be offensive and subsequent violence (Kruse et al.). The exhibition offers visitors the opportunity to take an enlightened position, so as to mark their difference from religious fundamentalists: the capacity to tolerate offensive art as a litmus test for secular, tolerant citizenship.

The exhibition has two parts. One features artist Jacques Frenken, who made art works from Catholic materials abandoned and discarded in the mid-sixties, when many Catholic churches were emptied of sculptures made from cheap plaster in the aftermath of Vaticanum II and all sorts of images of Mary, Jesus, and the saints were up for grabs. At that time the process of de-churching started to gain momentum, but the main reason for discarding such images was an aesthetic innovation geared to get rid of cheap plaster images. Frenken split the statues with a chain saw and put them together in new ways, which appeared as scandalous to many (Figure 4.5).¹⁹

Interestingly, he engaged with de-churching in a very material manner, working with its tangible stuff:

My children will understand later the times we live in now because of my works. How we fought for something new when we had to do away with our old values. How we, with empty hands, didn't know how to do any better than to dig out the old and re-present it in another, clearer and more flagrant form.

(Frenken 1967, quoted on a panel in the exhibition)



Figure 4.5 Spijkermadonna-I (1967) by Jacques Frenken ('s-Hertogenbosch in 1929)

I understand his art making as an act of iconoclasm that does not simply smash and destroy, but seeks to re-organize existing materials into a new iconicity in the sphere of (pop) art. While Frenken's art yielded many protests in the 1960s – it was dismissed as blasphemy and he as “anti-Christ” – there was no court case.

The second part of the exhibition is contemporary, showing that the recycling of images goes on and on, making use of the devotional objects put in circulation more recently.²⁰ The transformation of devotional images into artworks requires

acts of cutting up and image breaking in the process of art making. The recycling of discarded religious images into art does not efface their history, but encapsulates it in what Sigrid Weigel calls a “dialectics of secularization” (“Blasphemy and Infamy”). She uses this notion in relation to caricatures (such as the Muhammad cartoons) charged with being blasphemous by certain (Muslim) beholders:

Whereas (seemingly) secular means [. . .] are for example used in a caricature that attacks the abuse of religion for the purpose of terrorism, their rhetoric and image practices respond in some way to the supernatural meaning ascribed to their target within the criticized ideology. Thus they inherit their effects partly from the imaginistic economy of pre-semiotic or pre-modern symbolic orders, namely from cult images that are perceived as more than just representations of what they depict, but rather embodiments of transcendent or sublime ideas.

(“Blasphemy and Infamy” 1)

So in order to render the reuse of a devotional image in the secular frame of art meaningful, it is necessary to affirm the past capacity of the image to act as a religious medium and render present what it depicts. Weigel’s notion of the dialectic of secularization helps us understand how artworks that recycle a devotional image owe their appeal to both remembering *and* surpassing its religious nature of mediating divine presence through a presumed likeness cherished by previous beholders.

Of course, experiences and opinions about the exhibition differed widely. I take the visitors’ book as a resource that reveals a broad set of responses to the dialectic of secularization at play here, which may index positions taken with regard to the religious past across Dutch society.²¹ Many visitors appreciate the exhibition – *leuk* (nice) – or are indifferent. Others see the items displayed as sacrilege (“heiligschennis”), thereby expressing a disgust which is, I think, grounded in a fundamental cleavage between what they see on display and their embodied attitude towards and use of such images in devotional settings (Verrips). The art works employ images of Jesus and Mary but resituate them outside of a familiar Catholic frame. For certain beholders, these molested images mobilize a dear, embodied memory of Catholic piety which is scandalized. Memory is triggered, but by the same token stained: a perceived dissonance arises between what is sacred for the beholders and the desacralizing, transgressive manner in which it is treated by the artists.²²

The visitors’ book also contains references to pious family members – fathers and grandmothers who are no longer alive – who are imagined to have found these artworks unbearable. Someone also jokingly writes: “Now I know what to do with my (grand)mother’s stuff”. Next to responses from, I presume, visitors with a Catholic family background or Catholic believers, one also finds typical Protestant responses. For instance, someone stated that, in the face of these art works, which may easily be experienced as sacrilegious, it becomes obvious why

God does not want to be represented via images. Clearly, repercussions of how Protestantism and Catholicism organized and still organize sensational profiles and stances to images are still at work, having an afterlife just as the once sacred images and figures.

Importantly, some visitors ask whether such sacrilegious art would be possible to make and exhibit with regard to Muhammed and think that “Islam” or Muslims could learn something from this exhibition. Is there here a potential to better understand the sentiments behind protests by Muslims against the so-called Muhammad caricatures? Or is the message rather that Muslims should tolerate the reframing of what is sacred to them as secular art, just as Dutch Catholics – and for that matter, Christians in general – are expected to do? The comments along this line hark back to Bishop de Korte’s statement that even Christians who find the exhibition blasphemous would not throw bombs (as presumably “fundamentalist” Muslims might do in his view); given its prominence on the blurb of the catalogue, this statement provides a central frame of the exhibition. The exhibition and the discourse evoked by it speak to broader concerns about the representation of Islam in the public sphere that are, in turn, linked to Catholic – and perhaps also Protestant – sensitivities and past and present charges of blasphemy from Christians standpoints. Enduring the exhibition may be taken as a test for one’s civic capacity to tolerate potentially blasphemous dealings with religious images in a non-religious domain, even if one feels hurt. So, these recycled images from a Catholic past are situated in a field in which, on the one hand, their value and sacrality is defended by believers and post-believers against the danger of being squandered, while, on the other hand, the acceptance that artists are free to blaspheme is emphasized as a distinctive characteristic of Western society.

This occurs in a setting in which Christianity is increasingly subject to heritagization, which implies that taking Christianity as cultural heritage is not a question of being a believer but of recognizing it as a cherished resource that is preserved in the secular frames of art and heritage and serves to mediate a Dutch and even European identity. One artwork shown in *Verspijkerd en Verzaagd* was also exhibited as part of the art project *Stations of the Cross* (2019), which included various locations, including churches and museums. This was *De Laatste Dagen* (The final days) by Jan Tregot,²³ which was shown in the museum Ons Lieve Heer op Zolder (Amsterdam) (Figure 4.6).

It is described as follows: “The final days by Jan Tregot is one of the most gruesome Depositions ever made, featuring a discarded *corpus Christi* from an abandoned Catholic church. In the sculpture, the artist refers to scenes of religiously motivated violence in today’s media”. The artist wrote the following accompanying text:

Has the decline of the Church in Dutch society blinded us to the reality that despite all the changes we still live in a Christian culture? Can we still count on that culture to fulfill today’s need for spirituality or are we more afraid of the strain that religious tensions will place on our society?



Figure 4.6 Jan Tregot *De Laatste Dagen*, 2016/2017, Arduin, plaster, maple wood, jatoba wood, stainless steel, leather, oil paint. 90.5 × 88 × 60 cm. Painted by Erik van de Beek. Foto Anton Houtappels

For the artist, the decline of the (Catholic) church, through which a work as this becomes available for artistic recreation, does not undo the rootedness of the Netherlands in Christianity. His statement that “we still live in a Christian culture” contrasts markedly with the voices criticizing the repressive character of Christianity and seeking to be liberated from it that got dominant in the sphere of arts and in wider society in the Netherlands in the aftermath of the 1960s. Echoing a current process of reframing Christianity as culture (see also Beekers, “The Matter of Home”), Tregot envelopes his art piece in the heritage frame. I do not know to what extent he wants to embrace the idea of a Christian culture. Whatever this may mean for him, the idea of Dutch and European culture as being rooted in Christianity or in a Judeo-Christian tradition, is often put forward in debates about Dutch cultural identity, in ways that exclude Muslims from cultural citizenship.

Heritagization of Christianity, culturalization of citizenship, and national identity

A recent report (Beugelsdijk et al.) by the Dutch Social Cultureel Planbureau (SCP) that regularly publishes research about societal issues notes that a concern about national identity is on the rise against the horizon of globalization, Europeanization, and immigration.²⁴ The researchers found that 41% of their 5,000 respondents think that there is a Dutch identity, and 42% that it exists in some respects, while 6% insist that it does not exist. But what might Dutch identity mean? The report identifies two positions as ideal type profiles: one position emphasizes the role of symbols and traditions in making people belong to the Dutch nation and sees these symbols and traditions as a source of national pride; from this angle the state is expected to take responsibility to protect Dutch identity and traditions. The second position emphasizes civic freedom, such as the right to demonstrate and the freedom of religion, and expects the state to protect democracy, civic freedom, and the inclusiveness of the rule of law (Beugelsdijk et al. 16). In real life, many respondents are undecided and may adopt one or the other position depending on the issue at stake in (usually heavily polarized) public debates.

The first position resonates immediately with the notion of the “culturalization of citizenship” put forward by Eveline Tonkens and Jan Willem Duyvendak to spotlight the increasing recurrence to “a static and essentialized understanding of culture as well as an idea of citizenship that has culture at its core” (2). This implies that even when immigrants achieve legal rights and have successfully passed a citizenship exam, they may not be considered full citizens because they do not adhere to certain norms and values, practices and ideas associated with Dutchness (*Geschiere*). The culturalization of citizenship implies that cultural identity, rather than civil rights, features as prime marker of citizenship. It is important to stress also that the second position may lend itself to a culturalization of citizenship, for instance by identifying secular values about sexual freedom, female emancipation, gender diversity – or, as noted, the preparedness to tolerate offensive images – as prime markers of Dutch civic identity and employing these markers in (potentially intolerant) stances vis-à-vis persons with conservative attitudes grounded in religion (and especially Islam, see Kešić and Duyvendak; Mepschen et al.).

It is telling that according to the SCP report Christianity – as well as religion in general – is barely regarded as a resource for national cohesion (*verbondenheid*), whereas Islam is regarded as a potential threat for national identity. This stance is, obviously, most strongly articulated by parties at the right of the political spectrum, but shared more broadly across society (Hart 32). So while de-churching entails the waning influence of Christianity, making the Catholic church and Protestant churches less and less operate as “volkskerken” (e.g., churches which are distributed widely across the nation), Islam, though only pertaining to a small minority of 5% (or less),²⁵ is strongly present in the public domain. The debate

about and search for national identity, as well as all the recent research conducted thereon, arguably is a response to the insecurities and anxieties triggered – and profiled and exploited not only by right wing parties but more broadly across the whole political spectrum – by the presence of Muslims. But also the articulate voices of other (post)migrants from areas formerly colonized by the Dutch who call for more inclusive forms of citizenship, the rethinking of national canons of art and history, and the decolonization of Dutch culture contribute to a sense of malaise on the part of many native Dutch who find that “the Netherlands are not the Netherlands anymore”.

In this situation, heritage emerges as a new potential resource for a sense of national cohesion, and is supported accordingly by the current Dutch government (at the expense of subsidies for the arts) (Kulberg; Frijhof). But with increasing plurality, what is cherished as – and upgraded to – the status of national heritage (and what not) is subject to contestation; this plays out in protests against figures as Black Pete, as well as in calls to remember the dark sides of Dutch colonialism and transatlantic slave trade, and to include the heritage of minorities in a broadened national canon. I situate the reappraisal of the material remains of de-churching as religious heritage against this backdrop.²⁶ We are witnessing a process of the heritagization of Christianity through which it is recast as a root of national – and European – culture. Van Houwelingen states that “it seems that Christian culture and traditions are anchored more deeply in Dutch identity than the belief in the Christian doctrines” (19, translation BM)²⁷ – a phenomenon characterized as “cultuurchristendom” (e.g., Christianity not as religion, but as culture). In this secular form, it can be acknowledged by anyone irrespective of his or her belief in God and sympathy for Christianity as religion.²⁸ Certainly, this heritagization lends itself to slipping into exclusivist culturalizations of citizenship. Ernst van den Hemel has pointed out that current right-wing populist parties (including the PVV in the Netherlands run by Geert Wilders) “stress a culturalized notion of religion, in which one is born” (261). They do not advocate a straightforward culturalist secularism that rejects religion as a threat to freedom and liberal values (as pointed out in the introduction). Rather, they embrace a post-secular “culturalized notion of religious-secular citizenship” (Hemel 262) that emphasizes the Judeo-Christian roots of Dutch culture and society.

The marked articulation of this post-secular nationalist stance that “hijacks religion” (Marzouki et al.) is certainly not the only way in which people engage with the reframing of Christianity as heritage. As the examples of the responses to *Verspijkerd and Verzaagd* show, people may feel disturbed about potentially offensive ways of dealing with elements of Christian heritage but at the same time take their capacity to endure this as a sign of tolerant citizenship that distinguishes them from intolerant (presumably Muslim) others. This is a form of culturalized citizenship that stresses civic virtues such as tolerance, which is to be mobilized – even with pain – with regard to offensive ways in which artists deal with Christian heritage. Yet others – active Christians – may feel irritated by the very idea of turning Christianity into a matter of the past that serves for little more

than being preserved as heritage and who, rather than bothering about the remains of de-churching, believe in God as a living source for responsible citizenship and care for the weak.

The – so far little researched – nexus of the heritagization of Christianity and the culturalization of citizenship entails many possible stances, and it is up to further research to spot how religion, culture, and citizenship are related in the Netherlands and elsewhere (see Meyer and van de Port). What I hope to have conveyed is that a focus on Christian material culture in general, and buildings and objects that become superfluous and end up on the garbage belt of secularization in particular, helps to achieve new insights into this nexus. As material media of the divine become sacred waste yet retain some sacred residue, they are recycled quite effectively to mediate secular narratives about culture, tradition, and national identity in the Netherlands.

Notes

- 1 Grounded in anthropology and religious studies, so far my ethnographic work has focused on religion in Ghana, where Christianity is on the rise, and indigenous religious traditions are re-framed as heritage and folklore. This is my first work about Christianity in the Netherlands, where it is in serious decline and has become heritagized. Heartfelt thanks to Daan Beekers, Rosemarie Buikema, Irene Stengs, Pooyan Tamimi Arab, and Jojada Verrips for stimulating, encouraging, and learned comments on previous versions of this chapter. I also thank Simone Jobig for her logistic support. The research conducted for it took place in the framework of the “Religious Matters in an Entangled World” research program (www.religiousmatters.nl), which I could set up thanks to the Spinoza Prize from the Netherlands Organization of Scientific Research (NWO), the Academy Professor Prize of the Royal Netherlands Academy of Arts and Sciences (KNAW), and the overall support of the Department of Philosophy and Religious Studies, Utrecht University.
- 2 See: Report Centraal Bureau voor de statistiek (CBS), 22-10-2018: www.cbs.nl/nl-nl/nieuws/2018/43/meer-dan-de-helft-nederlanders-niet-religieus
- 3 See Articles 6 (www.denederlandsegrondwet.nl/id/vkugbqvdswwv/artikel_6_vrijheid_van_godsdienst_en) and 23 (www.denederlandsegrondwet.nl/id/vh8lnhrouwy3/artikel_23_grondwet) of the Dutch constitution.
- 4 In the period between roughly 1880 and 1970, religion – and by implication humanist and socialist world-views – were regulated through a model of pillarization that formed the basis for allocation of access to broadcasting media and the right to establish schools and universities for religious and world-view-based organizations. The fact that pillarization entailed marked cleavages between various religious-cultural groups was increasingly criticized since the 1950s. This system had more or less eroded at the time of the arrival of significant groups of Muslim migrants. While previously they might have been able to develop another pillar, the fact that they arrived at the time of de-churching implied that they faced increasing allergies against religion, as well as the celebration of new secular freedoms with regard to, especially, female emancipation and sexuality.
- 5 Elsewhere, I have elaborated the notion of “sensational form” to indicate the authorized modes in which practices of mediation take place and shape the ways in which believers relate to and experience particular religious objects (Meyer, *Mediation and the Genesis of Presence* 26–28).

- 6 See: www.trouw.nl/religie-filosofie/een-op-de-vijf-nederlandse-kerken-is-geen-kerk-meer~b033cc0f/?utm_source=link&utm_medium=app&utm_campaign=shared%20content&utm_content=free
- 7 The article also states that about 2,000 churches built in the period 1800–1970 were destroyed. According to a report by the Rijksdienst voor Cultureel Erfgoed (2011), approximately 1340 churches closed down in the period between 1975 and 2011 (the year of the appearance of the report), of which about 340 churches were destroyed. Combining this with the figure of 2,000 destroyed churches given by *Trouw* would imply that the destruction of the bulk of 1660 churches falls in the period 1800–1975 and after 2011. See www.cultureelerfgoed.nl/.
- 8 See for instance the following websites: www.toekomstreligieuserfgoed.nl/; www.frh-europe.org/about-frh/statement/.
- 9 See the following websites: www.rijksoverheid.nl/actueel/nieuws/2018/06/22/nieuw-leven-voor-erfgoed, www.toekomstreligieuserfgoed.nl/sites/default/files/views_file-browser/bouwstenen_voor_een_kerkenvisie.pdf
- 10 Original:
- Kerken spelen in het erfgoed een enorme rol als het gaat om de herkenbaarheid van het landschap. Als je wandelt, en dat doe ik veel, loop je vaak van kerk naar kerk. Het gaat om de combinatie van investeren in kunst en cultuur en in erfgoed. Als je in deze tijd weet waar je vandaan komt, als je dat stevig onder je voeten hebt, kun je als samenleving ook meer vernieuwing aan.
- www.nrc.nl/nieuws/2018/03/12/extra-geld-voor-cultuur-gaat-naar-talent-educatie-en-kerken-a1595337
- 11 Reprinted as “bijlage 13: scheiding Kerk en staat, in *Bouwstenen voor een kerkenvisie*, OCW 2019”.
- 12 This fits into a broader understanding of cultural heritage as a binding force. Minister Engelshoven (OCW):
- In een tijd waarin tegenstellingen lijken toe te nemen, is de verbindende kracht van erfgoed een niet te onderschatten waarde. Daarom vind ik het van belang dat zo veel mogelijk mensen, van jongs af aan, het erfgoed beleven en erbij betrokken zijn.
- www.rijksoverheid.nl/actueel/nieuws/2018/06/22/nieuw-leven-voor-erfgoed
- 13 See: www.grootstemuseum.nl/en/
- 14 Interestingly, the current, controlled deconsecration of Catholic churches shares certain features with the Calvinist iconoclasm and cleansing of churches in the 16th century, in that objects may be destroyed. The main difference is that the current deconsecration occurs under the authority of the Catholic church, which seeks to prevent the possibility of a sacrilegious use of sacred objects in a secular setting. An instance of a “self-imposed iconoclasm” (as Beekers argues in the online exhibition *The Urban Sacred*: www.urban-sacred.org/amsterdam-chasse/).
- 15 See www.cultureelerfgoed.nl/publicaties/publicaties/2011/01/01/een-toekomst-voor-kerken-een-handreiking-voor-het-herbestemmen-van-vrijkomende-kerkgebouwen for the stances of the stances of the Catholic Church (73) and Protestant Church Netherlands (75).
- 16 See the press release, including many images: www.hetnoordbrabantmuseum.nl/topmenu/pers/beeldmateriaal/2017/persdossier-verspijkerd-en-verzaagd/
- 17 Original:
- De tentoonstelling is geen parade van spot en blasfemie, integendeel, maar laat aan de hand van de hergebruikte heiligenbeelden zien hoe onze kijk op het christendom

in de laatste halve eeuw is veranderd. Veel Nederlands zullen de oorspronkelijke heiligenbeelden nog kennen of herkennen, en hoewel onze tijd rijp is voor deze tentoonstelling, zijn we ons ervan bewust dat z'n overzicht nog altijd wisselende emoties kan oproepen. Tegelijkertijd heeft het er alle schijn van, dat ons christelijk erfgoed hier langs heel andere wegen behouden blijft dan we gewoonlijk geneigd zijn te denken.

18 Original:

Als je gelooft dat God in Jezus bij ons gekomen is, kan zo'n beeld gemakkelijk blasfemisch worden geïnterpreteerd. Al zullen christenen niet zo snel bommen werpen. Nee, je hoeft niet bang te zijn dat het museum wordt aangevallen.

- 19 This film by Gilles Frenken (2017) shows Jacques Frenken at work (between 1964 and 1969, the timespan in which he used devotional images for pop art) in his atelier: www.gillesfrenken.nl/film/verspijkerd-en-verzaagd
- 20 See also the work of Moniek Westerman with discarded devotional images: www.trouw.nl/nieuws/nieuwe-kunst-maken-van-afgedankte-jezusbeelden~b9fc792e/
- 21 I am grateful to the Noordbrabants Museum for allowing me to make use of the visitors' book.
- 22 Similarly, deconsecrated church buildings also evoke painful memories for their previous users (Beekers, "De waarde"; Beekers, "The Matter of Home").
- 23 www.jantregot.eu/en_GB/sculpturen/
- 24 The report "Denkend aan Nederland" is based on a survey among 5,000 Dutch, as well as interviews and focus groups. For the full report see: www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2019/Denkend_aan_Nederland
- 25 Less, because not all those designated as Muslims may de facto consider themselves as actively embracing Islam.
- 26 This process receives surprisingly little attention in the SCP report, and in Chapter 12 (on heritage) religious heritage is mentioned in passing only (Kulberg 6).
- 27 Original: "De christelijke cultuur en tradities lijken dus dieper in de Nederlandse identiteit verankerd te zijn dan het geloof in de christelijke leerstellingen".
- 28 This idea was outlined by Sybrand Buma, at the time leader of the CDA, in his HJ Schoon-lezing held on 1 Sept. 2017: www.cda.nl/actueel/nieuws/sybrand-buma-houdt-hj-schoon-lezing-2017/.

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Part II

Sovereignty

Love and sovereignty

An exploration of the struggle for new beginnings

Gregory Feldman

Being, becoming, and the unstable present

To what does sovereignty refer as a lived, empirical reality? The answer cannot start with the “state” because people – human beings as such – preceded the state’s arrival as a political form. To avoid question-begging, we must ask, more precisely, what sovereignty does to satisfy the human need to live in political communities, one of which happened to become a modern state. Or, similarly, what compels people to live in political communities in the first place? An answer must start with the obvious and the abstract: that people, in all their plurality, do not usually choose to live – to *be* – in isolation even though they occasionally need solitude, and that people struggle to *become* something new in the future. To the former, with whom or how they live with others is not the point, but rather that people seek the company of others before whom they can appear, that is, in front of whom they can *be*. Therefore, this struggle possesses a spatial, synchronic dimension. To the latter, what they struggle to *become* is not the point, but rather the fact that they strive to become something more in the future, whatever that might be. Therefore, this struggle also possesses a temporal, diachronic dimension. Together, the struggle amounts to the reconciliation of *being* in the present and *becoming* in the future. By design, it renders the present unstable, history contingent, and the future unpredictable. That uncertainty creates the prospect of new beginnings. This chapter argues accordingly that this very prospect of new beginnings manifests itself through the impulse to love and to undertake sovereign action.

Understanding love confronts a different problem than understanding sovereignty. The former is not obstructed by such a hegemonic, modern concept as the “state”, but rather obfuscated with an array of meanings that seem to lack a common denominator: love of children differs from the erotic love of a lover, which differs from love of friends, which differs from love of country, etc. If love refers to all of these phenomena, then does the term hold any useful, explanatory power? Hardt wisely asks us to see love moving across scales, incorporating, for example, love of the couple, the family, and the country (677). He is certainly correct that the love impulse does not solely reside at the level of the intimate. However,

love does not grow uniformly in proportion – or in reverse proportion – to scale because its expression in one context differs qualitatively from another. Hence, the variety of love experiences cannot be compared because one does not love a child, a lover, a parent, a community, and a country in the same way. Yet in all cases love signifies a desire for and a joy of new beginnings.

This chapter argues that love and sovereignty both guarantee one a place among others in the present and make a future of new possibilities inevitable. They stem from the same human impulse to *be* and to *become* and so love also transpires through the same temporal and spatial dimensions as sovereignty. As a temporal experience, love also presents us with an undetermined future (Razsa and Kurnik 252). Time is neither circular nor teleological when love is involved, neither repetitive nor pre-determined. Similarly, sovereign action inaugurates a new polity that sets history off into an unprecedented direction. But, love is also a spatial experience insofar as it creates bonds *between* people in the present. Love makes it possible not merely to endure, but also to thrive in the present's inherent uncertainty. Similarly, sovereignty is the act of (re)constituting space with others so that such actions simultaneously constitute the actors as particular beings through mutual recognition in the course of joint action itself. Sovereignty is the lived experience of unalienated politics. Without others, one risks isolation, which is such an unbearable experience precisely because one is solely surrounded by oneself. Sequestered as such one lacks any prospect of becoming something new or different for lack of contact with anything new or anyone different. Lacking love and sovereign action, one remains trapped in an ongoing present, or, rather, condemned to a living death, a fate that can only be avoided by encountering difference.

This chapter's first section critiques the notion of sovereignty before the early modern period and into medieval history. This move showcases its original commitment to new beginnings, thereby loosening the hold of the modern, reductionist connotation of the right to violence with impunity for the sake of restoring order. The chapter then proceeds to consider the inherent links between love and sovereignty through three contexts. The first context is the desire and love for children.¹ Ironically, children destabilize political life because they do not enter the adult world as mere replicas of their parents, but they also stabilize political space by both carrying on the traditions that bind it together and reorganizing it to account for new and unexpected events. The second context is the desire and love for a lover. This intimate love, too, seeks both the assuredness that partnership provides but also the new experiences and perspectives that lovers – never fully known to each other – give to each other as their intimacy expands and grows. The third context is revolution, which again presents people with a structurally similar dilemma and similar possibility. In eradicating the old order, the revolution is compelled to both constitute a new beginning for those in the polity and a stable organization that its inhabitants can rely upon to conduct their daily affairs. In each of these three contexts, something seemingly contradictory must happen, which nevertheless often happens as an empirical matter: the future must remain

open to guarantee new possibilities and escape from the threat of eternal present (a veritable living death), while the present must be sufficiently stable lest the angst of floating adrift in uncertainty and meaninglessness immobilize us.

Sovereignty before modernity

The familiar view of sovereign power describes it as the right of extra-legal violence and so absolute domination over the body politic. However, invoking the right to declare the exception *per se* (Agamben; Schmitt) is one expression – often an ugly one – of inaugurating a new beginning, that is, to (re)constitute the space that exists between people. We must ask, however, if we are somehow genetically, socially, or historically pre-disposed to ugly manifestations of sovereign action. We can only answer “no” to this question if we take seriously what we vaguely call “human agency”. That sovereignty refers primarily to the human power of creation and the instantiation of political subjecthood, rather than destruction and depoliticization, becomes clear when extending the genealogy of sovereignty prior to such early modern political philosophers as Bodin, Hobbes, and Montesquieu.² Sovereignty begins its career not as a territorial concept but as a moral one recognizing God as the creator of all things (Elshtain 2). Augustine reasons through the Trinity that God’s absolute power of creation offers the possibility for people to rise up (but never fully reach) his level of wisdom and goodness symbolized through acceptance of the Trinity’s second figure, Jesus Christ. Augustine argued that each of the Trinity’s three parts – Father, Son, and Holy Ghost – were equals. As God loves his creation, so he wills not to dominate it, but rather to offer it a proximate experience of godliness through the figure of Christ, his Son (Elshtain 8–9). Augustine therefore maintained that no force could exude sovereign power over the bodies of the earthly realm (Elshtain 9). Inspired by Augustine, Arendt regarded empowerment as the capacity to inaugurate new beginnings among people who regard each other as equals. That capacity is sovereign because it reflects God’s unbound power to create worlds out of nothing. Just as God created the earth as a one-time, unprecedented act, humans, created in his image, conduct unprecedented acts by virtue of their human-ness. The birth of each person into the world signifies not merely a new beginning, but also the birth of one who is capable of inaugurating new beginnings. Arendt thus reads Augustine as offering us a principle of freedom, which she regards as the human capacity to begin anew (Arendt, *The Human Condition* 177; Arendt, *Between Past and Future* 165–166; Arendt, *The Life of the Mind* 216–217; Elshtain 4).

Hence, God’s sovereignty lies in the power of creation, not domination and arbitrary destruction. This sovereign capacity did not mean that humans were equal to God, but that they could construct worldly cities consistent with God’s grace and love. Conversely, God could not impose arbitrary will because people cannot follow an inconsistent God but only fear his unpredictable wrath, a fear so often realized during a modern state of exception. Parallel to the juridical interplay between constitutive and constituted power (Jennings 29), God is unbound

with absolute power opening all possibilities of action except those that would have him contradicting himself but is also bound by ordained power, which renders God reliable, regulated, and integral to the worldly political life (Elshtain 21). From the writings of Augustine in late antiquity through those of Thomas Aquinas in the late medieval era, this interplay among God, pope, king, emperor, and people never allowed for a sovereign with the absolute power of domination. Instead, the relationship between God and people amounts to dialogue in which the power to create is absolute for God and, to a lesser extent for people, but so are the responsibilities to love and to be just. Sovereign authority thus flows from two sources, God and people. Any king who strove to rise to the level of God above the people would lose legitimacy from both (Elshtain 15). Kings were not to unite both legal and sacred power in their person, which would have granted them absolute dominion (Elshtain 16). The connotation of absolutism in sovereign matters first appears in thirteenth century France when monarchies struggled to centralize their rule against the Pope's *plenitudo potestati*. This tenet granted the Pope the power to make and unmake kings; it became a formal creed with Pope Boniface VIII's bull of 1302, *Unam Sanctum* (Elshtain 23–24). In response, the monarchs of Christendom aimed for full sovereign powers in their respective territorial kingdoms that paralleled, but did not depend on, God's sovereign power in the divine realm. They sought freedom from the Divine Law, which the Pope strove to impose on them. The monarchs' reaction laid the ground for our modern understanding of sovereignty as absolute power over dominion territory and the inhabitants within.

This extended genealogy shows that sovereignty, rather than the power of absolute domination, originally refers to the absolute power of creation. This comparison of sovereignty on each side of late medieval Europe is critical for imagining an alternative politics free from the tyranny of the state form. Yet, there is more at stake in noting the difference in the concept of sovereignty in two historical eras. New beginnings are possible in each one, but the question remains as to why modern sovereign action so often results in awful abuses in state power. The answer, I propose, is that the medieval understanding is premised upon the plurality incumbent in the term "people". Things new and unprecedented can only come to fruition in a plural world, that is a world where differences in standpoint encounter each other as equals to constitute new political space. We have not lost this capacity as a modern human possibility. Rather, the state form obstructs it because the state is premised upon the myth of homogeneity (of race, class, nation, culture, gender, etc.). The sovereign action of the modern state – transpiring in a state of exception – is justified in the name of purity. People inevitably die because such purity is contrary to the empirical reality of plurality.

Though we evaluated sovereignty through a particular Christian historical trajectory, stripped of its particular cosmological imagery, we find the common problem of people striving to establish a constituted political order without destroying the constitutive power that enabled it in the first place. Put differently, the problem becomes how to define basic tenets of political life that take on the aura of

sacredness, but not to the extent that they cannot be agreeably redefined when new dilemmas call for it. This problem emerges most fully when an old order collapses, or is at least suspended, and a new beginning has yet to take place (Arendt *On Revolution* 197). Multiple directions are possible in the gray zone composing this gap in time.

Love of children

In *My Family and Other Animals*, Dr. Theodore Stephanides, the Greek naturalist and Durrell family friend, once effectively said to mother Louisa that if you can control your children, then something has gone terribly wrong. Much more than sage advice to a parent learning to let go, the quip signifies that children cannot be regarded as mere offshoots of those who bore them no matter how hard we might try to replicate ourselves through them. If so, the joy of parenting would lie in the narcissism of seeing oneself in one's children. More telling is the pride parents feel in witnessing the child's achievements, their doing of deeds that parents never imagined or that they accomplished through their own initiative and effort. The literature on love and children leans heavily toward the issue of compassion (*caritas*). Love of children shows – or at least carries the emotional performance of – our humanitarian inclination to protect the innocent (Ticktin), and, conversely, much research has shown how children develop compassion during infancy, a process allowing them to unlearn a certain amount of childish narcissism (Nussbaum 168–182). Much less scholarship examines the way that we love children for their own sake. To love for the sake of compassion effects or restores the status quo. Humanitarianism, while it may save lives, is not transformative as it effectively preserves the status quo by cleaning up its worst excesses without inaugurating fundamental changes. In effect, humanitarianism saves the status quo from itself.

Children are the emblem of the human capacity to begin anew. Arendt goes so far as to argue that the spell binding lovers together eventually breaks if the relationship does not produce a child (*The Human Condition* 242). The desire for the child reflects something greater than the parents' contribution to the world. Rather, the child provides the hope that the world can become something more than it currently imagines it could be, and so exceeds any contribution that the parents could have made themselves. The child is a *beginner* – one with the capacity to begin, not simply one who is a neophyte to be trained. The child offers hope that new worlds will be created out of the parents' love for each other. Children ensure that the parents will never have to live in a static, unchanging world. For this reason, Arendt (*The Human Condition* 242) refers to love as a “world-creating faculty” even though she regards love itself as unworldly by its very nature (*The Human Condition* 242).

If we can rely on the old line that there is always hope, the last spirit to escape Pandora's box, then children are to be protected above all, and not simply because they are the most vulnerable. Children are literally the only hope for the future,

for new possibilities. It is not just survival of the family, clan, town, or even nation that they promise. In this vein, J.M. Coetzee's otherwise bleak novel, *Waiting for the Barbarians*, places great hope in children, albeit as a discreet part of the storyline. In the wake of the Imperial force's exit, the book's main character, a magistrate tortured for fraternizing with the enemy, walks across the town square, previously the location of a public torture of the so-called barbaric enemy. He sees children building a snowman to which they give a personality, a birth as it were, by the way they dress it. The scene makes the magistrate "inexplicably joyful" despite all else he had endured (qtd. in Feldman *We Are All Migrants* 104–105). Badiou well explains this joy, "Love is always the possibility of being present at the birth of the world. The birth of a child, if born from within love, is yet another example of this possibility". Love's disposition toward children, therefore, addresses them as new beginnings offering the hope that no matter how awful the present, the future has a distinct possibility of being better. In this vein, Badiou sees love not only as the re-invention of life, but rather that "To re-invent love is to re-invent that re-invention" (33).

Plato makes the point clear in *Symposium*. In Socrates' speech on love, which is his recapitulation of Diotima's teachings to him, we read that "love is the possessing of the good forever" and its "function is reproduction in the beautiful, both in body and soul" (Plato 34). This bland technical definition comes with a refined explanation. Reproduction only occurs through *procreation*, which is "as close as a mortal can come to perpetuity and immortality" (35). Put differently, it is the closest that a mortal can come to being a god. One loves because one desires the good forever, therefore one desires immortality (35). Hence, "love is necessarily the love of immortality as well as of the good" (35). Yet, immortality here does not refer to eternal life. That state of being is possible only for the gods, who are immortal by design. Humans can only partake in the experience of immortality through love's mechanism of procreation. For earthly creatures, like humans, reproduction and procreation lead to a new life rather than a replication of the lives that begat it. Hence, even as "a new, different individual always replaces the old", even a living individual changes through time in both body and personality. The individual "is constantly being renewed, and old attributes are being destroyed" (Plato 36). In all of this, it is important to clarify that for Plato – via the mouthpiece of Socrates – love is not an object, but rather a force that desires the good (33). That force draws people together for the sake of reproduction and procreation of both something new and something that approximates the good.

Curiously, the greatest gesture of love for children is simply release from the household from which they came into the world. Parents groom and support the child so that it can ultimately establish itself and take solace in its own household. The promise of the new beginning, which the parents will gain in the child, cannot be fulfilled in any other way. The adult child who does not leave the nest plagues the parents with a sense of failure or at least frustration. (Such a situation legally transpired in the Spring of 2018. Two parents in Syracuse, New York, grew so frustrated with their thirty-year-old son who refused to move out of their home

that they successfully convinced a judge to evict him!) The adult child signifies most fully the human power of sovereign action. The new actor on the world stage introduces unprecedented perspectives and possibilities by virtue of their sheer particularity as a person. The proverbial “failure to launch” plagues the parents for never fully knowing what might have been had their adult child succeeded in constituting new ways of being with others, that is, new political space.

In contrast, the love for the beloved works in the opposite direction. If love for the child leads to the parents’ desire for the child to leave home, then, in erotic love, the lover wants the beloved with them as much as possible and for as long as possible. The departure of the beloved generates great pain and hopelessness for the future. No matter how much erotic love fails, we always try to find it again, or at least want to try again. It would be too simplistic to attribute that desire to try again to some theoretical instinct or pleasure principle. We need to cite a more flexible human impulse that can express itself in countless interactions but finds its more intense realization in erotic love and sovereign action. That impulse likely lay in Arendt’s observation made early in *The Life of the Mind*, that “whatever can see wants to be seen, whatever can hear calls out to be heard, whatever can touch presents itself to be touched” (*The Life of the Mind* 29). The capacities of sight, hearing, and touch do not exist merely for the subject to project itself outward, but to imply a receptivity to the same desire in others. Those senses serve not merely the body’s biological demands, but rather particular person’s demand to be recognized and to recognize others. That demand is foundational to our intimate and political lives. Without this capacity, the bonds necessary to create new beginnings are neither possible nor even imaginable.

Erotic love

The impulse of erotic love (not a modern Western romantic love per se) can easily slide into narcissistic love in which the beloved serves as a foil to reinforce a pre-existing understanding of oneself. Narcissism provides two practical advantages. It first protects one from the risk of transformation through one’s contact with another. Like political action, one does not know where it leads. It could make things worse. Narcissism, second, helps to retain one’s place in the social hierarchy. If the presentation of self that one deploys has been successful in achieving or maintaining social status, then narcissism precludes love from re-forming that self, which has already proven a recipe for social success. However, narcissism also encourages the modernist terror of redundancy and boredom as it results in the self being surrounded only by the self by reducing others to mirrors for self-validation. It may be a safe social bet, but the price is a certain lifelessness that has given fodder to countless novels and films about the vacuity of the bourgeois life and marriage. In this context, Badiou sees reactionaries yearning for a “safe” love, which is no love at all because of its erasure of difference, fear of subversion, and defense of traditional values. He reasons succinctly, “The identity cult of repetition must be challenged by love of what is different, is unique, is unrepeatable,

unstable, and foreign” (98). By this reasoning, love is neither compatible with the status quo nor could it be if it is to offer the prospect of a new beginning.

That we are drawn to erotic love, as opposed to lust (*cupidas*), signifies that we are prone to becoming tired of ourselves, tired of isolation, and tired of repetition. Yet, to engage love might be tantamount to asking – in an overly stark, existential register – for one’s death. Put differently, the lover’s transformation into someone enhanced beyond what s/he once was requires silence and self-sacrifice so that the beloved obtains presence in the lover’s eyes. Drawing on Barthes, Byung-Chul Han (1–2) describes such love as atopic love, pointing to Socrates as *atopos*, the lover who cannot be captured in words. Defying definition, the other is placeless in the lover’s world. Han describes this encounter as asymmetrical and exterior to the lover’s world. This characterization necessarily suggests the vitality of the love experience: that the beloved is not an Other whom the lover defines a priori. Such an Other remains captive, silent, and held at arm’s length in the lover’s world.³

Eros requires the destruction of existing life worlds if something new and transformative is to enhance us through an unscripted (and unscriptable) encounter with the other. The asymmetry and exteriority reveal that the beloved is truly an unknown entity to the lover. Han only describes this encounter from the standpoint of the lover, as if the placelessness applies to one person and not the other. Hence, to illustrate his point, he chooses von Trier’s film *Melancholia* in which an unknown planet collides into Earth, thus destroying all life on it, metaphorically releasing the lead character, Justine, from the depression of her loveless life. However, I would point cheekily to the popular INXS song in which “two worlds collided” as his point must apply to both people for love to achieve a synergistic effect among people. Like democracy, love requires equality among different people, each of whom impacts the other. Each person is both the lover and the beloved.

The atopic explanation of the encounter in erotic love is somewhat over-stated. That the lover, or the beloved, cannot be captured in words does not render either individual beyond comprehension and thus placeless in the other’s world. To not know the beloved means only that the beloved is always more, in actuality and potentiality, than what the lover can fully comprehend at any given moment. No one is a static object (a *what*) but rather a living subject (a *who*) (*The Human Condition* 181–182). To insist otherwise is to limit the beloved in the lover’s eyes and thus foreclose new possibilities in the erotic love relationship by muting what the beloved introduces to it. The common appearance of metaphors of death in the philosophy and literature on love refer to the death of the *narcissistic ego*, but not the ego as such. Even as Han puts it in conversation with Bataille, “The negativity of death is essential to erotic experience. . . . Above all death concerns the ego, the *I*. Erotic life-impulses overwhelm and dissolve its narcissistic and imaginary identity” (25). Eroticism is a life-impulse insofar as it embodies the desires for growth and renewal through the intimate encounter with (an)other. It simultaneously contains a death-impulse but only to the extent that it contains the desire

to break the established mold through which we have come to conduct our ordinary lives. Thus, we must be careful not to over-value rhetorical flourishes about deathly experiences, illustrated for example, in mysterious seducers who enchant their targets into submission or references to Dracula's erotic bite. Such literary examples only make the point through over-dramatization that erotic loves bring us to new places by letting go of the familiar. A more accurate metaphor than death is the shedding of old skin, or the pruning of branches, to make room for new growth. In death, we fear a plunge into a meaningless abyss, but in love one opens one's self to what is new and elating.

