

## ARTICLES

# GENOCIDE AND THE EROTICIZATION OF DEATH: LAW, VIOLENCE, AND MORAL PURITY

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### I. INTRODUCTION

#### A. THE NEXT GENOCIDE: PRACTICAL INVESTMENTS

As I write this, the world's attention is focused on the war against terrorism and the war in Iraq. Somewhere in Africa, a government has been accused of aiding and abetting the slaughter of its own people by the hundreds and driving thousands of several maligned minorities out of their homeland, to face rape and assault by marauding militia (partly government sponsored) and the certainty of starvation, suffering, and death at the hands of their persecutors.<sup>1</sup> Darfur, Sudan has slowly entered the lexicon of genocide,<sup>2</sup> to be added to a list that includes Srebrenica, Kigali, Kosovo, and long before these, Auschwitz and Kharput.

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<sup>1</sup> See, e.g., Human Rights Watch, *Sudan: Darfur Destroyed*, available at <http://www.hrw.org/reports/2004/sudan0504> (last visited June 23, 2004).

The government of Sudan is responsible for 'ethnic cleansing' and crimes against humanity in Darfur, one of the world's poorest and most inaccessible regions, on Sudan's western border with Chad. The Sudanese government and the Arab 'Janjaweed' militias it arms and supports have committed numerous attacks on the civilian populations of the African Fur, Masalit and Zaghawa ethnic groups. . . . The government and its Janjaweed allies have killed thousands of Fur, Masalit, and Zaghawa—often in cold blood, raped women, and destroyed villages, food stocks and other supplies essential to the civilian population. They have driven more than one million civilians, mostly farmers, into camps and settlements in Darfur where they live on the very edge of survival, hostage to Janjaweed abuses. More than 110,000 others have fled to neighboring Chad but the vast majority of war victims remain trapped in Darfur.

Diocese of Pueblo, *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan*, available at [http://www.dioceseofpueblo.com/pastorallife/mc/darfur\\_destroyed.htm](http://www.dioceseofpueblo.com/pastorallife/mc/darfur_destroyed.htm) (last visited Feb. 4, 2005).

<sup>2</sup> See, e.g., Nicholas D. Kristof, *Magboul's Brush With Genocide*, N.Y. TIMES, June 23, 2004, at A23. "Ms. Khattar . . . part of a wave of 1.2 million people left homeless by the genocide in Darfur." *Id.*

Darfur's entry is typical of modern-day instances of genocide. It begins, for us in the West, with what some have called the "semantic debate"<sup>3</sup>: is this really genocide?<sup>4</sup> We need to know, because once an event is called by that name, it has a definable and recognizable shape and entails specific legal duties which include an obligation, on the part of the international community, to intervene because of genocide's threat to international "peace and security."<sup>5</sup>

The failure and distraction of the semantic debate as a pragmatic vehicle for intervention has recently been noted, not least within the context of Darfur.<sup>6</sup> Nevertheless, the genocide debate may be important for another reason: the word carries emotional, moral, and historical weight. It is conceivable that Darfur would have remained on the margins of the world's consciousness were the events there characterized as "massive violations of human rights," in the more clinical language of the United Nations.<sup>7</sup> Although the word "genocide" may indeed be enervated by its application to sundry events that commentators continue to debate<sup>8</sup>—and

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In July 2004, the U.S. Congress passed a resolution labeling Darfur a genocide. Then, in early September, after reviewing the results of an innovative government-sponsored investigation, Secretary of State Colin Powell also used the term and President George W. Bush followed suit in a speech to the United Nations several weeks later—the first times such senior U.S. government officials had ever conclusively applied the term to a current crisis and invoked the convention.

Scott Straus, *Darfur and the Genocide Debate*, 84 FOREIGN AFF. 123, 123 (Jan./Feb. 2005).

<sup>3</sup> Unnamed Student, Phrase Used in Professor Kathleen Hamill's "International Human Rights Law and Policy" course at the Fletcher School at Tufts University in Response to a Panel Discussion Entitled "Crisis in Sudan: The Failure to Respond" held on July 7, 2004 at the Kennedy School of Government at Harvard University (July 8, 2004).

<sup>4</sup> See, e.g., Marc Lacey, *In Darfur, Appalling Atrocity, But Is That Genocide?*, N.Y. TIMES, July 23, 2004, at A3.

<sup>5</sup> See Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278.

<sup>6</sup> See Straus, *supra* note 2, at 124.

So far, the convention has proven weak. Having been invoked, it did not—contrary to expectations—electrify international efforts to intervene in Sudan. Instead, the UN Security Council commissioned further studies . . . Darfur has shown that the energy spent fighting over whether to call the events there 'genocide' was misplaced, overshadowing difficult but more important questions about how to craft an effective response to mass violence against civilians in Sudan.

*Id.*

<sup>7</sup> *Id.* at 130.

Meanwhile, other world leaders and opinion makers continued to show reticence about calling Darfur 'genocide.' EU, Canadian, and British officials all avoided the term, as did UN Secretary-General Kofi Annan, who was pilloried in the media for limiting his description of Darfur to 'massive violations of human rights.' Human Rights Watch and the Pulitzer Prize-winning author Samantha Power favored the slightly less charged term 'ethnic cleansing,' arguing that Darfur involved the forced removal of an ethnic group, not its deliberate extermination, and that genocide is hard to prove in the midst of a crisis.

*Id.*

<sup>8</sup> Kosovo is a controversial case in point, where some view NATO's military intervention as justified on the basis of curtailing or preventing genocide by the Milosević government, and others contest the application of the term and, as such, the use of force in that instance. See generally ALEXANDER COCKBURN & JEFFREY ST. CLAIR, *IMPERIAL CRUSADES: IRAQ, AFGHANISTAN AND YUGOSLAVIA* (2004) (arguing that the bombs dropped on Serbia and Kosovo had less to do with humanitarianism and more with realpolitik).

It's plain too that the US and its NATO subordinates wanted a confrontation and ultimately forced it. It's also clear that increasingly vocal and explicit charges by the Russians that the Kosovo Liberation Army (KLA) was supplied by the Germans and the CIA have merit. The KLA itself was roundly denounced—before the bombings—in the London *Times* as a Maoist

although to date the use of the term has not brought about intervention in Sudan<sup>9</sup>—it still garners attention, if only for a moment.

Genocide is a legal term whose deployment carries political, cultural, and moral implications. It is a juridical vessel for a number of specifications: morality and notions of evil, ethics and the instrumental (or political) nature of representation, lived event (what “actually” happened), and how things are narrated and remembered (the felt cultural, political, and moral needs of the perpetrators and victims, as well as the witnesses). As Straus puts it, “Genocide is a contested concept: there is much disagreement about what qualifies for the term.”<sup>10</sup>

Darfur provides two lessons at once: first, as the next genocide, it imbibes all the past instances, questions and critiques them, even as it cries for direct address in its own specific historical and political context. Second, as the next genocide, it irradiates outwards, outside itself, as a discourse; when we situate Darfur in the global-historical moment next to Iraq, Afghanistan, the Tamil Tigers, Abu Ghraib, and so on, we glimpse an understanding of our relationship to what we consider evil, what we “do” about it, who receives attention and why, and so on. In short, Darfur presses us to think about two related ways of seeing an event: in pragmatic or practical terms, and in abstract or philosophical terms. In the first place, people are dying: what do we do to stop this from happening, if anything? The answer to questions of activity entails the production of practical and strategic knowledge. In the second place, people are being killed: what is my connection to these events? Who are they to me, and who am I in relation to them and their suffering? The answer to questions such as these produces speculative and philosophical information. These questions attempt to excavate our active and specular investments in relation to their suffering and their destruction.

Activists and practitioners are impatient<sup>11</sup> with the questions that produce speculative knowledge, holding that to speculate about “being” and “existence” while people are being massacred and hounded from their homes is distracting or perverse. This is true, even or especially in the instant case. Yet, in order to persuade their leaders to act, activists require a

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gang fueled by heroin-trafficking. . . . So the NATO bombs began to fall and, exactly as could have been predicted, the Serbian brutalities in Kosovo escalated and the tidal wave of refugees began. Everything has gone according to the script.

*Id.* at 7.

<sup>9</sup> See Straus, *supra* note 2, at 131. “The genocide debate and the Darfur crisis are thus instructive for several reasons. First, they have made it clear that ‘genocide’ is not a magic word that triggers intervention.” *Id.*

<sup>10</sup> Straus, *supra* note 2, at 132. Straus continues with a discussion of the two elements that are most contested with respect to the meaning of the term: what constitutes the “group” being destroyed (that is to say, “how much ‘partial’ group destruction does it take to reach the genocide threshold?”), and the problem of determining the perpetrator’s intent “in the midst of a crisis.” *Id.* Whereupon Straus notes, “the indeterminacy makes genocide a difficult term around which to mobilize an international coalition for intervention.” *Id.*

<sup>11</sup> See, e.g., Samantha Power, *Dying in Darfur: Can the Ethnic Cleansing in Sudan be Stopped?*, THE NEW YORKER, Aug. 30, 2004, at 56. “In the meantime [whilst states resist calling the crisis in Darfur a genocide], the debate over semantics has only further distracted the international community from the more important debate about how to save lives.” *Id.* at 72.

vehicle that tells the actors it is politically expedient, morally advisable, or legally required that they act. In short, they need a theory. My point is that when the action is largely, if not exclusively, “contained” in the legal box—that is, one cannot act, notwithstanding one’s moral instinct to the contrary, unless one’s actions are legal, or arguably (as in the case of Kosovo), unless the act can be legitimated (sometimes *ex post facto*)—then the theory behind the legality of action in the face of a genocide becomes critical.