Arendt reasons that love is not just apolitical, but rather "antipolitical" (*The Human Condition* 242). She means with this distinction that love is not a worldly experience, unlike action, which requires a tertiary mediating agent between actors (Kampowski 62). That agent is the world itself, the human artifice without which action is not possible and which itself results from action. Thus, for Arendt, action is inherently political because it transpires in public spaces that separate and relate people to each other (Arendt *The Human Condition* 52–53). In contrast, love has the lovers not simply leaving the world behind, but rather "love, by reason of its passion, destroys the in between which relates us to and separates us from others" (*The Human Condition* 242). We are drawn to erotic love because it "possesses an unequalled power of self-revelation and unequalled clarity of vision for the disclosure of *who*, precisely because it is unconcerned to the point of total unworldliness with *what* the loved person may be" (242). If action is the endeavor through which worlds are created, then love fuses lovers together in an embrace that eliminates all the worldly criteria through which they were publicly related (Kampowski 68–70). This prospect makes erotic love so publicly threatening – and that is why lovers might feel compelled to keep their love secret – as exemplified in cases of "forbidden love". Yet, an irony appears in Arendt's thought. For her, as mentioned previously, the unmediated and passionate experience of love between two people must result in a child, "love's own product" and the "only possibility of a happy ending" to the unworldly, antipolitical affair (*The Human Condition* 242). That child also becomes a tertiary agent between the lovers that returns them back to the world in order to raise the child to independence. Though anti-political, and hence not an example of action, love nevertheless compels us to live in the world. It creates the potential for worldly action in the form of its issue (the child).

Love is not all you need: from love to action

Badiou distinguishes love and politics on the basis that in politics there are people that one simply does not love (57). In fact, there are enemies in politics – those whom we could never tolerate making decisions that affect our lives (58). Nevertheless, enemies must be managed if we are to create new beginnings with those allied to us. As stated earlier, the thread that melds love and politics together does not have us scaling up the intense feeling we have for a particular lover to the

level of the collective group. (Badiou pre-empts this argument in his reflections on the “cult of the Party” in previous decades [70–71]). Rather, the thread is the full throttled impulse to create worlds in which one can reinvent oneself with others. Erotic love is insufficient to this task as a political project because it is a private experience between people rather than one appearing in public space. Yet, as much as we desire love, we also desire public appearance, and for that we need politics, or, rather, political action through which we instantiate ourselves through establishing public space with others who are inherently different. In resonance with Arendt, Badiou identifies the crucial difference in the love relationship that is also crucial in sovereign action: plurality, randomness, and contingency. He describes plurality in love as the encounter with difference between two people, which he calls the Two Scene. Those two people have committed to each other’s differences rather than their own identities rendering the result of their love unpredictable. Ironically, the lovers put their trust in chance and become capable of experiencing the world from the perspective of difference (Badiou 16–17).

The thread that runs from erotic love to political action is not the degree of intensity we feel for others. Rather, it is the phenomenological need we have for others (that is, those who are different) to guarantee our own reality as sentient beings. That reality materializes through the mutual recognition that different people give to each both erotically and politically. Our worldly appearance cannot be achieved erotically, although it shares with politics the impulse to new beginnings. Arendt’s perspective on solidarity helps us follow the thread. For her, solidarity is the key. Solidarity proceeds through reason, not passion, because it can conceptualize a multitude generally. Crucially, this generalization does not mean homogenization of difference into race, class, or humanity, though it might strategically speak in those terms. Rather, it looks upon a multitude heterogeneously seeing differences with an equal eye (*On Revolution* 79). Solidarity as the means through which political action is organized depends upon equality among differences in the struggle to constitute a new world in which we constitute ourselves as a plurality. Like love, solidarity operates on the same premise of equality among differences in the thrill of constituting new beginnings. For solidarity, that new beginning is a new world we constitute with others, whereas, for love, it is a new beginning through an intensely private relationship between persons outside of the world. Each generates immense creative power, but they differ qualitatively as relational experiences.

Why struggle at all? Love, sovereignty, and action

That love and political action are united by a common cord is further signified in the structure of the basic dilemma they present. Regarding love, the thrill of constituting new beginnings with a lover contains a fundamentally destabilizing element to it. In constituting the new (and untested) it destroys the old. In its quest for enhancement and transformation, it jeopardizes a stable foundation

that lovers must establish if their relationship can endure past the moment of the encounter. Badiou describes it in near metaphysical terms: “how can what is pure chance at the outset become the fulcrum for a construction of truth” (41). Love needs both the new and the reliably proven. Similarly, in revolutionary action, the thrill of establishing the polity’s new foundation must also provide a secure framework to organize the routines necessary for basic social reproduction. Two inter-related puzzles present themselves when undertaking the revolutionary act of establishing a new political foundation. The first is to establish it without recourse to an a priori transcendent principle rooted in abstract logic, natural law, or historical force. Similarly, love loses its thrill if it mimics some idealized romance that kills the particularities of the lovers. The second, lacking a transcendent principle, is to avoid arbitrary government. Similarly, again, lovers need reliability in their entangled lives as well as new-ness. We can state the dilemma with this question: do social life and the revolutionary spirit contradict each other, which is homologous to asking if the routines of family life contradict the unpredictable results of erotic love, which originally united the family’s progenitors? The dilemma is resolved by identifying that principle in the same one that bound them together when they first organized (Arendt, *Between Past and Future* 205). Regarding sovereign action, that principle does not compel those actors by logical necessity or historical force, but rather through the agreement they had reached as to how they must act. Since it was established by mutual agreement, then it can be changed by mutual agreement. For lovers, similarly, that principle is that which made them realize that their together-ness was a basis for the thrill of new-ness.

Both cases, ironically, evoke principles of together-ness that yield both stability and new possibilities. In both cases, adherence to such principles requires an enormous amount of trust. Love and action cannot promise safety, because of the contingent effects of human plurality. They can only offer new possibilities, whatever they may be. The issue here is not what particular polity emerges from sovereign action. The potential types of polities are as innumerable as the possible types of human association. To see sovereign action as the expression of new beginnings does not require that we establish a singular template for government. Instead, it demands that we understand what draws people to revolutionary action and why people are so disillusioned with politics in the modern world. Revolutionary action is sovereign action insofar as it constitutes political space anew, with no prior foundation or derived power. Sovereign power – like love – is spontaneous as it emerges unpredictably from the actors (or lovers) without appeal to a higher authority, unexamined tradition, or transcendent principle. That space can only be defined by the particular persons undertaking the joint action itself: action, sovereignty, political space, and being all collapse into a singular experience. The prospect of that thrill of being draws people to sovereign action.

Why undertake action to constitute public space with others? The answer is oddly mundane and fantastic at once. We are compelled to it – as we are compelled

to love – because it makes us happy (Feldman, *We Are All Migrants* 103). Graeber points out that in anarchist movements

it is difficult to find anyone who has fully participated in such an action whose sense of human possibilities has not been profoundly transformed as a result. It's one thing to say, "Another world is possible". It's another to experience it, however momentarily.

(Graeber)

There is a special thrill, enjoyment, and sense of possibility in its undertaking. The answer might seem underwhelming. However, this response only testifies to how mundane our experience with sovereign action could be (but is not). Arendt similarly recounts the happiness American revolutionaries experienced in the act (that is, the struggles) of founding a new republic. In Jefferson's playful correspondence with Adams about what an afterlife might entail, he concludes that "May we meet there again, in Congress, with our antient Colleagues, and receive with them the seal of approbation 'Well done, good and faithful servants'" (qtd. in Arendt, *On Revolution* 122–123). She parallels Jefferson's reply to Socrates who in the *Apology* similarly wishes for an afterlife much like the life he had lived. He sought no blessed island where he could rest his soul, but rather the enlargement of the circle of interlocutors with whom he could engage in unending dialogues about the best way for people to live together. For him, the experience itself – of struggling to constitute worlds with others – cannot be rivalled by anything beyond an earthly life. Socrates' conclusion should prompt us to also ask if an afterlife could provide an experience as fulfilling, elating, and meaningful as that encountered through erotic love, the love of children, and sovereign action itself.

Both sovereign action and erotic love initiate outside worldly space, with the former establishing a foundation to the polity without precedent (a new world) and the latter fleeing the world for the sake of enhancing the thrill of being in ways that the world could never permit. From non-worldly places, new-ness can emerge as the foundation to the new polity where new ways of being can appear. Children can also emerge as those capable of beginning the world anew. Despite their different affective experiences of love and action, they each share a single theme: a rejection of precedent and desire to create something from nothing or something that might never have been.

Notes

- 1 This approach assumes neither that every adult desires to have children nor that any given adult should desire children. In particular, it recognizes that motherhood as a social institution has so often functioned as a means of disempowering women. Instead of examining motherhood (or fatherhood), the argument focuses on why children are generally regarded as worthy of the special care placed in them.
- 2 This section draws from Feldman, *The Gray Zone* 10–12.

- 3 The *Other* (uppercase O) refers to a subject defined a priori and who is not empowered to renegotiate that identity. Lacking voice, the Other has been reduced from a speaking subject to a voiceless object. An *other* (lowercase) is a subject regarded as equal and necessarily different from any other subject. No two subjects can be the same because no two subjects have lived the same life. Love between *others* does not imply a Greek notion of complementarity expressed by Aristophanes in Plato's *Symposium*. For him, love reunites a man and woman back into an integrated whole from which they were separated. Yet, love between others need not result in a closed unit. It remains constantly open to new beginnings by virtue of the fact that each of the others never remains the same throughout the life course.

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Postsecular pacification

Pentecostalism and military urbanism in Rio de Janeiro

Martijn Oosterbaan and Carly Machado

Introduction

On the morning of November 26, 2010, several *favelas* (shantytowns) that together form the *Complexo do Alemão* were surrounded by soldiers of the federal Brazilian military.¹ The complex of *favelas* in the peripheral *zona norte* of the city was commonly portrayed as the hotbed of the infamous Red Command (*Comando Vermelho*), one of several large criminal organizations in the city that control the drug trade. In the course of the day, television spectators were able to follow on their screens the real-time advancement of military forces into the complex up until the celebratory moment that soldiers planted the Brazilian flag at the highest point of the neighborhood to signal that the Brazilian state had retaken this *wild* territory from the gang that had ruled it for many years. While many city residents remember this iconic event, not many people know that the military had given the entire operation a strikingly religious title and had baptized it: ‘Operation Archangel’. Likewise, not many people know that in the months of military occupation that was part of Operation Archangel, the military collaborated closely with religious organizations embedded in the *favelas* to ‘pacify’ the urban zone and to make sure no violent confrontations would occur in the period leading up to the FIFA World Cup final of 2014 and the Olympics of 2016, both held in Rio de Janeiro.

The described representations of loss and recuperation of urban territory point to what Diane Davis has termed ‘fragmented sovereignty’ (Davis), a concept that denotes the state’s limited capacity to monopolize the means of coercion in the face of irregular and private armed organizations (Hansen and Stepputat). Moreover, the military operations also demonstrate how the restoration of state rule over Brazilian urban territories draws on a religious repertoire, laying bare the prominence of a particular political theology that envisions the reestablishment of state sovereignty in terms of a divine (angelic) intervention.

This chapter shows that this political theology is related to what can best be called religious-military urbanism. The main argument of the chapter is that the continuum between this political theology and a particular ‘religious governmentality’ (Garmany; Lanz) amounts to what we call ‘postsecular pacification’, which

we roughly define as the fusion of military interventions on national soil under democracy on the one hand and religious modes of governing urban territories on the other. To make this argument, this chapter by and large engages with two contemporary scholarly discussions – one centered on the militarization of urban life (Graham; Wacquant) and the other on postsecular urbanism (Beaumont and Baker; Berking et al.) – and we argue that insights harvested from these discussions should be united if we want to understand contemporary power and rule in Rio de Janeiro.

‘Pacifying’ Rio de Janeiro

Reflections on military interventions in urban civil life in Brazil should not disavow Brazil’s military rule that started in 1964 and lasted till 1985, yet in this chapter we focus on the post-dictatorial era, marked by the first democratic elections in 1988 and the embracement of a neoliberal economic ideology. Whereas the democratic transition reestablished boundaries between police and military action, theoretically preserving the latter for foreign threats, separations between the two were never absolute. In Brazil, police tasks are divided between the *Polícia Civil* – members of which perform investigations – and the *Polícia Militar* – members of which carry out surveillance and maintain public order. As the name suggests, the *PM* is closely connected to a military tradition of maintaining law and order, and in Rio de Janeiro the *Polícia Militar* has been responsible for many of the state’s ‘pacification’ projects.

Beyond a questionable separation between police and military action, military forces have regularly been employed in urban security interventions. Rio de Janeiro, the second largest city of Brazil after São Paulo, has experienced different models of military occupation since the democratic turn, starting with the 1992 military occupation of Rio’s *favelas*, implemented to ‘preempt incidents’ during the May 1992 International Earth Summit sponsored by the United Nations. Between 2008 and 2016, military forces were regularly employed in service of the so-called Pacification Policy, designed to maintain the city ‘under control’ during the Mega Events period – a period of successive events starting with the Pan American Games in 2007 and ending with the Olympics of 2016. Recently, in response to the bankruptcy of the state of Rio de Janeiro and the demise of the state security program, the city witnessed the so-called Military Intervention (2018) – a federal dispositive that put the army in charge of the city’s police force for the first time in Brazil since it introduced its new Constitution in 1988. Though we find it very important to monitor the effects of this dispositive, this chapter focuses on the Pacification Policy and its effects.

The Pacification Policy by and large consisted of a public security strategy with three phases: first, the occupation of violent urban areas by military or other security forces (special forces of the state of Rio de Janeiro, for example); second, the (re)establishment of state presence via local police units – so-called UPPs (*Unidades de Polícia Pacificadora*/Pacifying Police Units) set up by the *Polícia*

Militar of Rio de Janeiro; and third, the implementation of social programs – at some point called ‘social UPPs’. These social UPPs were designed as means to reorganize daily life in the occupied urban territories and to provide public services to the locality (electricity, water, education, medical support, etc.). Nevertheless, social UPPs were never truly installed, and during the course of the city-wide UPP program, the ‘nonviolent’, social face of the Pacifying Policy was formulated randomly, mainly in cooperation with cultural and religious actors, sometimes with state support and funding but certainly not always. Later, we analyze what the consequences were of this cooperation, but first we want to highlight what the focus on ‘pacification’ and the employment of the Brazilian military in urban territories tells us about the contemporary government of urban citizens.

As argued by different scholars in their recent book *Militarization in Rio de Janeiro: from pacification to intervention* (Farias et al.), the militarization of urban zones of Rio de Janeiro serves to shape a specific model of the neoliberal city, by means of a violent and warlike “governing of the poor” (Wacquant). Instead of investing in social programs, health and welfare, the ruling powers essentially maintain that private parties are better equipped to offer public services, since they have the capital and the expertise to do so. In effect, however, the neoliberal state primarily protects the flow of capital and the interests of businesses, while keeping the labor costs low. As stated by Wacquant:

the promotion of the market as the optimal contraption for organizing all human activities requires not only a minimalist “small government” on the social and economic front, but also, and without contradiction, an enlarged and diligent penal state armed to intervene with force to maintain public order and draw out salient social and ethnic boundaries.

(111)

In contexts where such boundaries and interventions are enmeshed with criminal violence (exercised by non-state *and* state actors), urban conflicts regularly take the shape of warlike combat, and representations of urban violence are frequently formatted to resemble warfare.

Stephen Graham has extensively described what he calls the “new military urbanism”, which according to him entails “the extension of military ideas of tracking, identification and targeting into the quotidian spaces and circulations of everyday city life” (xii), focusing on “the task of identifying insurgents, terrorists and an extensive range of ambient threats from the chaos of urban life” (xiii). Graham draws our attention to the fact that this new military urbanism “incorporates the stealthy militarization of a wide range of policy debates, urban landscapes, and circuits of urban infrastructure, as well as whole realms of popular and urban culture” (xiv). We find his focus on everyday mediated urban culture especially enlightening. Graham warns us not to underestimate the reproduction of the experience of urban war via TV shows, movies and video games (Der Derian; Stahl),

since these media help to bring “military ideas of the prosecution of, and preparation for, war into the heart of ordinary, day-to-day city life” (Graham xiv).

Whereas we largely agree with Graham’s take on military urbanism, his analysis appears to be embedded in a secular(ist) framework. When he discusses religious ideologies and organizations throughout his book, they feature predominantly as destructive forces that fuel the desire to annihilate city life (Graham 36–59). When he pictures religious groups, the adherents are fundamentalists that have entrenched themselves in urban zones (AlSayyad). Moreover, the governmental apparatus, including the military, is assumed to be non-religious or at least non-partisan. Our short introduction and our earlier work (Lanz and Oosterbaan; Machado, “É muita mistura”) show that such a secularist presumption is problematic. Social life in many large cities throughout the world display fusions between neoliberal and religious ideologies that reshape the urban infrastructure and produce new types of religious subjects that are both thoroughly urban and pious (Deeb and Harb). Instead of presupposing that religion is to be found outside the processes that comprise new military urbanism, we propose to open up our perspective and investigate when and how religious groups, practices and ideologies become part of the “militarization apparatus” (Farias et al.). As we will argue in more detail later, one especially has to take the spectacular growth of Pentecostalism into account when discussing the urban transformations of Rio de Janeiro of the past decades.

Before discussing in more detail what Brazilian Pentecostalism is and how it has become part of Rio’s new military urbanism, we want to draw attention to an approach commonly known as ‘postsecular urbanism’. By and large, scholars that adhere to this approach (Beaumont and Baker; Cloke and Beaumont) offer a model of contemporary urban life that includes religion and helps us to understand neoliberal cities such as Rio de Janeiro. As we will see, this approach can be helpful but also displays a certain bias towards Western societies, or, at least, appears to have certain presuppositions about what kind of roles religious organizations can adopt.

At the heart of postsecular urbanism lies the acknowledgement that theoretical reflections regarding religion and urban space should move beyond the secularization thesis that has reigned in urban studies for a long period (Olson et al.) and to recognize religion as a constitutive force of modernity. Contrary to the expectations, contemporary cities around the world exhibit the (re)emergence of public forms of religion, and we are witnessing new cross-fertilizations between social domains that were formerly understood as separate (Braidotti et al.). As Justin Beaumont, one of the first scholars to write on ‘the postsecular city’ has argued, a new conceptual frame was indispensable to describe the “interconnectivities between diverse social realities [. . .] that were limited to hitherto totalizing and prevailing notions of modernization and secularization” (7). We agree with those who state that the category ‘postsecular’ can be misleading when it is taken to mean that religious practices and institutions did not form part of the modern governmental apparatus in the recent past (Stack et al.), but we believe

the concept has currency precisely because it can highlight that categories such as ‘religion’ and ‘the secular’ are part of governmental (state) practices. Moreover, a postsecular *perspective* (Oosterbaan, “Public Religion”) brings attention to the recent changes in the relations between state and religious institutions and the ways in which these relations are perceived and represented (in popular media and in scholarly reflections).

Although postsecular urbanism has developed in different directions, the fore-runners of the approach pointed out that, in the face of weakening welfare states under neoliberal policies, governmental agencies in cities in Europe and the United States started to turn to religious institutions (‘faith-based organizations’) and invited them to provide care, welfare and justice to city dwellers (Beaumont; Beaumont and Baker; Cloke and Beaumont). According to several of the proponents of this take on postsecular urbanism, the turn could be understood as a ‘rapprochement’ of secular and religious institutions involved in the regulation of social life (Beaumont; Cloke and Beaumont).

Whereas we do not regard religion primarily as a reactive force to neoliberalism, and we think there is great historical variation to what extent religion was separated from state institutions, we do see that one of the effects of urban neoliberalist adjustments is that governmental agencies that are constitutionally described as secular actively seek new collaborations with religious institutions in an attempt to regulate social life. Nevertheless, in order for us to perceive these collaborations we have to shed the assumption that the goals and effects primarily involve care and welfare; the rationale of the rapprochements can also be security and control, for example. Here, we aim to elucidate how state and religious institutions collaborated and conjointly formed the ‘pacification apparatus’ characteristic of the Pacification Policy era of 2008–2016. This pacification apparatus, or “governance dispositive” (in Foucaultian terms) consists of discourses, practices, institutions, groups and moralities entangled in many different ways (Machado, “É muita mistura”; “The Church Helps”), with the general aim of identifying, targeting, transforming and/or removing particular violent actors from urban neighborhoods.

Operation Archangel and Pentecostal pacification

Religious groups and practices were mobilized by means of many different strategies during the pacification period in Rio de Janeiro, and the Brazilian army was one of the state institutions that planned and managed the incorporation of religious actors in the pacification process. During the first phase of the Pacification Policy, which focused on the ‘occupation’ of urban territories, the Brazilian military played a very important role in cooperation with various other public security forces. This was especially noticeable in two conglomerations of *favelas*: Complexo do Alemão and Maré. Military involvement in the securitization of these two areas caused an unprecedented situation in Brazil: military forces remained in the Complexo do Alemão for 19 months with a contingent of approximately

1,800 soldiers, which is by far the longest period of urban occupation by national military forces on Brazilian soil. In Maré, military forces remained 15 months, and during this period they stationed a total of 2,400 soldiers in the area.²

From the outset, the military operation at Complexo do Alemão involved Pentecostal actors and practices. In March 2011, not long after the military forces had entered the complex, the military helped to organize a spectacular rock music concert at the biggest football field of the complex – ironically known as ‘*o Campo do Sargento*’ (Sergeant’s Field). The show was formally presented as part of a health campaign against *Dengue* – a tropical virus carried by mosquitos – and the show’s official title was ‘Rio against Dengue’. Besides the military, the event was supported by the state’s secretary of health, the well-known NGO called *Afro-Reggae* and a cosmetics company. Strikingly, the show headlined a famous Brazilian evangelical band called *Ministério Diante do Trono* (Before the Throne Ministry). While both the religious field and the music market are rapidly changing in Brazil, in 2011 distinctions between so-called *música gospel* (evangelical music) and *música secular* (regular/secular music) were still drawn relatively sharply, and at the time one would not easily encounter performances of evangelical bands at events that were not explicitly known as evangelical or Pentecostal, let alone at an event organized by different state institutions and non-religious organizations.

Based on our earlier work on the rise of Pentecostalism in the city’s *favelas* we see the choice to invite Diante do Trono as an outcome of the cultural dynamics that made Pentecostalism popular in the first place. In the decades before the pacification, Pentecostalism had started to present itself as one of the few (if not the only) answers to the violence that haunted *favelas* as a result of police corruption and gang competition (Oosterbaan *Transmitting the Spirit*; Teixeira). Conversion within a born-again Christian frame allows for a powerful experience of personal salvation, and it is one of the few accepted explanations that gang members can employ to negotiate their withdrawal from gang life. Armed with a language of redemption, *favela* residents that have been involved in illegal activities regularly preach that only God can end the misery and hardship of a life of crime, and this message has attained currency outside Pentecostal circles, such as, for instance, in the state institutions involved in Rio’s pacification project.

The pacifying potential of Pentecostalism finds its material manifestation in a number of cultural practices, and *gospel* music is one of the major amplifiers of the popular religious sentiments related to urban violence (Oosterbaan, “Sonic Supremacy”). During Rio’s ‘pacification’ years, Diante do Trono revealed itself as part of the gospel industry, which the Brazilian state could employ as the ‘cultural’ element of their physical presence. Moreover, the Diante do Trono repertoire reflected both the soothing, pacifying gesture of the state’s institutions *and* their forceful capacity to produce order. This was very visible and audible during the ‘Rio against Dengue’ event, which both authors witnessed live. Before the start of the performances and speeches, armed soldiers and several tanks surrounded the *Campo do Sargento* site where the event took place. The somewhat grim ambience of the cultural event provided the counterpoint *and* enforcement of crucial

elements of the Diante do Trono performance. Ana Paula Valadão – singer, leader and pastor of the gospel band – has a very sweet voice, and in gospel circles she is generally known as one of the singers that has the ‘voice of an angel’. The opening songs of the show reflected this quality of her voice as she sang softly and comfortingly, while her lyrics emphasized God’s forgiving nature in the face of sinners. Meanwhile, the tanks and soldiers formed a disturbing counterpoint to the band’s soothing tone. However, during the performance, Ana Paula’s lyrics emphasized less God’s compassion and more His wrath. Simultaneously, the stage lights became more intense, the tone of her voice turned from sweetness to braveness, and the musicians started playing fiercer and louder. All of a sudden, the gospel performance became much more confluent with the military environment and the army’s display of power. As we see it, Diante do Trono’s performance on the one hand outlined and legitimized the state’s forceful presence as representation of God’s order – referring to His sovereign position as King of Kings – yet on the other hand maintained a Christian model of subjectivity that is frail and vulnerable, always at risk of becoming part of the “world of crime” and thus in need of guidance.

These sketched religious elements remained integral parts of public security strategies during the entire pacification period, even though they were not very visible to the broader public of the pacification spectacles we briefly painted in the opening of this chapter. Spectators that followed the state’s display of power via mainstream media were rarely confronted with the messiness of daily life in the *favelas* or with the local understanding of the transformative powers of Pentecostalism. Nevertheless, on the ground, Pentecostalism was central to the military ‘occupation’ of territories, bodies and souls, and arguably the military’s appropriation of Pentecostal tropes and practices produced a new form of *favela* governance that leans heavily on both military and Pentecostal references.

This new governance dispositive came into being as the result of the (*gospel*) events and staged performances we described earlier but also as the result of a number of other kinds of state interventions. Following their spectacular arrival, the Brazilian military drafted a long-term strategy to remain at Complexo do Alemão for a considerable amount of time. However, being trained as combatants and not as policemen, military personnel encountered a major difficulty during their urban intervention on their own soil: how to identify the ‘enemy’ outside the context of war. In the words of Colonel Vladimir Schubert Ferreira:

The greatest difficulty we have here is to act against Brazilians. It is different from other typical military operations, where we have a definite physical enemy in uniform. In urban confrontation, we cannot see the enemy on the other side. The trafficker, the thief and the suspects are among the people.³

(Zaluar)

The possible involvement of everybody and anyone with drug trafficking (an image frequently reproduced in mainstream media) made the task of identifying

the “good citizen” very complex in the eyes of the military. Faced with the difficulty to identify the “enemy”, military intelligence officers defined religious belonging as the key moral indicator that could separate the “good guys” from the “bad guys”. Local communitarian engagement, political action, and even the local status of “*trabalhador*” (worker) could not count any more as defining features of the good citizens and religious identification emerged as an important marker of difference.

Moreover, during the UN peacekeeping mission in Haiti, the Brazilian army learned that pacifying practices demand more than enemy identification, weapons and brute force. One also needs symbolic, cultural and political devices to secure and control occupied territories.⁴ To employ such devices, military intelligence planned and executed strategic actions that are formally known as ACISO – an acronym for Civic-Social Actions. These actions consist of events held inside occupied territories, where the extensive logistic-human military structure makes way for different activities and projects, such as medical, dental, veterinary, legal, educational, recreational and religious services. Such events became extremely common in Haiti, and they were later replicated in Complexo do Alemão, and Maré (Gonçalves).

In line with the prevalent religious identification of the good citizen, the military also sought active collaboration with local religious leaders in Complexo do Alemão.⁵ The Eastern Military Command (*Comando Militar do Leste* – CML), in charge of Operation Archangel, understood that local religious actors could play an important role in mediating tense relations between soldiers and residents. At the time of Operation Archangel, the Eastern Military Command had eight chaplains in the field: five priests (Catholic) and three pastors (Protestants), who along with the chaplains of the military police of the state of Rio de Janeiro (also only priests and pastors), carried out the religious assistance of the troops. Relatively quickly after the occupation and the ‘Rio against Dengue’ event, in mid-August 2011, the Eastern Military Command extended the tasks of their evangelical and catholic chaplains and made them establish relationships with local religious leaders – most notably Catholics and Evangelicals – to establish partnerships that would allow the organization of Civic-Social Actions.⁶ The choice to establish partnerships with religious interlocutors in the field was due to the military’s explicit distrust of inhabitants associated with local residents’ associations and NGOs. According to the military, members of these organizations were “conniving with the traffickers” and therefore considered ‘contaminated’.

In the course of Operation Archangel, three types of actions were designed by the Eastern Military Command chaplaincy: 1) local events of a religious-civic nature, on dates such as Children’s Day, Christmas day and Easter, to organize and publicize the partnership; 2) training courses for local religious leaders, aimed at strengthening their participation in the pacification process, which covered a diverse range of topics such as: mediation of conflicts to establish a so-called Culture of Peace, substance abuse, domestic violence, Christian social doctrine and themes related to entrepreneurship such as management and fundraising;

3) the formation of local chambers of religious leaders that were involved in the pacification to deliberate on territorial issues and to communicate their wishes with the public authorities. To this end, local religious leaders were invited to meetings at the main base of the Operation Archangel, near Complexo do Alemão (Esperança).

The military-religious partnerships during the pacification period bring us back to elements of the new military urbanism that Graham described and to discussions on postsecular urbanism. According to Graham, such military urbanism commonly involves the extension of military ideas of *tracking*, *identification* and *targeting* into the quotidian spaces and circulations of everyday life in the city in order to identify *insurgents*, *terrorists* and an extensive range of ambient threats in the ‘chaos’ of urban life (Graham). While most analyses on the relation between religion and policies in the context of postsecular cities focus on policies of care, the pacification era in Rio de Janeiro demonstrates that neoliberal urban transformation (under the umbrella of upcoming sports mega-events) forged new relations between religion and *policies of order and control*. Religious belonging was activated as a meaningful strategy of military *tracking* during the military’s presence at Complexo do Alemão, and religious leaders were *identified* as ‘trustful partners’, not contaminated by crime and violence. After the identification of religious leaders as ‘good partners’ in the field of battle, agents of the Brazilian military started to train religious leaders to secure their roles as mediators, warranting a future sociability in the *favela* based on a ‘Culture of Peace’. In other words, instead of identifying religious actors as a danger to the city, the Brazilian military employed religious ideologies and organizations as a path to peace and discipline in the context of a militarized city.

In no way do we want to suggest that the Brazilian army turned ‘religious’ in itself or that the strategies they developed to occupy the urban territories were homogenous or entirely planned before their entrance into Complexo do Alemão. However, it is clear that Brazilian army chaplains involved in Operation Archangel quickly changed from actors employed to take care of the troops to actors that could better be understood as members of the army’s intelligence team, strongly skilled in the task of reshaping local associative networks, cutting dangerous connections between suspicious groups and establishing safe and fruitful partnerships with religious actors in a pacified context. In addition, it is striking that the Brazilian military employed Christian Salvationist nomenclatures for their urban operations on home soil. Four years after the start of Operation Archangel, the title of the occupation of Complexo do Alemão, the Brazilian military commenced *Operation San Francisco*, which entailed the recovery and occupation of another infamous set of *favelas* in Rio de Janeiro – an urban area known as Maré. Both operation titles employed a markedly Christian understanding of subservience and sovereignty in a supposedly secular context and also came very close to Christian promises of rebirth, projected on whole urban territories.

The counter strike pastor

While the relations between the Brazilian military and urban Pentecostal churches are new, the Pentecostal churches in Rio de Janeiro have been employing a language of warfare for a considerable time now (Montes; Mafra). In accordance with historical trajectories of Christianity worldwide, Brazilian Pentecostal churches recurrently frame their urban presence as part of a ‘spiritual battle’, and this frame is full of quasi-military references. Beyond the generic deployment of warfare symbolism, Pentecostal churches in Rio de Janeiro embed their language and practices in a social context of actual lethal violence that is the result of armed struggles over urban territories and the drugs market (Oosterbaan *Transmitting the Spirit*).

Nevertheless, we perceived a transformation and a strengthening of the cultural cross-fertilizations between Pentecostal practices and organized violence in the urban peripheries in the past decades. Pentecostal drug dealers (Cunha), Pentecostal police officers (Machado, “Morte, perdão e esperança”) and Pentecostal pastors (Machado, “Conexões e rupturas urbanas”) gradually have become *the* central characters in the urban contestations in cities such as Rio de Janeiro, and Pentecostal practices have become increasingly more characterized by explicit military elements such as uniforms, guns and vocabularies. Moreover, the bridges connecting church practices and state security policies have become ever stronger.

One of the Pentecostal churches that is exemplary of the religious-military urbanism we encounter in Rio de Janeiro is the *Assembléia de Deus dos Últimos Dias* (ADUD, Assemblies of God of the Last Days). ADUD is well known in Rio de Janeiro as the ‘ex-bandit’ church. Its pastor – Marcos Pereira – was one of the first Pentecostal leaders in the city who spectacularly showed his presence in territories perceived as violent and dangerous. Pastor Marcos Pereira preached in prisons and police stations, interrupted *carioca* funk parties in *favelas* and turned them into open-air Pentecostal services, and he and his missionaries were well known in the peripheries of Rio because they frequently ‘rescued’ bandits from the so-called drug gang death courts.

Over the years, pastor Marcos created his own type of exorcism ritual aimed at a particular target population: criminals that reside inside the overpopulated prisons or in the city’s *favelas*. He customarily waves his jacket over a row of people lining up, who subsequently fall to the floor, a sign that they are demon-possessed. In order to expel the devil, he successively blows in the direction of these people, who then stand up, liberated of the evil spirits that possessed them. While some people lay down calmly, others display demonic possession explicitly and (performatively) resist the pastors’ attempt to expel them. Those evil spirits whose presence has been revealed frequently display criminal behavior, mimicking the use of guns with their hands and challenging the pastor with offensive words. In such cases, the exorcism ritual can become more violent and more military-like. The pastor frequently impersonates a soldier, a spiritual police officer fighting

against the spirit of crime, holding and shaking the person's head, or even 'shooting' the person with his Bible while mimicking gunshots (shouting 'pow, pow, pow') until the 'devil of crime' leaves the subject's body. With his performance, pastor Marcos communicates that the subject is not a criminal, but someone who is possessed by a spirit that forces him or her to commit crimes and he signals that it is necessary to use force to free the possessed soul. At one point, the pastor claimed he had a '66 caliber gun', referring to the Bible and its 66 books. In the past years, individuals have produced video clips about the pastor in which they creatively used his image to parody his exorcisms. In the clips, which can be found online, he is called the 'police pastor', the 'machine gun pastor', or even the 'BOPE pastor', a reference to the feared and loathed *Batalhão de Operações Policiais Especiais*, a special operations battalion of Rio de Janeiro's military police that is frequently praised by hardliners for taking on drug traffickers with lethal force (Rocha). In some of these videos, a fictional image of pastor Marcos appears who is dressed as a policeman, shooting demon-possessed people with a real gun.⁷ In others, the fictional image is shooting together with the police. Sometimes people edit the sound, adding real gunshot sounds to footage of pastor Marcos' exorcisms, and one of the online videos mixes real footage with video game images, while calling pastor Marcos the 'CS [Counter Strike] Pastor'. *Counter-Strike* (also known as *Half-Life: Counter-Strike*) is a first-person shooter video game in which players assume the roles of members of teams of governmental counter-terrorist forces in combat and various terrorist militants opposing them.

By itself, the playful yet serious mixing of popular video games, representations of urban violence and Pentecostalism point to a gap in the existing literature on the militarization of public life and popular media. In the aftermath of 9/11 many scholars have noted an alarming rapprochement of US militarization of public life and military combat representations in US popular culture (Der Derian; Stahl). Ranging from a host of Hollywood movies and television series focused on heroic US military interventions abroad and on American soil to violent video games that persuade so called first person shooters to identify with American soldiers in international military conflicts, celebrations of spectacular military culture have taken center stage in globally circulating mass media. Not surprisingly, Graham states that "the divisions between military simulation, information warfare, news and entertainment are becoming so blurred as to be less and less meaningful", (69) and "the profusion of digital video sensors in turn provides an almost infinite range of material for reality TV shows like *Police, Camera, Action!*, which provide the citizenry with voyeuristic and eroticized experiences of urban violence" (69).

Here we will not expand on the particularities of the Brazilian mediascape – which displays an abundance of crime shows – or on the fact that bottom up modifications of the video game *Grand Theft Auto* (GTA) appeared in Brazil that allowed players to act as BOPE officers. These and other phenomena demonstrate that the blurring of boundaries itself is not particular to the US or Hollywood and that similar process are taking place in Brazil, be it under different structural conditions than in the US. More importantly for us here, the inclusion of pastor

Marcos within such video game simulations of urban warfare points to the fact that religious groups can also be included in the new media of military urbanism as an imagined counterforce to insurgent subjects. In such a scheme, pastor Marcos' exorcism performances are presented as a social technology able to discipline bodies and souls in the urban war of Rio de Janeiro. Religiously minded audiences receive a "voyeuristic and eroticized" live experience of Rio's urban spiritual battle.

For the purpose of this chapter, it is important to highlight that beyond the religious interferences in urban warfare, ADUD also established a formal alliance with a UPP in Rio de Janeiro during the pacification period. This alliance was mediated by what is formally known as a *therapeutic community*. Therapeutic communities in the state of Rio de Janeiro are commonly understood to be rehab clinics for those who suffer from drug addiction. In practice, however, they are hybrid institutions of which the majority is operated by religious institutions. Rehabilitation clinics in Rio are employed by state and non-state parties to manage the violence and to control the 'dangerous populations'. Those who are taken to these 'therapeutic' facilities may suffer from different predicaments, but definitely not only drug addiction. Undisciplined members of Rio's drugs gangs (*comandos*) are frequently brought there by their peers in order to give them a time-out which allows them to take a step back from the mess they are involved in, and to help them to avoid severe corporal punishment or even death. Police officers sometimes take a troubled person to a therapeutic community instead of taking him or her to a police station, offering the opportunity of rehabilitation, and a warning that next time it might go down differently. Strikingly, many of the therapeutic communities in Rio de Janeiro are run by Pentecostal churches. In general, the long-lasting alliance between the state and the evangelical churches in the field of drug dependency control and prevention is widely accepted in Rio de Janeiro. Pentecostal churches generally preach abstinence from alcohol, smoking and chemical substances and the Rio de Janeiro state and municipal governments depend on close partnerships with religious institutions to run the extremely precarious public programs for the treatment of drug addiction.

Despite the emphasis on treatment, recuperation and therapy, the formal responsibility for the state-religion partnership embodied in the therapeutic communities lies not with the (Federal) state ministry of health but with the (Federal) state ministry of justice. The state ministry of health is responsible for the inspection of these facilities, but the process of establishing funding criteria and selecting those communities that will receive public funding is carried out by the state ministry of justice. This bureaucratic structure reveals the implicit goals of the state policies regarding the rehabilitation clinics: therapeutic communities serve as important governmental-religious intervention technologies aiming at governing the poor and 'dangerous' populations of the city's peripheries and *favelas*.

In May 2010, ADUD's institute for drug addiction treatment was officially declared a state public utility, which also opened the way for a formal partnership between an UPP in the *favela* Turano (located in the neighborhood Tijuca)

and ADUD. During the pacification period the UPP-ADUD relationship was primarily mediated by the church's therapeutic community. As part of the alternative management of urban violence, therapeutic communities receive and shelter populations living at the margins of the state, inhabiting the folds of the legal and the illegal. In line with the previous description, church members involved in the therapeutic community effectively served as an auxiliary force of the state in the government of the populations of pacified areas. Nevertheless, such governance attained a particular Pentecostal twist in the process. Adding religious (born-again Christian) conversion and exorcism to the treatment of people that arrive at the therapeutic community seemingly produces a win-win situation *and* a multi-purpose treatment. The analogy between demonic possession and addiction – inflictions that both can be presented as involuntary afflictions instead of signs of immoral character – allows parties to transform the dichotomous frame that unequivocally separates the good citizens from the bandits, while also presenting the cure to crime and addiction at the same time. More than a simple disease, drug addiction is closely connected to spiritual evil, and beyond treatment alone, Pentecostal therapeutic communities provide a form of care that tackles all evils at once: physical, moral, spiritual and social. Subsequently, the dangers posed by crime can be translated into the dangers posed by drugs, and treatment of addiction became a path to moral recovery for the (perceived) *comando* member or affiliate.