Genocide, then, is the legal term (derived from international law) that enables us to act in the face of massive human suffering. But the law also enables us to stand still. This is the substance of the semantic debate: if Darfur is defined as a genocide, legally we have a duty to intervene. If not, we may stand still and, indeed, as happened in Rwanda, stand down when the slaughtering begins. But behind the semantics and the impatience, behind the will to intervene or not to intervene, lies a discourse of practicality and expediency: is it feasible? Do we have economic or political interests at stake? And beneath even this level of address lies something else: the peculiar hold of the specular. Herein lurk dark hints about ourselves, intimated in that secret sense, barely confessed to ourselves and quickly suppressed, that “Those savages are at it again,” or “I couldn’t look at the pictures of these broken children, those raped and forlorn women, and yet I couldn’t turn away either.” The law enables us to escape these secret buried hints; in a sense, the law enables an escape from ourselves. It is all about those poor, wretched people dying, and the need to chide ourselves, through the law, into moral action.<sup>12</sup>

Critiquing the law on genocide involves a risk. People are being killed; the object of critique, therefore, should be to produce instrumental information that will enable us to act—“what can we do to save them, to stop this, today?”<sup>13</sup> But I submit that despite the dichotomy between practice and theory, both practical and speculative information are, in the final analysis, instrumental. How is theory instrumental? When we see that the semantic debate is really asking what is reposed within the law, what the law as a vessel contains, we realize that it expresses more than legal entailments: the law, as the discursive determinant of how we see an event, is mythopoeic. It generates and resolves (or attempts to) all those ambivalent fears, hopes, and desires in relation to dead bodies and forlorn victims. It contains, and therefore quiets, ambiguous political, historical, and cultural difficulties. In short, the law as a vessel defines the self in relation to the other across the borderline called genocide: how I define what is happening to those humans dying in a faraway country defines me in relation to them, me as both construct and projection in relation to the other. The discourse on genocide, in short, is a project or a myth-system<sup>14</sup>

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<sup>12</sup> See Straus, *supra* note 2, at 129. “The [Genocide C]onvention had never been tested, however, and the law is in fact ambiguous on what ‘undertaking to prevent’ and ‘suppressing’ genocide actually mean and who is to carry out such measures.” *Id.*

<sup>13</sup> See *id.* at 124 (describing U.N. commissioned studies and vague threats, which have not proven effective in stopping the violence).

<sup>14</sup> Like Edward W. Said’s *Orientalism*, the discourse of genocide is “a myth-system with a mytho-logic, rhetoric, and institutions of its own. It is a machine for producing statements” about an event in relation

that produces knowledge about the self. But when we see the law as discursive (as, indeed, the semantic debate), we understand that law as repository of self-projection is a means of producing a certain kind of self and escaping another: this is a self defined according to whether or not she does or does not have legal duties. The self as ambivalent,<sup>15</sup> torn, discordant, opaque, is resolved in the clarity of the rational, juridical self.

But how is knowledge of the self that is elucidated by a critique of the law “instrumental” in terms of what to do about the dying out there? I suggest that critique allows us to see that escaping from the self is also a means of escaping from a view of the self implicated in those actions far away, as somehow invested in the death and depredation “out there.” In other words, the critical project is instrumental because if we are really interested in saving lives, in doing something, not just in the instant case—and the instant case is always too late, always peripheral—but also in the future, then we need to move beyond the (borderline of) innocence<sup>16</sup> vested in us by the juridical self, which essentially casts us in the role of bystanders engaged in a semantic debate, or saviors intervening to rescue both lives and consciences. But investment in the life of the other means, in effect, that the self must excavate and confront the deep, conflicted and, indeed, largely unconscious desire for the destruction of the other. The self confronts the sense that that destruction (thanatos) is a febrile, sacramental and, I will argue, erotic engine and source of the self’s creative project (eros).

Thus, to the practitioner’s impatient question concerning Darfur: “What can we do to save lives now, today?” one must also add another question: Will the deployment of any of the practical options at hand (get the UN involved, get the lawyers and the military on standby) *ensure* that if there is another Darfur I will be able to ask, “What can I do to save lives now, today?” In other words, what is our investment in genocide?

## B. CONFLICT MANAGEMENT

The object of this Article is to look more closely at the discourse on genocide, the juridical narrative that has been created around instances of mass violence that have involved the application of the term as a legal referent. Stated simply, my purpose in critiquing the discourse on genocide is to engender a disinvestment in the death of others. I analyze the discourse as a form of conflict management at two levels of investment: the

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to, and regardless of its ultimate definition as, genocide. POWER, POLITICS, AND CULTURE: INTERVIEWS WITH EDWARD W. SAID 36 (Gauri Viswanathan ed., 2001) [hereinafter SAID].

<sup>15</sup> See generally DAVID KENNEDY, THE DARK SIDE OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004). See *infra* Part II.A and note 48 for a discussion of Kennedy’s stories of moral ambivalence, uncertainty, and “resolution” within narrative.

<sup>16</sup> I use the term “border(s) of innocence” as a metaphor to denote how discourse, particularly of the law (the juridical), functions in part to create a severance between the self, the one that sits in judgment, the one observing and constructing the object or event, and the other or the event itself. “Innocence” suggests both my non-complicity in the event (violence of the other), as well as my naïveté, bewilderment, and incomprehension when faced with the annihilatory violence of the other, i.e., its foreignness to me. This “border” is a construct (*cordon sanitaire*) driven in part by a deep and libidinal (desiring) will to moral purity, as I discuss in this Article.

individual and the state. Pursuant to a prescription for Darfur today, or indeed for what we could or should have done in Kosovo or Nyarubuye yesterday, I hope to provide in the following pages a reflection on what we mean by genocide, what investments are involved, how we have constructed our narratives, our world, such that these investments and their tenebrous consequences seem inevitable and inescapable, how we appear to ourselves to be powerless in the face of rampant death and destruction out there in the world. By extension, I posit a critique of a legal system and legal/political prescriptions that render our narrative of genocide stable and inevitable.

To be sure, we suffer when we see photographs of the victims, ravaged and emaciated. But that's the point: as Slavoj Žižek has noted, we hold different libidinal investments between suffering "here" and suffering "there," suggesting that the latter is represented as more real, in a sense, and therefore more necessary.<sup>17</sup> The nameless Japanese man in Alain Resnais's *Hiroshima Mon Amour*<sup>18</sup> makes a similar point to his lover, the nameless French woman, who believes she knows Hiroshima from what she has seen (e.g., hospitals, museums, Peace Square, newsreels)—"I saw everything. Everything." He replies, over and over, "You saw nothing in Hiroshima. Nothing."<sup>19</sup>

Almost daily we are fed a diet of images of ravaged and emaciated victims of crises somewhere else, in Africa, the Middle East, Asia, or South America, and we think we see "everything," that we know ourselves through and against these images. My point will be that within such stories are intimated the creation of the borders between self and other that make the other's destruction seem insoluble, render my pity and horror futile, and justify, indeed require, my redemptive intervention (use of force).

But I will also argue that the question of our libidinal investment is not the creation of the border itself; on the contrary, a borderless world, after all, is a world gone mad.<sup>20</sup> Borders, as Miroslav Volf notes, can also be

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<sup>17</sup> See SLAVOJ ŽIŽEK, WELCOME TO THE DESERT OF THE REAL! FIVE ESSAYS ON SEPTEMBER 11 AND RELATED DATES 13 (2002).

And the same 'derealization' [as in *The Truman Show*] of the horror went on after the WTC collapse: while the number of victims—3,000—is repeated all the time, it is surprising how little of the actual carnage we see—no dismembered bodies, no blood, no desperate faces of dying people . . . in clear contrast to reporting on Third World catastrophes, where the whole point is to produce a scoop of some gruesome detail: Somalis dying of hunger, raped Bosnian women, men with their throats cut. These shots are always accompanied by an advance warning that 'some of the images you will see are extremely graphic and may upset children'—a warning which we never heard in the reports on the WTC collapse. Is this not yet further proof of how, even in this tragic moment, the distance which separates Us from Them, from their reality, is maintained: the real horror happens *there*, not *here*?

*Id.*

<sup>18</sup> HIROSHIMA MON AMOUR (Criterion Collection 1959).

<sup>19</sup> *Id.* This is during the long sequence at the beginning of the film. With respect to newsreels, she says, inter alia: "The films have been made as authentically as possible. The illusion, it's quite simple, the illusion is so perfect that the tourists cry. One can always scoff, but what else can a tourist do, really, but cry? I've always wept over the fate of Hiroshima. Always." He says, "No. What would you have cried about?" Later, interrupting her monologue on the films, "You saw nothing. Nothing."

<sup>20</sup> MIROSLAV VOLF, EXCLUSION & EMBRACE: A THEOLOGICAL EXPLORATION OF IDENTITY, OTHERNESS, AND RECONCILIATION 90–91 (1996). "The formation and negotiation of identity always entails the

bridges to the other. Within the discourse on genocide, which is all about destruction, lies the possibility that the very thing that separates us from them—that requires us to see their suffering and to see it as more real and, as such, as the limit of my self-extension (in an act of redemption, saving them)—also unites us. The analysis becomes, in short, a function of reconceptualizing the borders themselves.

The borders of innocence are the narratives and ways of seeing that constitute the discourse on genocide. What is evil, and who am I in relation to it? In the following, I will suggest that the discourse is a means of managing the world and categorizing the humans within it.

In discussing the Nazi program of extermination, Alain Badiou notes that whereas evil exists, “there is no radical Evil.”<sup>21</sup> Evil as “a category not of the human animal, but of the subject,” he explains, must be understood with reference to “the intrinsic dimensions of the process of political truth.”<sup>22</sup> As such, evil is taken out of conceptions of natural law (biology), as well as divorced from its “obviously religious origins.”<sup>23</sup> This is not to deny the singularity of the Holocaust, but rather “to situate [*localiser*] this singularity” within human history and subjectivity.<sup>24</sup>

David Kennedy describes what happens to the situatedness of events within certain narratives. Although the story he tells concerns the alleged abuse of political prisoners by the Uruguayan government in the 1980s, it is illustrative of the discursive mechanisms applicable to any human rights event, including events described as genocide.

Kennedy and his colleagues first meet a prison warden named Papillon, then the prisoner, a woman named Ana. In reporting on these meetings, Kennedy struggles with their meaning as situated narrative: “I could tell a story about ‘human rights abuses in Uruguay and the work of private institutions to combat them,’” he begins, suggesting also a situatedness having to do with “the rhythmic ebb and flow of the rule of law,” or “[t]he process of Uruguayan ‘democratization,’” or “a narrative about social struggle or foreign relations.”<sup>25</sup> Then Kennedy notes the following:

For all this potential narrative variety, however, it seems that no matter which story I tell, our moment with Ana is bound to be rendered too lucid, its own ambiguity lost to history. The difficulty is that both the analysis and the activism respond to narrative demands. Both enterprises struggle against the confusion of moments like ours with Ana, continuously creating new ambiguities and confusions. Although one point of a story like this one is to remember what was put aside in our moment with Ana,

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drawing of boundaries, the setting of the self as distinct from the other. As Gillian Rose puts it in *Love's Work*, “a soul that is unbound is as mad as one with cemented borders.” *Id.*

<sup>21</sup> ALAIN BADIOU *ETHICS: AN UNDERSTANDING OF EVIL* 66 (Peter Hallward trans., Verso 2001).

<sup>22</sup> *Id.* at 66.

<sup>23</sup> *Id.* at 58.

<sup>24</sup> *Id.* at 64. “One of the singularities of Nazi politics was its precise proclamation of the historical community that was to be endowed with a conquering *subjectivity*. And it was this proclamation that enabled its subjective victory, and put extermination on the agenda.” *Id.* at 65.