As a kind of recuperation machine, ADUD manages to include in their activities hundreds of so called 'ex-bandits' who – even though belonging to a Pentecostal church – deliberately remain 'in action', facing the challenges of Rio's violent urban scene. As discussed before (Birman and Machado), ADUD does not ask the recuperated 'ex-bandits' to forget their past but to constantly relive it in order to testify and act like a living testimony. Their stories – generally brought with much fervor – are considered priceless tools that can rescue others who, just like them, are desperately hoping to live a different life outside criminal gangs. Instead of fully closing off their past, their criminal life becomes part of their new redeemed life as a potency to act and to mediate. As such, they continue to be part of the game, not changing sides, but operating as a new and third component. They are neither bandits nor policemen, but remain in the field to rescue those who desire spiritual exile. In some cases, gangs of 'ex-bandits' actively interfere when *comando* members want to punish members that have broken a code or are suspected of betrayal or theft. In such cases, they plea to take them off *comando* hands, to extract them from the scene, to pacify them. The church's crew of 'ex-bandits' can thus be perceived as a kind of spiritual urban militia operating in the peripheries of the city, helping to protect local communities.

Conclusion

Although we could only sketch a number of transformations that took place during the so-called pacification years of Rio de Janeiro, the material presented here

demonstrates that the urban transformations that occurred in light of the consecutive mega events in Rio de Janeiro spurred a widespread militarization of city life, be it in the form of the previously inconceivable military occupation of whole urban areas or in the form of pacification units (UPPs) run by the military police. These transformations by and large confirm Stephen Graham's suggestion that we are dealing with what he has coined "new military urbanism" (Graham). Nevertheless, we find the framing of urban religion in Graham's work insufficient to understand the new kind of quasi-military regulation of urban social life. While Graham recurrently pictures religion as something that stands outside military urbanism or as something 'threatening' that fuels its emergence, the developments in Rio de Janeiro in the past decade show that in many cases we are actually dealing with something we might better call religious-military urbanism. This religious-military urbanism entails the fusion of military interventions on national soil under democracy and religious modes of governing urban territories and – in the spirit of Graham's new military urbanism – also entails the proliferation of mediatized (pop) cultural events and products. In the cases presented here, these range from television shows to music events and video games. To frame our understanding of religious-military urbanism we engage with an approach that has become known as postsecular urbanism (Beaumont and Baker; Berking et al.). Whereas this approach helps us to address some of the flaws we identify in Graham's work, to understand better how state, religious and commercial parties together produce a new kind of urban social life we want to add that the rationale for such collaborations is not necessarily care or welfare in the manner often described in the existing literature. In a context of "fragmented sovereignty" (Davis) such as encountered in Rio de Janeiro where armed gangs and *milícias* control urban territories, military and police forces teamed up with Pentecostal and Catholic leaders in *favelas* to regain control of the urban areas. This religious-military cooperation combined two powerful tropes of sovereign power: the Brazilian nation state and divine supremacy. Our cases show that even when religious-military cooperation is framed as 'therapeutic', the forces that drive such cooperation regard the cityscape as a worldly and spiritual battlefield riddled with criminals and bandits. Maneuvers on this battlefield predominantly aim to *pacify* the urban population and implicitly and explicitly refer to the possibility of highly violent interventions that eliminate rather than recuperate urban citizens.

Notes

- 1 This chapter was written in the frame of the NWO (Netherlands Organization for Scientific Research) funded project: 'The Popular Culture of Illegality: Criminal Authority and the Politics of Aesthetics in Latin America and the Caribbean', headed by Rivke Jaffe and Martijn Oosterbaan. We want to thank NWO wholeheartedly for their support. We also want to thank the editors of this volume for their encouragement to develop our chapter and Antonius Robben for his detailed advice on how to improve it.
- 2 The main operation that served as reference for the army's role in the Peace Policy actions in Rio de Janeiro was the United Nations Mission for the Stabilization of Haiti

- (MINUSTAH). In operation since 2004, the UN Peace Mission in Haiti has enlisted soldiers from different countries, including Brazil.
- 3 See the online Globo article: “Para Exército, ocupar Alemão é mais difícil que guerra e missão no Haiti”, <http://g1.globo.com/brasil/noticia/2012/08/para-exercito-ocupar-alemao-e-mais-dificil-que-guerra-e-missao-no-haiti.html>. Translation ours.
 - 4 Clearly, military practice aimed at winning ‘hearts and minds’ of populations in occupied territories is not confined to Brazilian Military forces. For example, John D. Kelly et al. point to the US military ‘cultural turn’ following the wars in Iraq and Afghanistan. According to the authors, this turn involved the revitalization of counterinsurgency practices that support US control of occupied territories (Kelly et al.).
 - 5 Both Gonçalves and Esperança (2016) did important research on the relationship between the Brazilian army and religious actors in Complexo do Alemão in the context of Operation Archangel. Much of the ethnographic data we discuss here are part of the collective findings in the context of the research project “*Crime e religião: mediadores sociais do processo de pacificação na região metropolitana do Rio de Janeiro*” (2010–2016), under the coordination of Carly Machado. For more, see Machado et al.
 - 6 Gonçalves’ work focuses specifically on the actions involving the chaplains in the field.
 - 7 Strikingly, in the original footage of the scene where the pastor ‘shoots’ with his hands, he shouts: “I’m going to trade a shot with him [the devil]. I’m angrier than a BOPE police officer.”

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Cities of refuge

Rights, culture and the creation of cosmopolitan citizenship

Barbara Oomen

The names of the cities vary: Sanctuary Cities, Solidarity Cities, Cities of Refuge, Integrating Cities, Fearless Cities. The common denominator, however, is that of an ever-increasing number of cities that seek to take a more welcoming stance towards, for instance, refugees than the state. As the vice-mayor of Athens put it: “Where nation-states fail to take responsibility, we must act”.¹

Such cities are of interest to anyone seeking to understand the interplay between law and culture in the creation of citizenship in Europe today. They have also increasingly received the attention of those frustrated with the inability of states to adequately address global challenges like climate change, who herald local governments as sites of pragmatic politics and hotbeds of inclusion (Gordon; Hoornweg et al.). Many mayors and municipal councils have actively stepped up to this challenge, increasingly developing local policies to tackle global challenges and actively promoting their own role in international fora. When President Trump, for instance, pulled out of the Climate Agreement stating that he “was elected to represent the citizens of Pittsburgh, not of Paris” (Aust 57), the mayor of Pittsburgh tweeted that he was fully committed to following Paris, “for our people, our economy and future” (Aust).

One global challenge that cities have taken on is that of migration. Whether it concerns refugees or forced migrants more generally, cities have increasingly developed an independent stance, acting where nation-states remained undecided or downright hostile, arguing for inclusion in times when the national current was that of exclusion. In going further than the national standard in welcoming and integrating refugees, such “Cities of Refuge” increasingly claim a *de facto* sovereignty over what was once a clear national competence. Cities, in the context of networks like the ones mentioned earlier, contribute to the international development of refugee law and policy, at times even openly defying their national governments in doing so. At the Marrakesh meeting on the Global Compacts for Refugees and for Migration, for instance, a number of mayors were present from countries that were not, like Italy.

Such cities, it seems, go much further than the role of state agents classically associated with local authorities (UN). They are actively involved in the definition and renegotiation of refugee rights and of human rights in general

(Oomen et al. *Global Urban Justice*). In the process, they engage in practices of bordering, either creating new borders or breaking down existing ones. In doing so, they also actively negotiate and establish sovereignty, a term with many meanings. In legal and political thought the term is used, amongst others, to designate the inviolability of a state and its presence in international relations. From a more internal perspective, the term is also used to designate ultimate state authority, the constitution maker. In a more fundamental sense sovereignty designates the philosophical and theoretical foundation of the powers concerned. In all these senses sovereignty is about power and this is what is at stake in these local-level negotiations of rights (Heringa and Kiiiver 23–24). Against this theoretical background, this chapter discusses the interplay between law, culture and human rights in these Cities of Refuge, arguing that it amounts to the creation of “citizenship” and with it sovereignty, in a process in which a local culture of welcome is coupled to the realization of cosmopolitan, human rights.

Before developing this argument, it is necessary to provide a number of definitions and methodological caveats. The term Cities of Refuge will be used as shorthand for a wide range of local authorities that all explicitly seek to go beyond the national standard in refugee reception and integration, even if they diverge in size, formal competencies and actual activities. Pointing towards the prominence of such cities does not mean that there are not, simultaneously, “Cities that Refuse”, local authorities that put in extra effort to stop migration and its consequences, like the “Anti-Sanctuary” cities in the United States.² Another important caveat is that the discussion will be mostly based on European examples, with the occasional reference to the United States. This is due to the empirical research done in the context of the Cities of Refuge research project, which is limited to Europe, even if the majority of refugees in the world live in cities elsewhere.³

The following sections first provide some general background on Cities of Refuge, their activities and what motivates them. Subsequently, I argue that, if unpacked, practices of welcome and integration in these cities can be considered to strengthen local sovereignty and create what, following Vvasti and Dayal, will be called “citizenship” (Vvasti and Dayal). Here, culture in its broadest sense plays a key role in discursively supporting such practices and connecting them to local imaginaries and identities. At the same time, the “citizenship” thus shaped is cosmopolitan in nature, and all about the further development and realization of human rights in a given context. This, in the conclusion, is related to the wider theme of this chapter: the interplay between law and culture in shaping citizenship in Europe today.

Cities of refuge

Perhaps paradoxically, the forces that come with globalization have also led to a real rise of the local. Neoliberalism has, for one, created global cities that have economies larger than some nations, intimately connected via financial, communication and transport networks (Sassen). Global transport and the travel of ideas

have also facilitated migration to an extent that, for the first time in world history, more people live in cities than on the countryside. This globalization, and the fear of “McDonaldization” and the alienation that it evokes, has also translated into a “return to the roots”, a search for belonging that translates into an increased emphasis on urban identity (Scholte). Such a focus on a specific urban identity and the unique features of a given city is not only important to connect an increasingly heterogeneous population and make it feel at home but also to attract foreign investment, workers and tourists. From a more institutional vantage-point, the global emphasis on good governance, devolution and decentralization of the past decades has left cities worldwide with a much wider set of competences than ever before. National politics of closure, finally, have often solicited local responses of openness, with cities emphasizing the importance of pragmatic and inclusive policies (Barber).

The way in which local authorities worldwide have come to respond to people on the move as a result of global conflicts and inequalities is a case in point. Historically, of course, many cities formed safe harbors for people on the move long before the formation of nation states (Prak). The term “Cities of Refuge”, for instance, has a biblical origin, pointing at the six towns in which those who had committed manslaughter could claim asylum (Numbers 35:1–34, Deuteronomy 4:41–43). All throughout the Middle Ages cities were shaped by, and often thrived because of, their ability to welcome and integrate those forced to flee elsewhere. The formation of the nation state from the 17th century onwards, however, went hand in hand with the creation of *international* law as a system of legal agreements between sovereign nations. It was thus nation states that stood at the cradle of international refugee law, agreeing, by means of the 1951 Refugee Convention that persons outside of their borders with a “wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”, had a right to international protection.⁴ States would be responsible for both international protection and for safeguarding the rights of refugees within their borders, with local authorities invisible from an international legal point of view (Nicola).

Much of this has changed in recent years, with local authorities all over the globe stepping forward to explicitly take responsibility for the reception and integration of refugees. The mayor of Ghent and President of the Eurocities network, for instance, stated in 2018 how “while member states talk, cities act”, stating how cities provide essential services and put values of solidarity, humanity and dignity into practice, and calling upon the EU to do the same.⁵ Such urban engagement can, amongst others, be traced back to the Sanctuary Cities and the human rights cities movements in the 1980s (Oomen et al. *Global Urban Justice*). Intellectually, however, the idea that cities had a key role to play in tackling global issues like migration gained traction with the virtual manifesto *If Mayors ruled the world* by political scientist Benjamin Barber in 2013 (Barber). It was Barber who formed the Global Parliament of Mayors (GPM), seeking to empower local authorities in a world in which nation states increasingly did not manage to rise to

the challenges of the day. The way in which many national leaders – in response to populism and xenophobia – increasingly sought to close borders in the following years would only add to the popularity of the work and its institutionalization in the GPM and other networks. Local authorities, increasingly and in many different ways, claimed *de facto* and at times even *de jure* sovereignty over refugee reception and integration.

This interplay between local authorities and national governments, dubbed “decoupling” by Scholten, played out differently in different parts of the world (Scholten). As a general trend, mayors and municipalities are increasingly making migration policies all over the world, also in those parts of the globe where most forced migrants live, like Africa and Asia. This contribution, however, will focus mostly on Europe and occasionally on the United States, where the dynamics of decoupling already differ substantially per country. The United States, for instance, has seen the rise of Sanctuary Cities, cities in which the local enforcement agencies refuse to cooperate with the federal government in locating and detaining undocumented migrants (Critchley and Trembly 33; Lee et al.). Whereas the term has roots that go back to the 1980s San Francisco Sanctuary City movement and cities identified as such for years, the number of Sanctuary Cities and the clamp-down against them increased drastically with the 2016 election of Donald Trump (Lasch et al.). Much of this took place via legal means: in a wide range of generally unsuccessful court cases the Trump administration sought to keep eight states and dozens of cities and counties from sheltering irregular migrants.⁶

In Europe the “decoupling” of local migration policies from those developed nationally increased substantially with the influx of over a million forced migrants in 2015. Part of the way in which European cities jumped to the task was simply the absence of coordinated national policies: in the summer of 2015 cities like Milan, Athens and Vienna saw hundreds of thousands of migrants pass through and simply had to develop local-level policies. Here, the main reason for urban decoupling of refugee policies was that the states that formally had sovereignty simply failed to take responsibility. In other cases, however, cities explicitly welcomed refugees out of a more principled moral stance. The mayor of the city of Palermo, for instance, explicitly welcomed refugees arriving via the Mediterranean and stimulated the adoption of the “Charter of Palermo”, depicting mobility as an inalienable human right (Città di Palermo).⁷ On the eve of a UN summit on refugees and migrants the mayors of Paris, London and New York wrote an op-ed in the *New York Times* titled “Our immigrants, our strength”.⁸ This type of discursive commitment continued after 2015. In 2018, for instance, the mayor of Barcelona, Ada Colau, offered that her city would take in the refugees from the vessel *Aquarius* that had been refused entry by Italy.⁹

The words of welcome were accompanied by deeds in a manner that scholars have labelled the “local turn” in migration management (Schiller and Çağlar; Peninx et al.). Whereas we will consider in the next section the way in which many municipalities throughout Europe went further than the standard in welcoming and integrating forced migrants, it is important to set out the multi-level character

of these efforts from the outset (Filomeno; Scholten and Penninx). The EU, for instance, put refugee reception and integration squarely in the center of the EU Urban Agenda, with city networks like Eurocities calling for more and more financial and legal empowerment of cities in this field (Eurocities; Bendel et al.). The Council of Europe has also sought to reinforce the role and responsibilities of local authorities with respect to refugees, for instance by emphasizing how local authorities are responsible for the realization of human rights (Congress of Local and Regional Authorities). At the international level, the United Nations granted local authorities a place at the negotiating table of the Global Compacts on Refugees and Migrants adopted in 2018, and the over 150 mayors present endorsed the Compacts by means of a Mayors Declaration during the Marrakech meeting on the topic (Mayoral Forum).

The fact that these 150 mayors were united in a Mayors Migration Council with the involvement of the Global Parliament of Mayors and the UCLG Cities4Migration also points at another aspect of “Cities of Refuge”, that is, the degree to which they develop their policies in the context of city networks. Worldwide, there are dozens of such transnational city networks which do not only exchange best practices in the field of refugee reception and integration but also obtain additional funding, set and monitor standards and seek to influence national and international standard-setting and policy-making (Caponio “City Networks”; Oomen et al. *Transnational Networks*). In this manner, participation in networks with names like Arrival Cities, Integrating Cities, Solidarity Cities, Cities of Refuge, Fearless Cities or Integrating Cities strengthens the ability of cities to “decouple” local migration policies from those developed nationally and to underscore their sovereignty in these domains. This renegotiation of sovereignty can have far-fetching results. In the City Initiative on Migrants with an Irregular Status in Europe, for instance, cities work together to strengthen services to irregular migrants, such as offering legal advice, education, health care, shelter and support for victims of crime (Spencer).

As stated before, this is a select group of cities, with other cities being less forthcoming or downright hostile in relation to migration. In trying to understand why certain cities become Cities of Refuge whilst others do not, it is important to take a comprehensive approach.¹⁰ The demographic composition can, for instance, play a role, as can the active presence of immigrant organizations (Caponio, “Grass-roots Multiculturalism”). In addition, the political color of the city concerned can play a role, even if this is not always the case.¹¹ The financial position of a local authority and competition for resources are also explanatory factors. In addition, the Cities of Refuge research shows the relevance of tradition and history in stimulating and supporting welcoming policies. It also points at the singular role of individuals – mayors, politicians, civil servants, civil society leaders – in shaping local policies of welcome, particularly in smaller places (Oomen and Leenders). What is it, then, that these cities do in relation to the reception and integration of forced migrants? The following section unpacks some of the urban activities, arguing that they amount to the creation of “cityzenship”.

Creating citizenship

A closer look at the actual activities of Cities of Refuge and what these mean for migrants reveals the degree to which local authorities are involved in all the key elements of citizenship: shaping legal status and political membership, setting out rights and obligations, stimulating civic virtues and practices of engagement as well as strengthening discourses of inclusion and participation (Shachar et al. 5). Citizenship has been understood by Isin et al. as the main institution mediating rights between the subjects of politics and the polities to which these subjects belong (Isin et al. 1). Whereas the origin of the word “city” is that of “town-dweller”, the formation of the state has, for centuries, led to a situation in which the key polity in the formation of citizenship was the state.¹² The post-World War II multi-level legal order changed this, creating more and more of a multilevel citizenship (Maas). The political relevance of Europe and the global legal order in this process has often been recognized, but the degree to which cities have a key role to play in shaping citizenship, and fulfill this role, has received less scholarly attention.

Let us first unpack the ways in which Cities of Refuge increasingly shape key elements of the citizenship of newcomers in Europe. This obviously differs between cities, countries and policy domains, so the following list is far from exhaustive.

The only European country in which local authorities formally decide on naturalization decisions is Switzerland where, for instance, two Muslim girls who refused to take swimming lessons together with boys were refused citizenship.¹³ In practice, however, local authorities all throughout Europe insert themselves in the asylum application process, for instance by indicating that they prefer to receive “deserving” and “promising” asylum seekers within local asylum

Table 7.1 Domains of divergence in local migration policies

<i>Domains</i>	<i>Reception</i>	<i>Integration</i>
<i>Legal status</i>	E.g. Status determination	E.g. Participation declaration
<i>Movement</i>	Restrictions upon movement?	Support for travel
<i>Housing</i>	Asylum center or not? Whom placed? Types of housing ((de)central)	Spread out or in “ghettos” Possibilities for contact with neighbors
<i>Education</i>	Type of education for minors? Education whilst in procedure?	Type of education
<i>Work</i>	Allowed to work? Type of work?	Activities to access work?
<i>Health care</i>	Provided? For different groups?	Type of (psychological) support?
<i>Participation</i>	Activities?	Activities? Formal structures?
<i>Integration</i>	Start with formal integration?	Setting conditions?

centers.¹⁴ In addition, local authorities frequently take a specific stance in relation to migrants whose asylum application has been turned down. In the Netherlands, for instance, a number of municipalities passed local council resolutions in 2018 calling against expulsions to Afghanistan in contrast to national policies, calling upon the municipal duty of care for everyone within their local borders, including people in asylum centers and those out in the streets after rejection of their asylum application.¹⁵ Another way in which Dutch municipalities influence the legal status of newcomers is via their role in shaping and giving out the Participation Declaration. As of 2017, specific groups of newcomers in the Netherlands have to sign a Declaration stating that they will respect Dutch values like freedom, equal dignity and solidarity, and that they will participate actively in society. Not signing the Declaration, for which the municipalities provide very different trainings, leads to a fine but also to an inability to pass the integration exam and subsequently to stay in the Netherlands (Oomen and Leenders).¹⁶

Another means by which local authorities increasingly absorb roles classically related to the nation state is via politics of bordering. Where states in Europe increasingly close borders, there are instances of local authorities seeking to open them. In Italy, for instance, cities such as Florence, Naples and Parma openly defy Salvini's strict border policies, with the mayor of Naples stating that "the city would continue to grant residency to asylum seekers".¹⁷ In Florence, the mayor won a legal battle with the national government over the registration of asylum seekers, a necessary step towards gaining access to social services.¹⁸ Another instance of city bordering relates to dispersal policies: in the wake of the 2015 refugee influx, European countries like Germany, the Netherlands, Ireland, Norway and the UK adopted dispersal policies in which refugees and asylum seekers were "dispersed" over specific towns and often kept from moving onwards for a specific amount of time (DGIP EU). Asylum seekers are also often confronted with borders thrown up by local authorities within the municipal confines, for instance by means of local ordinances restricting their movement, as was the case in the Dutch municipality of Weert.¹⁹ In granting, or refusing, refugees support for travel, municipalities also exercise a *de facto* control over their freedom of movement.

Cities also have a key role in the definition and realization of a wide range of other rights, such as political and socio-economic rights. Where it comes to political rights, for instance in relation to participation in public life, some cities set up advisory councils of refugees and migrants. The Australian town of Dandenong, to cite just one example, is not only proudly "the most culturally diverse community in Australia" but also has an Asylum Seeker and Refugee Advisory Committee tasked with, amongst other things, to "celebrate and raise awareness of the achievements of asylum seekers and refugees".²⁰ Similar councils can be found throughout Europe. In some cases, local authorities also grant refugees, and other non-western migrants, the right to vote or to be voted for in municipal elections. The city of Vienna, as a human rights city, passed an ordinance seeking to grant third-country migrants such a right but was barred from doing so by

the Constitutional Court.²¹ Some Belgian cities, however, do give refugees the right to vote in some municipalities as long as they are registered there (Ziegler; Wallis).

It is in the field of granting social and economic rights that the largest degree of divergence between cities can be noted. This is partially due to the large exercises of decentralization and devolution of powers that took place in Europe, as in the rest of the world, over the past decades. As a result, local authorities, in many cases, obtained competences over domains like housing, social policies, access to work and even education. Whereas the exact competences, financial arrangements and space for autonomous decision-making differ substantially per country, it is clear that cities make use of this space, at times even explicitly seeking to expand it. In Utrecht, to quote one example, the city provides asylum-seekers with “future-free” education and support in finding access to work. Together with the university the city has also set up a program, InclUUsion, that enables asylum-seekers waiting for a decision on their status to follow all sorts of courses and trainings for free. In other Dutch municipalities, in contrast, no such support is available.

These practices of local inclusion and giving meaning to social and economic rights are best understood as acts of “cityzenship”. The term is used by Vrasti and Dayal in a normative sense, as a way of imagining an alternative legality, an “entitlement extended to all residents, regardless of origin, identity, or legality, based on the principle of ‘rightful presence’” (Vrasti and Dayal 995; Squire and Darling). More empirically, I would argue, the term captures the efforts of Cities of Refuge to shape legal status and political membership and to define rights and obligations in an inclusive manner, with the idea that all present in a city should be treated equally as a point of departure. In shaping a “cityzenship” that differs from national understandings the local authorities concerned also claim the sovereignty which is so closely related to the concept of citizenship. As will be discussed later, these efforts are not only located in the realm of law and politics but also, crucially, in the cultural domain.

A culture of welcome

Under the title “Libero”, Ai Weiwei set up an installation in the center of Florence in 2017 that led to widespread discussions. The “artist” covered the windows of the historic Palazzo Strozzi with orange lifeboats in an attempt to draw attention to the plight of refugees in the Mediterranean.²² In a comparable move Ada Colau, the mayor of the “Solidarity City” of Barcelona, unveiled a digital “shame counter” in 2016 to track the numbers of refugees dying on the Mediterranean. In Dresden, racist attacks on refugees in 2015 were countered by a graffiti artist spraying “welcome”, in giant Arabic letters, on a train.²³ In Mechelen, a 20-foot-high inflatable refugee was perched atop the Cultural Center.²⁴ The Cities of Sanctuary movement in the United Kingdom has a separate arts stream, which shows the role of music, theatre, film and other arts in creating inclusive communities.²⁵

If there is one common thread in all these examples it is that they illustrate the role of arts and culture in creating cities of refuge and shaping a cosmopolitan citizenship.

Culture, here, should be understood in its broadest sense, as a historically transmitted pattern of meaning, embodied in symbols, a system of inherited conceptions expressed in the symbolic forms by means of which people communicate, perpetuate and develop their knowledge about and attitudes toward life (Geertz 89). In spite of its connection to history, culture is malleable, permanently negotiated and subject to contestation (Scott). This also applies to the urban context. Possibly paradoxically, underlining a distinctive urban culture has generally become an ever more important corollary to globalization. Partially, neo-liberal policies have led to a need for “city marketing” as a means to underline the distinctive features of a city and its attraction to tourists, companies and future employees (Hilber and Ergez). In addition, the need for grounding in times of globalization, for a return to the roots, has stimulated a revival, or even a reinvention, of urban history and distinct characteristics and traditions. In the city of Utrecht, for instance, the tradition of St Martin is celebrated more extensively each and every year, with international support and explicit attention to “the values of St. Martin, such as compassion, sharing, peace and justice”.²⁶

This example shows the degree to which a distinctive urban culture can simultaneously be cosmopolitan and emphasize diversity as a key distinctive feature. The campaign *IAmsterdam*, for instance, started as a project to unite Amsterdam citizens of all colors and creeds and to underline common urban belonging.²⁷ The fact that, over the years, it came to be criticized as a symbol of mass tourism, individualism and neo-liberalism also shows the perils in coupling identity politics with city marketing. Still, Amsterdam forms but one example of a city explicitly underlining its openness as a key characteristic, drawing on history, and making use of arts and culture, in order to actively shape a cosmopolitan citizenship. On its website, for instance, the city refers to “Amsterdam DNA” in stating how “the reputation of Amsterdam as a liberal and tolerant city is due to the ability of the town to absorb new groups into one Amsterdam, in which everyone is an Amsterdammer”. Such an approach also comes to the fore in the city’s policies for irregular migrants and for refugees, which are much more inclusive than in other parts of the Netherlands.

For cities actively shaping a culture of welcome, both communal and personal histories are important. City history feeds into cities of refuge in two ways. On the one hand, an urban history interlaced with migration that has left its demographic and spatial traces in town can help understand why some cities are more welcoming than others. On the other, key actors intent on creating a culture of welcome will leaf through the pages of urban history – both positive and negative – in order to find support for current policies. Take Mechelen, a city in which mayor Bart Somers (of the relatively right-wing VLD party) took the lead in welcoming more refugees than expected of Belgian cities, and putting considerably more effort into their integration. He indicated that the fact that Mechelen, with its Great Council,

had an international court *avant-la-lettre* from the 15th century onwards also put responsibility on the town for upholding the rule of law in the 21st century.²⁸ At the same time, the fact that Jews were deported from this town during the Second World War created an additional reason to actively shape a culture of welcome. The Mechelen mayor also provides an illustration of the key role played by individual histories in how, where and why a culture of welcome is created. Bart Somers, for instance, connects his commitment to building such a culture to his family history, in which his uncle joined the Nazis to fight against the Soviets, while another uncle was killed by the Germans (Somers).²⁹

Shaping a culture of welcome is also very much a discursive act. The degree to which in- and exclusion is about the discursive drawing of boundaries has often been established (Schrover and Schinkel). In addition, it is clear to what extent actors that seek to shape a culture of welcome struggle with dilemmas on what particular language of inclusion to use.³⁰ Should Mechelen be a city of justice or a human rights city? Should Barcelona be a solidarity city or a city of refuge? The mayor of Middelburg, in the Netherlands, also openly wondered whether to call the city a city of freedoms or a human rights city, stating how “the first simply sounds much better”.³¹ Each label, however, comes with particular (political) connotations and can speak differently to different constituencies. In another context Paul Gready reports on how the York Human Rights Council was renamed the Fairness Commission because it sounded more homegrown (Graham et al.; Hoff et al.). Such a choice does, however, also serve to exclude certain groups of people and prioritize certain policy choices, for instance where it concerns irregular migrants. The local formation of an inclusive citizenship thus draws from culture, tradition and the arts and, in doing so, also contributes to further shaping such a culture.

The right to the city: citizenship and cosmopolitan values

The practices and discourses of welcome and integration are thus deeply bound to the localities concerned, initiated by people who live there, geared towards people arriving there and building on local social, economic and cultural capital. At the same time, the creation of citizenship, in practice and the cultural imagination, also strengthens cosmopolitanism in the classic Greek sense of citizenship of the world and the recognition of a global citizenship built on universal, inalienable and indivisible human rights. Cities of Refuge, and those who inhabit them, do this by mobilizing such rights and giving them meaning in local settings but also by promoting them internationally, teaming up with local and regional organizations in doing so. In these processes, they establish and renegotiate sovereignty.

A key concept here is that of the “right to the city”. The concept can be dated back to 1968, to Henry Lefebvre’s radical *droit à la ville*, in which all citizens were to participate in urban planning, and which called for a “radical restructuring of social, political, and economic relations, both in the city and beyond” (Lefebvre; Purcell 101). By now, the right to the city platform defines it as “the right

of all inhabitants, present and future, to use, occupy and produce just, inclusive and sustainable cities, defined as a common good essential to a full and decent life".³² The right to the city has been codified in national and city constitutions, for instance in Mexico. Also, there are both a European and a Global Charter for the Safeguarding of Human Rights in the City which do not only define the right to the city but also include concrete steps for human rights implementation. As such, the Right to the City can not only be considered a campaign for equal access to public space (Vrasti and Dayal 1997) but also a soft law mechanism geared towards arriving there and to granting all urban dwellers the same rights.

One consequence of the support for the Right to City in many Cities of Refuge relates to irregular migrants. Whereas national politicians in Europe have, over the past years, moved towards an ever more exclusionary stance in relation to the rights of such people, Cities of Refuge have taken a much more inclusive and pragmatic approach. Barcelona, for instance, the driving force behind the European Right to the City movement, registers irregular migrants in the local *Padron* (registry) thus granting them symbolic municipal citizenship but also very tangible access to services (Wood 2018). The same applies to the Parisian *carte citoyenne* and the IDNYC in New York (Ambrosini and Van der Leun 2015). There is also a European city network of eleven cities seeking to strengthen the position of migrants with an irregular status by explaining why cities would want to do this and offering specific advice in fields like accommodation, housing, access to justice, healthcare and education (Delvino and Spencer).

Such policies often put the municipalities at loggerheads with national governments, as is the case with network members Utrecht and Barcelona. In response to this, local authorities increasingly invoke international human rights law to defend their position. One example relates to the provision of shelter for undocumented migrants. In the Netherlands, the national government has, since 2012, refused to grant such shelter to irregular migrants who do not cooperate with their own expulsion. This policy has been criticized as violating human rights by, amongst others, the European Committee of Social Rights and various UN Special Rapporteurs.³³ These rulings, in turn, were invoked by cities like Utrecht and Amsterdam to justify their policies of shelter (named "Bed, Bath, Bread" in the Netherlands) vis-à-vis the national government (Oomen and Baumgartel, "Frontier Cities"). Similarly, the Spanish Constitutional Court has deemed Barcelona's policies pertaining to the socio-economic rights of irregular migrants to be unconstitutional, whereas international human rights bodies have indicated that these policies fulfill Spain's treaty obligations.³⁴

The emphasis that Utrecht, Barcelona and Amsterdam place on human rights for all those who live within the urban confines fits within their identity as a human rights city, a local authority that bases its policies on international human rights law (Oomen and Baumgartel, "Human Rights Cities"). Over the past decades, more and more cities have self-identified as such, joining the World Forum on Human Rights Cities or signing the European Charter for the Safeguarding of Human Rights for the City (Oomen et al. *Global Urban Justice*). Whereas the

practices of these cities differ substantially, a common denominator lies in the efforts made to “localize” human rights (De Feyter et al.). The activities of human rights cities and their networks, however, also contribute to the global spread of human rights, their legitimacy and their effectiveness. In the words of the chair of the commission that drew up the Universal Declaration of Human Rights, Eleanor Roosevelt: human rights needed to acquire meaning in “small places”, and without meaning there they lack meaning anywhere (Roosevelt).

Conclusion

What is the interplay between law, culture and human rights in those local authorities that can be designated as Cities of Refuge? Such cities increasingly take an independent stance on many dimensions of refugee reception and integration, like status determination; political, social and economic rights and civic integration. In doing so, they create a de facto and inclusive “cityzenship”, where everyone living within an area has access to rights by virtue of their local presence. Expressions of culture play a key role in these processes. Practices of refuge are grounded in historical narratives, connected to “urban identity”, illustrated and shaped by means of the theatre, arts, music and the like. This connection to urban identity often takes place in the context of transnational networks – like “Fearless Cities” but is also explicitly related to local tradition, culture and practices. The words of welcome, the speech acts of mayors, politicians and key civil society actors play an important role in weaving an inclusive urban culture and legitimating welcoming practices.

At the same time, and perhaps paradoxically, this shaping of “cityzenship” strengthens cosmopolitan values, like human rights. Cities which endeavor to ensure that all present enjoy equal rights are thus at the vanguard of the human rights movement, whether the banner under which they operate is that of a human rights city or otherwise. This also explains why international organizations increasingly join forces with progressive local authorities, by-passing the state and supporting and stimulating Cities of Refuge and their transnational networks.

This, in turn, has implications for sovereignty, the central topic of this section. By now it is clear how “Cities of Refuge”, in creating cityzenship and shaping a culture of welcome increasingly exercise a form of de facto sovereignty. As is the case with citizenship, sovereignty has many understandings, but is always about power and the final authority over public affairs. With this in mind, one clearly sees the degree to which cities, as polities, have and claim a certain type of sovereignty, in the sense of defining and shaping the rights of those present within the urban confines. In not only doing this locally, but also in stepping out into the international arena to advocate for and to seek to strengthen the rights of their citizens, they also challenge the classic Westphalian order of nation states. In all, those seeking to understand the future of global citizenship and of the nation state are advised to turn an eye to what happens locally, to practices like the formation of “cityzenship” and the cultural processes accompanying them.

Notes

- 1 Interview, Dec. 9, 2018.
- 2 www.citylab.com/equity/2018/09/the-rapid-rise-of-the-anti-sanctuary-city/571309/
- 3 See www.citiesofrefuge.eu for more information on the project.
- 4 Art. 1A(2) 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, adopted by the UNGA Resolution 2198 (XXI)
- 5 See: www.eurocities.eu/eurocities/news/While-member-states-talk-cities-act-WSPO-B25MX5
- 6 See <https://cis.org/Map-Sanctuary-Cities-Counties-and-States> for the number of states and counties, and www.nytimes.com/2018/12/12/nyregion/sanctuary-cities-state-courts.html
- 7 Interview, the Hague, Sept. 11, 2016.
- 8 www.nytimes.com/2016/09/20/opinion/our-immigrants-our-strength.html
- 9 See www.catalannews.com/politics/item/catalan-president-and-barcelona-mayor-reaffirm-offer-to-take-in-refugees
- 10 Sabchev, Tihomir. “Studying Refugee Reception and Integration at the Local Level: The Holistic Relational Model”. EU at the Crossroads of Migration Conference, 8 May 2018, Utrecht University, Utrecht. Presentation.
- 11 Database city networks Cities of Refuge.
- 12 The online Etymology Dictionary gives as an origin the term *citisein* “inhabitant of a city or town” from the Anglo-French *citesein*, *citezein* (city-dweller, town-dweller, citizen), dating the origins back to ca. 1300. www.etymonline.com/word/citizen. Other sources point at the basis in the Latin term *civitas*.
- 13 <https://eu.usatoday.com/story/news/world/2016/06/28/swiss-deny-citizenship-muslim-girls-who-balked-swimming-boys/86469658/>
- 14 Interviews Cities of Refuge Zeeland, former mayor of Vlissingen, mayor of Goes.
- 15 Amnesty International a.o., 7 Mar. 2018, Brandbrief aan de gemeenteraden en colleges van burgemeesters en wethouders van Nederland (*urgent letter to all the municipal councils and executive boards in the Netherlands*).
- 16 Amendment of the Law on Civic Integration and others to include the Participation Declaration in the Civic Integration Test and to codify social support, House of Representatives, 2016–2017, 34 584, no. 3, p. 3.
- 17 www.telegraph.co.uk/news/2019/01/03/italian-mayors-rebel-against-hardline-interior-minister-matteo/
- 18 See https://corrierefiorentino.corriere.it/firenze/notizie/cronaca/19_marzo_20/migrante-sconfigge-decreto-salvini-giudice-puo-isciversi-all-anagrafe-e6eadbc4-4ae9-11e9-9566-856852234d16.shtml
- 19 See www.nrc.nl/nieuws/2016/12/20/asielzoekers-in-weert-krijgen-huisarrest-a1537598
- 20 See www.greaterdandenong.com/document/25321/refugees-and-asylum-seekers#PARA7
- 21 Austrian Constitutional Court, VfGH, G218/03, 30 June 2004
- 22 See www.anothermag.com/art-photography/9134/ai-weiwei-on-art-freedom-and-politics-now
- 23 See <http://aestheticsofcrisis.org/2015/refugees-welcome/>
- 24 See www.nytimes.com/2016/12/03/opinion/sunday/where-refugees-can-come-home.html
- 25 See <https://arts.cityofsanctuary.org/>
- 26 St Maarten celebrations today, in https://sintmaartenutrecht.nl/_userdata/files/broch_StMaarten_eng.pdf, p. 21.
- 27 See www.iamsterdam.com
- 28 Interview during “Europees Forum Mechelen”, Mechelen, Apr. 26, 2017.
- 29 De Standaard: “Ik was vroeger ook behoorlijk radicaal”, *De Standaard*, 13 Apr. 2013.

- 30 See also Miellet, Sara, *Refugee Reception in Zeeland: Burden, Benefit, Duty or Gift?*, Renforce presentation, Utrecht, 8 May 2018.
- 31 Discussion on Middelburg and Freedom, CBK, 7 Nov. 2018, with the author included in the discussion.
- 32 www.righttothecityplatform.org.br
- 33 European Committee of Social Rights (ESCR), European Federation of National Organisations Working with the Homeless (FEANTSA) v. The Netherlands, Complaint no. 86/2012, 10 Nov. 2014. See also ESCR, Conference of European Churches (CEC) v. The Netherlands, Complaint no. 90/2013, 10 Nov. 2014. European Social Charter 1961, 529 UNTS 89. Office of the United Nations High Commissioner for Human Rights (OHCHR), Mandates of the Special Rapporteurs on Extreme Poverty and Human Rights; on Adequate Housing As a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context; and the Special Rapporteur on the Human Rights of Migrants, Allegations Concerning the Failure of the Government of the Netherlands to Provide Emergency Assistance to Homeless Irregular Migrants, Doc. JUA NLD 1/2014, 12 Dec. 2014.
- 34 See UN, CESCR, Concluding observations on the sixth periodic report of Spain, E/C.12/ESP/CO/6, para. 11.

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Deepening and widening of the protection of fundamental rights of European citizens vis-à-vis non-state, private actors

Hanneke van Eijken and Sybe de Vries

Introduction

Traditionally, fundamental rights relate to the vertical relationship between the state and the citizen. The primary addressees of the obligation to respect fundamental rights are public authorities, and the fact that fundamental rights may also bind private individuals is generally considered problematic (de Vries, “Securing Private” 43). Of course, non-state, private actors have always played a role in society and may have regulatory powers. But their role has significantly grown and become crucial in domains which would traditionally be reserved for the state, particularly as a consequence of digitalization and rapid technological developments. As a result the dividing lines between the public and private domain are increasingly blurring. Big tech companies dominating the digital market place have a big impact on businesses’ and consumers’ access to the market and major possibilities to invade and monitor citizens’ lives, to influence the democratic process and to impact civic space and European citizens’ fundamental rights.

In this chapter we will focus on the protection of EU citizens’ fundamental rights, particularly vis-à-vis non-state, private actors within the EU legal order. We will show how in European law the traditional fundamental rights narrative of the individual versus the state has changed, how a narrative of citizens relying on fundamental rights in a dispute with other citizens and private parties has unfolded and how this narrative may contribute to a more comprehensive judicial protection for EU citizens.

We will first briefly introduce the origins of EU citizenship and fundamental rights protection within the European legal order, and then focus on the application of the EU Charter of Fundamental Rights (hereafter EU Charter or Charter), which has become the most important human rights document for the European Court of Justice (hereafter Court or CJEU). We will specifically address the remarkable development of the Charter into an EU source of rights for private individuals in so-called horizontal disputes. We will conclude this chapter with a couple of observations, and explain how the case law of the CJEU may contribute to filling the gaps in judicial protection of citizens trapped between the public and private domain.