<sup>25</sup> KENNEDY, *supra* note 15, at 40.

the telling reinforces a deeper social practice of conflict management: we defer coming to terms with the confusion of the moment by embroidering it into the fabric of numerous comforting stories.<sup>26</sup>

As Kennedy's analysis of the "dark side" of humanitarianism suggests, if the "ordinary" human rights event is ambiguous and confusing, such that it is situated "by embroidering it into the fabric of numerous comforting stories,"<sup>27</sup> how much more will this be true of a massive program of extermination, such as the Nazi Holocaust or the Rwandan and Bosnian genocides? It is at the point of the situatedness of an event within a narrative of desire and suppression, management and deflection, that I wish to posit an analogy. I suggest a parallel operation, regarding what Kennedy terms the "narrative demands" that reinforce the "deeper social practice of conflict management," between the individual, psychic level on the one hand, and on the other, the "management" of sovereignty (the sovereign self) by the state within, by and through the international legal system.<sup>28</sup>

The similarity between the two—individual and state—revolves around the function of law as the repository of a narrative, if you will, of stability, a "comforting story" of rationality and safety. This is the content of the "semantic debate" regarding genocide as a juridical discourse. The law, for both self and sovereign, manages the ambiguities and reinforces the social practice of conflict management. For the self, the law does this by containing (and resolving) the duty of moral action or inaction in the face of the other's suffering; the law alienates the self from that suffering, in part through the specular fixation on suffering as other. To understand a similar operation of the law at the level of the state, one must recall the idea or conceptualization of sovereignty as both dichotomized and contradictory. As Martti Koskenniemi explains it, "modern doctrine constantly oscillates between an ascending and a descending perspective on statehood,"<sup>29</sup> that is, the choice between a conception of sovereignty as either before or after the law. To grossly simplify a complex problem: if the sovereign comes after the law (law anterior to the sovereign), then the law "manages" and constrains the sovereign, including as such the political will, which itself includes the sovereign's appetite for imperialism. If, on the other hand, the state as sovereign is anterior to the law, then the international legal system is in effect the will of the state, spoken by it. In any event, under either theory, it may be posited that a state will perceive itself, qua the imperialist appetite (non-equality of states or, simply, the question of power), as either constrained by or constraining the rule of law (international legal system). There is an inevitable enmeshment between

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See id.*

<sup>29</sup> MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT 193 (1989). Koskenniemi also refers to the "mutual exclusivity" of these two conceptions as empiricism versus conceptualism, the "legal approach" (sovereign under law) versus the "pure fact approach" (law ultimately the will of the sovereign), with Hans Kelsen, the principal advocate of the former (the "utopianism" in the title of Koskenniemi's book), and Carl Schmitt, the advocate of the latter (the "apologism," i.e., for state power as the ultimate "source of validity"). *See id.* at 194–200.



sovereignty and law, but even if the question of the relationship cannot be resolved by resort to either theory of sovereignty, the choice of one perspective over another will have consequences for the situatedness of the political, extrinsic event. Calling an event genocide, then, implicates the sovereignty of the redemptive and the recalcitrant states in question.

Genocide, then, involves the issue of conflict management at two levels. Analogous to the individual confronted with the trauma of the external event—managed by a narrative of juridical alienation from the violence and displacement of the self’s own aggressivity as other (libidinal or erotic investment), the juridical is also the site of the state’s stability when its sovereignty is under threat (i.e., external crisis as a threat or crisis with respect to international peace and security). If, then, the international arena is characterized by what Michael Hardt and Antonio Negri call the “omni-crisis,”<sup>30</sup> then this must involve both the threat to and stabilization (ratification) of the sovereign, i.e., the meaning of sovereignty within the redemptive act. In a sense, then, both individual psyche as a “subject” of the self, and sovereignty as the state’s subjectivity under or through international law, are invested in systemic crisis as both materially and discursively exteriorized.

As Kennedy notes, juridical narrative as an instance of conflict management—of ambivalent psychic projections as much as imperialist drives or hungers—both creates the ambivalences it attempts to resolve and reinforces the tracks or the patterns of management.<sup>31</sup> The juridical narrative, therefore, coheres with an idea of imperialism itself as functionally a cycle of the creation and resolution of conflict. As Hardt and Negri point out in their discussion of the “new” post-imperial or modern sovereign, “the expansion of Empire is rooted in the internal trajectory of the conflicts it is meant to resolve.”<sup>32</sup> Hardt and Negri go on to point out that “[t]he first task of Empire, then, is to enlarge the realm of the consensuses that support its power.”<sup>33</sup>

Thus, if we agree with modern theorists that the nature and extent of the widespread conflicts throughout the world since the end of the Cold War have inaugurated a new kind of superpower sovereignty, whereby the United States is called upon to exercise the law, or to manage conflicts either pursuant to or regardless of the law (the “state of exception”<sup>34</sup> that permits the sovereign under threat to suspend the law, and in a sense to

<sup>30</sup> See MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* 189 (2000). “The end of the crisis of modernity has given rise to a proliferation of minor and indefinite crises, or, as we prefer, to an omni-crisis.” *Id.*

<sup>31</sup> See generally KENNEDY, *supra* note 15.

<sup>32</sup> HARDT & NEGRI, *supra* note 30, at 15.

<sup>33</sup> *Id.*

<sup>34</sup> See CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5 (George Schwab trans., MIT 1985) (1922). “Sovereign is he who decides on the exception. Only this definition can do justice to a borderline concept.” *Id.* See also Giorgio Agamben, *Generation Online, The State of Emergency*, at <http://www.generation-online.org/p/fpagambenschmitt.htm> (last visited Oct. 29, 2004). Agamben notes that “[t]he state of emergency [i.e., the suspension of law] defines a regime of the law within which the norm is valid but cannot be applied (since it has no force), and where acts that do not have the value of law acquire the force of law.”

operate above the law to redeem the world<sup>35</sup>), then we can apprehend the discourse of genocide as “internal” conflict management, as resembling and replicating the imperial dimensions (or at least the imperialist appetite in such conflict management) of a discourse of “external” management of the omni-crisis that sustains the sovereign’s existence.<sup>36</sup> The story of the omni-crisis as implicated in the sustenance of sovereignty and, in turn, the strong and secure modern state, is both the rational deduction of the theory of sovereignty, whether before or after the law, but depends for its existence or reality on the “management” of a suppressed and displaced “irrational” and the creation of a libidinal investment in that displacement/management.

Another way of characterizing the rational displacement of (self-) aggressivity is to consider that the perverse and secret rush we get from knowing that we are safe from “that horror, out there” is something like the rush of recognition that our safety is in some, perhaps highly (or not so highly) attenuated sense, a consequence of “that horror, out there.”<sup>37</sup> The resort to moral action, unexceptionable as it may be, is also at base an exercise of power with all the ambivalence that entails.<sup>38</sup>

I posit, therefore, a parallel between the modern sovereign and the self, and suggest that a critique of the borders of innocence created by externalization is also a critique of the legal system that maintains them. The object must be to discomfort, as it were the “comforting stories,” to unravel the fabric (semantic debate) into which the external event is embroidered. The comforting story in question is the juridical discourse on genocide; that is, the term itself and the narrative that subtends it is, in Kennedy’s terms, a deferral of the confrontation with the ambiguity and confusion or, more deeply, the fraught sense of shame, complicity, illicit fascination, and finally, abjection of the event and its representation, even as the images and stories produce, or spin, ambiguities and confusions within the memorials—and counter-memorials—to the “singularity” of the event.<sup>39</sup>

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<sup>35</sup> See Payam Akhavan, *The International Criminal Court in Context: Mediating the Global and Local in the Age of Accountability*, 97 AM. J. INT’L L. 712, 715 (2003) (review essay).

Based on its self-conception as the sole superpower and ‘leader of the free world,’ the United States contends that it plays an exceptional role in enforcing international law through the use of armed force, and that it must not be inhibited in discharging its unique responsibility for fear of politically motivated prosecutions (or because of any other external legal constraints, for that matter).

*Id.*

<sup>36</sup> See EMMANUEL TODD, *AFTER EMPIRE: THE BREAKDOWN OF THE AMERICAN ORDER* 3 (2003).

The elevation of terrorism into a universal force *institutionalizes a permanent state of war across the globe*—a fourth ‘World War’ according to certain American authors who see nothing ridiculous about considering the Cold War as the third. Everything seems to indicate that the United States is, for some obscure reason, trying to maintain a certain level of international tension, a situation of limited but permanent war.

*Id.*

<sup>37</sup> See JOSEPH CONRAD, *HEART OF DARKNESS* 90 (Doubleday 1997) (1899), for a famous literary rendition of that moment of recognition spoken by Kurtz: “The horror! The horror!”

<sup>38</sup> See HARDT & NEGRI, *supra* note 30, at 15. “Empire is formed not on the basis of force itself but on the basis of the capacity to present force as being in the service of right and peace.” *Id.*

<sup>39</sup> See generally KENNEDY, *supra* note 15.

Genocide, as a discourse, is redemptive. This is the essence of Samantha Power's powerful critique of U.S. foreign policy in the wake of genocide: the absence of a forceful response is a moral failure.<sup>40</sup> But the capacity to use force, its index within the equation of ethical action, is but one, albeit crucial, element of the sovereign's legitimacy: the sovereign is implicated within the genocide. The sovereign is called into being by crises,<sup>41</sup> none more so than the instantiation of genocide. It is this knowledge, this "ambiguity<sup>42</sup> and confusion," that sits at the heart of ethical action, and that analogizes the logic of imperialism, the demands of narration, and the self's conceptualization of an event described as genocide.

This Article, then, examines the latent eroticism beneath the redemptive juridical discourse through a comparative analysis of the self, on the one hand, and the sovereign on the other, in their relationship to the external event or crisis. I wish to examine the extent to which there is a pleasurable or erotic<sup>43</sup> element, or rush, on the psychic level for the individual self, or an investment—for the state in the source of its validity (meaning of sovereignty)—that inheres in the suffering of the other. My goal is to provoke the reader to question an international legal system that recharges and perpetuates the subconscious desire for mass violence as a means of verifying the moral purity of those who are not personally subject

<sup>40</sup> See generally SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* (2002).

<sup>41</sup> See HARDT & NEGRI, *supra* note 30, at 16. Both the supranational analogy (the international legal system) and the domestic legal order operate on the same terrain: the terrain of crisis. See *id.* "As Carl Schmitt has taught us, however, crisis on the terrain of the application of law should focus our attention on the 'exception' operative in the moment of its production." *Id.* Domestic and supranational law are both defined by their exceptionality. Exceptionality in turn is defined as follows: it means that the intervening authority is granted:

(1) the capacity to define, every time in an exceptional way, the demands of intervention; and (2) the capacity to set in motion the forces and instruments that in various ways can be applied to the diversity and the plurality of the arrangements in crisis. Here, therefore, is born, in the name of the exceptionality of the intervention, a form of right that is really a *right of the police*. . . . The judicial power to rule over the exception and the capacity to deploy police force are thus two initial coordinates that define the imperial model of authority.

*Id.* at 16–17. As can be seen, whether one speaks of the modern nation state, the superpower (hegemon), or of "Empire" as a supranational state, the same juridical operation or gesture entails.

<sup>42</sup> I do not wish to push the analogy too far, since, in any event, Kennedy's conceptualization of ambiguity is more complex than simply that which is deferred or suppressed by the narration of experience, to wit:

[A]ctivism avoids ambiguity by reference to an analysis that treats the ambiguity as having already been resolved in action. Yet, just as the patterns we embroider onto our relations are undone when the ambiguity of the experience is recaptured, so the ambiguity of our analyses is belied by the felt authenticity of our experiences. Oddly, this work—weaving meaning into our lives only to rip out the cloth—is forgotten, and the story seems simply to unfold, to progress. Propelled forward by our practice and reimagined by our analysis, time seems to move forward independent of our activities. Moreover, as we forget the ambiguity of our play, the results of our activities come to seem real.

KENNEDY, *supra* note 15, at 51. What I hope to suggest by the analogy between narration and imperialism is simply a logic of crisis that situates the discourses on genocide, or the discourse of genocide, within the unconscious, the dream-world, or more precisely the "internal trajectory" of global power dynamics, whether these dynamics are called old state-centric imperialism, new Empire, supranationalism, or globalism. See HARDT & NEGRI, *supra* note 30, at 15.

<sup>43</sup> See GEORGES BATAILLE, *EROTICISM: DEATH AND SENSUALITY* 16 (Mary Dalwood trans., John Calder 1962) (1957). "In essence, the domain of eroticism is the domain of violence, of violation." *Id.*

to the threat of genocide or the moral exceptionalism (sovereign as “he who decides on the exception”<sup>44</sup>) of the third party state.<sup>45</sup>

When we perceive the violence “out there,” remote from ourselves, it may, on a material level, have little to do with us. But its existence has psychic weight that bears upon the meaning of our lived experience here in the safety of our home. The meaning can be expressed as a kind of investment in the existence of that violence, out there; this is the content of the “eroticism” that explains the relation of the self to the other, who is composed of violence and suffering across the border or zone of innocence, the meaning and substance of the juridical self.

I attempt in this Article to reclaim the erotic from its specular fixation on the other’s death. As a critique of our libidinal investments (eroticism), the project hopes, by extension, to critique the legal system that ratifies them by examining the construction of the self and the sovereign at the limits of law and politics. The paradigmatic case for this, I suggest, is the case of genocide; the point at which the self, at a distance, observes the enactment of the final resolution of the self-other antagonism.

The Article is divided into three parts. In the first, I outline and explain what I mean by eroticism, or the “libidinal investment.” In the second, I explain the meaning of the erotic as a disciplinary device in relation to the other’s death. I examine the erotic as the juridical border that maintains and polices the rational or stabilized self (and sovereign), and propose two means of escape from the inevitability of the eroticism-death complex, indexed as the political and the moral/ethical.

In the result, I hope to posit a “neutral space” within which the self (or sovereign) may discover itself, its antagonism.<sup>46</sup> That is, within the neutral space, the self encounters the other not as the displacement of its own violence, but as the site of its alterity (its sense of otherness). As such, law would function as the limit of politics (war by other means) and of the sovereign self (or state) when its normative base (its ontology) is no longer the exception or the crisis. I concede that for both sovereign and self this may be a difficult prospect, since it requires a different perception, or reconfiguration, of the border-as-law that maintains the sense (or myth) of security. But unless we reclaim the erotic as the domain of human connection and community—the will to love—we cannot, in a globalized world, long remain unscathed by the suffering “out there,” nor without increasingly high cost, maintain the myth of moral purity.

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<sup>44</sup> SCHMITT, *supra* note 34, at 5.

<sup>45</sup> I am grateful to my colleague Peter Manus for his editing suggestions for this introduction. Errors and infelicities are my own.

<sup>46</sup> See ŽIŽEK, *supra* note 17, at 66. “The actual universality is not the never-won neutral space of translation from one particular culture to another, but, rather, the violent experience of how, across the cultural divide, we share the same antagonism.” *Id.*

## II. EROTICISM

### A. NOTHINGNESS AND THE FATALITY OF FUSION

*I read in a book today that chance, desire, fear, and death leave men and women face to face, alone.*<sup>47</sup>

In this section, I hope to clarify the internal psychic drives, the erotic dimension of the ethical self and its relationship to the death and suffering of others. I will show how the legal system, by accommodating and projecting these libidinal investments in the face of crisis, sustains and is sustained by these forces as an externalization and normalization of them.

The “ambiguity and confusion” referred to by Kennedy that slips from the narration (activism, analysis, representation) of event (or lived experience) lies, in a sense, at the heart of ethical action<sup>48</sup> or “ethical consistency.”<sup>49</sup> In simple terms, the ethical is the struggle, as Slavoj Žižek has noted, not between existence and nonexistence, but rather between existence and “insistence,” essentially a “striving toward existence.”<sup>50</sup> The ethical insistence is an encounter with nothingness, the gap between action and inaction, the aftermath of the pause, wherein memory is a “permanent doubting.”<sup>51</sup>

But the analysis of the relationship between memory and nothingness is rich and ancient. Artists routinely speak of “negative space,” the absence that allows a figure to stand out in stark relief.<sup>52</sup> So it is with the borderline between self and other. As Badiou points out in his analysis of evil, “the most intense subjective sufferings—those that really highlight what is involved in ‘hurting someone,’ and often lead to suicide or murder—have as their horizon the existence of a process of love.”<sup>53</sup> As Bataille has noted in his study of death and sensuality, at the heart of that fraught relationship

<sup>47</sup> LA CAPTIVE (Image Entertainment 2000). Ariane, the female character, speaks these words to Simon in the car after he has dragged her out of a post-concert gathering with her friends at the opera house.

<sup>48</sup> Kennedy’s advocacy, his hope, “is that we will come to embrace the human side of humanitarian practice, including its dark sides, uncertainties, and ambivalences. Responsible humanitarian action in a cloud of uncertainty—my hope is that humanitarian advocates and policy makers will develop an appetite for this most basic experience of rulership.” Kennedy, *supra* note 15, at xxv–xxvi. My concern, in this article, is with the extent to which the “dark side” of our virtuous instincts in fact creates, or contributes to the creation and perpetration of, the conditions of rule.

<sup>49</sup> See BADIOU, *supra* note 21, at 60.

<sup>50</sup> ŽIŽEK, *supra* note 17, at 22.

[T]hat which does not exist, continues to *insist*, striving towards existence. . . . When I miss a crucial ethical opportunity, and fail to make a move that would ‘change everything,’ the very nonexistence of what I *should have done* will haunt me for ever: although what I did not do does not exist, its spectre continues to insist.

*Id.*

<sup>51</sup> See JULIA KRISTEVA, REVOLT, SHE SAID 101 (Brian O’Keefe trans., 2002). “What Plato and St. Augustine referred to as memory was a permanent doubting. Its essential aspect is nothingness, from Heidegger to Sartre. The question of nothingness is essential as an aspect of freedom. But what is the meaning of nothingness: the possibility to rebel, to change and to transform.” *Id.*

<sup>52</sup> “She keeps thinking, for some reason, about the professor in her art-history class. Going on and on about negative space, how sculpture is about the skin, that edge where substance and absence meet. How the presence of empty space, a void, causes a solid object to reveal itself.” Judy Budnitz, *Miracle*, THE NEW YORKER, July 12 & 19, 2004, at 87.

<sup>53</sup> BADIOU, *supra* note 21, at 66.

is the fatality of fusion, the quest for continuity between discontinuous beings.<sup>54</sup>

Perhaps counterintuitively, the paradoxical desire for fusion is a dream of the sovereign, described by Hardt and Negri as the “immediacy” between ruler and ruled.<sup>55</sup> Postmodernism conceives of immediacy as a break from the law; Michel Foucault, for instance, admonishes us to “[w]ithdraw allegiance from the old categories of the Negative (law, limit, castration, lack, lacuna), which Western thought has so long held sacred as a form of power and an access to reality.”<sup>56</sup> He further suggests that we “[p]refer what is positive and multiple, difference over uniformity, flows over unities, mobile arrangements over systems. Believe that what is productive is not sedentary but nomadic.”<sup>57</sup> Hardt and Negri’s view of late twentieth century globalism suggests the achievement of this vision.<sup>58</sup>

I want to suggest a relationship between the Negative and immediacy: the Negative *as* the law or limit means that the event out there is seen, in stark relief, against the horizon of the desiring subject’s self-projection. That is, if there is no mediation between my desire and the source of its production (immanent and supranational power, whereby immediacy expresses the fusion of desire and effect<sup>59</sup>), if barriers recede to the point of nonexistence and resurface as an insistence of the absent, then I *become* the law, I am the sovereign. The material world, the suffering of the wretched, is “im-mediated,” meaning that it is “more real” (following Žižek) than simply my projection. In this sense, immediacy and the “exception” (law) become normative.

The self depends upon the insistence of that immediated reality, violently recreated over and over again and *willed* as the reality, the center of my own de-realized self. This is the dream of fusion, an encounter with the self as the Negative. Expressed in psychoanalytic terms, the juridical, within that dream, is cathected, i.e., over-invested. And it is this investment in the center as the negative space, nothingness, which projects the will to fusion and the mastery over discontinuity (discontinuous being).

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<sup>54</sup> See BATAILLE, *supra* note 43, at 15. “I intend to speak of these three types of eroticism in turn, to wit, physical, emotional and religious. My aim is to show that with all of them the concern is to substitute for the individual isolated discontinuity a feeling of profound continuity.” *Id.*

<sup>55</sup> See generally HARDT & NEGRI, *supra* note 30.

<sup>56</sup> Michel Foucault, *Preface* to GILLES DELEUZE & FELIX GUATTARI, *ANTI-OEDIPUS: CAPITALISM AND SCHIZOPHRENIA* xiii (Robert Hurley et al. eds., Viking Press 1977) (1972).