Origin of EU citizenship and its relationship with fundamental rights

In a constitutional context citizens are bearers of fundamental rights, as so to compensate for the power of authorities and to guarantee equality and freedoms.¹ European citizenship definitely has elements similar to national citizenship, but at the same time it differs, because European citizenship is transnational. All EU citizens have the right to vote in European elections, for instance.² The right to vote and stand for election in both municipal and European elections in other Member States has created a more direct political nexus between the EU and its citizens. Political rights granted to EU citizens are essential in defining EU citizenship in constitutional terms. But at the same time EU citizenship rights are granted primarily to those EU citizens who have actually exercised their right to move to and to reside in another Member State. At that moment transnational EU citizenship becomes important.³ Recent case law has added that in exceptional circumstances, EU citizenship can apply in the absence of movement, because of this, according to the European Court of Justice, EU citizenship is (destined to be) the fundamental status of nationals of the Member States.⁴ Although EU citizenship can be described as a constitutional concept within the European legal order, it continues to have a strong connection with the internal market and to the so-called concept of “market citizenship” (Nic Shuibhne).

From the inception of the European Economic Community (EEC) European citizenship, although not included in the Treaties, there has been the concern of the EU institutions and the CJEU. In the early case law of the CJEU we find references to the nationals of the Member States.⁵ In the famous and landmark judgment *Van Gend and Loos*, which can be seen as the first ‘citizenship case,’ the Court held that

the Community (now the European Union, HvE/SdV) constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals.⁶

The Court refers to nationals of the Member States as actors within a European multi-layered legal order, and it thereby creates specific individual rights for citizens, such as the right to invoke EU law before national courts.

The next step in the development of EU citizenship was taken with the Tindemans report in 1974, which stressed the need to include European citizenship in the Treaties.⁷ In the section “A citizens’ Europe,” he urged that Europe should be close to its citizens and that

Measures taken in connection with the social policy of the Union, as regards security, concertation and participation will be directly felt in the daily lives of Europeans. They will emphasize the human dimension of the undertaking.⁸

Meanwhile, well before the formal inclusion of EU citizenship in the Treaties, the Court increasingly granted EU citizens (fundamental) rights that they could claim under EU law. The rights to equal treatment and free movement were first developed within the context of the internal market. In addition the Court provided for a broad scope of application of the four freedoms, which in principle require an economic connotation. Tourists, for instance, were also seen as recipients of services under EU law and could thus invoke the right not to be discriminated against.⁹ Through this broad interpretation, even persons who were not economically active as workers or self-employed but who had sufficient financial means and sickness insurance were granted the right to free movement. In 1993 three free movement enhancing Directives were adopted, which further codified the right to reside in other Member States for EU citizens who were not economically active (students, the retired and nationals with sufficient means).¹⁰

The connection between European citizenship, social policy and fundamental rights has been made from early on. One of the famous cases is the case of Ms. Defrenne, a stewardess for a Belgian airline named Sabena. Ms. Defrenne complained at the national court that she was discriminated against on grounds of gender. The Belgium court referred a preliminary question to the CJEU in the national case asking for guidance whether individuals could derive rights from EU law. In its judgement the CJEU held that although Article 119 EC (Article 157 TFEU) is being addressed to the Member States, it “does not prevent rights from being conferred at the same time on any individual who has an interest in the performance of the duties thus laid down.”¹¹ This ground-breaking judgement opened the door for many cases on gender discrimination for nationals of all EU Member States.¹² Hence, European citizenship was informally one of the key elements of European law, although it took until the Treaty of Maastricht to formally include the concept of EU citizenship in the Treaties (1992) and the Charter of Fundamental Rights (2009). EU citizenship has been developed in the case law of the Court into a dynamic and broad concept, granting several rights to citizens moving to and living in other Member States, based on the principle of equal treatment.

The concept of EU citizenship and the foundational right for EU citizens to move and reside freely in the territory of EU Member States can now be found in Articles 20 and 21 (1) TFEU, whereas the right to free movement is laid down in Article 45 of the EU Charter and is codified and elaborated in Directive 2004/38.¹³ Article 20(1) TFEU reads as follows:

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

In the first case on EU citizenship, the case of *Martinez Sala*, the Court ruled that EU citizens may not be discriminated against on grounds of nationality, whenever they reside legally in the territory of another Member State than their nationality.¹⁴

That particular case concerned the entitlement to child allowances in Germany by a Spanish national. In subsequent case law the Court ruled on many social benefits and residence requirements for EU citizens in another Member State than their nationality, based on the right to move and reside freely in the EU (Article 21 TFEU).¹⁵

More recently, the Court established a new line of case law in addition to the free movement rights based cases, on the basis of which EU citizens who have not even exercised their right to free movement can claim rights under EU law and particularly Article 20 TFEU. The Court interpreted Article 20 TFEU as such that any national measure that would deprive an EU citizen of his/her genuine enjoyment of the substance of EU citizenship rights constitutes a violation of Article 20 TFEU.¹⁶ So, even in the absence of free movement, Article 20 TFEU on EU citizenship can be invoked against a Member State if the effectiveness of EU citizenship would otherwise be undermined.¹⁷ This approach to EU citizenship outside the realm of free movement, however, has been adopted only in very specific situations. These includes the loss of nationality by EU citizens, the right to family life as enshrined in Article 7 of the Charter, the right of EU citizens to reside in the EU with a parent with the nationality of a third country and the right to vote for the European Parliament for prisoners in their own Member State.¹⁸ In the case of *Chavez*, for instance, the Court held that the right to family life (Article 7 of the Charter) and the rights of the child (Article 24 of the Charter) should be included in the assessment of whether an EU citizen is being deprived of the essence of his/her EU citizenship rights.¹⁹ This case law provides for a ‘fundamental rights friendly’ interpretation of Article 20 TFEU (van Eijken and Phoa 970), thereby deepening the link between EU citizenship and fundamental rights.

EU citizenship and fundamental rights protection are, obviously, different in the sense that citizenship manifests inclusion of only certain individuals who belong to the community (the citizens), whereas fundamental rights are universal in nature. European citizenship may, however, certainly have contributed to a further strengthening of fundamental rights of EU citizens, particularly due to EU citizens increasingly claiming their rights, which are now enshrined in the EU Charter in cases before the national courts. An early example of this is, of course, the previously mentioned case of *Defrenne* (van Eijken 217). Moreover, citizenship is a constitutional concept which is inherently intertwined or connected with fundamental rights protection. Basically, citizens need to be and should be protected against unjustified interference from the state authorities in their freedoms. In that context the European Union, although, not a state, has legislative and policy making powers that affect the freedoms of its citizens. From this angle, we will look at the protection granted by the EU to its citizens, especially where the dividing line between the public and private domain becomes increasingly blurred. Should EU law also grant protection to EU citizens in conflicts with other private parties that interfere with their freedoms?

Development of fundamental rights in the EU legal order

Fundamental rights as general principles of European law

Similarly to EU citizenship, the fundamental rights in the EU first developed outside of the Treaties before they were codified. Fundamental ‘human rights’ were not explicitly mentioned in the original Treaties, but some Treaty provisions can certainly be considered fundamental rights, such as the principle of non-discrimination and the principle of equal pay for men and women (Kapteyn 38). These fundamental rights were linked to the internal market and oriented on the development of an equal level of market-access for workers. It was not until the adoption of the Treaty of Maastricht (1992) that fundamental rights were formally recognized as part of EU law.

The CJEU, though, had already taken on the protection of fundamental rights in its early case law and recognized fundamental rights as part of the general principles of EU law. That recognition started with the case of *Stauder*²⁰ in 1969. The Court ruled in that case that fundamental human rights are “enshrined in the general principles of Community law and protected by the court.”²¹ With this ruling the Court reacted to the so-called *Solange decisions*²² of the German *Bundesverfassungsgericht*. In these decisions the German Constitutional Court affirmed that the primacy of EU law over national law should never set aside the level of protection of human rights provided by the national constitution, because human rights at the time were not explicitly part of Community, now EU law.²³ In response, the Court clarified that despite absence of express mention in the Treaties, fundamental rights were part of EU law as general principles, thereby drawing inspiration from national constitutional traditions and from the European Convention on the Protection of Human Rights (hereafter ECHR).²⁴ The case law on fundamental rights within the framework of general principles of Union law has been significantly developed in subsequent case law. But in the absence of an EU ‘bill of rights,’ EU citizens were afforded less legal certainty and foreseeability in the protection of their EU human rights. It was not until the year 2001 that the EU Charter of Fundamental Rights was adopted and solemnly proclaimed in Nice. It would take another eight years before the Charter obtained legally binding force, through the current Treaty of Lisbon. The EU Charter now has the same legal value as the Treaties (Article 6(3) TEU). It is furthermore important to mention that Article 2 of the TEU contains the foundational values of the EU, which include human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

All Member States are contracting parties to the ECHR and accept the jurisdiction of the European Court of Human Rights (ECtHR). In order to apply to become an EU Member State a candidate state has to respect the values referred

to in Article 2 TEU and has to be committed to promoting them (Article 49 TEU). Respect for human rights is even a precondition to start the negotiations on potential accession to the EU.

Ever since fundamental rights were recognized in the EU legal order, the ECHR has been referred to as a source of civil rights too by the Court of Justice. The Court has, however, always refused the possibility of EU accession to the ECHR when asked for advice. First, in 1996 it advised that the EU had no such competence.²⁵ But, upon the introduction of the Lisbon Treaty in 2009, Article 6(2) was included in the TEU providing not only the possibility, but that the EU in fact “shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.” However, after a draft agreement on the accession of the EU to the ECHR had been sent to the Court of Justice for an advisory opinion, the CJEU yet again identified compatibility issues with EU law and rejected the draft agreement.²⁶ Despite the fact that the lack of competence had been resolved by the Lisbon Treaty, five other substantive grounds were still found to impede the accession by the EU to the ECHR. So, for the moment the accession has been put on hold. Under Article 218 (11) TFEU, following a negative CJEU Advisory Opinion, an envisaged agreement may not enter into force unless it has been revised or the Treaties have been amended. So, currently both the EU Charter and ECHR remain two autonomous sources of EU law, although the ECHR civil rights are principles of EU law derived from the constitutional traditions of the Member States, as enshrined in Article 6(3) of the Treaty. In brief, nowadays, the sources of European fundamental rights are the Treaties, the EU Charter, the general principles of EU law, specific EU secondary legislation and the Court of Justice’s case law.

The scope and content of the EU Charter: the composite citizen in a multilevel order

Hence, for a long time the Court protected fundamental rights by classifying fundamental rights as general principles of EU law. As the Charter became a binding instrument of primary EU law, there were actually two different regimes to protect fundamental rights for EU citizens. Either the Court would refer to a general principle of EU law in order to protect fundamental rights, or the Court would refer to the Charter. Both routes, the Charter and the general principles of EU law, have as an important threshold that they are only applicable in situations which fall within the scope of application of Union law. Hence, in order to rely on fundamental rights as general principles or on fundamental rights that are acknowledged in the Charter, it has to be established first that a particular situation falls within the scope of EU law. This condition is included in Article 51(1) of the EU Charter, which determines the field of application of the Charter and reads as follows:

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union [. . .] and to the Member States only when they are *implementing Union law*.²⁷

The explanations to the Charter,²⁸ as well as the case law of the Court, define the scope of application of the EU Charter much more broadly. The explanations to the EU Charter stress that the Charter “is only binding on the Member States when they act *in the scope of Union law*.”²⁹ That *acting within the scope of EU law* entails a broader scope of application than *implementing* EU law has been subject to extensive academic debate (Ward; van Bockel and Wattel). This debate is of major importance for EU citizens, because the scope of application of EU law is a kind of “gatekeeper” to EU fundamental rights’ protection. In *Akerberg Fransson*³⁰ the Court finally ruled in favour of a broad interpretation of the term *implementing* by holding that the Charter will apply, if a situation falls within the ambit of EU law.³¹

In situations which are not covered by EU law, citizens can thus not rely on the EU Charter and are dependent on the national constitution or the ECHR for the protection of their fundamental rights.³² In that sense EU citizenship can be defined as composite citizenship. Composite citizenship relates to the fact that different authorities are responsible to protect EU citizens’ rights: local, national, European or global. In that sense, depending on the situation EU citizens find themselves in, they will be protected by EU law and thus the Charter or by the ECHR or national law including the constitution. The citizen as such is bearer of rights, protected by different layers of rights (van Eijken 233–238).

Nowadays it is generally accepted that the scope of the Charter is triggered in at least three situations: when Member States implement EU law into national law, when Member States derogate from EU law (especially in the context of the free movement of goods, services, capital and persons) or when Member States act otherwise in the ambit of EU law, for instance when they adopt legislation that supports the effectiveness of EU law (van Eijken et al.). It is clear from the case law that in order to activate the EU Charter another provision of EU law needs to be applicable too. The Court underlined in, for instance, *Marcos* that there is no autonomous application of Charter provisions, which means that there has to be another provision of EU law applicable to the situation. The Court moreover held that these provisions should have a “certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other.”³³ In any case, the broad interpretation of the scope of application of the EU Charter constitutes an important step in the protection of fundamental rights for EU citizens.

The EU Charter is a modern catalogue of civil, political, social and economic rights, freedoms and principles. Title I includes the right to human dignity (Article 1), the right to life (Article 2), the right to the integrity of the person (Article 3), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4) and the prohibition of slavery and forced labor (Article 5). Title II protects the “freedoms,” such as the right to liberty and security (Article 6), the right to data protection (Article 8), freedom of thought, conscience and religion (Article 10). Furthermore, the Charter contains a specific Title on various rights to equal treatment, the most important being Article 21 prohibiting discrimination on “any ground such as sex, race, colour, ethnic or social

origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.” This section also protects the rights of the child and elderly, as well as disabled persons (Articles 24, 25 and 26). Moreover, the Charter includes a specific Title on fundamental social rights, which is called “Solidarity.” Rights that are acknowledged in that part are, amongst others, the right of collective bargaining and action (Article 29), the right to protection against unjustified dismissal (Article 30) and the right to fair and just working conditions (Article 31). Title 5 recognizes “Citizens’ rights,” including the right to free movement and to reside freely (Article 45), political rights (Article 39 and 40) and the right to access to documents (Article 42).

Now could some of these rights, freedoms or principles be invoked by citizens vis-à-vis other citizens and private parties? For general principles of EU law the Court had determined in its case law dating from before the Charter that some of these principles can be applied in a horizontal situation, i.e. in a dispute between two citizens, and not only in a vertical relationship between the citizen and the state or public authorities.³⁴ Whether, and if so, to what extent, the EU Charter has the ability to be invoked in disputes between individuals was, at least until recently, unclear. After all, Article 51(1) of the Charter only refers to Member States and not to private actors. But, as we will discuss later, in a number of recent judgments the Court has provided for more clarity and determined that Charter provisions can be applied in horizontal disputes.

The protection of fundamental rights of citizens vis-à-vis non-state, private actors

Development of horizontal direct effect of EU law

Direct Effect of EU Law in General

As early as in its seminal *Van Gend & Loos* decision the Court held that provisions of the (EEC) Treaty can produce direct effect and create individual rights which national courts must protect.³⁵ In subsequent case law it became clear that other provisions of EU primary law can have direct effect, such as the four freedoms, the principle of non-discrimination on the grounds of nationality in Article 18 TFEU, the principle of equal pay for men and women laid down in 157 TFEU and general principles of EU law (de Vries, “The Bauer et al.”). Next to Treaty provisions and general principles, instruments of secondary EU law can produce direct effect. Regulations are by their very nature directly effective as they are, according to Article 288 TFEU, directly applicable and binding in all Member States without there being national implementing legislation (Jans et al. 65).³⁶ For Directives this is more problematic as Directives are addressed to Member States according to Article 288 TFEU and binding as to the result of the Directive to be achieved by the Member States in their national laws. But if Member States

have failed to implement the Directive in time or correctly, citizens can rely on the provisions of a Directive vis-à-vis the state, if these provisions are sufficiently clear and unconditional.³⁷

Horizontal direct effect of EU Law in general

The narrative of direct effect of EU law starts with *Van Gend & Loos* and continues with cases like *Defrenne* in which the Court recognizes the *horizontal* direct effect of the principle of equal pay for men and women enshrined in Article 157 TFEU. After all it was the stewardess Defrenne who advocated for the equality of women before the Belgian court against her employer, the airline company Sabena.³⁸ The story continues with judgments on the Treaty freedoms on persons and services, which were invoked by citizens in a horizontal dispute. These cases inter alia concerned sportsmen challenging rules set up by sporting associations restricting their free movement rights,³⁹ a banker fighting a discriminatory language policy adopted for employment by a private bank⁴⁰ or a ferry operator challenging a collective action by a trade union seeking to prevent it from relocating its head office to another Member State.⁴¹ Hereby the Court used various strands of argumentation to justify the horizontal application of the free movement rules (de Vries and Mastrikt). The Court frequently referred to the principle of *effet utile*, meaning that the useful effect of EU law must be guaranteed and may not be jeopardized, neither by the state nor private actors. It reasoned that for effective free movement, private actors cannot be allowed to restrict free movement where governments are not allowed to do so either.⁴²

Furthermore, the Court considers that, where certain private, regulatory bodies exercise a form of power or dominance over individuals, this may be a reason to accept the horizontal application of the freedoms.⁴³ The case of *Raccanelli* provides an example, which involved a dispute between the Max Planck Institute (MPI), which offered research places, and a foreign doctoral student.⁴⁴ As the MPI is a unique and prestigious research institute, it has substantial powers over the offering of research places to junior researchers and thereby has to respect the Treaty rules on free movement. Lastly, where the principle of non-discrimination on grounds of nationality is at issue, which constitutes the cornerstone of the free movement provisions and the internal market, the Court recognizes its fundamental rights character and as a consequence its horizontal application.⁴⁵

The fact that the Treaty provisions on free movement, on non-discrimination on grounds of nationality or on equal pay for men and women were primarily drafted for Member States and not for private individuals – for such private individuals “the drafters of the Treaty envisaged the provisions on competition” (Mortelmans)⁴⁶ – did thus not seem to be an obstacle for the Court to grant direct effect to these provisions and impose obligations on citizens at the same time. Regarding secondary EU law, Regulations can have horizontal application and direct effect, whereas Directives cannot, according to well-established case law, be invoked between individuals.⁴⁷ As Directives contain obligations for Member States and

are specifically binding upon them, they cannot impose obligations on individuals and can thus not produce *horizontal* direct effect, according to the Court.

Horizontal direct effect of fundamental rights as general principles of EU law

The foregoing shows that, despite the fact that in (most) Member States' national legal systems vertical and horizontal dimensions of fundamental rights are strictly divided (Walkila; de Vries, "Securing Private Actors" 47), in EU law these dividing lines are less strict as a (limited) form of horizontal direct effect for Treaty provisions on free movement and for the fundamental rights to non-discrimination on grounds of nationality and to pay for men and women has been recognized. The step towards recognition of horizontal direct effect of other EU fundamental rights should therefore not be very big or problematic.

In a series of judgments dating from before the time that the EU Charter gained legally binding force, the Court indeed acknowledged the horizontal application of the principle of non-discrimination on other grounds than nationality, like age.⁴⁸ Article 19 TFEU includes six grounds of discrimination, including age, which need to be combatted by the EU legislator and which are elaborated in Directives.⁴⁹ In order to rely on any provision of EU law as an individual before a national court a specific provision needs to have direct effect in the first place. The conditions to direct effect are that a certain provision needs to be sufficient, precise and unconditional. In other words, it has to be established that an individual can rely on a clear provision that does not need further executive measures by a Member State. As Article 19 TFEU does not have direct effect, citizens cannot, contrary to the principle of non-discrimination on grounds of nationality, rely on Article 19 TFEU, directly to challenge discriminatory practices on grounds of age. Instead they should rely on the applicable Directive, but as Directives lack horizontal direct effect, they are of no help to citizens who have a conflict with, for instance, their private employer. It is here that the CJEU held that the principle of non-discrimination on grounds of age is a general principle of EU law, which as such is capable of having horizontal direct effect, thereby circumventing the prohibition of horizontal direct effect of Directives.

Horizontal application of the EU charter of fundamental rights

Hence, there were already clear clues in case law that fundamental rights could apply in horizontal disputes. After the EU Charter became binding and elevated the EU fundamental rights to the same legal status as the Treaty rules, the question quickly arose whether the Charter could apply in horizontal disputes as well (de Mol). The main obstacle for applying the EU Charter in horizontal disputes appeared to be Article 51 of the Charter. As observed, Article 51(1) of the EU Charter determines the scope of application of the EU Charter and limits the

addressees of the Charter to EU institutions and Member States, not to individuals. This induced, for instance, Advocate General Trstenjak at the time in the *Dominguez* case to argue in favor of a restrictive reading of the EU Charter. According to her the Charter cannot apply in a horizontal dispute as Articles 51(1) and 52(2) of the Charter “indicate an intentional restricting of the parties to whom fundamental rights are addressed.”⁵⁰ But this point of view did not seem to be shared by everyone. In his convincing opinion in the *AMS* case on a conflict between a trade union and the private body AMS, Advocate General Cruz Villalón noted that “it would be paradoxical if the advent of the Charter changed this state of affairs in a negative sense” and held (Ward 1429):

There is nothing in the wording of the article or, unless I am mistaken, in the preparatory works or the Explanations relating to the Charter, which suggests that there was any intention, through the language of that article, to address the very complex issue of the effectiveness of fundamental rights in relations between individuals.⁵¹

In November 2018 the Court, in two cases, *Max Planck* and *Bauer and Broßonn*, unequivocally held that the fact that the Charter is addressed to the Member States does not preclude that Charter provisions may have horizontal direct effect.⁵² Both cases concerned the right to paid annual leave for four weeks which is laid down in Article 31(2) of the Charter under the Solidarity Title. *Max Planck*, and *Bauer and Broßonn* (*Bauer et al.*) are of crucial importance for the protection of fundamental rights for EU citizens in three ways: the judgments strengthen EU citizens’ fundamental rights in general, they strengthen EU citizens’ fundamental rights vis-à-vis other citizens and private parties and they strengthen citizens’ fundamental *social* rights which are provided for in the Charter. But before we will more thoroughly assess the relevance of these judgments, we briefly discuss the facts of the *Bauer et al* judgment in particular first.

The Bauer et al. Judgment

In the *Bauer* case, the widow Mrs. Elisabeth Bauer claimed EUR 6,000 from Stadt Wuppertal, the employer of her husband after her husband’s death, because he had not obtained his full four weeks of paid annual leave at the time he died. The case of *Broßonn* concerned a similar situation, except for the fact that the husband of Mrs. Broßonn was employed at a private company owned by Mr. Willmeroth. Ms. Broßonn claimed an amount of almost EUR 4,000, which corresponded to 32 days of outstanding paid annual leave, which her husband had not taken prior to his death.

The question was whether the heir of a worker, who died while in an employment relationship, has a right to financial compensation for the worker’s minimum annual leave prior to his death based on Article 7 of Directive 2003/88 and Article 31(2) of the Charter. Article 7 of Directive 2003/88 obliges the Member

States to ensure that every worker is entitled to paid annual leave of at least four weeks. Article 31 (2) of the EU Charter provides that every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

The Court ruled that

the right to paid annual leave, as a principle of EU social law, is not only particularly important, but is also expressly laid down in Article 31(2) of the Charter, which Article 6(1) TEU recognizes as having the same legal value as the Treaties.

In the case of *Bauer*, the Court stated that she could invoke Article 7 of the Directive to challenge the German legislation because that provision is sufficiently precise and unconditional and her situation is vertical in nature – an EU citizen vis-à-vis Stadt Wuppertal, a public authority – and citizens can under these certain circumstances invoke provisions of Directives against Member States, if Member States have not or have not properly implemented the Directive in their national legislation.

In the case of *Broßonn* the situation is different, because her husband worked for a *private* company (TWI Technische Wartung und Instandsetzung Volker Willmeroth e.K., owned by Mr. Volker Willmeroth) when he died. As Directives cannot be invoked directly vis-à-vis a private party and impose obligations on citizens, the Court continued to examine whether Article 31(2) of the Charter could play a role here. According to the Court the right to paid annual leave is as regards its very existence mandatory and unconditional in nature. Therefore, national courts are obliged to set aside any national law that violates Article 31(2) of the Charter. But, as this case concerned a horizontal dispute, the Court then continued to determine whether Article 31(2) of the Charter could be invoked against a private company. The Court concludes that, although Article 51(1) of the Charter refers to the EU institutions and Member States, “the fact that certain provisions of primary law are addressed principally to the Member States does not preclude their application to relations between individuals.” It subsequently ruled that Article 31(2) of the Charter lays down “a corresponding obligation on the employer, which is to grant such periods of paid leave.”⁵³

In the *Max Planck* case, which was decided on the same day as *Bauer and Broßonn*, a similar reasoning was used by the Court in allowing the horizontal application of Article 31(2) of the Charter. Article 31(2) can indeed be invoked directly by an individual against his employer, the Max Planck research institute. For that matter, the Court did not refer to its argumentation used in cases on the Treaty provisions on free movement, like *Raccanelli*, based on the fact that the Max Planck Institute is a prestigious institute having substantial powers over the offering of research places (see previous example).

The reasoning of the Court with respect to the horizontal application of the EU Charter in *Bauer et al* and *Max Planck* largely rests upon its previous judgment

in *Egenberger*, but is more detailed, explicit and extensive. The *Egenberger* case concerned a dispute between Ms. Vera Egenberger and the Evangelisches Werk für Diakonie und Entwicklung eV ('Evangelisches Werk'). Her application for a job with Evangelisches Werk was rejected because she did not belong to a denomination. In the following dispute Ms. Egenberger relies upon the prohibition of discrimination on grounds of religion to claim compensation, which is laid down in Article 4(2) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation and in Article 21(1) of the EU Charter prohibiting discrimination "on any grounds such as sex, race [. . .], religion or belief." In its decision the Court upheld its view that Directives cannot produce horizontal direct effect as they cannot of themselves impose obligations on an individual and cannot therefore be relied upon as such against an individual. With respect to the possibility to apply Article 21(1) of the EU Charter in a horizontal dispute, the Court basically uses two arguments for the horizontal direct effect of the principle of non-discrimination on grounds of religion. First, it states that it is mandatory as a general principle of law and that Article 21(1) of the EU Charter is no different from various provisions of the Treaty prohibiting discrimination. It hereby refers to the case law on free movement and equal pay for men and women (see previous example).⁵⁴

The importance of Bauer et al. for fundamental rights protection of EU citizens

In *Bauer et al* the Court continues to fill in the white spaces that are left in fundamental rights protection in the EU by further clarifying the scope of application of the EU Charter, which has after all become the most relevant human rights document for the CJEU. It has thereby built upon its originally bold approach towards general principles of EU law and hereby secured citizens' fundamental rights on the basis of the EU Charter, not only vis-à-vis the Member State, but also vis-à-vis other citizens.

The first step in the judgment has been to establish whether and, if so, under what conditions, citizens can invoke Charter provisions before a national court in the first place. The EU Charter itself seeks to distinguish between judicially enforceable rights on the one hand and principles, which need to be specified and elaborated by EU or national measures, on the other. Article 52(5) of the Charter aims to clarify this distinction and reinforce legal certainty, however, it "is not an example of clear drafting" (Peers and Prechal 1505–1506). Rather than referring to Article 52(5) the Court simply looks at the drafting of the Charter provision itself and examines whether it is mandatory and unconditional. By reiterating its doctrine of (vertical) direct effect in respect to directives and Treaty provisions, the Court has in *Bauer et al.* now developed a *general* test to be applied to all the rights protected by the Charter (Rossi).

By including the criteria mandatory, unconditional and sufficient in itself, the Court seems to have used a strictly textual interpretation of the Charter provisions

in accepting horizontal direct effect. The criteria mandatory and unconditional are coherent with previous case law regarding the four freedoms and build upon the narrative of direct effect as set out by the Court in *Van Gend & Loos*.⁵⁵ In the case *Defrenne* the principle of equal pay for men and women was held to extend to contracts between individuals because it was mandatory in nature.⁵⁶ It clarified mandatory as a provision that “imposes on States a duty to bring about a specific result to be mandatorily achieved within a fixed period.”⁵⁷ It gives the EU Charter a forceful effect into the national legal orders of the Member States and provides citizens with more clarity about which fundamental rights in the Charter should be regarded as judicially enforceable rights. Furthermore, as in *Bauer et al.* it concerned a fundamental social right, the idea that all social rights in the Charter should be seen as non-judicially enforceable principles and should thus be abandoned (see hereafter).⁵⁸

The second step has been to acknowledge the horizontal application of the EU Charter per se and the explicit recognition that Article 51(1) of the Charter does not constitute an obstacle to do so. The case law dating from before *Bauer et al.* concerned the horizontal application of the free movement provisions in the Treaty, or the principle of non-discrimination on various grounds either as mentioned by the Treaty, as a general principle of EU law or as laid down in Article 21(1) of the Charter. In *Bauer et al.* the Court looks beyond the domain of non-discrimination, thus opening up a new playing-field in the enforcement of not only fundamental social rights, but other fundamental rights in Europe as well (Sarmiento). The Court may thereby more generally accept the increasingly important role of private actors in our mixed economies and the fading dividing lines between the public and private. As stated in the introduction, in our increasingly digitalized societies, private actors play a major role. Think, for instance, about the big tech companies, like Google, Amazon or Facebook, whose actions have a significant impact on the fundamental rights of EU citizens. To what extent could these private actors be obliged to comply with EU fundamental rights as enshrined in the Charter, like Article 21 on non-discrimination, Articles 7 and 8 on privacy and protection of personal data or Article 11 on the freedom of information and expression, in a dispute with citizens before a national civil court?⁵⁹

The third and last step involves the qualification of Article 31(2) as a fundamental social right that is indeed judicially enforceable. After a previous judgment of the Court in the *AMS* case it was unclear as to what social rights laid down in the Solidarity Title could be considered as enforceable rights. Advocate General Cruz Villalón held that social and employment rights generally belong to the category of principles, but this view should thus be put into perspective. The value of *Bauer et al.* lies in the Court’s reiteration of the EU’s social values and objectives, which have been inherent in the economic integration process right from the inception of the EEC.⁶⁰ The Court affirms the constitutional status of fundamental social rights as enshrined in the EU Charter, and aligns them with, for instance, the right to equal treatment. This approach may contribute to the attainment of a more inclusive internal market, a so-called social market

economy as set out in the objectives of the Treaty and give the EU a human, more citizenship friendly face.

The extent to which other fundamental rights enshrined in the EU Charter may have horizontal application just like that remains to be seen. The right to paid annual leave is a work-related principle and is thus strongly linked with the internal market and with the concept of market citizenship. Also in other cases wherein the Court had to decide on fundamental rights in conflicts between private individuals, the internal market connotation was obvious, particularly due to the application of supporting EU secondary legislation adopted within the context of the internal market. Think about the already mentioned principle of non-discrimination or the rights to privacy and protection of personal data, which have been the object of extensive EU legislation. As the EU Charter itself states in Article 51(2) that it cannot extend the field of application of Union law beyond the powers of the Union or establish new powers, fundamental rights that are not supported by another provision of EU law or by secondary legislation remain out of the Court's sight. This may create an anomaly between fundamental rights, i.e. between those rights that are harmonized or materialized in EU legislation and those that are not. Since market-based rights are most developed in EU law, these rights are stronger and more prevalent.

Concluding observations: towards a seamless web of judicial protection for European citizens?

The broad interpretation by the Court of the material scope of application of the EU Charter is to be appraised, because it strengthens fundamental rights protection of EU citizens. Offering EU fundamental rights a broad scope of application coheres with the classic model of an authority having been granted powers by the people, in which fundamental rights serve to protect the people from abuse by this authority. In the context of a transnational and composite EU citizenship, it is crucial that where the EU has powers, the people are granted broad rights that effectively protect them in a transnational context too.

In addition, as the personal scope of application of the EU Charter now extends to horizontal disputes between private actors as well, the protection of citizens' fundamental rights has been further enhanced, which is particularly important considering the fading dividing lines between the public and private domains. The acceptance of horizontal direct effect of EU Charter provisions supports the development of a more harmonious and seamless web of judicial protection for EU citizens. The potential for gaps in protection caused by, for instance, the prohibition of horizontal direct effect of Directives materializing fundamental rights becomes most strikingly clear from the *Bauer et al* case. After all, in *Bauer et al* we are dealing with two similar situations, which, as a result of the non-horizontality of Directives, could have led to entirely different outcomes. Where Bauer could invoke the directly effective provision of the Directive vis-à-vis the *public* authority Stadt Wuppertal, Broßonn could not vis-à-vis the private employer of

her deceased husband. The Court uses a broad interpretation Article 31(2) of the Charter to fill in this gap in judicial protection, thereby building upon its previous case law on general principles of EU law, which were also applied in horizontal disputes alongside Directives.

Together with the *Max Planck* and the *Egenberger* cases, *Bauer et al* shows that the Court recognizes the role of private employers in regulating gainful employment. Whether this also means that the Court more generally accepts the increasingly important role of private actors in our mixed economies and their responsibility in protecting citizens' fundamental rights remains to be seen. In our increasingly digitalized societies, private actors like the five big tech companies play a crucial role, and their actions have a huge impact on fundamental rights of EU citizens. To what extent could these private actors be obliged to comply with EU fundamental rights, like Articles 7 and 8 on privacy and protection of personal data or human dignity as laid down in Article 1 or the freedom of expression as enshrined in Article 11, in a dispute with citizens before a national civil court?⁶¹

In this respect *Bauer et al* and *Max Planck* raise a number of important questions. First, it is unclear against exactly which type of private actors EU Charter rights can be invoked. Could all private actors, irrespective of their dominance, their power and possibility to exercise a certain power over individuals, be bound by a fundamental right like Article 31(2)? For example, the prestigious research institute Max Planck is quite a different private actor compared to Mr. Wilmeroth in the *Bauer et al.* case. The Court does not at all refer to or mention these different characteristics. This is somewhat unfortunate as the precise obligations that the Charter imposes on private actors are not always clear and can be far-reaching. Whether paid leave should be three or four weeks is not specified at all in Article 31(2) of the Charter; only the Directive demands a four week period. Is it fair that a private employer is obliged to pay for four weeks leave, even if the Charter does not clarify the specific time of leave that needs to be granted? On the one hand it is a good thing that the Court aligns the Charter with the text of the Directive and does not create two different norms. On the other hand, through a broad application of the Charter the private employer is bound by specific obligations they did not even know they were subject to under national law, let alone EU law. Horizontal application of Charter rights thus gives rise to legal uncertainty. The creation of obligations for private parties based on Charter provisions, even though such specific obligations cannot be read directly into the Charter, therefore deserves greater justification than the Court has so far provided in the *Bauer et al.* case.

Second, the limited, albeit broad, scope of application of the EU Charter may reinforce a certain hierarchy between fundamental rights. In areas where the EU has strong regulatory powers and has used these powers through the adoption of secondary legislation, for instance, in the field of the internal market or, closely related, in the areas of non-discrimination and employment, EU fundamental rights have a forceful effect. Once the EU has adopted legislation that materializes certain fundamental rights, the EU Charter can be easily triggered in disputes

between citizens and public or private actors. These fundamental rights may as a consequence gain more prominence than others, which remain second-division. Therefore there is no seamless web of protection but the case law does support broader, but also more fragmented, protection of fundamental rights.

Finally, even though the scope of application of the Charter has been broadened, at least for Article 31(2) of the Charter, there are many situations which fall outside the scope of application of the Charter. In these situations, as observed in Section 2.3, EU citizens will have to rely on national or international fundamental rights, which makes sense in the light of the division of powers. But what if a Member State systematically harms the fundamental rights of its citizens? Should these citizens not be protected under EU law, simply because they are EU citizens? In light of that question, and considering the growing threats in a number of EU Member States to the rule of law and fundamental rights and the difficulty for the EU to intervene, Bogdandy et al. came up with the following citizenship based proposal:

beyond the scope of Article 51(1) CFREU Member States remain autonomous in fundamental rights protection *as long as* it can be presumed that they ensure the essence of fundamental rights enshrined in Article 2 TEU. However, should it come to the extreme constellation that a violation is to be seen as *systemic*, this presumption is rebutted. In such a case, individuals can rely on their status as Union citizens to seek redress before national courts.

(Bogdandy et al., emphasis added)

In such a scenario the Member State would in principle remain responsible for the protection of their citizens under national law, unless the level of fundamental rights protection would be systematically reduced below a threshold of what is regarded as a minimum level of protection of fundamental rights. Member States are after all bound by the values upon which the EU is based, as mentioned in Article 2 TEU, and therefore have to ensure a certain level of fundamental rights. Linking Article 2 TEU to EU citizenship (Article 20 TFEU) would guarantee all EU citizens a minimum level of protection of fundamental rights, irrespective of whether they have exercised their free movement rights.

A next step would be to extend this doctrine to *private parties*, particularly the extremely powerful tech firms, which, acting within their sphere of private autonomy, are presumed to abide by EU fundamental rights. Could it then be argued that private companies – even in the absence of EU supporting legislation – should always abide to a minimum norm of EU fundamental rights protection, which could be invoked by citizens before the national courts whenever there is a systematic and serious impediment of their fundamental rights and a threat to the rule of law? An affirmative answer could further enhance a human rights based EU citizenship model as advanced by Granger, especially where the dividing lines between the public and private domain are increasingly fading (Granger).

Acknowledgments

The authors are grateful to Simona de Heer for her excellent research assistance.

Notes

- 1 Marshall refers to civil, social and political rights in his famous essay on citizenship. He argues that all three categories of fundamental rights are actually a precondition for full citizenship.
- 2 Article 24 TFEU, Article 39 TFEU, Case C-650/13 *Delvigne* [2015] ECLI:EU:C:2015:648.
- 3 Case C-85/96 *Martinez Sala* [1998] ECR 1998 I-02691; Article 21 TFEU.
- 4 Case C-221/17 *Tjebbes* [2019] ECLI:EU:C:2019:189, par 7.
- 5 Case 26-62 *Van Gend en Loos* [1963] ECLI:EU:C:1963:1; Case 6-64 *Costa/Enel* ECLI:EU:C:1964:66.
- 6 Case 26-62 *Van Gend en Loos* [1963] ECLI:EU:C:1963:1.
- 7 Report by Mr. Leo Tindemans, Prime Minister of Belgium, to the European Council, Bulletin of the European Communities, Supplement 1/76.
- 8 Report by Mr. Leo Tindemans, Prime Minister of Belgium, to the European Council, Bulletin of the European Communities, Supplement 1/76.
- 9 Case 186/87 *Cowan* [1998] ECR 1989-00195; Case C-348/96 *Calfa* [1999] ECR 1999 I-00011.
- 10 Council Directive 90/366/EEC of 28 June 1990 on the right of residence for students, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, Council Directive 90/364/EEC of 28 June 1990 on the right of residence.
- 11 Case 43/75 *Defrenne v Sabena* [1976] ECR 455, para. 31.
- 12 See for more information. Accessed 13 June 2019.
- 13 Directive 2004/38/EC of the European Parliament and of the Council of 29 Apr. 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30 Apr. 2004, pp. 77–123.
- 14 Case C-85/96 *Martinez Sala* [1998] ECR 1998 I-02691, paras. 61–64.
- 15 Case C-184/99 *Grzelczyk* [2001] ECR 2001 I-06193; C-148/02 *Garcia Avello* [2003] ECR 2003 I-11613; Case C-333/13 *Dano* [2014] ECLI:EU:C:2014:2358.
- 16 Case C-256/11 *Dereci* [2011] ECR 2011-00000, para. 64; Case C-34/09 *Ruiz Zambrano* [2011] ECR 2011 I-01177, para. 42.
- 17 Case C-256/11 *Dereci* [2011] ECR 2011-00000, para. 67.
- 18 Case C-34/09 *Ruiz Zambrano* [2011] ECR 2011 I-01177, Case C-650/13 *Delvigne* [2015] ECLI:EU:C:2015:648, Case C-133/15 *Chavez* [2017] ECLI:EU:C:2017:354; C-165/14 *Rendón Marín* [2016] ECLI:EU:C:2016:675.
- 19 Case C-133/15 *Chavez* [2017] ECLI:EU:C:2017:354.
- 20 Case 29-69, *Stauder* [1969] ECR 1969-00419.
- 21 Case 29-69, *Stauder* [1969] ECR 1969-00419, para. 7.
- 22 *BVerfG* 37, 271 2 BvL 52/71 (*Solange I*), 29 May 1974 and *BVerfG* 73, 339 (*Solange II*), 22 Oct. 1986.
- 23 On this development of fundamental rights in EU law, see furthermore Knook and Lenaerts.
- 24 Case 29-69, *Stauder* [1969] ECR 1969-00419, para. 7.
- 25 Opinion 2/94 *Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECR 1996 I-01759.
- 26 Opinion 2/13 *Accession of the Union to the ECHR* ECLI:EU:C:2014:2454.