<sup>57</sup> *Id.*

<sup>58</sup> *But see* Sonia Katyal, *Exporting Identity*, 14 *YALE J.L. & FEMINISM* 97 (2002) (suggesting that the global gay rights movement, based on an American model, is exporting a “fixed” form of (gay or lesbian) identity to the rest of the world. As this form spreads, it excludes and suppresses a social constructionist’s more fluid and hybrid model of identity—based on a more contingent, rather than stable, relationship between conduct and orientation/identity—which is prevalent in many parts of the world).

<sup>59</sup> See HARDT & NEGRI, *supra* note 30, at 19.

We could say, in Kantian fashion, that our internal moral disposition, when it is confronted with and tested in the social order, tends to be determined by the ethical, political, and juridical categories of Empire. Or we could say that the external morality of every human being and citizen is by now commensurable only in the framework of Empire. This new framework forces us to confront a series of explosive aporias . . . .

*Id.*

But nothingness, fusion, immediacy, and discontinuity are, in one sense, tropes, i.e., ways of speaking about a central dilemma of the ethical subject when faced with mass suffering and death out there in the “there, not here.” The dilemma involves a conscious will to act coupled with a secret, dark desire to engender the conditions that in turn dictate the ethical will to act. The projection of desire and violence can be revealed, explained, and rationalized, in part by its refracted relationship to imperialism or the imperialist impulse. To the extent that space and time have been colonized by the sovereign,<sup>60</sup> our subconscious desires are cast such as to render my loneliness before death, and my violent, cathected response in relation to it, inevitable and ineluctable. But through the very tension created between nothingness and fusion, the sovereign does posit, in Mouffe’s terms, an escape from “antagonism” to “agonism.”<sup>61</sup> The self’s bordered relationship to the other is not inevitably innocent, and the self’s desire for fusion may itself permit an alternative to the sense of failure that requires displacement, the production of a desire/abjection so normative and rationalized as to seem inherent in the ethical act itself.

#### B. LAW AND EROTICISM: A DISCIPLINARY DEVICE

Before discussing the alternatives to the failure of fusion, I wish to look more closely at the nature of the eroticism that operates to center and displace violence. I will then elaborate on the link between displacement (de-centering) and the imperialism that characterizes one sense in which the modern sovereign can be understood, at least as currently supported or permitted by the international legal system. As noted, understanding the border between self and violence is crucial to this analysis.

The juridical is the repository for my desire and investment in the other’s destruction, i.e., my investment in genocide. The juridical is a mechanism that constrains and cabins, but also normalizes those desires. The juridical locates the negative space at the center of the subject, what is sometimes referred to as postmodernism’s “de-centered subject.”<sup>62</sup> The center, in turn, is the terrain of redemption.<sup>63</sup> The link, then, between destruction and redemption is sacramental, the very function of the erotic.<sup>64</sup> In short, it is in part an eroticization of death that normalizes my investment in the destruction of the other. I propose, therefore, to examine this eroticization more closely as an imperialist trope.

<sup>60</sup> See HARDT & NEGRI, *supra* note 30, at 10–11. This “ethico-political dynamic that lies at the heart of its juridical concept” involves “a boundless, universal space,” and “all time.” *Id.* at 11. “Empire exhausts historical time, suspends history, and summons the past and future within its own ethical order. In other words, Empire presents its order as permanent, eternal, and necessary.” *Id.*

<sup>61</sup> CHANTAL MOUFFE, *THE CHALLENGE OF CARL SCHMITT* 4 (1999).

<sup>62</sup> See, e.g., Dragan Milovanovic, *The Postmodernist Turn: Lacan, Psychoanalytic Semiotics, and the Construction of Subjectivity in Law*, 8 EMORY INT’L L. REV. 67, 70 (1994). A tenet of postmodernism was “the idea that the subject was not as centered and in control as prevalent ideology claimed (in fact, the person became seen as the *de-centered subject*).” *Id.*

<sup>63</sup> For Volf and Christian theology, decentering is not therefore descriptive but, rather, the prescription: “Whichever way the ‘centering’ takes place and whatever its result, the self should be de-centered, claims Paul. The word he uses to describe the act is ‘crucified.’” VOLF, *supra* note 20, at 70.

<sup>64</sup> See BATAILLE, *supra* note 43, 15–16. “[A]ll eroticism has a sacramental character,” since the aim is “to substitute for the individual isolated discontinuity a feeling of profound continuity.” *Id.*

To apprehend the self's investment in the law (genocide discourse) as the repository of the displacement of the real, one may look briefly at some devices that convey the law's operation. To examine the borders between the self and the other that seem to make genocide "out there" inevitable, one must delve beneath the surface, beneath the horror and fascination, to the psychic, erotic investments produced by the borders within the context of a will to fusion. First, the law operates by exclusions. I will discuss the link between the constitution of the (morally pure) self via exclusions and the disciplinary devices that exemplify this operation.<sup>65</sup> Second, these devices are imperialistic,<sup>66</sup> which recalls the relationship between narrative demands and imperialism's imperatives. By implication, these demands and imperatives are inscribed within the law or the juridical response to violence, whereupon we may say that the "truth" of genocidal violence—my relation as outside the event, my silent observation (my gaze, or "magic eye"<sup>67</sup>) setting apart, in stark relief, the savagery of the other, the necessity and inevitability of my violent intervention—resides within the juridical mode of apprehending the event (as the real). Third, between the logic of nothingness and the fatality of (the will to) fusion, postmodern immediacy

<sup>65</sup> See VOLF, *supra* note 20, at 69–70.

Psychologists tell us that humans produce and reconfigure themselves by a process of identifying with others and rejecting them, by repressing drives and desires, by interjecting and projecting images of the self and the other, by externalizing fears, by fabricating enemies and suffering animosities, by forming allegiances and breaking them up, by loving and hating, by seeking to dominate and letting themselves be dominated—and all this not neatly divided but all mixed up, with 'innocences' [sic] often riding on hidden 'vices,' and 'vices' seeking compensatory redemption in contrived 'virtues.'

*Id.* Note that this "mixed up" character of human psychic construction may be compared, but finally opposed to, the intentional decision of the sovereign to declare the enemy and deploy the state of emergency. See Agamben, *supra* note 34, at 6. On the similarities between "being," for metaphysics, and "violence" for the sovereign:

To pure being as the ultimate stake of metaphysics, corresponds pure violence as the ultimate stake of the political; to the onto-theological strategy that wants pure being within the net of logos, corresponds the strategy of exception that has to secure the relation between violence and law. It is as if law and logos would need an anomic or 'a-logic' zone of suspension in order to found their relation to life.

*Id.*

<sup>66</sup> Hardt and Negri suggest a distinction between "disciplinary society," which deploys institutional (mediatory) devices that discipline the subject, and the "society of control," whereby disciplinarity is engendered internally, no longer requiring external or institutional devices or *dispositifs*. Both societies are imperialistic, however, the radical difference being the question of the source of discipline or self-discipline. See HARDT AND NEGRI, *supra* note 30, at 23.

<sup>67</sup> On a psychoanalytic subject struggling with a sense of insecurity and shame, Wurmser notes a transformation that he characterizes as "the magic eye." See LEON WURMSER, *THE MASK OF SHAME* 120 (1994). "[A] quite different inner power gradually took center stage . . . a more archaic version: the magical control by his eyes. *His seeing formed, transformed, and destroyed the world.*" *Id.* Also, "[s]eeing was ruthlessly uncovering, intruding, and demolishing." *Id.* at 122. *But see* SIGMUND FREUD, *TOTEM AND TABOO: ASSEMBLAGES BETWEEN THE PSYCHIC LIVES OF SAVAGES AND NEUROTICS* (A.A. Brill trans., Random House 1946) (1918) (discussing the neurotic's belief that his thoughts create reality).

The primary obsessive acts of these neurotics are of an entirely magical character. If they are not charms, they are at all events counter-charms, designed to ward off the expectations of disaster with which the neurosis usually starts. Whenever I have succeeded in penetrating the mystery, I have found that the expected disaster was death. Schopenhauer has said that the problem of death stands at the outset of every philosophy; and we have already seen . . . that the origin of the belief in souls and in demons, which is the essence of animism, goes back to the impression which is made upon men by death.

*Id.* at 86–87.



has proposed a model of salvation that justifies the exclusion, in the first instance, involved in the production of identity.

But this, I submit, leaves us with a choice, for the will to fusion is also the will to love. How, then, do we characterize the erotic limits of the ethical self? What is the self's desire, and must it always lead to death and the abjection of alterity? We cannot know companionship unless we understand the radical loneliness at the heart of the discourse as a device for producing the self's desire.<sup>68</sup> Although, as Paul Kahn suggests, love sits outside the law, and it is only through the law that we obtain the idea of love,<sup>69</sup> the law itself provides aporia that intimate the reality and independence of love's existence, as the self's desire. But determining whether love is always colonized by the abject will to fusion and immediacy, or something that refuses abjection and incorporates barriers involves, I suggest, a choice.

Stated at its simplest, it is a choice between love and death.<sup>70</sup> But nothing is ever quite so simple, for both contain pieces of the other. It is what we do with those pieces of the other within the self (law) that determines either a narrative that ends in the violent expulsion and eradication of the other, or a narrative that resists this end, thereby overturning the expectations of law as stasis.<sup>71</sup>

These themes—eroticism and the will to fusion (intimacy), identity and exclusion, desire and imperialism—may be captured in the “*dispositif érotique*” (erotic device) vividly portrayed in a 2000 film by Chantal Akerman called *La Captive* (The Captive).<sup>72</sup> Films on taboo eroticism lend themselves to an excavation of the deeper erotic or libidinal investment in displaced violence, because for a disturbing moment they permit a view of eroticism in crisis, and the eroticism's deep core of violence and violation. Through the figure of Simon, the protagonist, I hope to clarify the complicity of the outside observer in the other's eroticized destruction.

<sup>68</sup> See, e.g., ROBERT W. FIRESTONE & JOYCE CATLETT, FEAR OF INTIMACY 24 (Am. Psychological Ass'n 1999). “Couples and families are mere abstractions, not real entities. The individuals concerned are very real and do matter. Similarly, one can only analyze the value of a social system or society by analyzing its effect on its members: If the individual members are flourishing, it is constructive; if they are impaired or suffering under the social process, then it is obviously destructive.” *Id.*

<sup>69</sup> See PAUL W. KAHN, THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP 123 (1999). “Law emerges as a cultural formation bounded by an other created simultaneously with law itself. A world of law is one in which revolution and love are constantly seen as both the objects of exclusion and the objects of desire.” *Id.*

<sup>70</sup> See, e.g., SIGMUND FREUD, CIVILIZATION AND ITS DISCONTENTS 55–58 (James Strachey trans., W.W. Norton & Co. 1961) (discussing the struggle between love and death). *But see* FIRESTONE & CATLETT, *supra* note 68, at 33. “I reject [Freud's] conceptualization of a death instinct as such, and instead perceive aggression as derived from frustration.” *Id.*

<sup>71</sup> Schmitt analyzes the distinction between war (the Greek “*polemos*”) and “insurrection, upheaval, rebellion, civil war” (stasis); but Schwab notes, in the same footnote, that “[s]tasis also means the exact opposite, i.e., peace and order.” See CARL SCHMITT, THE CONCEPT OF THE POLITICAL 28–29 n.9 (George Schwab trans., Rutgers Univ. Press 1976) (analyzing the distinction between war (the Greek “*polemos*”).

<sup>72</sup> Akerman says her film was inspired by Marcel Proust's *La Prisonnière*, the fifth volume of *À la Recherche du Temps Perdu* (“Remembrance of Things Past”). The film is not a rendition of the novel, but it does carry the eroticism to a logical conclusion, death, rather than simply abandonment. See LA CAPTIVE, *supra* note 47.

As a disciplinary mechanism, the taboo eroticism in the film indexes, at one level, the way the violence of imperialism is internalized and encoded with libidinal desire, which in turn presents analogies to the discourse on genocide. The element of taboo eroticism played out in the genocidal event is particularly evident in the instance of mass rape as an act of genocide. These unspeakable acts are of necessity specular events, and their very existence weighs upon the psychic imagination as the displacement of violence that structures the *dispositif*.

The link between rape and eroticism has been suggested by Katherine Baker, who outlines the many and complex motivations for rape.<sup>73</sup> Baker's typologies of rape include rape as lovemaking,<sup>74</sup> rape as theft (the commodification of sex),<sup>75</sup> rape as a confused and thwarted "desire for intimacy,"<sup>76</sup> power-rape,<sup>77</sup> anger-rape,<sup>78</sup> and sadistic rape.<sup>79</sup> She writes: "Some anger rapists reach the point of what Groth calls sadism. In these situations, '[t]here is a sexual transformation of anger and power so that aggression itself becomes eroticized.' Often these rapists murder their victims after, and possibly even before, raping them."<sup>80</sup>

Sadistic rapists, Baker notes, are the exception—a mere 6% of reported rapes—and yet, "[t]hese men are the paradigm, but they are not most rapists."<sup>81</sup> Baker suggests that sadistic rape, the eroticization of violence and aggression, is the cultural paradigm of rape, and that this belies the serious harm caused by the many other kinds of rape, rape from a variety of other motivations, that do not conform to the sadistic rape paradigm.<sup>82</sup>

Another typology of rape, rape used to "insult or denigrate other men,"<sup>83</sup> is particularly prevalent in war. The link to eroticism here is latent, related to the eroticizing of power, competition, and humiliation of the

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<sup>73</sup> Katherine K. Baker, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 HARV. L. REV. 563 (1997). "Rape, at least in the words of one survivor, 'is death.' It is 'a primal experience to which other events might be meaningfully analogized—the 'rape' of the land, the 'rape' of a people. But rape itself cannot be reduced to other painful experiences." *Id.* at 605.

<sup>74</sup> *See id.* at 599–600.

<sup>75</sup> *See id.* at 602–03.

<sup>76</sup> *See id.* at 609.

<sup>77</sup> *See id.* at 608–09.

<sup>78</sup> *See id.*

<sup>79</sup> *See id.* at 611.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 611–12.

"Most rape victims are not victims of angry, sadistic rapists. This does not mean that most rape victims are not raped; it does not mean that rape victims fabricate their stories; and it does not mean that what happens to them is okay. It does belie the common belief that rapists are crazy men whose sadistic hunger for sex or hatred of women compels them to rape."

*Id.*

<sup>83</sup> *Id.* at 607–08.

Thus, the US soldiers left the 11<sup>th</sup> Brigade patch in order to impugn the honor of North Vietnamese men [in the My Lai rapes] . . . . By making the fact of their rapes public, the soldiers added further insult to the enemy. This view explains why rapes during wartime often take place in public or are [sic] committed in front of civilian witnesses, and it explains why rape and war have gone hand in hand since there has been war. The rapist seeks to demonstrate the superiority of his team. He does this by raping the property of the enemy.

*Id.*

enemy. The enemy, “the other,” can be either male or female; it is rare that the instigator of this eroticized violation of the other is a woman.

There have, however, been cases of women accused of encouraging and even committing wartime rapes. Consider the harrowing story of Pauline Nyiramasuhuko, as told by Peter Landesman.<sup>84</sup> This is a story of rape deployed as a weapon of war and of genocide—rape “unto death.”<sup>85</sup> Pauline, as she is generally called, is currently being detained in Arusha, Tanzania, where she “faces 11 charges, including genocide, crimes against humanity and war crimes.”<sup>86</sup> Landesman notes that “[s]he is the first woman ever to be charged with these crimes in an international court. And she is the first woman ever to be charged with rape as a crime against humanity.”<sup>87</sup> Pauline is accused of goading the militias to rape the women before killing them.<sup>88</sup> The soldiers, according to a witness, “said that Pauline had given them permission to go after the Tutsi girls, who were too proud of themselves. . . . She was the minister [for women’s affairs in the Habyarimana administration], so they said they were free to do it.”<sup>89</sup> “Pauline had led the soldiers to see the rape as a reward.”<sup>90</sup> Often, the descriptions of her crimes are brutal; for instance, this from Rose, a witness, to Landesman, “Hutu soldiers took my mother outside . . . stripped off her clothes and raped her with a machete.”<sup>91</sup>

Why rape? As Sydia Nduna, an advisor at the International Rescue Committee Rwanda tells Landesman:

‘Did you ever see the look in a woman’s eyes when she sees a child of rape? . . . It’s a depth of sadness you cannot imagine.’ The impact of the mass rapes in Rwanda, she said, will be felt for generations. ‘Mass rape forces the victims to live with the consequences, the damage, the children,’ Nduna explained.<sup>92</sup>

Landesman continues, “Making matters worse, the rapes, most of them committed by many men in succession, were frequently accompanied by other forms of physical torture and often staged as public performances to multiply the terror and degradation. So many women feared them that they

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<sup>84</sup> Peter Landesman, *A Woman’s Work*, N.Y. TIMES SUNDAY MAG., Sept. 15, 2002 at 82.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 86.

In most cases, she is accused of inciting crimes rather than carrying them out herself. However, according to a document prepared by tribunal investigators in preparation for the trial, one witness, code-named Q.C., saw a Tutsi community leader die ‘at the hands of Nyiramasuhuko.’ (The report does not specify what weapon Pauline used) . . . . Pauline has consistently denied the charges against her.

*Id.* at 86. Another woman, Biljana Plavsic, former President of the Republika Srpska, was also charged with genocide and crimes against humanity, for her part in the Bosnian atrocities. In October 2002 she pled guilty to one count of persecution, and was sentenced to 11 years. See, e.g., International Criminal Court Tribunal for the Former Yugoslavia Case, Case Information Sheets, at <http://www.un.org/icty/glance/plavsic.htm> (last visited Aug. 11, 2004).

<sup>88</sup> *Id.* at 83.

<sup>89</sup> *Id.* at 84.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 89.

<sup>92</sup> *Id.*

often begged to be killed instead.”<sup>93</sup> The theme of rape being worse than death is picked up later on, when Landesman speaks to the prisoners in the Rwandan detention centers, accused of rape and murder.<sup>94</sup> This is one of those interviews:

Lucien told me in detail about killing [a woman about whom he now had recurring nightmares]. But when I asked Lucien if he’d raped the woman, he fell silent and fought back tears. Every prisoner I spoke with described explicitly whom he killed and how. Not a single one admitted to raping a Tutsi woman.<sup>95</sup>

Landesman speculates that this silence may be for two reasons: one, the government had listed “rape committed during the genocide” as “the highest category of crime; those convicted were sentenced to death.”<sup>96</sup> The second reason, he speculates, may have been because “These men could somehow justify to themselves having murdered but not raped. In any event, the weight of that level of confession was obviously too much to bear, and if there could be any tangible proof that rape was considered the more shameful crime, it was this.”<sup>97</sup>

Rape is viewed as the most shameful part of the genocidal experience, according to Robert Jay Lifton, because it destroys the woman, “the symbol of purity” which is at the center of the family.<sup>98</sup> Lifton reiterates that “in this way, rape is worse than death.”<sup>99</sup> The more powerful the claim of the thing to be destroyed, the more virulent the destruction, and the more shameful the feeling in its wake. Luchino Visconti’s films, especially *The Damned*,<sup>100</sup> capture this sense of the erotic deployed to destroy the other (or, more precisely, the self’s alterity). Martin von Essenbeck, the ambitious son in *The Damned*, capitulates to his bitterness and destroys his mother Sophie by raping her.<sup>101</sup> By doing so, he finally achieves the sense of invincibility, which in the film is symbolized by donning the uniform of

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<sup>93</sup> *Id.*

Often the rapes were in fact a prelude to murder. But sometimes the victim was not killed but instead repeatedly violated and then left alive; the humiliation would then affect not only the victim but also those closest to her. Other times, women were used as a different kind of tool: half-dead, or even already a corpse, a woman would be publicly raped as a way for Interahamwe mobs to bond together.

*Id.*

<sup>94</sup> *See id.* at 125.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* On the subject of shame, quoting Robert Jay Lifton:

‘Rape sets in motion continuous suffering and extreme humiliation that affects not just the individual victim but everyone around her,’ said . . . Lifton, who[se books have] explored the psychology of genocide. ‘A woman is seen as a symbol of purity. The family revolves around that symbol. Then here is the brutal attack on that, stigmatizing them all. All this perpetuates the humiliation, reverberating among survivors and their whole families. . . . In this way, rape is worse than death.’

*Id.*

<sup>100</sup> THE DAMNED (Warner Brothers 1969).

<sup>101</sup> *Id.*

a Nazi officer. But it is a symbol also of his peculiar catastrophe.<sup>102</sup> The sex act in the film is depicted with immense tenderness, like the still waters of an unfathomably deep hatred. Meanwhile, his mother slips into madness, catalepsy, and eventual (enforced) suicide.