- 27 The text of the Charter was changed during the process. In a discussion document of May 2000, the scope of the Charter was defined as “The provisions of the Charter are addressed to the Member States exclusively within the scope of Union law.” Italics added.
- 28 Explanations relating to the Charter of Fundamental Rights, OJ, 14 Dec. 2007, 2007/C 303/02.
- 29 Explanations relating to the Charter of Fundamental Rights, OJ, 14 Dec. 2007, 2007/C 303/02, Italics HvE/SdV.
- 30 C-617/10, *Åkerberg Fransson*, ECLI:EU:C:2013:105. See also van Bockel and Wattel.
- 31 Case 11/70, *Internationale Handelsgesellschaft* [1970] ECLI:EU:C:1970:114 and Case C-260/89, *Elliniki Radiophonia Tiléorassi* [1991] 1991 I-02925. Nowadays also provided in the EU Charter (Article 51 (1)) and Case C-390/12, *Pfleger* [2014], ECLI:EU:C:2014:281.
- 32 See Case C-256/11 *Dereci* [2011] ECR 2011-00000; See also Van Eijken.
- 33 C-265/13, *Marcos* ECLI:EU:C:2014:187, para. 33.
- 34 Case C-144/04 *Werner Mangold v. Rüdiger Helm* [2005] ECR 2005 I-09981; Case C-555/07 *Seda Küçükdeveci v. Swedex GmbH and Co* [2010] ECR 2010 I-00365.
- 35 Case 26-62 *Van Gend en Loos* [1963] ECLI:EU:C:1963:1.
- 36 Case 93-71 *Orsolina Leonesio v. Ministero dell'agricoltura e foreste* [1972] ECLI:EU:C:1972:39.
- 37 Case C-91/92 *Faccini Dori* [1994] ECR 1994 I-03325.
- 38 Case 43/75 *Defrenne v Sabena* [1976] ECR 455; see also, p. 57.
- 39 Case 36-74 *Walrave* [1974] ECR 1974-01405; Case C-415/93 *Bosman* [1995] ECR 1995 I-04921.
- 40 Case C-281/98 *Angonese* [2000] ECR 2000 I-04139.
- 41 Case C-438/05 *Viking Line* [2007] ECR 2007 I-10779.
- 42 Case 36-74 *Walrave* [1974] ECR 1974-01405; Case C-415/93 *Bosman* [1995] ECR 1995 I-04921; Case C-438/05 *Viking Line* [2007] ECR 2007 I-10779; Case C-341/05 *Laval* [2007] ECR 2007 I-11767.
- 43 For instance, Case C-411/98 *Ferlini* [2000] ECR 2000 I-08081.
- 44 Case C-94/07 *Raccanelli* [2008] ECR 2008 I-05939.
- 45 Case C-281/98 *Angonese* [2000] ECR 2000 I-04139.
- 46 This dividing line has been marked by the terms ‘imperium’ and ‘dominium’, or public and private interests.
- 47 Case C-91/92 *Faccini Dori* [1994] ECR 1994 I-03325.
- 48 Case C-144/04 *Werner Mangold v. Rüdiger Helm* [2005] ECR 2005 I-09981; Case C-555/07 *Seda Küçükdeveci v. Swedex GmbH and Co* [2010] ECR 2010 I-00365.
- 49 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19 July 2000, pp. 22–26; Council Directive 2000/78/EC of 27 Nov. 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2 Dec. 2000, pp. 16–22; Council Directive 2004/113/EC of 13 Dec. 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21 Dec. 2004, pp. 37–43; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, 26 July 2006, pp. 23–36.
- 50 Case C-282/10, *Dominguez* EU:C:2011:559, Opinion of AG Trstenjak, para. 80.
- 51 Case C-176/12 *Association de médiation sociale v Union locale des syndicats CGT (AMS)* [2014] ECR 0000, Opinion of AG Cruz Villalón, para. 31.
- 52 Joined cases C-569/16 and C-570/16 *Stadt Wuppertal v. Maria Elisabeth Bauer and Volker Willmeroth v. Martina Broßonn* [2018] ECLI:EU:C:2018:871; Case C-684/16

Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV v. Tetsuji Shimizu [2018] ECLI:EU:C:2018:874.

53 Joined cases C-569/16 and C-570/16 *Stadt Wuppertal v. Maria Elisabeth Bauer and Volker Willmeroth v. Martina Broßonn* [2018] ECLI:EU:C:2018:871, paras. 88–90.

54 Case 43/75 *Defrenne v Sabena* [1976] ECR 455.

55 Case 26-62 *Van Gend en Loos* [1963] ECLI:EU:C:1963:1.

56 Case 43/75 *Defrenne v Sabena* [1976] ECR 455, para. 39.

57 Case 43/75 *Defrenne v Sabena* [1976] ECR 455, para. 32.

58 Case 43/75 *Defrenne v Sabena* [1976] ECR 455, para. 32.

59 Case C-131/2 *Google Spain v. AEPD and Mario Costeja González* [2014] ECLI:EU:C:2014:317.

60 Case 43/75 *Defrenne v Sabena* [1976] ECR 455, para. 31.

61 Case C-131/2 *Google Spain v. AEPD and Mario Costeja González* [2014] ECLI:EU:C:2014:317.

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Part III

Contestation

Looking back, looking forward

Citizenship, contestation, and a new compact for child and youth mobility?

Jacqueline Bhabha

Citizenship and childhood

Moussa, a Malian teenager, lost both parents before he was eight years old. As his nuclear family disintegrated, he suffered severe child abuse from his step-mother but had no child protection network to turn to (Hernandez and Uzureau 478–495).¹ Like every country in the world except the US, Mali has ratified the 1989 UN Convention on the Rights of the Child (CRC), a comprehensive compilation of international norms to protect children’s rights and needs (UN, art. 15). But its enforcement of the prohibition on child abuse and the obligation to ensure that the child’s best interests should be a primary consideration is deeply flawed, more observed in the breach than in practice. This is true of most CRC signatories.

As citizens, or even more broadly, as rights bearers (whether citizens or not, human beings covered by international norms), children are substantially disempowered and under-protected. As a result, rates of child abuse, especially in the home or within the family, are astronomical, “an epidemic” according to the Global Partnership to End Violence Against Children – striking proof of the degraded status of childhood as a category of citizenship. Six out of ten children between the ages of two and fourteen worldwide (amounting to almost a billion children) are subject to physical punishment by their caregivers on a regular basis (UNICEF, “Plain Sight”). In the absence of a supportive home environment, alternatives are elusive. As Moussa put it: “You go to the police and they hit you some more” (Senovilla-Hernández and Uzureau).

For thousands of children, escape may offer the best prospects for contesting the human rights abuses they face, flight rather than fight. Many children migrate from their homes to the nearest conurbation – Mumbai, São Paulo, New York, London, and Amsterdam are all home to thousands, some tens of thousands, of homeless citizen children fleeing child abuse (WomenAid International). But for others the drastic steps of international migration and long-term exile are more compelling alternatives. Thus, thousands of abused, abandoned or neglected children move farther afield, many of them living out what Charles Taylor calls “the social imaginary” of life elsewhere, following paths laid by their peers, if not in stone or on water, then on Facebook or other social media (215). Few adequate or

rights-respecting legal structures are reliably in place for this sizeable, self-reliant yet often vulnerable cohort of children contesting their initial circumstances. Whereas adults may have options to exit harsh home environments by securing work permits or family sponsored visas abroad, adolescents such as those just described are much less likely to. It is, one might argue, one of the egregious consequences of an international system crafted without the active participation or interests of adolescents or other young migrants and refugees, despite the fact that children under 18 represent over 50% of the refugee and migrant population (UNHCR, “Children”).

Migration and childhood

Contemporary child migration takes two general forms. One is initiated, mediated, or guided by adults, and relies on well-established and often networked pathways, whether they are sanctioned by migration laws or not. It is sometimes a migration of families, as evidenced by the trans-continental exodus of Syrians and the cross-border escape of South Sudanese – whole communities fleeing for their lives. But family-mediated migration also generates mobility by children on their own, unaccompanied or traversing itineraries facilitated by traffickers or smugglers, as evidenced by the so-called surge of Central American children fleeing across the US/Mexico border in 2014 and again in 2016. This form of child migration is the more well-established and comprehensively documented aspect of child migration. It is also the type of child migration that, despite significant human rights lacunae (lack of legal representation, detention, disregard of the child’s best interests), has to some extent been incorporated into current migration and refugee frameworks – family reunification, asylum, humanitarian leave, and visas for survivors of trafficking (Bhabha, “Child Migration”).

The other form of child migration, typified by Moussa, poses greater challenges to contemporary notions of citizenship, of child protection obligations, and of permissible mobility. It is the self-propelled unaccompanied migration of young people contesting the structure into which they have been placed, adolescents who feel compelled to leave what they experience as dead end, desolate circumstances which afford them no opportunities to support themselves or, in some cases, their families. These are situations where many of the building blocks of a rights-endowed childhood or adolescence are lacking – access to quality (or even frequently any) education, adequate healthcare, self-sustaining employment or other earning opportunities, and the ability to be a dutiful and responsible son or daughter.

Cultural variations in understandings of the transition from childhood to adulthood result in a broad spectrum of expectations for children transitioning from infancy through puberty to adulthood. Whereas in some contexts teenagers are considered dependent family members whose only obligation is engagement with education and other forms of self-exploration, in others they are vested with adult responsibilities such as parenting, income generation, and economic autonomy.²

The circumstances of adolescents who feel compelled to leave what they consider unviable home lives do not match current frameworks for affording protection to vulnerable child migrants. The primary, relevant migration categories target children seeking family reunification with already migrated parents or refugees or victims of trafficking. Independent child migrants such as Moussa do not qualify within those classifications. Rather, they find themselves trying to escape from situations characterized by Alcinda Honwana as “waithood,” where “nothing” happens, where stasis rather than opportunity is the order of the day (Honwana). This widespread adolescent state of affairs stands in stark contrast to the oft-inhabited online world which depicts personal challenges and public dynamism as options within easy reach. This virtual world, widely diffused through pervasive social media, affects the perception of citizenship, of selfhood, of the interface between rights, opportunities, and obligations that many young people grow up with.

By the age of 13, Moussa realized that he had no safe future prospects at home. Migration became his chosen exit strategy. It took him years to reach Europe, after several arduous attempts via Senegal and Mauritania.³ When he was 16, he finally arrived in France, thanks to the financial support of an older relative who had previously migrated abroad. An unaccompanied minor leaving serious child abuse, he should have had a strong case for protection in Europe. Article 3 of the Treaty on European Union (TEU) commits the EU to protecting the rights of the child and to promoting those rights in and outside the Union (EU, 2012/C 326/01). This commitment is citizenship-neutral, an incident of childhood and a concomitant of the type of Europe the TEU sought to build.

In practice, however, the EU’s approach to protecting non-citizen children’s rights has been largely driven by its broader approach to the management of migration and refugee protection, an approach largely designed for adults and nationals. In terms of both policy and practice in Europe, the migrant identity has trumped the child identity – alienage has taken precedence over minority when the two suggest contrasting interventions. Citizenship thus becomes a watershed divider for access to rights for this particularly vulnerable category. If children are entitled to have their best interests feature as a primary consideration in all actions concerning them, migrants are not – they are always subject to sovereign prerogatives to control territorial access and stay.⁴

As O’Donnell notes “the common rights of all migrant children, no matter whether they are trafficked, seeking asylum or subject to laws concerning irregular migration, have not been systematically addressed in EU law” (133). This situation is being belatedly rectified. In April 2017 a comprehensive EU Communication on the protection of children in migration was adopted, a measure intended to address the fragmented and inconsistent approach to migrant children so far, and to expand the scope of child specific protections to this group. In practice, migrant children’s rights have largely been left to Member States, and because national rather than EU policies govern their enforcement (or lack thereof) the outcome is unsatisfactory, with major protection deficits and variations apparent across the

Union. Entering the EU has not exposed migrant children to a consistent or quality regime.

Consider Moussa's experience on arrival in France, one that is unusual not because of its absence of child protection, but only because it has been carefully documented.

When they took me to Compiègne [a city to the north of Paris], they told me the way I was dressed proved I wasn't a minor.⁵ I was annoyed – I was in pain and really cold. I went to the courthouse and said I wanted to see the Children's Judge. When I said that, a police officer took me to the station, took my fingerprints, and locked me up. Around 9 PM they brought me in for a hearing. They blocked my passport and birth certificate. I told the 'sir' that I was hungry and he told me that we weren't in a restaurant. They told me to come the next morning at 10 A.M., and I went at 9. After they told me that they'd found my prints, that I had already come to France in 2013, that I was 19. I told them it was true that I had already come but that the passports and visas weren't mine. After the night, around 7 P.M., they put me in a car and took me to Lille. I stayed there for 4 days in a detention center. At the end of the fifth day, I met with an administrative judge. I already had my school bulletin [to prove attendance in Mali] and presented everything so they let me go. I went back to Paris.

In the bitterly cold winter of 2015, he slept roughly for many nights:

I left one day for the station and saw a Resto du Coeur [popular soup kitchen]. There were a lot of people there and I was cold. I went and got some gloves and hot milk. They gave me a blanket and I slept there at the station.

(Senovilla-Hernández and Uzureau 488)

Migration culture and contestation in Europe

The dramatic human rights deficits inherent in Europe's citizenship and migration regimes have been laid bare by recent events. Casualties among these deficits have been, *inter alia*, the right to seek asylum; the respect for the best interests of the child; and the duty not to discriminate on the basis of race, religion, or citizenship in matters of fundamental rights. All of these principles are incorporated into Treaty obligations solemnly accepted as essential correlates of European citizenship, of the area of "justice and security" that was being erected. But they have not been consistently upheld – Frontex, the European Union's Border and Coast Guard Agency that manages control of the European Schengen Area, has worked on behalf of European Union citizens as a force keeping refugees and distress migrants, including unaccompanied children, out of the territory and removed from critically needed protections, rather than as one abiding by the EU's long-standing humanitarian treaty obligations. Consider the Union's complicity with

devastating loss of life of Middle Eastern refugees drowning in the Mediterranean (over 100 a month in 2017, and over 4,000 in 2018), the willful practice of averting its gaze.

This institutionalized performance of indifference in the face of tragedy has enabled European States to avoid the experience of emotion that, as Didier Fassin notes, viscerally connects us to the situation of others and the humanitarian obligations of rescue (Fassin). These obligations arise out of what Itamar Mann provocatively calls “rights of encounter,” “a command of conscience triggered by defenseless human presence” (12). As a polity, the EU has increasingly chosen to delegate mobility blockages to authoritarian and brutal regimes not averse to violating the international norm that guarantees everyone the right to leave any country.⁶ Turkey and Libya are key protagonists in the current Faustian bargain.

It is not just this complicity with making the EU territory as inaccessible as possible to vulnerable migrants including children that belies the EU’s early commitments to abide by core human rights principles (including those described previously) embedded in the Universal Declaration of Human Rights and the European Convention on Human Rights. Consider also the evidence of child migrant detention and deportation across Europe, in Italy, in Sweden, and in Greece. These are not practices resulting, as they once were, from faulty classification of children as adults by virtue of age identification tests based on discredited one-dimensional and reductive physical measurements (Hjern 281–293). Rather they are justified by a xenophobic and exclusionary crisis mentality that feeds off and exacerbates widening inequalities in social and economic prospects for young people within and between continents (Lundberg 260).

These developments are the site of acute contestation over migration policy but more broadly over the very identity of European culture, its constituent ingredients, and the citizenship boundaries it generates. Citizenship and nationality are not predetermined contracts for reciprocal support among a closed group but affiliations that generate duties and entitlements the scope of which the collective defines and redefines. No a priori justification exists for a particular remit of citizenship. Residents, particularly those with voting rights, are all part of the process of definition and redefinition and accept outcomes they disagree with at their peril (or shame). Many sympathize with strong loyalty to, even psychological dependence on, what they consider “natural,” embedded cultural traditions, linguistic heritage, or the elusive national “way of life.” Willfully they fail to recognize how all these assumed “facts” of social life are ever changing, how instead of immutable national assets or heritage they are inevitably living traditions that cannot be preserved as archeological relics.

In multicultural and mixed societies, built through the morally neutral accident of birthplace and in and outward migration over centuries (what sociologist Michel Foucault has called “the era of the side by side”), the very notion of “our society” is under constant scrutiny and redefinition. Kantian ethics, Christian doctrine, and the European human rights legacy have all been invoked over the past few years to justify contrasting visions of inclusion and belonging in Europe.

Contestation over child migrants in the EU

The sites and instantiations of this EU contestation are familiar: razor wire borders erected at previously open EU borders, countered by railway workers mobilization of additional trains to transport refugees; virulent anti-foreigner rhetoric from neo-fascist parties countered by mass welcomes of newly arrived non-EU travelers at European railway stations with Olympian piles of water, food, and bedding; the dramatic rise of Brexiters and Le Pen supporters countered by huge pro-migrant demonstrations and by the proliferation of solidarity; refugee Airbnb in Amsterdam; and mass engagement with refugee child tutoring in Germany. And most recently, the potent transfer of civic contestation to the electoral and political sphere, with the dramatic increase in voter support for far-right parties in states across the EU.

This contestation has its articulate spokespeople, highly vocal after the watershed drowning of the three year old Syrian toddler Alan Kurdi off the coast of Turkey on 2 September 2015, two years ago. As Hungary erected kilometers of razor wire fencing, its Prime Minister Viktor Orbán referred to the tsunami of grief over the three year old's death as blackmail, and appointed himself as the vocal leader of an explicitly Islamophobic EU right:

We think all countries have a right to decide whether *they want to have* a large number of Muslims in their countries. If they want to live together with them, they can. We don't want to and I think we have a right to decide . . . I do not see any reason *for anyone else to force us* to create ways of living together in Hungary that we do not want to see.

(Mackey; emphasis added)

The “we” invoked by Orbán is ethnically homogeneous, white, and Christian, engaged in a civilizational clash with Muslims. At the same time, in a widely cited speech, Jean-Claude Juncker, the President of the European Commission, spoke for many European leaders immediately after Alan's picture circulated:

Since the beginning of the year [2015], nearly 500,000 people have made their way to Europe [. . .] The numbers are impressive. For some they are frightening. But now is not the time to take fright. It is time for bold, determined and concerted action by the European Union, by its institutions and by all its Member States. This is first of all a matter of humanity and of human dignity. And for Europe it is also a matter of historical fairness. We Europeans should remember well that Europe is a continent where nearly everyone has at one time been a refugee [. . .] Europe is the baker in Kos who gives away his bread to hungry and weary souls. This is the Europe I want to live in.

(Juncker)

Looking back at the sharp cultural clashes over European citizenship and identity over the past few years, it is clear that the poorly regulated and inadequately

protected migration of children and young people has been a central point of contention. It has become a space where fears about cultural integrity, employment competition, security risks, and welfare abuse have clashed with a cosmopolitan conception of citizenship and with humanitarian and human rights concerns about child protection.

These tensions and the policy spillovers they generate are clearly evident, perhaps most keenly in countries where the tradition of rights-respecting norms and generous migrant acceptance policies towards migrant children have recently come under visible pressure. Consider the situation in Sweden for example. A bastion of progressive child migrant and family reunification policies for some years, Sweden became the destination of choice for unaccompanied child migrants throughout the early years of the so-called migration crisis. Facebook tips and routes and word-of-mouth advice contributed to a quadrupling in the numbers of unaccompanied children arriving in Sweden in 2015, for a total of 35,000 arrivals. But in 2016 the Swedish government abruptly reversed course, willfully prolonging family separation and refugee misery by refusing to accept reunification claims. Instead of a respectful and welcoming reception, unaccompanied children fleeing conflict and abuse had this experience: “They question your date of birth: How do you know you are that age? What, don’t you know when you were born?” (Lundberg).⁷ Yet, Swedish decision-makers were aware, from their past experience, that the culture of some migrant children – Afghans, for example, who accounted for a majority of the arrivals – gave no salience at all to age, that “minor” was a concept which unaccompanied children encountered in the Swedish immigration interviews for the first time.

The policy reversal in Sweden has not gone uncontested. At the same time as Sweden stopped allowing family members to legally join their unaccompanied refugee children already in Sweden and instituted deportations of young Afghans back to their war-torn country, a vibrant sanctuary movement took shape, spanning many areas of the country and engaging a broad swath of civil society in a well-organized and concerted program of civil disobedience (Lundberg and Strange 347–362). Child migrants and their families became the site of an acute contestation over Sweden’s role in the European migration crisis and over Sweden’s soul as a historically hospitable EU state.

Another example of European contestation in the matter of child migration comes from Italy. For some years following the growth in migrant and refugee arrivals to Italy, the country was an exemplar in humanitarian response. For example, alone in Europe, it established a uniquely comprehensive (though not entirely effective) net of guardians for unaccompanied children, and, again uniquely in Europe, it provided an extension of the discretionary legal authority to reside in the country for young people beyond the age of 18, if they had arrived in Italy as minors, setting an impressive European precedent.⁸

A March 2017 reform on “Protection Measures for Unaccompanied Minors,” the so-called Zampa Law, carried this rights-respecting approach further by establishing, for the first time in an EU Member State, the principle that unaccompanied

minors were entitled to the same protection rights as Italian children, a measure in conformity with the international obligation not to discriminate between children in need of child protection on the basis of their nationality but nevertheless a departure from current EU policy which establishes no such equivalence. But this impressive reform has not attracted any additional public funding – and as a result the large numbers of child migrants arriving in Italy are increasingly offered reception facilities which fail basic standards of hygiene or safety. Political developments in Italy, particularly associated with the leadership position of Matteo Salvini, the explicitly xenophobic Italian Minister of the Interior, have changed the public political face of Italy from a beacon of humanitarian generosity to a purveyor of xenophobic hatred. The knock-on effect on young and vulnerable migrants has been dramatic. It has become increasingly evident that, in line with the political changes taking shape, many adolescents have preferred to reject the precarious offer of state protection and opt instead for autonomy and independence living rough on the streets, placing them in the same situation as Moussa in France. It is not just funding shortages that are stymying effective child protection in Italy. Contestation over protective responsibilities and migration management practice across the continent are having their impact on public servants and civic engagement, as Italy has succumbed to virulent xenophobic political opportunism.

Looking forward: child mobility and rights in Europe in the 21st century?

So much for looking back. What emerges if one looks forward to likely or desirable developments for child migrants and for the expansion or retrenchment of rights for Moussa and thousands of young people like him aspiring to a self-sustaining and rewarding future? There has been no lack of normative pronouncements on the importance of ensuring human rights protections for vulnerable migrants, including unaccompanied children.⁹ But the gap between aspirational undertakings and policy implementation has seemed unbridgeable. It is in this interstitial space between normative obligation and political practice on the ground that innovation is occurring. It was catalyzed by the failures of European responsibility-sharing during the large migration and refugee flows into Europe of the last five years, failures which undermined the courageous political stand of Angela Merkel and enabled the closely related upsurge in political hate-mongering across the continent. Innovation seemed essential as an urgent sense that the current refugee and migration-management system was not fit for its purpose radiated out, across Europe and beyond, to the global community (Bhabha, “Can We Solve”).

The concern to address deficiencies in current migration management has for once been generative, prompting well-supported efforts to explore opportunities to improve relevant state practice and to generate political will that moves beyond the polarizing contestation of the past months to a more constructive shared agenda for action and reform. In 2016, the UN embarked on such a program of action to address current migration challenges. Its central proposal, announced in

September of that year, was the creation of two “Global Compacts,” one centered on elaborating a comprehensive refugee policy, the other, approved by a majority of UN member states in December 2018, focused on the development of a new framework for managing global migration (UN A/71/150).

The Global Compact for Migration (GCM), the first ever global migration program of action, was, not surprisingly, the site of considerable international contestation throughout the drafting process and beyond. Though eventually approved by a large majority of UN member states, it was contested by some, with countries such as the US, Australia, Chile, Switzerland, and nine EU member states not signing, with several actively opposing it (Gotev). The GCM is slated to galvanize high level engagement in the development of cooperation on migration policy, to overcome the impasse created by contestation over central tenets of international movement today. A key goal of the GCM is to institute workable measures to “facilitate orderly, safe, regular and responsible migration and mobility of people.” This goal was articulated as part of the Sustainable Development Goals, the 15-year development agenda launched by the UN in 2015. It was the first time that migration had been included as a central target of an integrated development program (by contrast, migration did not feature in the previous generation of 15-year development plans, the Millennium Development Goals) (UN A/71/150, para 37). Success in realizing this target entails a broad program of reform, including the implementation of robust non-discrimination norms that are “people centered, sensitive, humane, dignified, gender responsive,” and for enhanced data collection on migration flows, both laudable and important goals that have so far remained elusive. How might they translate in deliverables for child and youth migrants?

A radical conclusion

If one thing is clear from the management of the large recent flows of migrants, it is that serious attention needs to be paid to a collective engagement with the needs of the next generation; young people growing up in situations where the prospects of a rights protected and rewarding life are more and more elusive. Hundreds of thousands will be on the move. Already now, rough estimates suggest that approximately 15% of the 232 million contemporary international migrants are under 20. As already noted, the proportion for refugees is much higher – children constitute over half the world’s refugees (UN DESA).

Across the world, in rural areas and in economically depressed regions within generally prosperous states, as the Arab Spring brought starkly to notice, a demographic explosion of young people is not matched by commensurate opportunities for higher education, skill training and employment (UNDP). Nor, it is worth remarking, is it complemented by appropriate legal migration opportunities. The same is true across many parts of sub Saharan Africa, Latin America, and Eastern Europe. In very large numbers, children and young people are trapped in oppressively exploitative situations, as participants in child labor, sexual exploitation,

armed conflict, and a range of forms of trafficking. Though by no means all these children move far from their homes, many do, and significant numbers experience traumatic forms of migration, either duped by traffickers or otherwise subjected to intolerable forms of child abuse and persecution. The absence of robust domestic child protection mechanisms and educational opportunities at home is compounded by the dramatic dearth of protective measures for children in the migration and refugee contexts (Bhabha et al).

Policymakers and rights advocates would do well to pay serious attention to the unaddressed needs of young people as members of a global commons that includes mobility as one of its features. What should this attention consist of? Most central is the redistribution of educational opportunity, to match the aspirations for self-advancement of all young people and afford to those currently forced out of school or never given adequate access to quality schooling in the first place a fair chance. A plethora of possibilities exists.

One way of doing this is by instituting much more capacious educational mobility, not just for wealthy populations as currently exists for southern elites attending boarding schools and high quality tertiary educational establishments, but for a much broader range of students. Student visas accompanied by scholarships or loan schemes could ensure that very large numbers of students benefit from educational opportunity, enhancing their prospects. Within the cluster of measures that address educational needs included in the UN Sustainable Development Goals, one is particularly relevant to child and youth migration. SDG 4(b) provides a target for democratizing and increasing educational opportunity in the following terms:

By 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programs, in developed countries and other developing countries.

While this may seem like an unreachable aspiration, it should not be. Cultural exposure and the chance to exercise mobility are building blocks for reducing social and economic inequality, and the adversarial contestation bred by insularity. Development budgets could include earmarked line items for these educational programs as they do for irrigation projects or vaccination distribution. An injection of overseas scholarship funds for educational institutions in the Global North facing cuts and declines in student enrolments would complement the generative impact that foreign student fees paid by affluent families have had.

A useful model for the subsidized educational mobility envisaged by SDG 4(b) exists in the form of the EU Erasmus Program. Established in 1987 and replaced by Erasmus+ in 2014, this has been a highly successful student mobility scheme. Apart from the cultural cross-fertilization enabled by large-scale migration of

young people across Europe, the Erasmus scheme has had a redistributive impact in terms of educational opportunity, affording students from poorer countries previously unimaginable opportunities to study in some of the best centers for higher education in Europe. Overall, by the end of the academic year 2013–14, the Erasmus program had supported 3.3 million Erasmus students and 470,000 staff since its launch (European Commission, “Erasmus”). Between 2007 and 2013, outward student mobility has doubled in Hungary, Turkey, and Cyprus due to Erasmus, with countries such as Slovakia and Montenegro seeing growth in mobility in excess of 75%. Poland, Turkey, and Romania have benefitted most from teacher training in Western Europe.

The Erasmus+ program has a budget of over €18 billion for the period 2014–2020 (European Commission, “Erasmus+”). In the 30 years that Erasmus has existed, there have been nine million participants (European Commission, “The 30th Anniversary”). Here is no reason why this could not be a model for a more geographically and culturally extensive scheme, spanning continents. Just as historic enmities, cultural, and linguistic difference between Turkey and Greece, Poland and Germany, Romania, and Hungary have not blocked the development of this scheme, so political and cultural polarities between less proximal countries would be surmountable. The racial and cultural differences within Europe loomed as large, even insurmountable, less than a century ago as global differences do today. The span of Erasmus, with millions of Black and Asian Londoners, Turkish Berliners and Moroccan Parisians covers an area no more culturally, racially, or religiously homogeneous than Europe and the Middle East or Africa combined. Can Europeans take on this challenge? Can educators? This would be consistent with the nondiscriminatory and inclusionary promise that European citizenship affords.

Other ideas along parallel lines – regarding apprenticeships, vocational training, entry level employment, job openings in countries of origin – can all be developed. That is the project that an expansion of citizenship for children and young people, not just those who are already Europeans but those who are in Europe or would like to be, demands. With this injection of an expanded young constituency, contestation over European citizenship, its boundaries, its essence, and its potential would become generative in new and unimagined ways – a goal to aspire towards.

Notes

- 1 These case details and the quotes and descriptions about it that follow are taken from: Hernández, Daniel Senovilla and Océane Uzureau. “Children’s Voices: Listening to Young African Migrants in France.” *Research Handbook on Child Migration*, edited by Jacqueline Bhabha et al., Edward Elgar Press, 2018, pp. 478–495.
- 2 For an excellent historical account of different conceptions of childhood see: Zelizer, Viviana. *Pricing the Priceless Child: The Changing Social Value of Children*. Princeton UP, 1985.
- 3 For rich accounts of these youthful pressures and itineraries among sub-Saharan African youth see: Timera, Mahamet. “Child Mobility from and within West African Countries.”

Research Handbook on Child Migration, edited by Jacqueline Bhabha, et al., Edward Elgar Press, 2018, pp. 66–81; Vacchiano, Francesco. “Desiring Mobility: Child Migration, Parental Distress and Constraints on the Future in North Africa.” *Research Handbook on Child Migration*, edited by Jacqueline Bhabha, et al., Edward Elgar Press, 2018, pp. 82–97.

- 4 No recent state policy illustrates the consequences of privileging the primacy of migration control over child protection obligations more dramatically than the egregious 2018 US family separation policy. This government sanctioned form of child abuse resulted in over 2,000 children, including babies and toddlers, being forcibly separated from their parents by untrained state border officials to further the US’s migrant exclusion agenda. See: Women’s Refugee Commission & KIND. “Family Separation at the Border.” www.womensrefugeecommission.org/rights/resources/1640-family-separation-at-the-border. Accessed 21 Feb. 2019.
- 5 Moussa explained to the researchers interviewing him that he had picked up warm clothes from a donation at a church in Paris.
- 6 See ICCPR, Art.12 (2): “Everyone shall be free to leave any country, including his own.”
- 7 Report by Swedish Children’s Ombudsman cited in Lundberg, op. cit, p. 7 on file with author.
- 8 The following comments on Italy are based on the work of Elena Rozzi, and on her chapter: Rozzi, Elena. “Unaccompanied Minors in Italy: From Children to Aliens?” *Research Handbook on Child Migration*, edited by Jacqueline Bhabha, et al., Edward Elgar Press, 2018.
- 9 See: UN Committee on the Rights of the Child. General Comment No. 6, *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. CRC/GC/2005/6. 2005; UN Committee on the Rights of the Child. *Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, 28 Sept. 2012.

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In search of new narratives

The role of cultural norms and actors in addressing human rights contestation

Julie Fraser

Introduction

As is frequently reiterated in contemporary times, we are living through a challenging period for human rights. Despite celebrating 50 years of the Covenants in 2016 and 70 years of the Universal Declaration of Human Rights (UDHR) in 2018, rights continue to be contested and may have even lost ground in recent years. Scholars and practitioners have been warning of the threats to democratic values and human rights around the world, highlighted in 2016 by the Brexit vote in the UK and the election of President Trump in the USA. There have also been challenges to international rights institutions, like the USA leaving the UN Human Rights Council and Burundi and the Philippines withdrawing from the International Criminal Court. The former UN High Commissioner for Human Rights, Zeid Ra'ad al-Hussein, criticized populist leaders like Presidents Trump and Duterte, noting that “the further away we get from those historical and dreadful experiences [of WWII], the more we tend to play fast and loose with the institutions created to prevent repetition”.¹ He also lamented the backlash on women's rights, evident from the “*return to greater inequality and harmful customs*” like female genital mutilation (FGM/C) (Ra'ad Al Hussein 369; emphasis in original). To drive home his critique, al-Hussein chose to step down as High Commissioner rather than seeking a second term.

Scholars too have commented on the challenges to and perceived decline of human rights. Hopgood argues that the “endtimes are coming for human rights as effective global norms” due to the increasing contestation inside and outside the human rights movement, combined with the relative erosion of the USA's power and the rise of Southern States (11). He notes that the (re)emerging areas of the world are not secular, with religion playing a stronger role in influencing their public attitudes. De Sousa Santos agrees, noting that “theology's center of gravity has moved to the Global South” (21). Indeed, religion is experiencing a type of resurgence, especially in political and public life (Toft 48; Fadel 1). In the last few decades, it has become a global phenomenon for people to claim “religion as a constitutive element of public life” (Sousa Santos 11). Studies show that the world is becoming more religious, with the relative size of religiously unaffiliated

people declining (Pew Research Centre, *Why People*; Pew Research Centre, *The Future of World Religions*). Hopgood argues that there is a “new salience of religion globally” and that “the foundations on which secular human rights were based are not available universally” (17).

It is difficult to share Hopgood’s perspective for several reasons. First, human rights have been contested internationally at least since the UDHR,² and it is disputable whether secular foundations for rights were ever universally available. It is also unclear why they should be, given the huge diversity of the world’s some 200 States and the foundationally relative nature of human rights (Donnelly 99; Glendon 146–147). While culture, including religion, has been the basis of many critiques of human rights, it is also a source and promoter of rights. For example, religion “has always been an inspiring source for the social groups and movements that have struggled against injustice and oppression throughout history” (Sousa Santos 22). Religious actors have played extensive and consequential roles in various democratization efforts around the world (Toft 51). In addition, religious organizations have long been providing human rights related services to the public like education and healthcare. As such, a relative increase in religiosity is not necessarily detrimental to the cause of human rights.³ Religion can be highly effective in human rights implementation due to its ability to guide and shape human behavior. On this basis, religious involvement should be sought out, encouraged, and facilitated – not feared.

Today’s challenging times may not present us with the end of human rights, but rather an opportunity to take stock, re-imagine, and re-engage a wider variety of actors on human rights. It is submitted that in addition to the formal State norms and actors, cultural ones like religion are also needed to participate in resolving human rights contestation and forging supporting narratives. Given the multiplicity of challenges facing human rights, it is necessary to have a plurality of actors working in support of rights. Nationally, these actors may be considered as human rights’ domestic constituents, comprising individual citizens as well as civil society. While the negative role of cultural norms and actors, and particularly religious ones, in abusing rights has been the subject of much scholarship, their positive role in implementing and protecting rights has received less attention. Therefore, this chapter explores the role of religious norms and actors in human rights implementation, focusing on Islam in Indonesia as a case study.⁴ The chapter commences with a brief analysis of the contestation between human rights and religion, as well as an unpacking of religion as a site of internal contestation. The chapter then presents the Indonesian case study, which provides examples from practice of how religion (in this case Islam) can and has been used to promote human rights. To conclude, the chapter urges further engagement of religious actors and more polycentric approaches to human rights.

Contesting cultures and human rights

Despite more than 70 years since the adoption of the UDHR, the universality of rights is still contested. While the international human rights system has developed

greatly in this time, challenges continue to be made based on culture. Key challenges have been presented by cultural relativists and advocates of ‘Asian values’ (Cerna; Kausikan), postcolonial and ‘Third World Approaches to International Law’ scholars (Mutua; Falk et al.), and on the basis of Islam. Such critics have contested both the conception and content of human rights, as well as their practical application in diverse communities around the world. Of all the cultural critiques, Brems concludes that those based on Islam come the closest to rejecting the universality of human rights (Brems, *Human Rights* 290). The Islamic critique is made all the more important given that Muslims currently make up around 25 per cent of the total global population (Pew Research Centre, *The Changing Global Religious Landscape*), and Islam is the world’s fastest growing religion. Islam is growing twice as fast as the world’s population and is projected to overtake Christianity as the largest religion in the next half century (Pew Research Centre *Why Muslims*). One scholar has claimed that the salient “question of the twenty-first century may very well be religion, particularly Islam” (Fadel 1).

A central issue for Islam (and some other religions) is that human rights must take second place behind divine law (Roy and Annicchino 17; Lenzerini 77; Brems *Human Rights* 286–287, 289). This can be seen in Art. 24 of the 1990 *Cairo Declaration on Human Rights in Islam*, which subjects all of the rights therein to Islamic law. Similarly, Muslim majority States often enter so-called Islamic reservations when ratifying international human rights treaties (Rishmawi 368). Such reservations typically note that the treaty is only binding in so far as it does not conflict with Islamic law (Brems, *Human Rights* 267–284). While some argue that such reservations undermine the object and purpose of the treaties, their impact on the treaty and legal obligations therein are unresolved (Lenzerini 90–100; Donders, *Cultural Pluralism*). Despite this, An-Na’im concludes that the Islamic tradition is in fact generally consistent with human rights norms, “except for some specific, albeit very serious, aspects of the rights of women and freedom of religion and belief” (An-Na’im *Why should Muslims* 87; Fadel). Typically cited examples of the incompatibility of Islam and human rights include Islam’s permissibility (at times and in some places) of child marriage, FGM/C, polygamy, and its prohibition of apostasy.

Various UN human rights bodies have addressed such so-called harmful practices based on cultural beliefs and held them to be human rights violations (UN CEDAW/CRC Joint General Recommendation). In this way, religion, and culture in general, is often portrayed as an obstacle to human rights enjoyment or a cause of their violation. Merry notes that human rights discourses tend to view culture as an ancient practice, something primitive or backward that obstructs progress (60). However, culture is in fact marked by dynamism and contestation, and not uniformity or consistency (Merry 67). Rather than a product, culture is a process continually undergoing change, with no well-defined boundaries and multiple influencers (Donders, *Human Rights* 6). Not only is culture not static, but it is not monolithic. Anthropologists describe culture as “unbounded, contested . . . marked by hybridity and creolization” (Merry 67). A function of this hybridity and internal contestation is that the lived practices of a particular culture

or cultural norm may be varied. Nyamu highlights that “cultural assertions often fail to reflect the full social reality,” where the day-to-day lived practices can be more diverse than the stated norms (Nyamu, *How Should Human* 405; Nyamu, *Are Local* 132). As such, notwithstanding even firm attestations of cultural norms and practices, alternatives will often co-exist among cultural communities.

The same applies to religion, as a part of culture. While an agreed definition is elusive, culture can generally be seen to encompass the complex features that characterize a society/social group, including modes of life, value systems, traditions, and beliefs (UNESCO, *Universal Declaration of Cultural Diversity* preamble; UNESCO, *World Conference on Cultural Policies* preamble). According to Geertz, culture signifies “a system of inherited conceptions expressed in symbolic forms by means of which men [sic] communicate, perpetuate, and develop their knowledge about and attitudes towards life” (89). As these definitions indicate, culture includes religion as a value and belief system. As such, religions can also be described as dynamic and contested, with Islam being no exception. In fact, “contrary to popular Western characterizations, there is no single uncontested definition of Islam and its precepts” (Mokhtari 470). Islam has various, and often conflicting, interpretations of its normative framework, and, similarly, Muslims have diverse opinions about and approaches to human rights (Ernada 101–102). While there can be contestation between Islam and human rights, there can also be internal contestation within Islam regarding human rights. As such, Muslims can and have used Islam to oppose as well as to support human rights. The next section presents an illustration of how Muslims in Indonesia used Islam to promote human rights.

Islamic law and institutions in Indonesia and their role in human rights promotion

Indonesia is a relevant case to study regarding Islam as it is the State with the world’s largest Muslim population of around 200 million. Indonesia also has strong Islamic institutions, such as Nahdlatul Ulama (NU) and Muhammadiyah, which boast huge combined memberships of over 100 million – some of the largest in the world. Despite not formally being an Islamic State, Islam clearly holds much influence in Indonesia. From a human rights perspective, Indonesia is a party to the main international human rights treaties and regionally is a strong supporter of rights.⁵ This section sets out a brief background to Islamic law and institutions and their manifestation in Indonesia, highlighting their intra-plurality and scope for diversity. It then gives an example of how Islamic norms and actors were instrumental in promoting women’s right to family planning and the ways in which they are currently being employed to tackle other contemporary human rights issues. Family planning was selected due to the focus given to it in Indonesia by local, national, and international organizations, and its long-term status as a Government priority. Indonesia’s family planning programme is now five decades old and has a strong history of engagement with Islam. The programme is

viewed internationally as a success for reducing Indonesia's fertility rate by more than half, and is advocated as an example for other (Muslim) States (BKKBN 1; Solomon et al. 4).