When the Hutu militias raped the Tutsi women “out of existence,” fueled as they were by envy and enmity toward the Tutsis,<sup>103</sup> they were “engaged not only in an act of sexual transgression but also a purifying ritual. . . . ‘The propaganda made Tutsi women powerful, desirable—and therefore something to be destroyed,’ Rhonda Copelon [said].”<sup>104</sup> But what drove Pauline to incite rape? Landesman discovers that Pauline and her family are in fact Tutsis, at least in part.<sup>105</sup> Her sister, Vineranda, speculated that when things changed in Rwanda in 1959 and it became dangerous to be a Tutsi, “Pauline was afraid that maybe the government would find out. And she was among many men in the government. And she had money and a position. She didn’t want to lose that.”<sup>106</sup> Lifton suggests another reason, “‘Part of Pauline Nyiramasuhuko’s fierceness had to do with eliminating the Tutsi in her,’ he hypothesized. ‘She was undergoing an individual struggle to destroy that defiled element in herself.’”<sup>107</sup>

Pauline Nyiramasuhuko and Sophie von Essenbeck (of *The Damned*), despite their different fates, were similar with respect to their sons. As Landesman notes, “Pauline did possess humanity, but it was in short supply, and she reserved it for her only son, Shalom, whom she had helped turn into a rapist and a killer.”<sup>108</sup> The son in each case had been created to destroy the object of self-hatred within and to purify the subject.<sup>109</sup>

The themes of purity and shame are particularly key to the nonconsensual act of sadistic or denigrative rape. But they are also key to the consensual sadomasochistic sexual relationship in Akerman’s depiction of taboo eroticism, where sex is encoded with the death instinct or will. Sadistic rape, “rape unto death,” and consensual eroticized aggression, however, all take place within a cultural context. Baker notes that

what leads many rapists to rape is not a perverse or abnormal sexual need, but a common, if distressing, failure to understand or appreciate the gravity of the harm that they inflict when they obtain sex by force. This

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<sup>102</sup> Shame and catastrophe are closely linked. Here, the film seems to suggest that the son suffers a catastrophe, of which his mother’s rape is at least in part the dénouement, when he discovers that the six year-old girl whom he ravaged and drove to suicide was in fact a Jew. *See id.*

<sup>103</sup> Landesman, *supra* note 84, at 130. “Unlike the Nazis, who were fueled by myths of Aryan superiority, the Hutus were driven by an accumulated rage over their lower status and by resentment of supposed Tutsi beauty and arrogance.” *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *See id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 132.

<sup>108</sup> *Id.* at 134.

<sup>109</sup> The mother, after the rape, runs her hands over a lock of her own blond hair preserved amongst her son’s childhood possessions. She also finds crude childish paintings representing her son murdering his mother with the words, “Mother destroy.” *See THE DAMNED, supra* note 100.

failure is linked to the cultural acceptance of sexualized violence, instrumental aggression, and a commodified view of sexuality.<sup>110</sup>

This is equally true of consensual violent or sadomasochistic sex (taboo eroticism).

Akerman's film, *La Captive*, is not explicitly sadomasochistic, but suggests the mapping of sex over the attempt to control the core of erotic violence (violence "unto death").<sup>111</sup> In analyzing the film, I want to highlight the norms that translate this attempt to control the death wish through a displacement of violation onto the other, i.e., the deeper substratum of the juridical discourse (libidinal investment in the borderline).

*La Captive* begins with Simon, blandly handsome and somewhat delicate, watching a film of a group of young women cavorting on a beach in Normandy.<sup>112</sup> The film is silent. Eventually it settles upon the face of Ariane, whom we later discover is Simon's lover. Ariane and her friend Andrée are seen sitting next to each other and Ariane's mouth moves as she stares blankly at the camera. Simon plays the scene over and over, evidently attempting to decipher the words. "I . . . think . . . I think . . . I . . . really . . . I really . . . like . . . I really like you."<sup>113</sup> He seems either to be projecting her words or his own, but in any event he speaks for a silent (and silenced) Ariane.

Simon lives in a strangely Kafka-esque apartment, lots of small rooms and tight, winding corridors, in a posh part of Paris. He drives expensive cars and is often chauffeur-driven in a Rolls-Royce. He lives with his grandmother, Ariane, and a housemaid. Ariane has her own room, apparently because she "brings in" pollen, to which Simon is allergic. But the provision of separate chambers for the two lovers is only one way in which the film emphasizes symmetries that call attention to their relationship as a particular kind of "*dispositif érotique*" (erotic device), as Akerman calls it.<sup>114</sup> The inner, claustrophobic spaces are juxtaposed against the open spaces in a seemingly empty Paris, as well as the open country scenes. Within those void-like spaces, the minimalist, anti-naturalistic acting style stands out in sharp relief, the inscrutability taking on the substance of a solid object.<sup>115</sup> The void-like spaces also emphasize the inner chambers, in which the mother-son relationship is played out by allusion to the Simon-Ariane affair.<sup>116</sup>

In both inner and outer spaces, we follow Simon as he becomes increasingly obsessed with managing every aspect of Ariane's life,

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<sup>110</sup> Baker, *supra* note 73, at 612.

<sup>111</sup> See *LA CAPTIVE*, *supra* note 47.

<sup>112</sup> See *id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* (Akerman's interview about the film is recorded on the 2001 DVD release.)

<sup>115</sup> Cf. Budnitz, *supra* note 52, at 87 (inscrutability analogous to the baby's blackness as color/complexion, rather than the absence of color).

<sup>116</sup> Akerman affirms the mother-son dimension in relation to the interiors in this and other of her films, within the interview: the apartments "are both protective and suffocating . . . . We don't need to search far [for why this is so]: it's the mother relationship." *LA CAPTIVE*, *supra* note 47.

including the thoughts and dreams to which he has no access. Ariane continually escapes, and is undisturbed by his scrutiny, his following her about, even his violent dragging of her from a *soirée* with her friends on one occasion. In a style reminiscent of the French *nouveau-roman*, their words are spare and repetitive. She says things like, “What I want is what you want”; he says, “As you know I am without memory,” but later insists, during their breakup (dialogue taken more directly from Proust), that she confess more of her lies: “But what are two lies? Give me at least four. Then maybe I’ll believe you. Without blame. At least I’ll have memories, real ones.”<sup>117</sup> But Ariane has no more to tell: “No, nothing. Nothing else.” “Nothing else?” “Nothing.”<sup>118</sup>

When Simon insists she tell him more lies “for my dignity” and suggests that she had never loved him the way she had loved and continues to miss her life as a lesbian (there are suggestions she continues to enjoy lesbian affairs even under Simon’s watch, further inflaming his obsessions), Ariane has one of her longest monologues in the film:

Ariane: You talk of things you don’t know.

Simon: No, alas. We’re like strangers at times.

Ariane: At times, yes. But that’s what I like. You want to know all, as if that changed something. Me, I ask you nothing. Neither what you think, nor dream. And if you told me all, I feel I’d love you less. I love you because there’s a part of you I don’t know. I imagine you’ve this world I cannot enter. That it’s closed to me only pleases me.

Simon: See? We cannot get along. I’m the total opposite (*le contraire*). For me, love is the very opposite.<sup>119</sup>

The oft-repeated words—“*au contraire*,” “*si tu veux*,” “*rien*”—suggest that the erotic device works precisely because they want different things which are both, paradoxically, satisfied by the device: her elusiveness feeds his obsession, and his surveillance allows her to live in the moments of escape. The rigid formality of the device provides the necessary constraint for her erotic imagination and, ultimately, unattainability. The consummation of their affair, within the cramped quarters of Simon’s or Ariane’s chambers, is also represented as onanistic,<sup>120</sup> with a fully-clothed Simon rubbing himself against a sleeping Ariane (she may be feigning sleep) until he ejaculates (Ariane, meanwhile, cries “*Andrée!*” after one such incident). Likewise, the bathroom scene, where each bathes on opposite sides of an opaque glass partition, suggests the impenetrability of their erotic lives, even as their conversation consists of Ariane worrying about how much she smells, and Simon giving detailed instructions as to her toilette (“Wash your vagina carefully, but keep it moist,” and so on).<sup>121</sup>

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> In the Akerman interview, the interviewer notes, in relation to the love scenes, “We can’t say that Simon has failed.” *Id.*

<sup>121</sup> *Id.*

The eroticism of the lovers is encoded (code, *coda*) with death, suggested by the score itself (Rachmaninoff's "Isle of the Dead"). Fusion takes place between self and other only as shadows, crossing and merging across the walls of isolated buildings or on the grass of an empty park.<sup>122</sup> Simon literally has an allergic reaction to Ariane, a "*florilège vide*," the pollen of her efflorescence symbolizing her ripeness unto death, her careful (and separate) toilette and ultimate effluence (she is drowned, or drowns herself, it is unclear) representing the purification rites that are achieved in the end. Death has been signified at the beginning, through Simon's imposition of a script onto Ariane's silence, and is suggested by the opacity of the bathroom screen (death of the gaze, inscrutability).

The encoding of death as the rigid law of the erotic is also signaled by the peculiar position of the spectator. We are complicit from the beginning, as we watch Simon stalk his desire through the empty streets of Paris, reminiscent of Hitchcock's *Vertigo*. The cultivated blandness of Simon's face, the subtle vulnerability of his body always clad in gray, his duck-like gait, make him an easy receptacle for our own projections. He is a ready conduit for our surveillance of Ariane, awakening a curiosity and an illicit desire for penetration and exposure, for "real" memories (what really happens between Ariane and the opera singer? Between Ariane and Andrée, with their secret smiles and giggles?).

Simon's fragility suggests the stereotypical mama's boy, engendering a desire to protect him in the wild, abstract, open spaces, where death threatens (Simon asks Ariane to kiss him as she drives and she obliges; the car lurches onto an embankment, opposite a cliff). Simon's loneliness and fixation on the sex lives of women suggests a libidinal cathexis that borders on homo- or auto-eroticism, recalling the allusive and suppressed homosexuality of Marcel's relationship to Albertine in Proust's *Remembrance*. A cold, wet, trembling and solitary<sup>123</sup> Simon at the end recalls the self-mastery of Pauline's son Shalom (as rapist and killer), or the debauched son Martin in *The Damned*, where the protagonist kills that which is himself, that which he loves (erotic obsession).<sup>124</sup> Simon, bobbing closer toward us across the waves as the score swells louder, is finally the master of this dark universe, dominating the alienated landscape, the grey, chopping waves and the bleak promontory in the distance. But the cost of

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<sup>122</sup> This seems to be a popular device in films of the erotic. In *L'année dernière à Marienbad*, the protagonists compare *themselves* to shadows; for instance, the woman, A, says to the man, X, that "You are like a shadow closing in on me . . ." ("*Vous êtes comme une ombre et vous attendez que me proche . . . Oh laissez-moi, laissez-moi, laissez-moi.*") *L'ANNÉE DERNIÈRE À MARIENBAD* (Alain Resnais 1961).