Islamic law and institutions in Indonesia

The word 'Islam' means peace, well-being, surrender, or salvation, and the purpose of Islamic law is generally defined as the happiness of all humans in this world and the afterlife (Daud Ali 39). The sources of Islam include the *Qur'an*, *Hadith*, *fiqh*, *Sunnah*, and *shari'ah*.⁶ Together, these sources contribute to what is referred to as 'the Islamic tradition'; however, they do not represent "a coherent or consistent body of teachings or precepts from which a universally agreed upon set of Islamic norms can be derived" (Hassan, "Is Family Planning" 226). Given the numerous inconsistencies and variances among the sources and their interpretation, Hassan concludes that "it is scarcely possible to speak of 'Islam' or 'the Islamic tradition' as if it were unitary" ("Is Family Planning" 226–227). Contrary to religious groups like Catholics, there is no set religious hierarchy in Sunni Islam (predominant in Indonesia) or ultimate leader like the Pope. In such an environment, there is a great scope for a diversity of views and beliefs within the Islamic faith. For example, there are four main schools of Islamic thought (*madhabs*) and Muslims may choose which to follow: *Hanafi*, *Maliki*, *Shafi'i* (predominant in Indonesia), and *Hanbali* (Daud Ali 115–120). Furthermore, within each of these schools and among their followers there is a divergence of views.

Lukito notes that Islamic law is full of differences and that pluralism lies at its soul.⁷ Islam's intra-plurality is also facilitated by its openness to interpretation. Despite frequent popular representation as literalist, Islamic law has always contained scope for interpretation (Rinaldo 1790; Bakircioglu 24). Scholars claim that Islam in Indonesia takes a highly interpretive approach emphasizing jurisprudence (*fiqh*), resulting in contemporary Indonesian Islamic thought and practice being 'radically diverse' (Rinaldo; Butt 281). This is also facilitated by the fact that, unlike some other Muslim majority countries, Indonesia does not have a grand *mufiti* – or acknowledge a single grand scholar of Islam (Assyaukanie 4). This interpretive tradition has given rise to multiple understandings of Islamic law not just in Indonesia but around the world. While some texts such as those regarding faith, prayer, fasting, charity, and the pilgrimage (the five pillars of Islam) are fixed and common to the whole Muslim community, others relating to human relations with one another and with objects may have numerous iterations and variations.⁸

This diversity and contestation within Islam is possible as, while the *Qur'an* is sacred and immutable as the word of God, its interpretation is not (Hursh 291). Scholars agree that Islamic jurisprudence (*fiqh*), as a work of human reasoning, is dynamic and subject to change from time to time and place to place (Daud Ali 32–34; Mir Hosseini 632). In conjunction with the lack of a clear hierarchy, anyone can interpret Islamic texts if they have the requisite knowledge and skills:

knowledge of Arabic, the *Qur'an*, and *Hadith*, understanding of the science of Islam and *fiqh*, and honesty (Daud Ali 74; Ismah 491–509). Like jurisprudence in other legal systems, *fiqh* involves the creative processes of reasoning and argumentation. While some interpretations may be seen as more authentic, authoritative, or persuasive than others, there is no definitive or closed group of scholars permitted to interpret Islamic texts. Equally, there is no individual or group who censors the results of the independent reasoning (*ijtihad*) of Islamic scholars. Rather, what is compelling is whether the principles or rules of interpretation and legal theory (*usul al-fiqh*) have been applied (Hallaq, *An Introduction to Islamic Law* 16). In fact, reasoning is key in Islam and highly valued, with Daud Ali claiming that: “Among the things that God gives to human beings, the most valuable one is human reason” (14, 71).

In Arabic, *tafsir* means ‘interpretation’ and refers to *Qur'anic* exegesis. According to this traditional method, if a text is definite and absolute with no other meaning or interpretation, then it is considered fixed – *qath'i*. However, if the meaning is unclear or not detailed, it is *zanni* and open to interpretation (Ernada 119). *Ijtihad* is an interpretive technique or methodology whereby on the basis of concerted effort and reasoning, a qualified person makes a determination according to the time and place of a matter unclear or unregulated in Islamic law (*zanni*).⁹ Through reasoning, analogy, and interpretation, Islamic law can be applied and adapted to contemporary situations while upholding Islamic doctrine. In this way, and with the exception of the prohibitions in Islam, the rules can change with the times (Daud Ali 23; An Na'im 88). As such, *ijtihad* is a mechanism for developing Islamic law, which functions to accommodate the changes and demands of society over time (Daud Ali 73, 79). A debate arose regarding *ijtihad* and to what extent it can still be practiced, or whether the ‘gate of *ijtihad*’ has closed.¹⁰ Rejecting this, Hallaq argued that accepting that the gates of *ijtihad* were closed would mean that Islam becomes inadequate and unable to apply *Shari'ah* to newly arising problems (Hallaq, *On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad* 132; Al-Alwani 65–68). In Indonesia today, there are many new issues insufficiently addressed in the *Qur'an* or *Hadith* that require *ijtihad*.¹¹ The fact that certain aspects can (and do) evolve based on new information and contemporary circumstances reflects the vitality and dynamism within Islamic law.

As such, different Islamic scholars (*ulama*) can make an interpretation after studying the religious texts and jurisprudence and arrive at different outcomes. This internal contestation can and does happen, with, for example, Indonesian Islamic institutions like Nahdlatul Ulama and Muhammadiyah taking different positions in *fatwas* on the same issue. A *fatwa* is a religious ruling or statement made by an individual or institution trained in Islamic jurisprudence in response to a request for clarification on an issue of religious principle or dogma (Menchik 364; Hallaq, *An Introduction to Islamic Law* 9–10). *Fatwas* are a crucial mechanism for transmitting Islamic rules and values from scholars to the general public and, as “responsive to political and social pressure,” they typically

change more rapidly than the bulwark of Islamic jurisprudence (Menchik 364). For example, Muhammadiyah declared smoking *haram*¹² on the basis of new information regarding its negative health impacts, while others like NU continue to view smoking as permissible (*makrouh*).¹³ In this situation there is a difference of opinion (*ikhtilaf*) and it is then for each Muslim to decide for themselves which position to follow (Bakircioglu 38). This is possible as *fatwas* are not legally binding or enforceable (Hallaq, *An Introduction to Islamic Law* 9). This interpretive scope and the (sometimes significant) plurality within Islam provides space for dialogue and debate within Muslim communities. This creates an environment in Indonesia that can support reasoned discussions and exchanges of views, as well as a diversity of views.¹⁴

As the State with the largest Muslim population in the world, Indonesia is also home to the largest Islamic institutions: Nahdlatul Ulama and Muhammadiyah. These institutions provide a range of services, including spiritual, educational, and health, with many members looking to them for guidance and following their teaching. Importantly, they both have commissions that produce *fatwas*. Another important Islamic institution is the Indonesian Council of Ulama (*Majelis Ulama Indonesia* – MUI), an independent advisory or consultative body for the Government, which also declares *fatwas* on relevant issues (Sciortino et al. 87). MUI's *fatwa* commission has 65 members (men and women), comprised of members from Islamic institutions across Indonesia including Muhammadiyah and NU. While Muhammadiyah and NU were created independently and have huge grassroots membership, the Indonesian Government under Suharto formed MUI in 1975 as a top-down measure with no membership network (Cammack and Feener 33–35; Assyaukanie 4–6).

These three Islamic institutions and their related *ulama* have great authority in Indonesia among their communities. For example, “the average Muslim believer seldom contradicts” religious leaders, (van Doorn-Harder, *Controlling the Body* 1028) and “they see the ‘*ulama*’ – not the State – as the guardians of Islamic law and regard their authority as absolute” (Nurlaelawati 271). To illustrate, most Muslims consider a marriage valid not depending upon State recognition, but whether it has been concluded according to Islamic law (Bedner and van Huis 187). Clearly, it is the *ulama* and other religious leaders who are perceived to hold authority regarding Islam. Professor Huzaemah (a senior female *ulama* and member of MUI's *fatwa* commission) highlighted this, noting that when the *ulama* speak people are more willing to comply than when only the Government speaks.¹⁵ As such, these Islamic leaders and institutions are highly influential in Indonesia and are looked to by their communities to guide their behavior. These three Islamic institutions, and other smaller faith-based organizations, were all engaged in Indonesia's family planning programme.

Islam and Indonesia's family planning programme

The Indonesian Government's close collaboration with Islamic leaders to promote and protect women's right to family planning goes back to the 1970s when, in

response to the high maternal mortality and fertility rates, Indonesia instigated an ambitious family planning programme (BKKBN 1). The programme secured political will from across various levels of Government, the community, and faith-based actors to decrease the fertility and maternal mortality rate, as well as to promote women's health and economic status (BKKBN 1). Now, 50 years later, the programme is considered an international success for having reduced Indonesia's fertility rate by more than half (BKKBN, UNFPA, USAID and FP2020 8). While having numerous children was previously seen as a status symbol and resource to support the family, today Indonesians prefer a small(er) family (Utomo et al. 74). Indonesia's programme has been hailed internationally as a model of family planning, and specially recognized for its active and effective partnerships with religious institutions. In fact, field research undertaken by this author in Indonesia leads to the conclusion that *but for* the involvement of Islamic law and institutions, the programme would have failed.

Due to Islam's highly influential position in Indonesia, the Government acknowledged early on that it would be necessary to include Islam in its family planning programme (Marshall 14). This is because Islam (like other religions) contains "highly developed codes of behavior related to sexuality and reproduction that are proscriptive in regulating marriage, sexuality, gender relations and roles, and procreation within the faith group" (Kissling 212). Due to the impact of such religious norms on reproductive health, understanding and addressing a health problem's socio-cultural determinants can be as important as addressing the medical aspects (Azuh et al. 106). The Indonesian Government did this by broadly engaging Muslim leaders, organizations, and communities from the outset of the family planning programme. For example, the Government spent time and money engaging Muslim leaders and scholars, including taking them abroad to learn best family planning practices in other Muslim majority States. While initially opposed to family planning, these leaders and their organizations altered their stance and came to support the Government's programme. This was done based on progressive interpretations of Islamic texts, as well as by external and internal contestation.

For example, NU and Muhammadiyah issued *fatwas* in favor of family planning, undertook public advocacy promoting family planning as well as women's health and equality, and provided reproductive healthcare services to the public. NU and Muhammadiyah were well placed to be effective in these roles given their established trust and legitimacy within the Muslim community. Their position can be contrasted to that of international human rights law in Indonesia, where (like in many former colonial States) international law is approached with skepticism given its historical role in justifying as well as facilitating colonialism (Anghie 112). During field work in Indonesia, many interview participants remarked upon the poor domestic resonance of human rights and the limited understanding of rights in general. An NGO representative reported that human rights are viewed as part of the 'Western agenda,' with those promoting them labelled as 'Western

agents.¹⁶ However, given the normative overlap, Islam can be engaged to further human rights goals. According to Hassan, it is easier to assure Muslim women that the *Qur'an* supports their reproductive rights than it is to tell them that a UN document will set them free (Hassan, *Challenging* 66). As such, it can be more effective to rely upon Islamic norms rather than international ones to increase a Muslim community's acceptance and utilization of family planning.

The Government's top-down measures with Islamic leaders and their institutions were complemented by the bottom-up work of Muslims who advocated reform from within. Reformist Muslim scholars played an indispensable role by performing contextual (re)interpretations of Islamic law in line with women's rights and equality (Mulia, "Muslim Family Law"; Nurmila; van Doorn-Harder *Women Shaping Islam*). This was possible given the scope for a diversity of views within Islam, and particularly within the interpretative approach in Indonesia. This interpretive scope and intra-plurality provides space for dialogue, debate, and contestation within Muslim communities and dynamism of Islamic norms. Those seeking gender equality in Indonesia used this interpretative scope to raise contestation, gain supporters, and push reforms. For example, the women's branch of NU, Muslimat, pressured the organization's central board to amend its position on family planning by contesting their interpretation of Islamic law and advocating their own reinterpretation (Marshall 17; Menchik 365, 368). In this way, both the Indonesian Government and individual Muslims mobilized Islam to support women's right to family planning. As the State lacks authority to determine or reform Islamic norms, it had to work with the Muslim community to do so. While the State can lack legitimacy in such situations, the leaders as well as members of Islamic organizations can have both authority and agency, including Muslim women.

This example illustrated that multiple actors and norms, and not just those of the State, can have a distinct role to play regarding human rights. Given its lack of authority regarding Islamic law, the Indonesian Government was dependent upon internal, bottom-up reform from within the Muslim community. This internal reform was in turn dependent upon the inherent dynamism and contestation of Islamic law, making the case study a prime example of how internal actors are agents in negotiating cultural norms. As the reforms were introduced by Muslims and according to Islamic interpretive processes, they were more likely to be viewed by the community as legitimate and applicable. While this process of negotiation and reform was internal, the Government encouraged and facilitated internal actors pursuing human rights compliant interpretations of Islam. This supportive (rather than direct) role of the State as an external actor is also advocated in the literature on cultural transformation, which also stresses the need to include and support marginalized voices (Brems, *Reconciling Universality* 229; Nyamu, *How Should Human Rights* 394; An-Na'im, *Toward a Cross-Cultural* 37). This shows the need for human rights to have domestic constituents or local citizenry and for States to find and support such actors within their national communities.

Islam's role in addressing contemporary human rights issues in Indonesia

As such, Islam can play a foundational and positive role in promoting and protecting human rights in Indonesia. This approach of relying upon *fatwas* to promote human rights compliant behavior has worked in the past and continues to be employed to address contemporary issues. A pertinent example of using *fatwas* to address a very sensitive religious issue is that of child marriage, which is considered a human rights violation (UN CEDAW/CRC Joint General Recommendation). Under the Indonesian Marriage Law (No.1 of 1974 art. 7), marriage is permitted for girls from the age of 16 years and for boys from 19 years. Many have sought to challenge this law and to eradicate the widespread practice of child marriage in Indonesia, which has one of the highest number of child brides worldwide, with one in four girls married before they turn 18.¹⁷ For example, a case was brought unsuccessfully before the Indonesian Constitutional Court in 2015 that sought to challenge the constitutionality of the law. Since then, other initiatives have been taken up, including a *fatwa* against child marriage by women *ulama*.

The world's first ever gathering of women *ulama* was held for three days in April 2017 at an Islamic Boarding School in Cirebon, West Java, Indonesia. Hundreds of participants, including both female and male *ulama*, academics, journalists, and activists, attended the National Congress of Female Muslim Clerics (*Kongres Ulama Perempuan Indonesia*) – an event years in the making (Britton; Robinson).¹⁸ Addressing themes such as “Amplifying Women Ulama’s Voices, Asserting Values of Islam, Nationhood and Humanity,” the Congress sought to recognise and celebrate women *ulama*, and to address pressing issues facing women such as sexual violence, religious extremism, child marriage, polygamy, and protection for migrant workers. While addressing these serious issues, the Congress was also an opportunity and space for women *ulama* to develop contacts, build networks, and share experiences. The Congress included cultural and musical performances and even provided reproductive healthcare services to participants.

At the Congress, the women *ulama* issued a rare *fatwa* against child marriage.¹⁹ Simply issuing the *fatwa* was an historic act, as male *ulama* have typically monopolised this exercise. For example, the Indonesian Ulama Council (*Majelis Ulama Indonesia* – MUI) is comprised almost entirely of men (Ismah 491). The Congress’ *fatwa* is therefore an important symbol of the women *ulamas*’ religious authority. The *fatwa* against child marriage is all the more noteworthy given that MUI and other Islamic institutions support child marriage, which remains legal under Indonesian law.²⁰ In their *fatwa*, the women *ulama* argued for the minimum age for legal marriage to be set at 18 years for girls, and urged the Government to raise the current age from 16 years. While the *fatwa* (like all *fatwas*) is not legally binding, it holds great authority in Indonesia. At its conclusion, the Congress presented their recommendations to Indonesia’s Minister of Religious Affairs on behalf of the Government.

This remarkable Congress was an initiative of Indonesian Muslim women who sought to contest male authority in Islam and the dominant male interpretations of Islamic law. Their strategy is to achieve this by “strengthening the expertise and knowledge of female ulama, networking among them, affirmation and appreciation of their work, as well as strengthening their cultural existence” (*Kongres Ulama Perempuan Indonesia*). In their deliberations and argumentation at the Congress that gave rise to the *fatwas*, the women *ulama* used classical Islamic texts, including the *Qur’an* and the *Hadith*. However, they also relied upon the Indonesian Constitution and international law, including the UDHR. This is a prime example of how international human rights law can be used by diverse groups in diverse ways. It shows how various actors beyond the State are involved in the promotion and protection of human rights, and how they legitimize rights in context by reference to Islamic law. Due to the authority of *fatwas* in the Muslim community in Indonesia, this *fatwa* may assist in combatting child marriage.

In fact, the following year, in December 2018, the Indonesian Constitutional Court unanimously ruled that the current legal age of 16 years for girls to marry was unconstitutional. The Court held that child marriage violated the Constitution’s protection of a girl’s right to education and to a healthy life and that the differences in ages for boys and girls was discriminatory. The case had been brought by three wives who had been pushed into childhood marriages and forced to quit school (Afrianty). Importantly, the Court referred in Section 3.16 to the international *Convention on the Elimination of All Forms of Discrimination Against Women* and to bringing Indonesian law into line with its international obligations. This decision is all the more remarkable given that the same Court only three years earlier in 2015 had declined to overturn the marriage age for girls. Intervening in this period was the women *ulama’s fatwa* of 2017 against child marriage. It is unclear what, if any, impact or influence this *fatwa* had on the Constitutional Court’s decision making, but it is clear that human rights compliant change is coming to this issue in Indonesia.

While the previously mentioned examples related to women’s rights, *fatwas* have also been issued in Indonesia on a wide range of topics relating to human rights. For example, several *fatwas* have been issued relating to public health and the environment. Given the limited access to sanitary toilets for many in Indonesia, open defecation is a problem that leads to contaminated water and a spread of diseases.²¹ In collaboration with the Government as well as the United Nations Children’s Fund (UNICEF), MUI issued a *fatwa* against open defecation in 2016 (Cronin). It also developed sermons for use by religious leaders at Friday prayers to urge people to change their practices and improve hygiene habits. That year MUI also issued a *fatwa* on environmental destruction, holding that it was forbidden – *haram* – to burn forests for illegal farming, which has devastated large parts of Indonesia and caused air pollution (BBC). Also at the women *ulama’s* Congress in 2017, a similar *fatwa* was issued on environmental destruction, urging the Government to improve regulations on the protection of nature (Fitri Ramadhani).

Fatwas have also been issued regarding combatting terrorism (Associated Press; Ingber) and even fake news (Heriyanto; Halim).

While *fatwas* can be linked to pro-human rights behaviors and positions, they can also oppose them. Assyauckanie looks at the connection between *fatwas* and violence in Indonesia, concluding that intolerant *fatwas* have been linked to subsequent violence. For example, a 2015 *fatwa* by MUI called for same-sex or homosexual acts to be punished, including by the death penalty.²² This ruling can be seen to contradict human rights law, which protects individuals from discrimination and violence based on sex, sexual orientation, and gender identity (UN Office of the High Commissioner for Human Rights).²³ Despite MUI's ruling, internal contestation exists, with other Muslims like Siti Musdah Mulia arguing that Islam rejects discrimination and hatred of LGBT persons based on its core principles of justice and equality.²⁴ Mulia submits the contextual interpretive methodology is best able to discern Islam's "universal moral message" and that an ahistorical or literal approach "can only lead to erroneous interpretations" (*Understanding LGBT Issues* 11). She concludes that the discrimination of LGBT persons in Islam is due to religious interpretation and not to the religion itself (Mulia, *Understanding LGBT Issues* 11).

The previously mentioned examples illustrate how powerful Islamic groups can be as actors in Indonesia and how Islam can be used to both oppose as well as uphold human rights. They also illustrate that there are, of course, no silver bullets and limitations to all approaches to human rights implementation, including relying upon religion. While Islam can be used to contest human rights, it can also agree or align with rights. Furthermore, contestation can occur on a variety of levels and between different actors, including between individual Muslims, within Islamic institutions, between different *fatwa* commissions, and between Islamic leaders and Government officials. While such processes of internal contestation and reform can take time and be complex and uncertain, as seen in the example of family planning, they can lead to meaningful change to a community's norms in line with human rights. Building support for human rights compliant positions from within Islamic groups and institutions can therefore be imperative to the success of any changes seeking to implement rights in Indonesia. In this regard, Mulia herself concludes: "There is still much work to be done" (Mulia, *Understanding LGBT Issues* 11).

Conclusions: religion as sites of internal contestation for promoting human rights

Clearly, human rights are not the sole concern of States but a broad web of actors and norms in society. As these few examples show, religious actors have come together in different ways to implement human rights in Indonesia. Rejecting Hopgood's negative forecast, Toft claims that "the human rights regime is not only not dead, but thriving" (49). Arguably, the human rights movement around the world is now more decentralized and locally owned than before (Toft 49).

Such a development should be welcomed. There are limitations to only relying upon formal State institutions to implement human rights, and benefits to involving cultural norms and actors like religion. These benefits include enhancing the cultural legitimacy and resonance of human rights, as well as expanding the local citizenry for rights. Without detracting from the pivotal role of the State in international human rights law, there is a need to recognize the role of these other actors, which is also supported in international law (Fraser). The UDHR itself proclaims in the preamble that every individual and organ of society is responsible for realizing human rights. Given the challenges of human rights implementation and ongoing contestation, an inclusive approach to rights that embraces States as well as other actors and norms is necessary. This is particularly important in contemporary times where there is increasing religiosity around the globe. Islam especially will become a more prominent player in the future as the world's largest religion.

As seen in the Indonesian example, change in line with international human rights law is not only possible but can also be effective when advocated by Muslims according to Islamic law. This reflects the special position of Islam within the Indonesian Muslim community, and the influential role that religion plays in communities all around the world. It relies upon the agency of community members to promote human rights compliant positions and to internally contest those that are non-compliant. Rather than an obstacle to rights enjoyment, religion and culture can be formidable allies in human rights protection. The human rights movement would be well served to better recognize this. Given its embedded nature and legitimacy within communities, as well as its normative overlap with human rights, religion can be a vital asset in human rights protection. Involving religion and other cultural norms and actors can ensure that rights are communicated and implemented in culturally appropriate ways, which not only facilitates their adoption but also pays due respect to cultural diversity. Therefore, while State norms and actors should be used to domestically implement human rights, so too should cultural norms and actors.

Ultimately, the question of whether or how much a State involves religious actors in domestically implementing human rights is a normative or political question. It will depend on a number of internal factors, including whether there is an official State religion, majority religion, or even an anti-religious or secular State. Notwithstanding the legal obligations, political and logistical issues, mixes such as public-private partnerships can bring human rights closer to the public, engaging various actors in society in meaningful ways and promoting bottom-up support for rights. As such, even if States can implement human rights independently, they should collaborate with religious actors where possible in order to reap the social benefits. Harnessing human rights to such domestic forces will help ensure their realization (Heyns and Viljoen 488). As former UN High Commissioner for Human Rights Mary Robinson noted: "We are all custodians of human rights" (UN Commission on Human Settlements). Inclusive participation in human rights implementation can improve simultaneously their legitimacy

and efficacy. Particularly in these times of transition and contestation, the human rights community needs to embrace all actors and narratives supportive of rights.

Notes

- 1 Keaten, Jamey. "UN Rights Chief Warns UN Could 'Collapse' Without Change." *The Associated Press*, 20 Aug. 2018. www.nytimes.com/aponline/2018/08/20/world/europe/ap-eu-un-human-rights.html. Accessed 27 Aug. 2018.
- 2 Concerns about the UDHR's claim of universality were raised at the time of drafting by inter alia the American Anthropological Association (AAA). Executive Board, AAA, 'Statement on Human Rights' (1947) 49 *American Anthropologist* 539. See also Dembour.
- 3 Of course, not all religious customs and practices will be aligned with human rights, and some may be in violation. For example, the practices of FGM/C and child marriage are supported in Indonesia by religious authorities. However, religion will also be important in redressing and changing such practices.
- 4 This case study is based on doctoral field work completed by the author in Java, Indonesia in January and February 2017, which included qualitative research methods including semi-structured interviews. Part of this study, including parts of this chapter (between "The Indonesian Government's close collaboration with Islamic leaders to promote and protect . . . and for States to find and support such actors within their national communities"), were previously published as Julie Fraser, "Challenging State-centricity and legalism: promoting the role of social institutions in the domestic implementation of international human rights law." *International Journal of Human Rights*, 2019. doi:10.1080/13642987.2019.1577539.
- 5 For example, Indonesia is part of the Association of Southeast Asian Nations (ASEAN) and is involved in its human rights initiatives including the ASEAN Human Rights Declaration (18 Nov. 2012) and the Intergovernmental Commission on Human Rights; for more information see <http://aichr.org>. Accessed 17 Nov. 2017.
- 6 The *Qur'an* is the primary source as the word of God revealed to the Prophet, while the *Hadith* are the Prophet's statements or sayings. *Sunnah* is the practice, custom, or tradition of the Prophet; *fiqh* is the science of jurisprudence; and *Shari'ah*, meaning the path or way, is a complete code of conduct based on the rules and regulations revealed to the Prophet. See for example Hallaq *An Introduction* 16; Daud Ali 31.
- 7 Interview with Prof Dr Ratno Lukito, State Islamic University UIN Sunan Kalijaga (21 Feb. 2017, Yogyakarta, Indonesia).
- 8 Two categories have been identified as relating to worship (fixed) and *muamalah* (open). In relation to the latter, regarding relations between people and objects, the *Qur'an* gives only general provisions (only around three per cent of the *Qur'anic* verses), so authorities can manage and formulate them in time and place, so long as they do not conflict with the *Qur'an* and spirit of *Shari'ah* (Daud Ali 21–23, 56, 103; Sciortino, Marcoes-Natsir, and Mas'udi 87).
- 9 This legal determination cannot conflict with the spirit of Islamic teachings or contradict the *Shari'ah*. Daud Ali 14, 23, 34, 71.
- 10 In this debate some had argued that Islam was sufficiently elaborated with all essential questions addressed, and therefore there was no need for further *ijtihad* – and that the gate had closed. While this position was accepted by many, it was contested and dismissed by others. Hallaq (1986) 130–132.
- 11 Interview with Prof Dr Huzaemah Tahido Yanggo, Rector of Institute of *Qur'an* Studies, Islamic University of Indonesia, and member of MUI *fatwa* commission (1 Feb. 2017, Jakarta, Indonesia).
- 12 "Islamic jurists have classified all human actions into one of five categories on a spectrum: obligatory (*Wajib*), recommended (*Mustahabb*), permitted (*Masmouh*),

- disapproved but not forbidden (*Makrouh*), or absolutely forbidden (*Haram*).” Hasna 182; Daud Ali 28.
- 13 Muhammadiyah *fatwa* No. 6/SM/MTT/III/2010. See further Dessy Sagita and Anita Rachman, ‘Indonesian Clerics Join Smoking Fatwa Row’ Jakarta Globe (15 Mar. 2010) <http://jakartaglobe.id/archive/indonesian-clerics-join-smoking-fatwa-row/>. Accessed 3 Jan. 2018.
 - 14 This statement represents a generalization that may not be reflected across all of Indonesia, which is highly diverse. Furthermore, this space for dissent and contestation and its scope will vary in other Muslim communities in States around the world based on the context.
 - 15 Interview with Prof Dr Huzaemah Tahido Yanggo, Rector of Institute of *Qur’an* Studies, Islamic University of Indonesia, and member of MUI *fatwa* commission (1 Feb. 2017, Jakarta, Indonesia).
 - 16 Interview with the Director of Rahima (30 Jan. 2017, Jakarta, Indonesia).
 - 17 UNICEF Indonesia. “Research Brief: Child Marriage in Indonesia: Progress on Pause.” 2016, 2. www.unicef.org/indonesia/UNICEF_Indonesia_Child_Marriage_Reserach_Brief_.pdf. Accessed 14 Nov. 2017.
 - 18 See the official website of the Congress (in Bahasa Indonesia) <https://kupi-cirebon.net>. Accessed 14 Nov. 2017.
 - 19 *Fatwas* were also issued regarding sexual violence and destruction of the environment. See Ross, Eleanor. “World’s Largest Gathering of Female Muslim Clerics Issue Fatwa Against Marital Rape, Child Marriage.” *Newsweek*, 28 Apr. 2017), www.newsweek.com/gathering-female-muslim-clerics-issue-fatwa-against-child-marriage-rape-591442. Accessed 14 Nov. 2017.
 - 20 For example, MUI, NU, and Muhammadiyah supported child marriage in the 2015 case against it brought before the Constitutional Court: www.ibtimes.co.uk/indonesia-constitutional-court-throws-out-petition-raise-girls-minimum-marriage-age-18-1507855. Accessed 2 Feb. 2019. See also Indonesian National Commission on Violence against Women (Komnas Perempuan), ‘National Human Rights Institution Independent Report Regarding the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Indonesia, 2012–2016’ Submitted to the CEDAW Committee (30 Dec. 2016) paras. 26, 52, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/INT_CEDAW_IFN_IDN_26445_E.pdf. Accessed 12 Nov. 2016.
 - 21 Approximately 63 million people in Indonesia practice open defecation. UNICEF and World Health Organization, Progress on Drinking Water and Sanitation, 2012, p. 20.
 - 22 Indonesia’s highest Islamic clerical body issues *fatwa* proposing the death penalty for people caught having gay sex (Molloy; The Conversation).
 - 23 See for example UN Office of the High Commissioner for Human Rights, “Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law,” HR/PUB/12/06 (2012) www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf. Accessed 3 Feb. 2019.
 - 24 See Siti Musdah Mulia. “Understanding LGBT Issues in Islam Promoting the Appreciation of Human Dignity.” 2nd CSBR Sexuality Institute – 11-18 Sept. 2009, Istanbul. Mulia concludes that the *Qur’an*’s “commitment to the values of equality and freedom is total and unqualified” (Mulia 9).

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Contested cultural citizenship of a virtual transnational community

Structural impediments for women
to participate in the Republic of
Letters (1400–1800)¹

Dirk van Miert

Introduction

From the fifteenth century onwards, up until at least the end of the eighteenth century, scholars and scientists in Europe often used the phrase *Respublica literaria* ('Republic of Letters' or 'Commonwealth of Learning') to denote the world they inhabited: an intellectual world in which students, teachers, scholars, printers, and often patrons were tied together into huge correspondence networks, intense travelling patterns, and later on scholarly journals, constituting a pan-European multinodal social network (Bots 10–12). If there was a Republic (a state, not necessarily a republican state), there must have been Citizens. But how are we to conceptualize 'citizenship' of a virtual community such as the Republic of Letters? An access point is offered by contestations of people's rights to participate. It is then that implicitly held criteria for inclusion and exclusion can be most clearly read between the lines. Many of these criteria have already been made explicit in the literature about the Republic of Letters. This chapter does not merely aim to describe those dominant cultural patterns, but analyzes them by applying citizenship-theory. Theories of citizenship, in particular the notion of cultural citizenship, allow us to identify the structures that perpetuated dominant patterns and that made it difficult for minorities and less empowered groups to fully participate in this learned community. In his chapter, I focus on women as one such group. But before we proceed to review different notions of citizenship, it is first necessary to grasp what the Republic of Letters actually was.

The Republic of Letters as a virtual community

In many ways, the Republic of Letters was a discursive ideal. The discourse employed by early modern scholars when they mentioned the 'Republic of Letters' was one that stimulated the sharing of knowledge for a common good. They conceptualized this 'Republic' as a category that transgressed geographical boundaries. Although learned networks stretched beyond European space into

the colonized world, the silent assumption was that the Republic of Letters was confined to the 'civilized world' of Christendom. Since the learned world was in fact divided across religious, political, and linguistic fault lines, its members were forced to accept many differences in religion and politics and used Latin (no one's native language) to make the exchange of knowledge possible. The Republic of Letters has therefore often been seen as fostering 'tolerance.' The notion of 'tolerance' as constitutive for a successful process of ongoing communication of knowledge was implicit in the way in which Erasmus made the concept of the Republic of Letters popular throughout Europe: according to Erasmus, bonds of 'friendship' tied its members together, and he therefore complained about 'barbarians' who aimed to tyrannize the Republic of Learning. Those barbarians (who were Europeans, to be sure) were the ones who wanted to censure true learning and were hence enemies of free scientific and scholarly inquiry. Yet, it was only at the end of the seventeenth century that scholars came to think of 'tolerance' as a principle in the moral economy of the Republic of Letters. That principle was pragmatic rather than ethical: one had to tolerate people and opinions when these could not be improved without harming the common good, that is the development of arts and sciences (Charlier 31–64; Goldgar; Grafton).

The Republic of Letters was not only a discursive ideal, but also an experienced reality: scholars constantly appealed to the ideal of *commercium literarium* (exchange of learning) for their own benefit, and did in fact communicate books, manuscripts, notes, drawings, botanical specimens, observations, descriptions, and objects across Europe. An estimated one to two million extant letters kept in libraries and archives in primarily Europe testify to the vibrant practice of knowledge exchange (Bots and Waquet; Van Miert).

The Republic of Letters thought of itself as meritocratic: 'merit' appears to be the word most often used by early modern scholars in combination with the phrase 'Republic of Letters'. The assumption was that, regardless of birth, anyone could participate in the exchange of knowledge. In practice, this made the Republic of Letters very exclusive: only highly educated people could participate, because one had to be able to read and write in Latin (although the active use grew less important in the 18th century). Such people were usually white and male. Codes of conduct were increasingly made explicit from the second half of the seventeenth century onwards. These acted as touchstones: scholars who systematically ignored principles of reciprocity and constructive exchange ran the risk of being sidetracked. Acquiring the habitus of a proper member of the learned community was of course much easier for those who were born into families in which attendance of university was common. We do, however, find numerous examples of upward social mobility – with scholars from humble social backgrounds who managed to make a living as a scholar. The heroic story of talented men, and occasionally women, who prevailed against the social odds just through their application and commitment to study, were part and parcel of a rising industry of funeral addresses and published *Lives* of scholars. The language of meritocracy was therefore not merely an ideal.

Yet, it is a topos amongst modern historians of the Republic of Letters to play down the high-spirited ideals by pointing to the endemic polemics, gossip, and mud-slinging with which scholars were confronted through the book market or in which they took an active part themselves. Such invectives often had the aim (doomed to failure) to silence the opponent. Or, to stick to the metaphor, to contest the opponent's right to partake in the constructive 'commerce of letters' that made him or her a citizen of the Republic of Letters. But when exactly was citizenship of this community contested? There are several ways to approach this question: identifying who excluded participants or looking at the behavioral dynamics that led people to being 'exiled' from the Republic of Letters. In this chapter, I seek to identify the main structures that led to the contestation of the citizenship of women as a minority in the Republic of Letters. Why this gendered approach?

There is a case to be made for studying the position of other groups whose full participation in the Republic of Letters was contested, such as people of color, non-Christians, or people with deviant sexual orientations. When the Joseph Scaliger (1540–1609), one of the best regarded scholars of his time, complained that 'atheists, onanites and sodomites occupy the kingdom of letters; honest, chaste and learned men stand in the cold,' it was clear that Christian male heterosexuality was the norm for him, as it was for his interlocutors (Scaliger, 7: 245). From citizenship studies, however, it appears that 'gender continues to be the dominant means by which citizens are included in or excluded from the rights and obligations of citizens' (Faue 389). Moreover, citizenship theory can be used not only to better understand the dynamics of the Republic of Letters. It also shows us new ways to study the dynamics of in- and exclusion of women, since the Republic of Letters is such a unique phenomenon of a theoretically inclusive transnational community.

The Republic of Letters thus offers a rare opportunity to analyze transnational early modern cultural citizenship. The case of female citizenship of this virtual community is interesting also because the Republic of Letters declined at the end of the eighteenth century, when in the aftermath of the French Revolution citizenship was redefined so as to relegate women to the private sphere. In Europe (the space of the Republic of Letters), women had always been assigned their place in the household, but the rise of bourgeois family and the legal and political codification of citizenship raised an official barrier for women to act in the Republic (Landes). Pre-revolutionary, and more specifically, early modern citizenship is therefore different from modern citizenship. And while early modern citizenship is being studied today, a gender analysis of early modern citizenship is still wanting. More complex even is a gender analysis of early modern citizenship of a transnational virtual community.

Defining citizenship

Before we turn to the extent to which women were integrated into the Republic of Letters, we should first consider what 'citizenship' of the Republic of Letters can

mean. Modern historians sometimes style the learned members of the Republic of Letters as ‘citizens,’ thus extending the metaphor of a Republic of Letters to those who inhabited this virtual space. Early modern learned people themselves did reflect on the moral-political question of how to behave as a good subject and the ethical-religious question of how to be a good person. But however much they liked to refer to their community as a Republic of Letters, the term ‘citizen’ they used almost never, let alone with much theoretical underpinning. One rare example is the young and aspiring Swedish student Gustaf Rosenhane who in a letter to Hugo Grotius (de Groot), one of the best known-scholars in Europe at the time, inscribes himself as a ‘citizen’ into the Republic, under the tutelage of the great Grotius (Grotius 337).

Historians have reflected extensively on how scholars were supposed to behave in order to be accepted as a ‘member’ (Goldgar; Goodman; Bots; Brockliss). The precarious situation of women in the history of science and scholarship is also the object of quite a few studies focusing on female authors and scientists (Schiebinger, *The Mind*; Nativel; Waithe; Stevenson; Churchill et al.; Wyles and Hall). But historians of the Republic of Letters have had little to say on the theory of citizenship. It can do no harm therefore to turn to those historians who have written about historical citizenship, most of whom are political and social rather than intellectual historians. This is particularly instructive because ‘citizenship’ is a notoriously slippery concept.

According to Marilyn Friedman,

Citizenship is multiple and various. It can be an identity; a set of rights, privileges and duties; an elevated and exclusionary political status; a relationship between individuals and their states; a set of practices that can unify – or divide – the members of a political community; and an ideal of political agency.

(Friedman 3)

To disentangle these relations, I rely for my next paragraphs on the excellent overview of the debate on early modern citizenship, provided by Maarten Prak in his recent *Citizens without Nations*, but will also draw on views that consider the role of gender, a dimension Prak ignores.

We first have to confirm other historians’ objections that Thomas H. Marshall’s 1950 classic tripartite division of citizenship into civil, political, and social categories is reductionist in the way it ignores the role of gender and of culture (Marshall; Faue 386–387). Marshall focused on the nation state, but that is unhelpful for studying the Republic of Letters, which was transnational, not centralized, and had no legislative or executive bodies; there was no top-down enforcement. As far as scholars were under control, they were censored by their political and ecclesiastical patrons with limited jurisdictions (princes, churches), not by a body that claimed to represent the learned community. For that reason, we first of all have to exclude civil or legal definitions of citizenship: the Republic of Letters

was not an ‘officially sovereign political community’ (Smith 105). It was rather a virtual, an ‘imagined’ (but not imaginary) or at least an experienced community (Van Miert et al.).

A second way of defining citizenship is political (Smith). But since there were no ‘rights,’ the Republic of Letters could not have citizens in a political way either. Although scholars themselves, as a collection of networked individuals, participated in self-governance, no rights to guide this process were laid down, and there was again no official representative or institution to appeal to.

Rather, ‘citizenship’ of the Republic of Letters needs to be sought in a third interpretation of citizenship: the social understanding of belonging to an association of humans. Marshall interpreted this as having rights to social insurance and education. Women were in a precarious state. For they sought social insurance from their families or sometimes from charities of cities and churches. Since women were excluded from Latin grammar schools, academic gymnasia, and universities, their position in the Republic of Letters was undermined, because a Latinate education was a prerequisite to engage in learned conversation.

All these three aspects of citizenship (civil, political, and social) are regarded as essential to avoid being perceived as second-class citizens (Marshall). Yet, they apply almost exclusively to white heterosexual males and fail to explain why in practice many people who have all these rights are still marginalized (Beaman 850). This brings us to a fourth definition of citizenship: citizens can more broadly be described as adhering to ‘certain standards of proper conduct’ (Smith 106). People who contribute to the well-being of their political community are, contrary to free riders, accepted as true members. Beyond laws, ‘citizenship is based on socially agreed upon norms, practices, meanings, and identities’ (Beaman 851). This means that by the performance of certain practices one could become a citizen of the Republic of Letters: ‘citizenship practices can exist outside the rules covering formal citizenship, as the product of certain behavior’ (Prak 7). The correct behavior required social capital: skills and networks that helped scholars to choose and pursue a career path. A condition for the use of social capital is freedom: the freedom of religion, of speech, and of the press, as laid down in the First Amendment of the Constitution of the United States for example, is essential to citizenship. Likewise, in the Republic of Letters, the *libertas philosophandi* was highly regarded: the freedom to investigate the truth even if that truth was unwelcome to the State or the Church. As we saw earlier, Erasmus in his *Against the Barbarians* (1494) already complained of those who wanted to tyrannize the Republic of Letters. For every aspiring member of the Republic of Letters, liberty also included the freedom to fully develop one’s potential: that educational ideal was in fact the hallmark of the Renaissance humanism that gave birth to the Republic of Letters. Proper conduct thus existed in respect to the freedom to pursue a career by exploiting one’s intellectual and social talents. Women, of course, were less free than men to adopt this pattern of conduct: they were barred from the institutions that helped acquire those behavioral patterns, even if they qualified fully from the intellectual point of view. The successful adherence to proper

conduct can lead to a “sense of belonging” (Beaman 850). The proper conduct can be produced top-down as the result of disciplining, but it can also be negotiated in a bottom-up process. This brings us to a final dimension of citizenship.

A core idea in the theory of citizenship is the notion of collective action: ‘Citizenship . . . was created in an environment of collective action, rather than imposed from above’ (Prak 11). The Republic of Letters was indeed a bottom-up phenomenon, with no formal legal power to implement a top-down program. But that does not mean people could create the ideal behavior in complete freedom. They had to negotiate at least four social systems through which the process was channeled: the family, the market, the state, and the voluntary association.

Social systems channeling citizenship

From studies of urban and national citizenship it has become clear that the family played an important role in facilitating citizenship, and indeed, we know of plenty of ‘scholarly dynasties’ in which careers were planned and built. The Gronovius family, for instance, had three generations of professors in the United Provinces in the 17th and 18th centuries. So-called family universities run by oligarchies of professorial families were a frequent phenomenon in German territories (Baumgarten 21). Isaac Vossius (1618–1689) made part of his career by inheriting the social and intellectual capital of his father Gerardus, including his library and epistolary network. Students with as yet little accomplishments to be commended for had to rely not only on their potential (their zeal, perseverance, modesty, talent, and trustworthiness) but also on the reputation of their parents to be eligible as citizens of the Republic of Letters (Bots 118). Conversely, we regularly come across complaints by mothers and fathers about sons who misbehaved or decided to choose alternative career paths. Thus, the independent-minded Pieter de Groot (1615–1678), son of the great Grotius, insisted on training as a lawyer, against the will of his parents. When he had made himself impossible as a boarding student, his mother complained in a letter to him: ‘How much do parents suffer, which they wouldn’t if only their children were what people wished them to be’ (Reigersberch 220).

In public life, however, ‘the two most important [factors] are the market as the coordinator of economic activities, and the state as the coordinator of politics’ (Prak 12). As for the market: Joel Mokyr, in his theories about the conditions that made the Industrial Revolution possible, pointed to the Republic of Letters as a key prerequisite for the free circulation of knowledge. He in fact characterizes the Republic of Letters as a ‘market for ideas’ (Mokyr, *A Culture of Growth* 187, 190, 202). And if we speak about ideas, we should not forget that those ideas translated into money for Europe’s many printers in the highly developed print industry, with companies having dozens of employees and having to invest heavily for risky profits. The spectacular rise of the scholarly journal at the end of the seventeenth century would suggest that scholars became more dependent on an actual market economy.

The Republic of Letters was no real state, of course: there was no prince or army, there were no judges. But the State did play a role in controlling the behavior of those citizens of the Republic of Letters that happened to be its subjects: princes were seldomly acknowledged as scholars, but they could censure the press, intercept letters, and silence people who fell under their jurisdiction. Louis XV of France had his agents and spies keep detailed files about Parisian inhabitants of the *République des Lettres*, in particular those who had information detrimental to himself or members of the nobility, and he jailed philosophers who crossed his line (Darnton 145–189). But they crossed the line of French ‘subject-ship,’ rather than French or Parisian citizenship, let alone the citizenship of the Republic of Letters. The same applies for the Churches – in the plural, for it was not only the Catholic Church (Roman and in particular the Post-Tridentine Church), but also the various Protestant churches who enjoyed different grades of political backing: in 1553 the scholar and theologian John Calvin had the free-thinking polymath Michel Servet burnt at the stake, but Calvin did so as a leader of the clergy, not as a consul of the Republic of Letters.

After the market, the family, and the state, there was a fourth mechanism that coordinated actions of citizens: the voluntary association (Streeck and Schmitter). Surely, the scholars who participated in the Republic of Letters did so of their own free will, although opting out as a socialized scholar would have hardly been an option (see the following case of the learned Anna Maria van Schurman (1607–1678), who burnt most of her ships when she renounced her learning). The voluntary association, then, did require the adherence to certain patterns of conduct that were embodied and transmitted as social capital. Without these, it was difficult to come to a form of collective action. From the end of the seventeenth century onwards, the codes of how to behave as a scholar (not your regular *cortegiano* or *compleat gentleman*, although they shared much in their social dispositions) became articulated as the substance of teachings at university (Kivistö). Associating with the Republic of Letters required adopting such patterns.

The family, the market, the state, and the voluntary association were all relevant in coordinating citizens’ agency. To different extents, they also help to understand who qualified for citizenship in the Republic of Letters. There is, therefore, a case to be made to at least define the citizenship of the Republic of Letters as governed by the codes of conduct of a voluntary association of a bottom-up collective of free men who competed through a market for ideas for social and intellectual standing and hence for jobs in the services of universities, churches, and princes: *studium*, *sacerdotium*, and *regnum*.

The adherence to behavioral patterns leading to membership of a community can be labeled ‘cultural citizenship.’ Cultural citizenship ‘considers citizenship beyond its legislative status and acknowledges the relationship between culture and citizenship’ (Beaman 852). The notion of cultural citizenship is used as an analytical framework to understand why in modern societies people who have the full legal status of a citizen do not participate fully in society. They are marginalized because they are denied ‘cultural citizenship,’ that is, they do not adhere to

what is experienced as the dominant culture. Hence, cultural citizenship considers other social statuses, including gender (Beaman 854–855). Since this concept focuses on the ‘sense of belonging’ instead of on the State, we can apply it to a virtual community such as the Republic of Letters, which was never a real State in the first place.

Fulfilling the imperative of sharing knowledge was crucial for being accepted amongst the ranks of the people who made up the Republic of Letters. This culture of exchange was deemed possible because of the fundamental freedom that the Republic of Letters upheld: an exchange in a sphere of (affective and instrumental) ‘friendship,’ a *libertas philosophandi* was supposed to make the Republic of Letters into a refuge from censorship and tyranny. Censorship was condemned, knowledge had to flow, and libraries should be open to all scholars (Mokyr, “The Commons of Knowledge” 37; Goldgar 3; Grafton; Bots 55–57; Kivistö 24). It is exactly in this ideal of sharing knowledge that women were impeded by the family, the market, the State, religious authorities, and the norms of the voluntary association that was the Republic of Letters.

A women’s Republic of Letters?

It is a well-known and often repeated fact that women struggled to gain access to the world of learning. A number of conditions made it difficult for women to manifest themselves in the Republic of Letters. First, considering the State, women were barred from a formal education in Latin, whereas active knowledge of Latin was a prerequisite for participating in a debate that was largely carried out in Latin and that largely drew on Latin (and increasingly Greek) sources. Second, women had the disadvantage that their primary duty was not in the public ascertainment of learned agency, but in the roles of wife, mother, and manager of the household, roles stressed by the State and the Church and structured by the family. Taking part in arts and sciences was regarded as an inevitable distraction from these tasks (even if male scholars also had a share in running the household and looking after the children). A third obstacle was ‘scientific’: the argument that women were mentally, psychologically, and physically inferior to men and not created to carry out scholarly labor. These roles were supported by social, political, and religious arguments, familiar to any patriarchal society. The result is that the representation of women in the sources concerning the Republic of Letters is limited. Part of this is due to the structure of the archive itself, which was shaped by patriarchal concerns. Take for example the letters of the influential Huguenot scholar Isaac Casaubon (1559–1614). The posthumous edition of the correspondence of Casaubon, published in 1638, silently omits numerous references to his family life, apparently in an attempt to construct Casaubon’s posthumous identity as a more masculine and disembodied hero (Botley and Vince 65–66). There is enough evidence, however, that girls, even if they could not attend Latin grammar schools, did occasionally learn Latin when they sat at the family table shoulder to shoulder with their male siblings struggling with their homework. Girls from

well to do families sat in on the private lessons of their male siblings; that is the way in which the aforementioned scholar Anna Maria van Schurman learned her first Latin.

The constraints for women are known, but the problem today is women's visibility, rather than their agency. An estimated 14% of the astronomers in German territories between 1650 and 1710 were women, but their role has been largely written out of history, since their names were not printed on title pages and since they left the corresponding to their husbands (Schiebinger, "Women of natural" 200). Three women occupied professorial chairs at eighteenth-century universities in Italy, but there were many more women involved in observing, calculating, registering, and actual writing. Some actually published. In the period until the French Revolution, "Latin literacy actually includes far more women than have been recognized" (Churchill et al. 2). But few of them, as far as we currently know, kept a sustainable epistolary exchange going, and that was the prime pattern of conduct to gain full citizenship of the Republic of Letters.

The Republic of Letters was all about sharing, in particular through correspondence. The problem is not that women failed to share. Rather, they did the opposite: they shared without claiming ownership. With no written letters as evidence of their sharing practices, they struggled to engage in the recognizable reciprocal social relationships that structured the Republic of *literati*. In short, women largely failed to participate in the market for ideas. This market for ideas is not merely a metaphor: the early modern book market was extremely large and competitive. But since female authorship was commercially risky, the learned production by women was often published anonymously or through male pseudonyms.

This does not mean that some women did not try to carve out a space for themselves within the Republic of Letters. Laura Cereta (1469–1499) in a letter of 1488 spoke about a *muliebris respublica*, a female republic (Cereta, *Epistolae* 195). Scholars have mistakenly taken this to be a variation of the *respublica literaria* (Robin 11, 74). Apart from the fact that the 'Republic of Letters' was no household name yet by 1488 (we now know of only two earlier mentions on record, of 1417 and 1484, and these had not appeared in print by 1488), Cereta does not describe a contemporary networked world of learning and exchange but a catalogue of famous intelligent women, throughout the ages: a 'history' of learned women from the times of the Old Testament onwards up to Tullia Cicero and then suddenly jumping forward to her near-own time with the humanists Nicolosa Sanuti (d. 1505), Isotta Nogarola (1418–1466), and Cassandre Fedele (1465–1558). This list of famous women has been called a 'genealogy,' but Cereta does not hint at any transmission of learning from one generation to another. Carol Pal is certainly correct that this vision of a 'Republic of Women' was rooted in Christine de Pizan's *La Cité des Dames* from 1405 (which also reviews a long list of famous women, both real and fictional ones) (Pal 178–179). Thus, the idea of a 'Female Republic' actually *precedes* the 'Literary Republic' as a phrase. Yet, the concept had no further history of reception, although catalogues of famous women (including scholars) continued to appear throughout history. In fact, the

inventories of de Pizan and Cereta are contributions to the *querelle des femmes*, a centuries long discussion (which is still ongoing) running from Boccaccio's *Concerning Famous Women* (1365), via de Pizan, Henricus Cornelius Agrippa's *Declamation on the Nobility and Preeminence of the Female Sex* (1526), Lucrezia Marinella's *The Nobility and Excellence of Women* (1600), Marie Le Jar de Gournay's *Equality of Men and Women* (1622) (Gournay), Johan van Beverwijck's *On the Excellence of the Female Sex* (1639) (Beverwijck), Schurman's *Dissertation about the aptitude of women's nature for science and arts* (1641) (Schurman), Otto Sperling Jr.'s *On learned women* (unpublished, c. 1670–1710) (Sperling) and Gilles Ménage's *History of Women Philosophers* (1690) (Ménage) to Mary Astell's *A Serious Proposal to the Ladies, for the Advancement of Their True and Greatest Interest*, 2 vols. (1694 and 1697), the periodical *The Female Tatler* (1709–1710) and *The Ladies Library* (1714), as well as the anonymously published *Women not inferior to Men* (1739, presumably authored by Mary Wortley Montagu), and on to Wollstonecraft and later feminist authors (Findlen 108–109). To what extent these authors (both male and female) went beyond defending women's intellectual and social equality (or superiority) to men and argued for active participation in the *commercium literarium* of the Republic of Letters remains to be studied. But this *querelle* shows that the Republic of Letters was divided, and that female citizenship was in fact contested – the arguments against women as participants are cited at length before being demolished in the works listed earlier.

A women's Republic of Letters would mean a network of female scholars engaged in the exchanging of knowledge and acknowledged as a community by themselves. But although Cereta mentioned Cassandra Fedele as a famous scholar, she was disappointed that Fedele, indeed Europe's best-known female scholar at the end of the fifteenth century, neglected to write a response to her well-crafted letter of 1487 in which she presented herself to her colleague (Cereta, *Collected Letters* 141–144). According to Cereta, Fedele had violated the show of friendship by speaking low of Cereta's learning. Fedele ignored the trust that Cereta had offered (Cereta, *Collected Letters* 145–148). Cereta maintained intellectual contact with at least four nuns (Robin 6), but this hardly constituted a sub-network. And to be accepted as a member of the Republic of Letters, one did not want to create a minority network but participate in the dominant culture. To do so required more than being a polyglot. For a woman to be part of the scientific and scholarly discussion required active and sustained contact and the acknowledgement of such learned interaction.

There were always such women who crafted their networks through correspondences and in particular through the exchange of occasional poetry. Isotta Nogarola (1418–1466) addressed Latin letters to the best-known scholars of her time, and these letters circulated widely, soliciting praise and further contacts. But it proved a precarious business: the humanist scholars who were interested in these letters might have blamed the negligence of one of them to reply, but the burden was on Nogarola, who in the eyes of the scholars was rejected and thus humiliated. A subsequent allegation of sexual depravity was enough to force her

into religious retreat, which ‘resolved the anomaly of the learned woman in the minds of her critics’ (Parker 14).

Elisabeth Weston fared better. In exile from England, Weston ‘succeeded in publishing the only female-authored volume of neo-Latin verse known to exist’ (Hosington 222). She approached a number of scholars by sending them an edition of her Latin poems, usually not directly but through an intermediate so as to maintain an air of modesty. It forced celebrities such as Joseph Scaliger to write his only Latin letter to a woman on record (1602), praising Weston for her accomplishments. The letter is a string of compliments, admiring Weston, ‘miracle of virtues,’ for her ingenuity: it is ‘rare’ to write such good poetry at young age, and it is ‘unusual’ for a woman: it is wondrous rather than desirable. Scaliger praises Westons’ *linguarum commercium* (her linguistic fluency), ‘which seems not to be acquired, but innate’; her ‘virtue’ makes Scaliger wish for her friendship (Scaliger, 4: 451–452). Scaliger underplays Weston’s agency by suggesting she is a miracle of nature (the word ‘admiration’ appears four times within the space of four lines) who never worked for her talents. He also makes clear that it was a male scholar, in fact the nominal editor of the edition of Weston’s Latin poetry, who made him aware of Weston’s existence. Weston thus outsourced her advertising to a male colleague, obfuscating her own agency. In her answer, she assures that Scaliger was exaggerating:

I revere your judgement with a grateful mind, but you know the customs and the time we are living in. I strive, however, to do whatever is in my power to pursue, increase and maintain with piety, virtue and industry what you and your peers grant me.

(Scaliger, 4: 498)

With these obligatory phrases, the exchange seems to have ended. It is the only letter from Scaliger to a woman that has survived; there are 20 more letters, in French, in his correspondence of 1669 items that were addressed to him *by* women. Weston was not the only female poet to dedicate a Latin poem to Scaliger: in 1606, Scaliger compliments his correspondent Marquard Freher (1565–1614) with the poetical talent of his wife Margaretha Boxias (or ‘Bockin’) von Gutmannsdorff (fl. 1606), who had written a poem about her husband’s thirst for Scaliger’s books. Scaliger responded by a humorous poem in which he praises Margaretha and Marquard and devaluates his own importance (Scaliger, 6: 465–366). While Weston used the book market to build her career, she and her male correspondents played down her own agency: she voluntarily wanted to associate herself with the Republic of Letters, but it appeared that she was not *too* willing to do so.

Women routinely, like Weston, marshalled the help of male peers to pave the way for access to the epistolary networks and thus to citizenship of the Republic of Letters. Anna Maria van Schurman found *pères d’alliance*, for example in the doyen of Utrecht University, the professor of theology Gisbertus Voetius,

whose public lectures she famously attended from behind a curtain in a niche of the lecture hall, making her the first female university student in Europe. She also sought out the protection of another extremely authoritative theologian, who was connected to the princely court of the stadholder in The Hague, André Rivet. Schurman made sure to dismiss herself from societal obligations by not marrying – a resolution she ascribed not to herself but to a promise she made to her own father on his deathbed. Despite this deferment of responsibility for her unmarried state, Schurman did assert herself. She was looked up to by learned women as an example: they sought contact with her and followed her strategy of gaining male intellectual protégés. She maintained a lifelong friendship with philosopher Elizabeth of the Palts, acted as a patroness to Marie Moulin, gained the respect of the older Marie de Gournay (the publisher of Montaigne's *Essays*), and struck up correspondences with the philosophers Dorothy Moore and Lady Ranelagh and with the Hebraist Bathsua Makin. These female networks and the fact that they were imbedded into the wider Republic of Letters bely the idea that the Republic of Letters was an exclusively male affair (Pal). But Schurman spectacularly went her own way when she decided to break with the reformed orthodoxy she had endeared and decided to support the religious deviant Jean de Labadie, a Catholic turned Protestant turned Prophet. It is said she 'followed' Labadie, but she actually actively helped Labadie establish himself with the support of her own female network. This led to her exclusion from the Republic of Letters and to a 'smear campaign' (Van Beek, *The First Female* 222). The effects are noticeable in her surviving correspondence: from the 235 dated letters, 88% is from before the break, even if she lived another eight years (customarily the last decade in scholars' lives are most productive in terms of correspondence) (Sint Nicolaas). Maybe she continued to write many letters, but then they were not kept any longer, signifying posterity's bias against deviant behaviour. What has survived suggests that instead of corresponding with highly regarded citizens in the Republic of Letters she now sought out contact with lesser known figures. The spiritual leader Antoinette de Bourignon (1616–1680) fully exploited the dynamics of the epistolary genre by publishing her insights in the form of letters – most of which are actually likely to be not fictitious but really part of an epistolary conversation. The letters allowed her to expose her personality (essential for a mystical prophetess) and to rephrase her thoughts in different ways to different interlocutors in a direct way (Baar 216–224). No correspondence of the classical scholar Anne Dacier (1647–1720) has been published, but her contribution to scholarship was acknowledged by important male peers such as Gilles Ménage, Pierre-Daniel Huet, and later Voltaire (Wyles 66–67).

The rise of the scholarly and scientific journal in the second half of the 17th century ensured that women also gained access to learned knowledge, in particular since these journals often appeared in the vernacular. Anne-Marguerite Petit, Madame Dunoyer (1663–1719), ran a journal *Quintessence des Nouvelles historiques, critiques, politiques, morales et galantes* from 1711 to 1719 that appeared

no less frequently than twice a week. Marie Leprince de Beaumont (1711–1780) likewise reached an international audience by touching on gender-related issues (Bots 183).

Many learned women are only starting to be brought to light in the twenty first century. A string of scholars who all were styled ‘a second Schurman’ by their contemporaries has now been identified: Francina Christina Roscam (fl. 1730), Hyleke Gockinga (1723–1793), Anna Elisabeth Buma (1750–1825), Elizabeth Carter (1717–1806), and Jacoba (Coosje) Busken (1759–1841) (Capitein xv; Everard 87; Van Beek, “Een vrouwenrepubliek”; Van Beek “Huet”). Schurman was for female scholars what Erasmus was for male scholars: the benchmark for excellence. But a second Erasmus fully partook in the learned economy of the Republic of Letters – most of the time, a ‘second Schurman’ did not. Their citizenship of learned women was successfully contested. Being erudite was not enough to be accepted as a citizen of the Republic of Letters: one needed, like Schurman, regular learned interaction. Roscam and Buma left no correspondences at all, and they were never acknowledged in the learned world.

Gockinga, a woman from a family of high social standing and author of a hefty commentary on Genesis, wrote at least a dozen letters to the professor of theology Paullus Chevalier (1722–1796), rector of Groningen University. Chevallier was closely tied into the Republic of Letters: he exchanged letters with hundreds of people (there are over 600 unpublished letters written by him) (CEN). Gockinga apparently sought him out as a *père d’alliance*, marshalling through him the support of the theological faculty of the University of Groningen for the approbation of her books. As a result, her work was taken seriously by scholarly journals that published positive reviews of her commentaries and translations. The polyglot Buma, on the other hand, evidently felt that her citizenship of the Republic of Letters was contested: she led a sad and secluded life in Leeuwarden, seeking relief in composing poems and keeping a chronical of cultural, political, and scientific events. To a friend she is recorded to have said ‘Oh, don’t mention that I read all those languages, because a learned woman is shunned. The women usually fear her and the men, even the learned, don’t bear well that a woman has more than ordinary knowledge’ (Van Beek, “Anna Elisabeth Buma” 29).

Another example of a learned woman whose position was precarious, despite her important contributions to the history of scholarship, was the English scholar Elizabeth Elstob (1683–1756). One of the founding parents of the study of Anglo-Saxon, she earned her money as small-time school teacher. She had been introduced to a group of scholars known as the ‘Oxford Saxonists’ by her brother William, who studied in Oxford. Although she was acquainted with Mary Astell and her circle of learned women, she proved unable to survive economically after the death of her brother and went into hiding to escape her creditors. She took on a new name and barely made it as a school teacher, until she finally landed a job as a governess in an aristocratic family, and she struck up a correspondence with George Ballard. But she remained ‘on the margins of scholarship’ (Hollis).

Exemplary is the letter that Mary Wortley Montague addressed around 1742 to the long-dead Schurman (in a humanist fashion like Petrarch's fictitious letters to authors from Roman antiquity). In it, Montague expressed the wish to be admitted into Schurman's coterie of women (Pal xiv).

Women in positions of power fared better. The German Henriette Catherina Von Gersdorf-von Friesen (1648–1726) or Frisius, read the Bible in Hebrew and Greek, corresponded with learned men, and composed Latin poems (Langer; Von Rantzau 2). A patron of leaders of the Lutheran pietist movement, she was also a talented painter and musician and engaged in a critical epistolary conversation with Leibniz (Zinzendorf xiii). It was to her and to the learned Margarethe Sibylla Lösser that the German student of philosophy Johannes Sauerbrei at the University of Leipzig in 1671 dedicated his disputation *About the erudition of women (part 1)*. In theses of this disputation, he counters, step by step, the argument that nature and history demonstrate the inferiority of women's intellectual capacities. In his prologue he cites with approval the opinion of Erycius Puteanus, Flanders' most popular seventeenth-century professor, that 'it is human and divine law that women are ascribed to the Republic of Letters, are trained in the cultivation of the finest arts, and are not excluded from gaining fame and immortality' (Sauerbrei A4^r). Sauerbrei's two-part *Diatribes* inscribes itself in the *querelle des femmes*, cataloguing famous women but also arguing from all sorts of perspectives for intellectual equality of men and women. The interesting aspect is that he fights the contestation of women's citizenship of the Republic of Letters explicitly, and that he does so in an educational context: as a student defending theses, not as an outsider with a programme demanding access.

Successful in winning acknowledgement was also Anne Dacier-Lefèvre. Although we have no published correspondence of her, her family connections gave her a good start: she was the daughter of a well-connected classical scholar and first married a publisher and then another classical scholar (Bury). Although stories about illegitimate relations were not from the air once she had made her name through numerous editions and translations of classical texts, she was the dedicatee of Gilles Ménage's catalogue of women philosophers from antiquity. Incidentally, Schurman herself is also mentioned in Ménage's work, where he discusses the famous philosopher Hypatia (d. 415) and corrects the polymath Claudius Salmasius, who in 1645 praised Schurman calling her 'our Hippias' (Ménage 63; Salmasius b6^v).

In short, citizenship for women in the Republic of Letters remained precarious. A counter-Republic of Letters for women never took shape, at least not as an actor's category. Women very often sought the patronage of male peers. Male early career scholars did the same of course, but they outgrew such strategic alliances once they had established themselves. Women who maintained themselves in the Republic of Letters were either of noble descent, such as Gersdorff-von Friesen, or they were single or without children. Only very occasionally did the daughter of an established classical scholar like Anne Dacier, born Lefèvre, carve out a reputation of her own for her scholarly work.

Conclusions

If citizenship is coordinated by the family, the market, the state, and the voluntary association, it should be concluded that the family heavily impacted women's citizenship: it was Schurman's relation with her father (he made her promise not to marry), that fulfilled one condition for her to partake in the scholarly economy of the Republic of Letters. Cassandra Fedele's success as a scholar diminished after she married. It was her elevated social position that allowed the Palatine princess Elisabeth of Bohemia to engage in long term epistolary contacts. Henriette Catharina von Gerdtsdorff-von Friesen was the daughter of a social climber who gained the noble title of *Freiherr* in 1653 and who resided at a large estate where she patronized leading pietists (Langer 47). Anne Dacier was the daughter of a well connected classical scholar, and first married a published and then another classical scholar (Bury). In the case of women, family appears to have had much more impact than in the case of men on being accepted as citizen of the Republic of Letters.

The market likewise worked against women: books by women or defenses of female qualities were often printed only anonymously or by little known publishers, as is the case with Gockinga's biblical commentary, today available only in four copies (one in Groningen, where she lived herself, one in the Hague, and two in the United States). Instead of the State, we should consider the Church as a power controlling women's citizenship of the Republic of Letters. It is no coincidence that women, from Schurman to Gockinga, targeted religious leaders as *pères d'alliance*: the best protector a woman could have was an authority on proper Christian conduct, or a princess. Dacier converted, together with her husband, to Catholicism in 1685, a month before the Revocation of the Edict of Nantes, apparently to prevent jeopardising the continuity of their philological activities. The example of Weston, who used a male proxy to contact Scaliger, indicates that women had fewer opportunities to strike up a line of contact than men. When women participated in scholarly debate, their sex was always an issue that needed to be addressed. This asymmetry (masculinity was never in need of defense) means that women's citizenship of the Republic of Letters remained contested. Nevertheless, throughout the history of this virtual community, they permanently managed to have themselves represented.

In short, acceptance of citizenship was not predicated solely on being a polyglot, on being able to read and publish in Latin, and on publishing learned books. It was as much conditional on sustained learned interaction and exchange, through writing letters or teaching at an academic institute. Even if women adhered to required patterns of conduct such as engaging in the economy of occasional poetry, they still struggled to gain social recognition as a scholar. For women, the essential practice of *commercium literarium* was restricted through the family, the market, the State, the Church, and the social rejection of female scholarly agency. That agency was obscured due to the masculinization of the type of authorship that was accepted in the Republic of Letters. Female authorship was also made

invisible because of the marginalization of alternative types of authorship, such as ‘writing by women cited in male-authored texts; anonymous voices in . . . marginalia, and mortuary rolls; and, perhaps most complex of all, women who collaborated with scribes’ (Churchill et al. 3). The Republic of Letters was structured by asserting authorship through self-presentation, in particular through letter writing (Van Houdt et al.). The Latinate culture of the West raised ‘barriers that restricted women’s full participation in Latin culture – prohibitions against receiving a formal education, teaching outside the home or convent, and speaking or preaching in public,’ which women had to circumvent in one way or the other (Churchill et al., 3). One option was to write letters and sometimes to construct female sub-networks within the Republic of Letters – ‘provinces’ so to say, which the historian with hindsight is tempted to label as a ‘Women’s Republic of Letters’ – such as the networks in which Anna Maria van Schurman, Elisabeth of Bohemia, and Christina of Sweden played a central role. However, the egalitarian and meritocratic self-image of the Republic of Letters was an ideal that only men could seek to realize with some hope of success. ‘Traditional conceptions of citizenship are based on a common culture that makes some citizens more or less accepted than others. By culture, I am referring to the norms, values, practices, and behaviors that are seen as normative’ (Beaman 852). Beyond the State, in the Republic of Letters, such normative patterns were in place, and we have demonstrated how they were structured through the family, the market, and the State, and that voluntary association with the Republic of Letters confirmed such normative patterns. This rendered a woman’s career in learning different and caused women’s citizenship of the Republic of Letters to be contested.

Note

- 1 This chapter was written in the context of ERC Consolidator Project (grant agreement No 724972), ‘Sharing Knowledge in Learned and Literary Networks (SKILLNET): the Republic of Letters as a pan-European knowledge society’ (2017–2022). I am indebted to Pieta van Beek, Samantha Sint Nicolaas, Iris Stofberg, and Arnoud Visser for pointing out some relevant sources.

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The art of dissent

Ai Weiwei, rebel with a cause¹

Sandra Ponzanesi

The artist as intellectual

In December 2018, the prominent Chinese artist Ai Weiwei unveiled a flag to mark 70 years of the Universal Declaration of Human Rights. The light-blue flag has a footprint made up of white dots at its center. The design was inspired by Ai's time spent visiting Rohingya refugees in Bangladesh, who were forced to flee attacks in *Myanmar*. While he was in the refugee camp, he noticed that nearly everyone was barefoot. He was inspired to see the bare footprint as a symbol for displaced people but also as a symbol of our common humanity. He took 100 muddy footprints of people, young and old, in various locations, and combined them in his design.

Ai hopes his design will act as a visual reminder for people to educate themselves on the meaning of human rights, to offer hope and to encourage further debate on the importance of human rights. "It's about human identity," says Ai in a video released to accompany the launch. "Human rights is not a given property, but rather something we can only gain from our own defense and fight [. . .] Not many ideas can relate to this very broad, but also very special, topic."² Elsewhere he explains, "As humans, as long as we can stand up or can make a move, we have our footprint."³

The flag was flown for seven days in June 2019 to mark the 70th anniversary, as part of the human rights grassroots' awareness campaign called Fly the Flag.⁴ Ai Weiwei commented: "I am honored to have the opportunity to design a flag for the 70th anniversary for the Universal Declaration of Human Rights." He added, "as we all come to learn, human rights are the precious result from generation after generation's understanding of the human struggle. I am proud to be a part of this force."⁵ "Flown both physically and digitally, the flag will remind people of the international commitment made to ensure a minimum standard of safety and dignity to every human being," said the organizers. "We are living through turbulent times. Political instability, economic inequality, social change and technological revolution create new challenges and uncertainties," they added, and "the Universal Declaration of Human Rights offers people a beacon of hope in these uncertain times."⁶

The dissident artist, who has been in exile in Berlin since 2015, is considered to be one of the most prominent human rights activists worldwide. His peculiar mix of art and politics in the contexts of human rights, freedom of speech, and migration issues has made him into an intellectual icon of global stature. He comments relentlessly on the shortcomings of the nation states, China in the first place but also the United States, and of The European Union as an institution. He does so by using a wide range of art forms, media, and platforms. He is on the world stage as a denouncer of gross human rights violations, as a spokesperson for the exiled and disenfranchised, and as a rebellious opponent of authoritarianism and censorship.

His extensive oeuvre, which spans the fields of art, curating, installation, photography, architecture, film, happenings, blogging, and social media platforms, has inspired many followers and brought to center stage issues that authorities and repressive regimes prefer to sweep under the carpet. Iconoclast and uncompromising, Ai Weiwei could be defined as a public intellectual who navigates the terrain between individual expression and collective action. He is famous for crossing boundaries, not only between art and politics but also across different media genres and platforms, combining an attachment to tradition with postmodern irreverence, artisanal craftsmanship with seriality and commercial branding, foregrounding the materiality and everydayness of ready-made objects with high symbolism, mixing values and doctrines with ‘in-your-face’ confrontation and contestation (see the *Fuck Off* installations throughout the world, between 1995 and 2003, in which he showed his middle finger in front of canonical vestiges of power such as the White House, Tiananmen Square in Beijing, the Eiffel Tower, etc.).⁷

Yet, despite his fame and notoriety there is very little scholarship on Ai Weiwei. Information is mostly of journalistic nature or linked to exhibition catalogues, but a systematic analysis is missing.⁸ Of interest is the maxi Taschen edition, *Ai Weiwei*, edited by Hans Werner Holzwarth and published in 2016, which offers a detailed overview of his life and works and collects some of the scattered essays on the artist. Included are texts by art promoter Uli Sigg and by academic William Callahan, a professor of International Relations at the London School of Economics with expertise on the global politics of China. Callahan has written a fascinating essay on Ai Weiwei based on his 90-minute interview with the artist at his studio in Beijing on May 27, 2013. As Callahan writes, “Ai Weiwei is an inside/outsider, an outside/insider, who mediates between different groups, first in art, then in architecture, and now in politics [. . .] Ai is the go-to-guy for dissidence in China” (Callahan, “Citizen Ai” 912).

It is interesting to insert Ai within a contemporary definition of the public intellectual, which includes art and activism as forms of engagement for changing the public sphere. This kind of intellectual, who operates outside the boundaries of the West, brings to the fore the positions and voices of marginalized people but also of art forms that would not normally be considered ‘high art’ or worthy of being included in museums and receiving serious critical consideration. His main

friend, promoter, and defender in the West, Swiss art collector and former ambassador to China, Uli Sigg, warned Ai to be careful, “‘Don’t let them mix your position as an artist and a political activist’ because ‘political art’ is not a good word” (Callahan, “Citizen Ai” 901).⁹

Although he is a global political figure, the politics of his work have attracted little academic attention and analysis. As Callahan writes,

Perhaps this is because Ai is a polarizing figure: people either love him as a human rights activist or loathe him for playing the dissident-hungry Western media. Ai’s activities are likewise full of contradictions: He is a global artistic force but has little artistic presence in China. As a dissident, Ai characteristically targets the state as his enemy; but at times he also works closely with the state on his various projects.

(“Citizen Ai” 899–900)

Therefore, it might be better not to seek to resolve the contradictions of Ai as either a human-rights hero or stooge of the neoliberal West, but to look for the productive interactions between Ai as an artist and Ai as an activist intellectual who offers a model of civic engagement to promote cultural and political change through innovative and groundbreaking artistic manifestations. At least since the inception of the term at the onset of the 20th century, the term “intellectual” has designated a politically engaged figure who is deeply embedded in society rather than standing outside society. Yet, although public intellectuals are endowed with the difficult task of representing, or speaking for, specific social groups, they are also called upon to stand outside by being “objective,” “neutral,” or “independent” (Spivak). In this sense, they are *organic*¹⁰ to those constituencies, and their critical role allows them to mediate between one or more publics and institutions. (Gramsci; Bourdieu; Robbins)

As such, Ai much deserves the label that Edward Said reserves for the intellectual as someone who belongs to the established intelligentsia yet is always slightly out of place, unsettled, and unsettling. Said deems this figure *exilic*: an adjective to be understood both literally, as in belonging nowhere (here, Said draws on his own experience of displacement) and metaphorically, as in “outsider, amateur and disturber of the status quo” (Said x). Amateurship is particularly relevant, for it safeguards intellectuals from the threat of expertise. Since they operate within the boundaries of institutions, they must maintain a “relative independence” (xvi), that is, an almost romantic spirit of opposition and dissidence (Said).

An intellectual is therefore someone who speaks truth to power. Yet the role of public intellectuals is not merely a question of speaking up in the name of others. As Foucault pointed out in his interview with Deleuze, the idea of ‘speaking for’ has ethical implications, as the public intellectual not only takes responsibility

for speaking for others but can also end up ventriloquizing and silencing them (Spivak). Therefore, the role of public intellectuals is particularly complex for non-Western or (post)colonial intellectuals who juggle competing regimes of political representations, individual and collective, playing a crucial role within their community as well as in the host society. I have considered elsewhere the figures of (post)colonial public intellectuals, trying to avoid normative definitions in favor of more nuanced and complex understandings that would include artists, activists, and movements as influential in changing public opinions and representing/foregrounding the interests of marginalized groups (Ponzanesi and Habel). Therefore, it is important to acknowledge that intellectual labor is also performed outside academia, and that the myth of intellectuals is also informed by professions and market dynamics (Robbins, *Intellectuals: Aesthetics; Secular Vocations*; Small).

The definition of the intellectual is brought forward also by Callahan in his definition of Ai as the citizen intellectual. By comparing Ai's work with that of other public intellectuals and placing it in the context of civil society, the notion of 'citizen intellectual' emerges to include a broader movement of activists and public intellectuals who are creating a new form of political space. Citizen intellectuals are liminal figures who sometimes work with the state and sometimes against the state. Citizen intellectuals do not worry about these contradictions because they value what is good for humanity and the interplay between "structure and agency, radical opposition and embedded action, and individual activity and community building" (Callahan, "Citizen Ai" 905).

The notion of 'citizen intellectual' starts with the Czech dissident and later president Vaclav Havel's 1978 analysis of civil society in "The Power of the Powerless." Havel suggests that being a dissident can be counterproductive because it isolates intellectuals as an exclusive group separate from the rest of society. Rather than arguing that an elite movement can lead a revolution, Havel thought that everyone can contribute by making their own revolution by "living in truth" (58). This implies rejecting the lies of the regime. But it is also important to do small-scale work to create parallel cultures and parallel markets and thus a parallel society that exists side by side with official culture. Havel argues that ultimately, official structures "simply begin to wither away . . . to be replaced by new structures that have evolved from 'below' and are put together in a fundamentally different way" (qtd. in Callahan 914). It is noteworthy that Ai won the inaugural Václav Havel Prize for Creative Dissent in 2012.¹¹

Citizen intellectuals are independent voices not because they stand in opposition to power, but because they take advantage of the new opportunities offered by China's elastic social space to choose when to work with or against the state. "While not political in the sense of always directly criticizing the party-state, citizen intellectuals are certainly political in the broader sense of probing the boundaries of what is allowed in Chinese society" (Callahan, "Citizen Ai" 916). Rather than judging Ai as either a dissident or an official intellectual, the flexibility of the citizen intellectual allows individual events and activities to be put into a broader

and more nuanced context. For example, in the case of Ai a connection can also be made to the notion of ‘citizen media’ due to his engagement with multi-media platforms (from blogs to Twitter and Instagram). ‘Citizen media’ refer not only to the form or content produced by non-affiliated citizens but also to the impact they make in the public sphere and the way in which they propose to transform it. Citizen media are therefore meant to operate through a wide range of art forms, creating diversified political interventions pursuing a more inclusive agenda (Baker and Blaagaard). Therefore, the figure of Ai could be better labelled as that of citizen media more than citizen intellectual as he actively engages in transforming the public sphere through different media engagements.

Genesis of a dissident artist

Ai Weiwei is an artist, dissident, provocateur, and human rights activist who has come to be the face of China in the contemporary art world. Born in Beijing, China, in 1957, Ai Weiwei grew up during the nascent stages of China’s Cultural Revolution, which saw the persecution and exile of artists, writers, and intellectuals who were perceived to be a threat to Mao Zedong’s Communist sociopolitical movement. Ai’s father, the renowned poet Ai Qing, was one of the 300,000 intellectuals forcibly displaced to rural labor camps as part of the Down to the Countryside Movement, where he and the rest of his family endured unexplainable hatred, discrimination, unprovoked insults, and assaults. Ai Qing was later hailed as a great national poet after the death of Mao Zedong in 1976. Ai Weiwei was only 12 months old when his family was sent to labor camp. He suffered greatly as a young child from the poverty and repression, but also used that period to learn how to craft something out of nothing and develop a phenomenal aversion toward authoritarianism and dehumanization.

In 1981, Ai moved to New York, where he spent his most formative years from the age of 24 to 36. He enrolled to study visual art at the Parsons School of Design at The New School, but he dropped out after only six months and had to scrape by as a street artist and by working odd jobs. With no diplomas and “not even a half-decent art career,” Ai Weiwei visited “every single exhibition,” moved frequently, gambled during the weekends, and was more of a “thinking artist” than one who actively produced (Sigg 8). Several modern artists inspired Ai’s use of found or recycled objects from everyday life, including Marcel Duchamp (1887–1968), Jasper Johns (b. 1930), and Andy Warhol (1928–1987). He developed in particular a deep appreciation of Marcel Duchamp’s ‘ready-mades’ – found objects of everyday use elevated to the status of art – and their implied critique of cultural value systems. The influence of Pop Art and Andy Warhol’s serialization is also evident in his later work.

In 1993, upon learning that his father was ill, he returned to China, where he started to become a prominent artist, architect, and social media activist. Connected to this period of return are some of Ai Weiwei’s most famous and provocative artworks, such as the series featuring Chinese antique urns – some more than

2,000 years old. He bought antique Neolithic urns and transformed them into contemporary art works.

Ai's *Neolithic Culture Pot with Coca-Cola Logo* exemplifies this crossing of boundaries within a single artwork. By whitewashing an ancient urn in *White-wash* (1993–2000), and branding an antique pot with the Coca-Cola logo, in *Han Dynasty Urn with Coca-Cola Logo* (1994), an obvious symbol of Western ideals and reminiscent of mass production and Andy Warhol's style, Ai brings together both traditions to question the global capitalistic system.

One of Ai's most famous pieces, *Dropping a Han Dynasty Urn* (1995), incorporates what Ai has called a 'cultural ready-made.' The work captures photographs of him as he drops a 2,000-year-old ceremonial urn, allowing it to smash to the floor at his feet. Not only did this artifact have considerable value, it also had symbolic and cultural worth. The Han dynasty (206 BCE – 220 CE) is considered a defining period in the history of Chinese civilization, and to deliberately break an iconic form from that era is equivalent to tossing away an entire inheritance of cultural meaning about China. By destroying the urn, he evoked the widespread destruction of the Cultural Revolution and the commodification of the contemporary world.

With this work, Ai began his ongoing use of antique ready-made objects, demonstrating his questioning attitude toward how and by whom cultural values are created. While being rooted in Chinese tradition and influences, his art simultaneously embraces the Western model of the avant-garde, of a "radical destruction of tradition" (Sigg 8). This prolific period on his native soil is what launched Ai Weiwei's career on the international stage, according to Western critics.

In 2003 Ai established his architecture studio Fake Design¹², (shut down by the government in 2012), beginning the migration of his celebrity into other domains (Driessens). Ai moved toward architecture, which demonstrated that his work had more of a functional impact on society than that of many other conceptual artists, thereby illustrating his value in terms of social impact. "I realized that doing it by myself wasn't enough. The project had to be big [. . .] and could raise public consciousness much more" (qtd. in Obrist 60). Ai has built upon his socially engaged credentials by using architecture to transform people's lives. "The risk, as with any brand extension, was brand dilution; however, by staying true to his brand values (or vision), Ai managed to make a smooth transition" (Preece 426).

In 2005 Ai was invited to start blogging by Sina Weibo, the biggest Internet platform in China. For the following four years, he used this as a platform for his scathing critique of the Chinese regime, producing a steady stream of social commentary, criticism of governmental policy, and miscellaneous thoughts on art and architecture, as well as autobiographical writings. The blog was shut down by Sina on May 28, 2009 due to its popularity (over a million people visited the blog regularly) and Ai Weiwei's outspoken attitude to events such as the Beijing Olympic Games and the Sichuan earthquake.¹³ He then turned to Twitter and wrote prolifically on the platform, claiming to spend at least eight hours online every day.

In 2007, Ai participated in the prestigious art exhibition, *Documenta 12*¹⁴ with two projects. Taking the Scheherazade story as his cue, for his project *Fairytale* Ai invited 1001 Chinese citizens from all over China, “such as workers, students in a rock ’n’ roll band, etc.” to the city of Kassel in Germany in five stages (200 people at a time, given the complexity of the logistics), from June 12 to July 14, 2007. People were chosen through an open invitation on his blog. Quoting from the catalogue, “they came from different regions in China, were chosen from thousands of applicants, have never been to a foreign country, and most do not speak a foreign language.” (VV. AA). The exhibition was also populated with 1001 wooden chairs from the Qing dynasty (1644–1911) that Ai, an antiques aficionado, had collected and restored.

Fairytale is the largest-scale performance piece ever created. It was also the most expensive exhibit in the *Documenta* of 2007. Two Swiss organizations provided the funding. With a team of about 40, Ai organized passports and visas for the visitors, as well as arranging accommodation in an old factory in Kassel. They were each provided with a suitcase and a set of clothes. They came on condition that they would describe their trip to and experience in Kassel. Each had a USB memory stick strapped to their wrist to store text and photos. Ai’s project has its roots in Ai’s own youth in Communist China, where there was little scope for travelling and limited creative freedom. *Fairytale* was a powerful figuration, for the East and the West, a source of inspiration in its pedagogical function as a transmitter of values and foreign worlds. The project was based on the idea that “Against the backdrop of a totalitarian regime and massive social changes China needs an exchange not based on the institutional but on the individual” (Conde 10).

Ai gained international fame as the artistic consultant for Beijing’s “Bird’s Nest” Olympic stadium, which was designed by the Swiss architect firm Herzog & de Meuron. Just before the 2008 Olympics, Ai became infamous for denouncing the stadium as China’s “fake smile” or “pretend smile” to the world. Ai refused to attend the opening ceremonies. He later tweeted that “No outdoor sport can be more elegant than throwing stones at autocracy” (@AiWW, 10 March 2010).

He later told journalists that he regretted having helped the Communist Party to stage successful Olympic Games with his design of Beijing’s Bird’s Nest stadium, which he saw as just propaganda for the ruling party. “The Beijing Olympics have oppressed the life of the general public with the latest technologies and a security apparatus of 700,000 guards,” he told the paper. “I became disenchanted because I realized I was used by the government to spread their patriotic education. Since the Olympics, I haven’t looked at (the stadium),” he said.¹⁵

Ten days after an 8.0 magnitude earthquake took place in Sichuan, a western province of China, (May 12, 2008), Ai led a team to survey and film the post-quake conditions. This was in response to the government’s lack of transparency, trying to cover up the scale of the tragedy as caused by the government’s shoddy ‘tofu’ constructions. Many of the dead were kids in school and the families

wanted names and bodies to mourn. Ai's politics of memory eschews compassion in the pursuit of justice (Sorace 414). Ai's dedication in finding and recording the names of each student is not only a way of honoring the dead but also a way of undermining the "hierarchy of grief" through which certain bodies are invested with value during their lives and mourned after death while other bodies remain anonymous, abandoned, and exposed to suffering. This is resonant of Butler's notion of a grievable life, according to which on a global scale some lives are more grievable and mournful than others because of the different cultural and economic value attached to them:

If there were to be an obituary, there would have had to have been a life, a life worth noting, a life worth valuing and preserving, a life that qualifies for recognition. Although we might pursue that it would be impractical to write obituaries for all those people, or for all people, I think we have to ask, again and again, how the obituaries function as the instrument by which grievability is publicly distributed.

(Butler 34)

Like many public intellectuals, Ai was critical of the official response to the earthquake. Noticing that public schools often suffered more damage than surrounding buildings, many people felt that the schools collapsed due to substandard construction stemming from official corruption. After the Party refused to investigate, Ai recruited volunteers online and launched a 'Citizens' Investigation' to compile names and information about the student victims.

Although the citizens' investigation was "frustrating", it was also cathartic for many people. The volunteers were able "to release their anxieties, their anger, by doing very simple small things, everybody can do it. Ask the questions. Do the research and put in on the internet."

(Callahan, "Citizen Ai" 905)

Ai and his team eventually shamed the government into releasing its own list of 5,335 names of children who were killed in the earthquake. Ai published the list of names and numerous articles documenting the investigation on his blog, which was shut down by the Chinese authorities in May 2009.

On September 14, 2009 Ai had emergency brain surgery. The cerebral hemorrhage was believed to be linked to a police attack in August, where he was beaten for trying to testify on behalf of a fellow investigator of the student casualties in the earthquake.

From October 2009 to January 2010, Ai exhibited *So Sorry* at Haus der Kunst in Munich. This was Ai's largest retrospective. For his show, Ai created the installation *Remembering* (2009) to honor over 80,000 Chinese, most of whom were children. The artwork featured 9,000 backpacks covering the façade of

the Munich Haus der Kunst, representing the school children who perished in the May 2008 Sichuan earthquake.¹⁶ It was so captivating and popular that it rubbed the Chinese ruling regime the wrong way. This was considered ‘dangerous art.’

For his 2010 installation *Sunflower Seeds* (commissioned by London’s Tate Modern and displayed in the Turbine Hall), Ai Weiwei produced a bed of 100 million porcelain seeds, all hand-painted. Ai had less than a year to “develop an idea,” “draw up a concept,” and mobilize a workforce of 1,600 to “mold,” “paint,” “fire,” and “glaze” each one of more than 100 million *Sunflower Seeds* (Sigg 9). These were tasks that required mobilization of massive personnel resources in the shortest timeframe, tasks that “every other artist would have rejected.” This installation is an attempt to retrain the eye to see differently the relationship between the individual and the commons. As Sorace commented,

For his exhibition Ai hired sixteen hundred Chinese artisans from the town of Jingdezhen to handcraft and individually paint over one hundred million porcelain sunflower seeds. In this way the viewer of the exhibition is confronted simultaneously with the sublime power of the mass and the unique singularity of each individual seed. The precarious dialectic between the individual and the communal is staged rather than overcome in favor of either.

(410–411)

The sunflower following the sun is a well-known metaphor for the people during China’s Cultural Revolution. The Chinese people were represented as sunflowers following Mao’s radiant face. The sunflower seeds also provided much-sought-after nourishment during the period of poverty under the Cultural Revolution and were used to chew on too during discussions and conversation. Ai Weiwei created a deceptively unified field with a large number of individual seeds. *Sunflower Seeds* comments on social, political, and economic issues relevant to contemporary China, such as the role of the individual in relation to the collective. But the seeds also reference the high level of craftsmanship of Chinese artisans, with the seriality and individuality of each seed. The exhibition was a massive international success with people walking on, sitting on, and feeling the seeds as a fully immersive aesthetic experience.¹⁷

While the Sichuan earthquake project primarily targeted a Chinese audience, the sunflower seeds were made as a comment on Chinese mass production and collectivism for a Western audience

As such he is represented as a genuinely “authentic” Chinese artist due to his frequent use of traditional Chinese crafts, for example, yet a defender of “Western” values in the form of democracy and liberal thinking, successfully symbolizing that ideology as an iconic brand.

(Preece 627)

It is no surprise, then, that the Chinese government is no great fan of Ai and censors him to the best of their ability. On April 3, 2011, Ai was arrested and detained for 81 days on charges of tax evasion. The government charged him 15 million RMB (\$2.3 million) in back taxes, allotting him 15 days to pay. In response, thousands of people began “lending” him money, expressing their solidarity. In China it is called lending because a charitable donation would have to be approved through the appropriate bureaucratic channels. Ai received 6,725,139 RMB (approximately one million dollars) in loans. Some of the loans were open

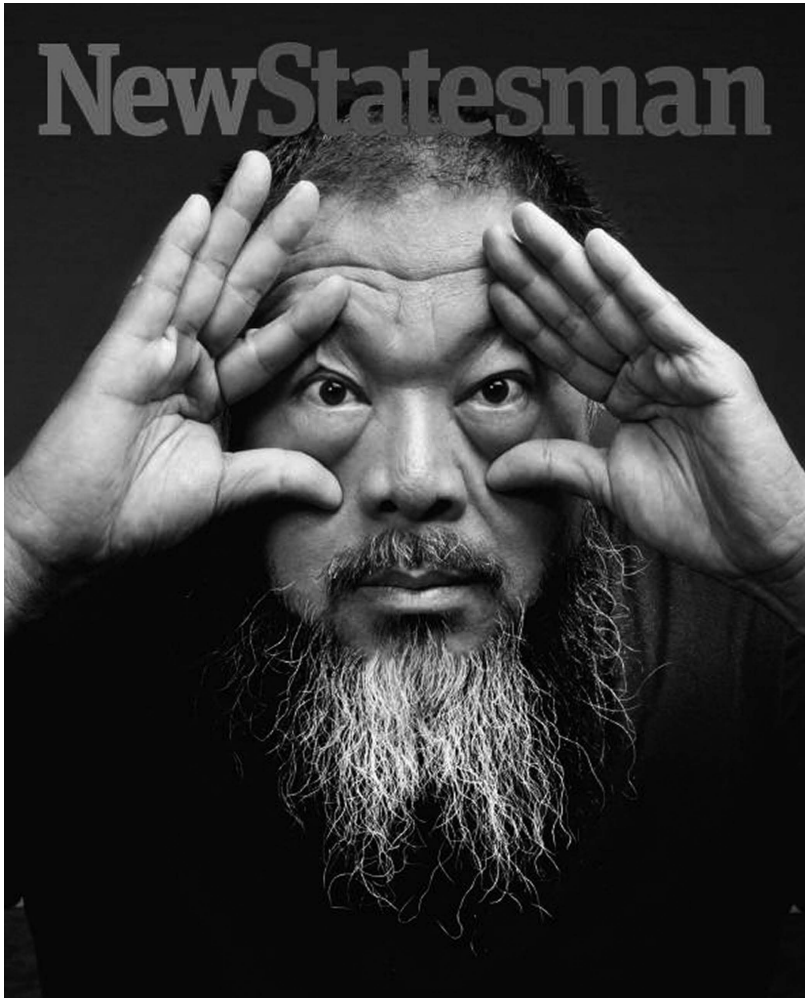


Figure 12.1 Photographed by Gao Yuan for Ai Weiwei Studio.

Source: Courtesy of New Statesman magazine.

political criticisms. One person donated 512 RMB (\$80) commemorating the date of the Sichuan earthquake (May 12, 2008); another loan was for 89.64 RMB, suggesting the date of the Tiananmen Square massacre (June 4, 1989) (Sorace 415).

The final blow for the government was when Art Review proclaimed Ai the “most powerful artist in the world” (ArtReview).¹⁸ *Time Magazine* declared Ai among the 100 Top Global Thinkers of 2011,¹⁹ and in 2012 Elton John dedicated his concert in Beijing to Ai.²⁰ In 2012, London’s *New Statesman* invited him to be a guest-editor for a special issue on China (Figure 12.1). The statement proclaiming, “‘The rebel artist reveals a China its censors don’t want to see’ was used to promote the special issue.”²¹ The issue was made available also in Mandarin. In addition to uploading it to newstatesman.com, it was also made available for free via torrent sites allowing people located in the region of the “great firewall of China” from Tibet to Shanghai to access the magazine. The issue was awarded the Amnesty International Media Award 2013.²²

The arrest was even dramatized on stage in London with the play *#aiww: The arrest of Ai Weiwei*.²³ His imprisonment was, therefore, the government’s biggest gift and favor to Ai. It meant that he immediately became world-famous, an icon of resistance to censorship and dictatorship, an advocate of human rights worldwide, and Ai Weiwei’s career has never been the same since. Through his new location in Berlin,²⁴ Ai Weiwei has witnessed and followed the European refugee crisis from close by and documented it with provocative artworks and staged events, but also tried to put it in a larger context of globalization and human movement.

The human flow²⁵

“The Refugee crisis is not about refugees. It is about us.”²⁶

More than 65 million people around the world are refugees who have been forced from their homes to escape famine, climate change, and war. As a filmmaker, Ai Weiwei examines the staggering scale of the refugee crisis and its profoundly personal human impact in *Human Flow* (2017), Ai’s first long feature film. For the realization of this documentary, the artist and his team spent three years travelling to over 23 countries and 40 refugee camps, interviewing and filming. Some of the camps are relatively new, coping with those who have fled the war in Syria. Other camps – such as the Ain al-Hilweh camp in Lebanon – have existed for decades and have now sheltered three generations of refugees (Figure 12.2).

But instead of offering representations by journalists and by Western media, which focus on the enormity and the flows of these exoduses, Ai Weiwei focuses on the individuality, the ‘human’ face behind the massive crisis in order to compassionately document the experience of the contemporary refugee and the various, mostly failed, institutional responses. “When the Berlin Wall fell, there were 11 countries with border fences and walls,” Ai said.



Figure 12.2 Ai Weiwei, *Human Flow*, Palestinian girls from Gaza for Ai WeiWei Studio.

Source: Courtesy of Amazon Studios.

By 2016, that number had increased to 70. We are witnessing a rise in nationalism, an increase in the closure of borders, and an exclusionary attitude towards migrants and refugees, the victims of war and the casualties of globalization.²⁷

The crew gathered 900 hours of material to be edited and composed into a breathtaking narrative by editor Niels Pagh Andersen, one of Scandinavia's most influential editors who has worked on more than 250 films, including Joshua Oppenheimer's *The Act of Killing*, the 2012 documentary film about individuals who participated in the Indonesian mass killings of 1965–1966. The camera appears to be mounted high above the stream of refugees, or seemingly hovering in a drone. This captures stunning shots of refugee camps from above, where drones are used by the artist to capture the scale of this humanity rather than functioning as a surveillance mechanism. The film has a lot of texts and captions, with statistics and facts, that counteract the rather poetic visual language of the film. It gives a geopolitical location and a sense of continuity to a film that otherwise might come across as a mosaic of different pieces, countries, and traumas. The focus on the people behind the word 'refugee' is a humanizing approach that is often absent in the conversations about the crisis, where people are reduced to economic terms. Victims of war, famine, disease, climate change, genocide, and laws that make life unlivable are demonized as criminals, freeloaders, and extremists, painted as a faceless and malevolent horde, often by the same countries and people that are responsible for their displacement. But in this film even tigers,

cows, dogs, and other animals get centerstage, shown as trapped by the nature of migration, just like human beings.

There is a moment in the film in which you see people taking photo portraits; they look very uncomfortable and vulnerable, a unit within a distressing bigger whole. Ai is always present, talking to people, filming with his smartphone, a large presence that at times can come across as narcissistic and self-aggrandizing. The sweeping aerial shots of expansive refugee camps and lines of migrants show the human species as a force of nature that, like rivers and oceans, will eventually make its way to wherever it must be.²⁸ The film brings to the fore an aesthetic of humanity as a flow in open contestation of borders, boundaries, and walls. Ai Weiwei's protests of border walls is further magnified in his subsequent project, with a huge New York installation.²⁹

Good fences make good neighbors

Good Fences Make Good Neighbors was a multi-media exhibition for public spaces organized throughout New York City. It lasted from October 2017 until February 2018 (Public Art Fund).³⁰ The title is a quote from Robert Frost's poem "Mending Wall," which refers to the way Ai's structures are installed; it is apparent that contradiction as a theme pervades his exhibition. The exhibition documents the current global migrant crisis, connects it with earlier histories of exile, and in doing so, mainly reveals two types of tensions: between the individual and the collective and between the visible and the invisible. The ambitious project, comprising seven structures, ten bus shelters, 100 advertising platforms, and 200 lamppost banners, was scattered throughout the five boroughs of New York from Manhattan to the Bronx and Queens, Brooklyn and Staten Island. It connected all the pieces through an interactive map that provided the background information on the artworks and the subjects, accessible via smartphones. The exhibition was both strikingly interruptive of the visual regime of the city and self-effacing, blending in with its surroundings to become invisible, and reminding us of its temporary existence. The art (advertising platforms and banners) served to insert facts of the refugee experience into the public discourse, intervening directly in the lives of the millions of New Yorkers who use public transit every day. These artworks are at first invisible but once you notice them you see them everywhere. You cannot un-see them anymore.

Culturally, the banners serve to illustrate the fact that immigration is not a new phenomenon, and – especially in a city like New York – immigrants have been there the whole time, whether we recognize them as such or not. In placing images of Joseph Conrad, Joseph Brodsky, or Victor Hugo amongst images of immigrants arriving at Ellis Island and Ai's own cellphone photographs taken at refugee camps in Lesvos, Greece, Ai is dismissing the differences of their social statuses, political environments, and even historical eras in order to emphasize "their shared humanity" (Public Art Fund). These double-sided vinyl portraits were created by cutting squares in black vinyl banners to generate images in the

space that remained. According to Ai, this play of positive and negative space speaks to the ambiguity of the boundaries between refugees and migrants.

Most of Ai's structure installations were in the form of distinctive steel barriers. His structure *Arch*, installed in Washington Square Park, was a steel cage that occupied the space underneath the marble arch, with a mirrored opening that took the form of two conjoined figures. Similarly, *Five Fences*, which were chain-link fences fitted on the stone wall of the Foundation Building of The Cooper Union for the Advancement of Science and Art filled the arches with stainless steel and transformed the wall into a prison-like barrier. The beautiful *Gilded Cage* (Figure 12.3), placed at the corner of Central Park and Fifth Avenue, expressed the luxury of a golden cage, glistening in the sun, with an opening for getting in and out and therefore allowing you to peep through at the sky and the surrounding architecture through a game of shadows and light.

It is the non-invasiveness of his art that returns us to Ai's distinctive style of bridging two paradigms to form a single proposition. The unobtrusiveness of his art appears to emerge from Ai's utilization of New York City's ready-made form, of weaving the standardized, perspective nature of the urban surroundings into his art whilst transforming some aspect of the surroundings in his art, much like his use of the Neolithic pots as a canvas. What is created is what Ai calls "very almost-art, but maybe, maybe not" (Loos), one that individuals notice and understand as art, but may not pay close attention to. Perhaps Ai's larger project is not to raise awareness of the global migrant crisis itself, but rather to shed light on what Ai perceives as the way individuals around the globe react to the plight of refugees and migrants; we are well aware of the borders, the displacement, and the victims, but we choose to walk past them, like Ai's advertisement platforms, after a perfunctory glance.

Ultimately, Ai's massive network of art installations is working to reshape the perception of the migrant in America. His use of Frost's quotation, "good fences make good neighbors," as the title for the project invokes the American perception of the need to keep people separate to avoid conflict. This perception is at least part of the reason for the resurgence of the political far right, the widespread fear of the immigrant, and Trump's insistence on building "The Wall" to keep the undesired other out.³¹ In weaving his works throughout New York, introducing facts and images into the discourse, de-emphasizing the differences between past and present immigrants, and altering the meaning of the term "good fences," Ai's project confronts the instinct to separate and offers instead the potential to cooperate as "good neighbors."

Ai Weiwei is in fact questioning the very need for a boundary wall. Robert Frost was a poet celebrated for his deftness in concealing larger, darker, and more complex meanings behind a façade of innocence and simplicity. In the spirit of Robert Frost, Ai's "good fences" are ironically not impenetrable barriers but are often both an obstruction and a passageway at once. By erecting chain-link walls, cages, and fences that prove to be unobtrusive in the bustling city, Ai can be said to also question the necessity of the "wall" and boundaries in the first place.

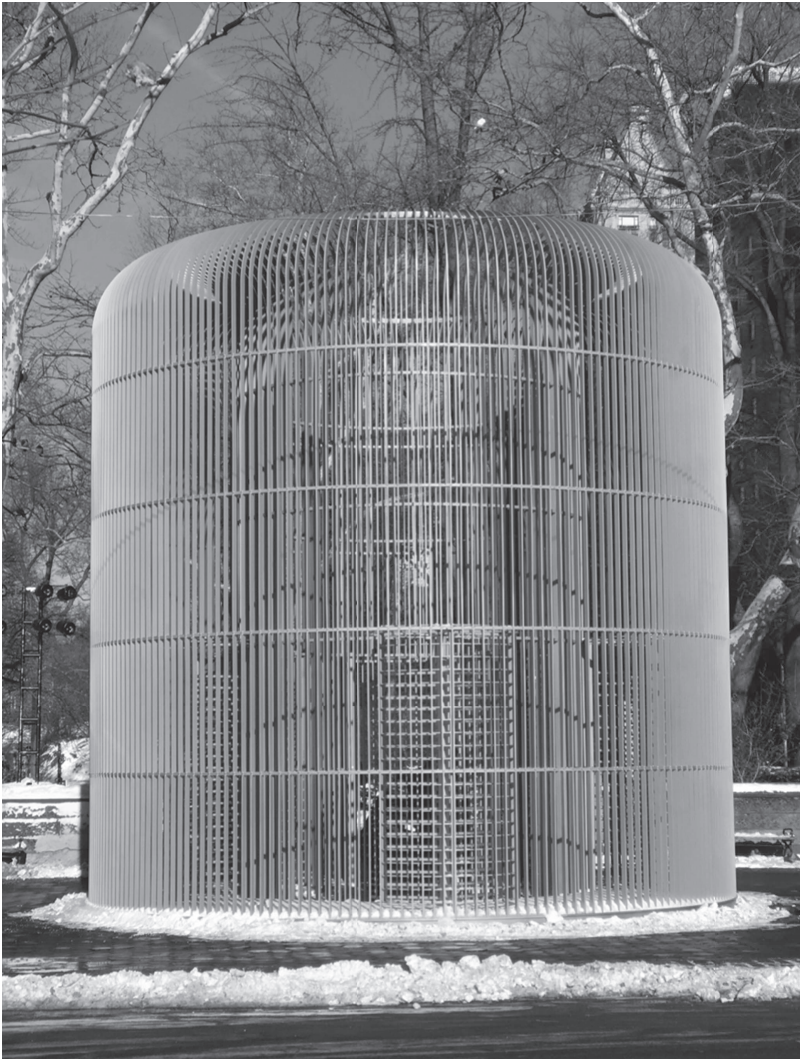


Figure 12.3 Ai Weiwei, *Gilded Cage*, 2017. Mild steel, paint.

Source: Courtesy of Lisson Gallery for Ai Weiwei Studio. Photo Sandra Ponzanesi.

Art as contestation

Ai Weiwei is considered to be a hyperbolic character, either adored or abhorred, often framed as a troublemaker and a smart ass. His persona has certainly undergone a global branding that translates his contrarian attitude into a *modus operandi* for a sustained critique of oppression, censorship, and social injustice. Though

often perceived as a mad tweeter, egomaniac, and narcissist, his larger-than-life personality has shrewdly used all media channels to promote not just himself but also human rights advocacy and actions to tackle the plight of migrants. His prominence can be also interpreted as a “Western” tokenism for the non-Western artist called to represent these issues, bestowing on him prestige and recognition while ignoring many other artists with similar concerns who struggle for visibility and do not have the same access to the international circuit of art and commerce.

Ai is indeed a brand name, carefully crafted, which has skyrocketed internationally after his detention in 2011 by the Chinese government.³² As a result, the scope of his work’s content has also expanded dramatically, whereby he has turned his attention to global crises. The narrative of “Ai the Rebel” is thus born, writes William Callahan, and its “uncompromising view of the individual vs. the totalitarian state” is especially seductive as Ai Weiwei seems to be playing to the “dissident-hungry audience in the West” (Callahan, “The Art of Politics” 463–464). Granted, in only a few years Ai Weiwei evolved from a nameless artist who engaged in activism in China to become “one of the world’s top dissidents,” as he first gained fame from designing and later denouncing the Beijing 2008 Olympics Bird’s Nest stadium as China’s “pretend smile,” then fascinated the world with *Sunflower Seeds* in 2010, and eventually became a global political figure and received worldwide acclaim in the global art forum after his illegitimate detention in 2011 (Callahan, “The Art of Politics” 461).

Ai Weiwei’s political activism, his stance as the lone hero against the cruel state, more than anything else helped pave the way to his international stardom. Ai has “secured the highest possible degree of international visibility by role-playing with the international media,” Uli Sigg writes (11). Although to this Ai Weiwei would respond: “That’s not my game. I hate it, I really hate it” (Callahan, “The Art of Politics” 464). Ai writes that he “spends very little time doing ‘art as art’”; to produce art without being political is not an option, for Ai Weiwei feels “to be political means you associate your work with a larger number of people’s living conditions. . . . And you try to use your work to affect the situation” (Warsh 40, 44).

Ai has always used social media as his own platform to reach wider audiences despite control and censorship. His blogs reached millions of readers. Ai has written 2,700 blog posts and uploaded thousands of photographs. Blogging was a natural extension of his work: “The blog is a modern drawing. Whatever I say there could be seen as part of my work” (qtd. in Obrist 45). A believer in the Internet’s integral role in promoting freedom of speech, Ai Weiwei never stops arguing, asking questions, and writing on social media platforms for the Chinese people – although both his blog and Weibo (the Chinese version of Twitter) accounts were blocked by the Chinese government. He commented without restraint and in no uncertain terms on subjects such as the dire consequences of official mismanagement before and after the Sichuan earthquake. Many of Ai’s compatriots were thrown in jail for less. According to Sigg:

And were you to remind him where Chinese draw the line regarding human rights activism – where the fun ends in their estimation – this audacious man

would gracefully thank you for telling him. But it will not affect him or his endeavor to build a new Chinese society. Many people will feel exactly the same, but so few of them dare to raise their voice in this way. He writes for them, they will owe him.

(9)

But on May 28, 2009 the government cut him off from his audience of millions when his blog was shut down by the authorities. He subsequently started a series of micro-blogs on the Chinese version of Twitter, which were swiftly identified and blocked by the Internet police. Today Ai is very active on global Twitter, whose imposed brevity suits his style. His Twitter account @aiww has 365,600 followers. The messages, however, are accessible from within China only to people who know how to overcome the “Great Firewall,” which prevents Chinese users from navigating the uncensored global space of the Internet. His Instagram account is also incredibly popular. Ai is famous for taking endless selfies with all kinds of people he meets all over the world and posting them on his account without captions, leaving the interpretation to the power of the image. His Instagram account has 19,800 posts and 495,000 followers.³³

Ai’s art has, thus, inextricably been tied to his life and politics, serving more than just “art” for its own sake. From a Western vantage point, Ai’s art, persona, and to a certain extent his social media presence, presents a narrative of him as a political martyr rallying against a repressive government. His arrest and detainment, as Sigg observes, have since damaged China’s image in the West, reinforcing the view of the Chinese government as an oppressive force that silences freedom of expression (11).

Three years after his release from illegal detention, Ai Weiwei has gone from a liminal figure who blurs the lines between art and politics to a world celebrity/star. This is also interesting from the point of view of the culture industry (Ponzanesi) in order to unpack Ai as an authentic celebrity brand that is highly mediatized and globalized. By using his role as “native informant” (Spivak) for China but from the point of view of the democratic West, Ai plays the card of “China’s most famous artist” (Bach) to market tradition as well as stretching his artistic output over a highly fragmented and competitive global market. “His brand therefore contains a number of different ‘products’ (often produced by artisans, volunteers or sometimes factory workers), which until closed down by the Chinese government in 2012, were managed through his company: Fake Cultural Development Ltd.” (Preece 618).

Authenticity is part of the star persona, which is the property of the star’s relationship with the public (Dyer), not dissimilar from the recognition of the public intellectual as someone whose charisma, authority, and capacity to speak truth to power are recognized by the public/audiences (Small; Misztal; Ponzanesi and Habed). Ai’s brand has received so much attention in comparison with other artists and activists that it has ultimately enabled him to become a global celebrity. According to Preece, this is due to several factors:

generating wider attention through operating in multiple markets under various guises, which compose what we refer to as the “product portfolio” (artist,

curator, architect, blogger, activist); achieving coherence and clarity by consistently repeating brand values in each of these markets; and encouraging the various stakeholders to participate in the brand and make it their own.

(Preece 623)

The core of Ai's product is his works of art. However, Ai is very skilled in playing different roles and using different media outlets to increase his influence, expanding his brand into various realms. Ai uses different media to communicate with the public; while art has a relatively small audience. Ai, with his controversial personality, has a great talent for manipulating production of his fame behind the scenes:

By connecting directly to different publics and inviting them to collaborate and co-create within his vision, he allows for an authentic brand culture. Indeed, we would argue that Ai is one of the few celebrities to have understood the full significance of the medium used to communicate with the public in performing authenticity.

(Preece 631)

Indeed, Ai has always been a part of the "twenty-first-century approach to dissent that blurs art, life, politics, and activism" ("The Art of Politics" 464), as William Callahan claims. As the poster boy for freedom of expression, Ai Weiwei "bears the flaw of loving his country and not the party" (Sigg 11). Osnos writes so appropriately that "Ai's use of new media has subverted the usual Chinese method of dissent: favoring bluntness and spectacle over metaphor and anonymity. He shamed the system with his own transparency" (Osnos 60).

Notes

- 1 The author declares that the research, authorship, and/or publication of this chapter is done with financial support from the ERC (European Research Council) consolidator grant "Digital crossings in Europe: Gender, diaspora and belonging" (CONNECTIN-EUROPE), grant 647737.
- 2 See Ai Weiwei, "On Human Rights." 10 Nov. 2018. www.europarl.europa.eu/cms-data/157201/Ai%20Weiwei%20On%20Human%20Rights%20Nov%2020%202018.pdf
- 3 Ai Weiwei, "Fly the Flag." Video: www.itsnicethat.com/news/ai-weiwei-flag-human-rights-art-101218
- 4 This grassroots campaign was established by a host of arts organizations and charities, including Fuel, Amnesty International, Donmar Warehouse, Human Rights Watch, Liberty, the National Theatre, Sadler's Wells, and Tate Galleries. See: <https://flytheflag.org.uk/>
- 5 Baines, Josh. "Ai Weiwei Creates Flag for New Human Rights Awareness Campaign." *It's Nice That*, 10 Dec. 2018. www.itsnicethat.com/news/ai-weiwei-flag-human-rights-art-101218.
- 6 Hitti, Natasha. "Ai Weiwei Designs Footprint Flag as a Symbol for Human Rights." *Dezeen*, 10 Dec. 2018. www.dezeen.com/2018/12/10/ai-weiwei-flag-human-rights/
- 7 See: <http://gofuckyou.altervista.org/ai-weiwei-fuck-off/>

- 8 Among these books are Ai, Weiwei, and Larry Warsch, editors. *Weiwei-isms*. Princeton UP, 2012; Pera, Rosa, editor. *Ai Weiwei: On the Table*. La Fabrica; Multilingual edition, 2015; Ai, Weiwei, and Cheryl Haines, editors. *Ai Weiwei: Yours Truly: Art, Human Rights, and the Power of Writing a Letter*. Chronicle Books, 2018; Ai, Weiwei, and Larry Wars. *Humanity*. Princeton UP, 2018.
- 9 Ai Weiwei interview quoted in Callahan, “Citizen Ai” 901.
- 10 Antonio Gramsci theorized the distinction between ‘traditional’ and ‘organic’ intellectuals. According to Gramsci anyone could be an intellectual. An organic intellectual is a member of a social class, as opposed to a member of the traditional intelligentsia that regards itself as a class apart from the rest of society. Organic intellectuals are meant to change the status quo and fight for equality and justice (Gramsci).
- 11 https://hrf.org/events_talks/2012-havel-prize-acceptance-speech/
- 12 In Chinese the characters that sound like ‘fake’ mean ‘scientific development,’ a Communist Party catchphrase. The spoken word also sounds like how a Chinese person would say ‘fuck.’
- 13 A book of English translations of over 100 of Ai’s blog posts for Sina, the Chinese MSN-style web portal, along with a few other short essays was published as *Ai Weiwei’s Blog: Writings, Interviews and Digital Rants, 2006–2009* (MIT Press). See also Smith, Terry, “Art of dissent. Ai Weiwei.” *The Monthly*, June 2011. www.themonthly.com.au/terry-smith-ai-weiwei-art-dissent-terry-smith-3356
- 14 The *Documenta* is one of the pinnacles of contemporary art and recognized as a ‘cathedral’ of the avant-garde since its foundation in the 1950s. Held every five years, it returned in 2007 with its “grand mass of contemporary art” (Conde 4).
- 15 Ai, Weiwei. “I Wish I Never Designed Birds Nest.” *Artlyst*, 9 Mar. 2012. www.artlyst.com/news/ai-weiwei-i-wish-i-never-designed-birds-nest/
- 16 See: <https://publicdelivery.org/ai-weiwei-remembering-haus-der-kunst-muenchen-2009/>
- 17 The project was initially meant to be interactive: visitors were supposed to stroll through the hall with sunflower seeds – walk on them, handle them, and establish their own relation to them. The Tate eventually prohibited people from walking on the seeds because of concerns about the health problems created by the porcelain dust (Sorace 410).
- 18 See: https://artreview.com/power_100/2012/ and www.bbc.com/news/entertainment-arts-15285939
- 19 John Huntsman. “Ai Weiwei”, the 2011 Time 100. Thursday, 21 Apr. 2011. http://content.time.com/time/specials/packages/article/0,28804,2066367_2066369_2066464,00.html
- 20 See: www.theguardian.com/world/2012/nov/26/elton-john-dedicates-show-ai-weiwei
- 21 See: *New Statesman*, in Callahan 912.
- 22 See: <https://anjawohlstrom.com/New-Statesman-The-Ai-Weiwei-guest-edit>
- 23 www.hampsteadtheatre.com/whats-on/2013/aiww-the-arrest-of-ai/
- 24 Ai Weiwei had spent over four years under house arrest in China until his passport was returned and he was finally allowed to leave China at the end of July 2015. According to some critics, Ai Weiwei purportedly surrendered making art about China in exchange for his passport, thus his more recent focus on migration and refugees. As intended before his arrest, the outlawed artist moved to Berlin to join his family and take up a guest professorship at the Berlin University of the Arts (UdK) that he’d been offered in 2011. He was declared by the mayor a ‘friend of the city.’ His three-year visiting professorship ended in summer 2018. At the moment of writing Ai Weiwei has declared that he will leave Berlin without saying where he is moving to. He explained that the language remained a problem and that “Germany is not an open society. It is a society that wants to be open, but above all it protects itself. German culture is so strong that it doesn’t really accept other ideas and arguments.” as he told in an interview in the German daily *Die Welt* (9 August 2019). See link: <https://www.thelocal.de/20190809/germany-is-not-an-open-society-chinese-born-artist-ai-weiwei-on-leaving-berlin>.
- 25 *Human Flow*, premiered at Venice in 2017 and won multiple awards.

- 26 Ai, Weiwei. "The Refugee Crisis Isn't About Refugees. It's About Us." *The Guardian*, 2 Feb. 2018. www.theguardian.com/commentisfree/2018/feb/02/refugee-crisis-human-flow-aiweiwei-china. Accessed 3 Mar. 2019.
- 27 Barone, Joshua, "Ai Weiwei's Latest Artwork: Building Fences Throughout New York City." *New York Times*, 26 Oct. 2017. www.nytimes.com/2017/03/26/arts/design/ai-weiweis-latest-artwork-building-fences-throughout-new-york-city.html.
- 28 With its heightened visual sense and need to trace the contours of a certain type of experience, *Human Flow* is similar to Gianfranco Rosi's *Fire at Sea*, about migrants on the island of Lampedusa. It has points in common with Alejandro González Iñárritu's immersive VR installation-drama about immigrants, *Carne Y Arena* (2017). These projects are part of a renewed form of public engagement of the artist as intellectual and the intellectual as artist. www.theguardian.com/commentisfree/2018/feb/02/refugee-crisis-human-flow-ai-weiwei-china
- 29 Ai Weiwei's new documentary, the film *The Rest*, went in premiere on 22 Mar. 2019 during the CPH:DOX (20–31 Mar.). The film participated in the festival's main competition and the artist was present at the festival. Ai Weiwei was guest curator at CPH:DOX in 2013 but was unable to visit the festival due to travel ban posed by the Chinese authorities. *The Rest* is a parallel work to *Human Flow*, as it also focuses on the refugee crisis and is an indignant defense of humanism and human dignity. *The Rest* accounts for the life and experience of these refugees in political limbo in Europe but with the individual human being in the lead role, "the scale here is in line with the body, voice and experience of an individual refugee." And it is precisely in the individual's story that some hope emerges in the midst of hopelessness. The film is also edited down to "an unsentimental, clear-sighted, and all the more gripping film. . . . The form is listening and attentive. The intricate chaos of various crises, which in the European public has been called 'the refugee crisis', has not blown over." (Bjerregaard 2019). For more info see: Sofie Bjerregaard, "Chinese artist, documentary filmmaker, and critic, Ai Weiwei, is coming to CPH:DOX 2019 with his newest film 'The Rest' premiering in the festival's main competition." *CPH:DOX*, 8 Feb. 2019. <https://cph-dox.dk/en/ai-weiwei-to-visit-cphdox-2019> and Tom Grater, "Ai Weiwei talks new doc 'The Rest', Criticizes Global Film Industry for Working with China," *Screendaily*, 22 Mar. 2019. www.screendaily.com/features/ai-weiwei-talks-new-doc-the-rest-criticizes-global-film-industry-for-working-with-china/5137937.article
- 30 The installation was organized in collaboration with the Public Art Fund. The exhibition website can be found here: www.publicartfund.org/ai_weiwei_good_fences_make_good_neighbors/about
- 31 "Everything We Know About Donald Trump's Proposed Border Wall," *Fortune Magazine*, 19 Jan. 2018.
- 32 "Ai Weiwei: Life and Work." *Ai Weiwei*, edited by Hans Werner Holzwarth, Taschen, 2016, p. 561.
- 33 These figures are from 21 Mar. 2019 and subject to further fluctuations. It is interesting to make a comparison to gain an impression of the reach that an artist-activist can achieve. For example, pop stars like Beyoncé have of course stratospheric numbers of followers (Beyoncé has 1761 posts, and 126 million followers), while Michelle Obama has 145 posts and 27.7 million followers.

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