<sup>123</sup> Simon is in a boat with a boatman; a blanket on the floor of the boat may be covering Ariane's body. *See id.*

<sup>124</sup> For a related examination of the eroticization of violence whereby the protagonist gains mastery over the other by subverting the male-female power relations, see e.g., Lilita Cavanni's *The Night Porter*. The female victim (Lucia) of sadomasochistic rape and abuse by a Nazi officer (Max) in a concentration camp during the war meets her abuser twelve years later in a hotel in Vienna, where she has come to stay with her famous pianist husband. Since the war, Max is already a reduced man, a porter at the hotel. The two enter and replay their sexual relationship, but this time Lucia, as the masochist, has the power, and she uses it to destroy Max, ultimately destroying herself in the process. *THE NIGHT PORTER* (Lotar Film 1973).



mastery is that Simon has had to rewrite the earlier scene at the beach. The frolicking women become a disjointed memory recalled through the lens of a destroyed but transcendent Simon, shivering in the dawn wind and scarred by Ariane's absence.<sup>125</sup>

Negative space, then, becomes the central trope in this eroticization of death. Here I want to pick up the themes suggested in the film and relate them to the analysis of the discourse on genocide. Negative space is also a central theme in the discourse on genocide as the constitutive element of the subject's relation to the other: the other is petrified within the void, quarantined within the opaque interior spaces, and abjected into the turbulent sea, far from the center, far from conscious will. Where Pauline's fixation on rape as the means toward this abjection is more allusive, the film represents the abject more explicitly, if elliptically, within the structuring of space, time, consciousness, and memory.

Thinking of the relationship between the erotic and death as a carefully structured *dispositif*, one sees an order or a "law" in operation, and it is the law as crisis, exception (corruption) as norm. It is the antithesis of romance,<sup>126</sup> love without memory, an investment in the decomposition<sup>127</sup> of love. Love is envisaged, precisely because of this investment, as perfect merger, as ritual purification (shadows are pure, abstract, empty), and as an overcoming of the self (shadows are darkness, other, the not-self, the aporetic insistence). Simon's being, as with the spectator's in relation to the object (and production) of desire, is "a rupture opening to let out the 'excess' of an unmaintainable and thus delusive unity, whether that unity is consciousness, the body, a community, or even a nation."<sup>128</sup>

Eroticized death, or the decomposition of love, is the substratum of the juridical translation of the event or crisis.<sup>129</sup> The denial (or effluence) of

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<sup>125</sup> See, e.g., GILLES DELEUZE, *CINEMA 2: THE TIME-IMAGE* at 196 (Hugh Tomlinson & Robert Galeta trans., Athlone 1989). In reference to another of Akerman's films, Jeanne Dielmann says

In the same place or in space, a woman's body achieves a strange nomadism which makes it cross ages, situations and places (this was Virginia Woolf's secret in literature). The states of the body secrete the slow ceremony which joins together the corresponding attitudes, and develop a female gest which overcomes the history of men and the crisis of the world. It is this gest which reacts on the body giving it a hieratism like an austere theatricalization, or rather a 'stylization.'

*Id.*

<sup>126</sup> In his interview, Akerman states, "[*La Captive* is t]he opposite of a romantic film. Even if there's romantic music." *LA CAPTIVE*, *supra* note 47.

<sup>127</sup> I borrow the term from Deleuze's *Cinema 2: Time-Image*, in reference to a process of decomposition which eats away at them [i.e., Visconti's aristocrats] from within, and makes them dark and opaque: the rotting of Ludwig II's teeth, family rot which takes over the teacher in *Conversation Piece*, the debasement of Ludwig II's love-affairs; and incest everywhere as in the Bavarian family, the return of *Sandro*, the abomination of *The Damned*; everywhere the thirst for murder and suicide, or the need for forgetting and death, as the old prince [in *The Leopard*] says on behalf of the whole of Sicily. It is not just that these aristocrats are on the brink of being ruined; the approaching ruin is only a consequence.

DELEUZE, *supra* note 125, at 94–95.

<sup>128</sup> GEORGES BATAILLE, *VISIONS OF EXCESS: SELECTED WRITINGS, 1927–1939* xxi (Allan Stockl trans., Univ. of Minn. 1985.)

<sup>129</sup> This relation is Freudian and depends upon the central absence and transcendence of the phallus as law. A critique of this Freudian analysis notes:

alterity—the projection of violence—is no more than the conception of love and care of the other that comes to us through the distorting lens of exclusion. Exclusion, as I hope to show in the following, is the gesture of the law (exception) that constrains the category of the ethical. As such, this problematic of an eroticism-death complex is historically contingent: the more the self or sovereign is im-mediated, the more alterity is eroticized and abjected (law of exception). The discourse on genocidal violence represents a code, or a mode of surveillance or disciplinary mechanism (*dispositif*), tying us rigorously to the immanent specular, requiring the evisceration of a failed will to fusion with the other.

Confinement, decomposition, sacral purification,<sup>130</sup> the fatality of fusion: these are the themes that map both the eroticism of death (alterity) and genocide as a juridical discourse (the ethical self). In both, the investment in death suggests the tension between justice—each party obtains what he or she wants; the device, as with the juridical, is a success<sup>131</sup>—and truth: disclosure, memory, counter-memory (amnesia<sup>132</sup>). As Bataille notes, “Eroticism opens the way to death. Death opens the way to the denial of our individual lives. Without doing violence to our inner selves, are we able to bear a negation that carries us to the farthest bounds of possibility?”<sup>133</sup> The erotic, in short, is always a tension between love and violation.

Genocide, the annihilation of the other, occurs at a distance. But excavating the eroticism suppressed within the discourse on genocide may reveal genocide as also the *narrative* of displaced violence. The narrative is ruled and managed by the ethical act; this is apposite to the event itself as engendered in part and permitted by the erotic investment itself. The subterranean darkness, the subconscious terrain that orders and cabins our desire for confinement within the code, the will to an impossible fusion, the ensuing disgust and exclusion: all this suggests something more subtle, more elusive, than simply the increasingly depressed and cauterized ethical

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The [sexual] triangle takes form in the parental use [mommy-daddy-me], and reproduces itself in the conjugal use. We do not yet know what forces bring about this triangulation that interferes with the recording of desire in order to transform all its productive connections. But we are able at least to follow, abstractly, the manner in which these forces proceed. . . . It is clear that such a totality-unity is posited only in terms of a certain mode of absence, as that which partial objects and subjects of desire ‘lack’. . . . This common, transcendent, absent something will be called phallus or law, in order to designate ‘the’ signifier that distributes the effects of meaning throughout the chain and introduces exclusions there (whence the oedipalizing [sic] interpretations of Lacanism).

GILLES DELEUZE & FELIX GUATTARI, *ANTI-OEDIPUS: CAPITALISM & SCHIZOPHRENIA* 72–73 (Robert Hurley, Mark Seem & Helen R. Lane trans., Viking Press 1977).

<sup>130</sup> “[A]ll eroticism has a sacramental quality.” BATAILLE, *supra* note 43, at 15–16.

<sup>131</sup> Akerman contends, in the interview, that the erotic device “suits them,” recalling a similar mechanism in Stanley Kubrick’s *Eyes Wide Shut*: “In that macabre, theatrical scene, these powerful people” develop a device “that suits their eroticism.” *LA CAPTIVE*, *supra* note 47.

<sup>132</sup> With regard to the films of Orson Welles, “Welles’s nihilism finds a way of being expressed which is inherited from Nietzsche: suppress your recollections, or suppress yourselves.” DELEUZE, *supra* note 125, at 113.

<sup>133</sup> See BATAILLE, *supra* note 43, at 24. After quoting from Rimbaud, Bataille adds: “Poetry leads to the same place as all forms of eroticism—to the blending and fusion of separate objects. It leads us to eternity, it leads us to death, and through death to continuity. Poetry is eternity; the sum matched with the sea.” *Id.* at 25.

sense as more and more images from “out there” drag us into the vortex of a “pornography”<sup>134</sup> of specular violence and humiliation. There is, I suggest, something more willed, something intimating actual governance and conflict management, inflorescent and suppressed, that is evident in the pervasive production of images and stories of the ravaged and chaotic other. In short, there is something of the willed if subconscious production of otherness as chaotic and violent.

In the following analysis of the discourse on genocide as a function of borders, I hope to show that the spectator, the “we,” is a discursive identity, along with the actual victim and perpetrator of genocidal violence. I do not mean to suggest a moral equivalence between the three identities by arguing that the discursive borders are constitutive of their particular identities. That is, I do not suggest that there are not “real” victims, perpetrators and observers of genocidal violence, but rather that their identities within the discourse as such are a function of the discourse. Each party enters the discourse and incorporates the identity (assignment) by choice, by a prescriptive love that is a shadow of community. I believe it is here, at the borders constructed as a function of identity, that the imperialist script makes its claims upon us, upon our desires. Thus, it is not so much the fact of cabining desire that is problematic with respect to the interface of death, self, and other, so much as the way desire is calibrated and perceived to engender the will to purity and disaggregation.

### III. BORDERS

#### A. THE WILL TO MORAL PURITY

*The terror of recognizing this intimate enemy constitutes another threat to our sense of security and self-assurance.*

—Robert Firestone<sup>135</sup>

In this part on eroticism and borders, I begin with the normative border as the stable wall that divides the self from the other as an operation, within the crisis (exception) of the wall that divides the self from its alterity. I will analyze two alternatives to the norm of stability: one suggests the nonexclusionary border, a porosity that permits a view of the self’s otherness within the moment of love and community. This view, taken from theology, posits a libidinal investment in the eroticism of the “death” of the self, thus obviating abjection (or the displacement of violence and chaos onto the other). The second view, taken from secular liberalism and its postmodern critique, posits borders as “borderlessness” or hybridity.

<sup>134</sup> See, e.g., Michael Ignatieff, *The Terrorist as Auteur*, N.Y. TIMES, Nov. 14, 2004, available at [www.nytimes.com/2004/11/14/14TERROR.html](http://www.nytimes.com/2004/11/14/14TERROR.html) (last visited Nov. 15, 2004) (discussing the proliferation of executions and bombings by terrorists, noting that “[t]his is terrorism as pornography, and it acts like pornography: at first making audiences feel curious and aroused, despite themselves, then ashamed, possibly degraded and finally, perhaps, just indifferent.”). Ignatieff’s call is to a return to our “repugnance” in order not to descend, in the “vortex,” to become like the terrorists, i.e., “by becoming as barbarous as he is.” See *id.*

<sup>135</sup> FIRESTONE & CATLETT, *supra* note 68, at 34.

This too translates the eroticism of death as the embrace of immanence or immortality.<sup>136</sup> Both are concerned with a “return to the self” and its return to the political as a reconfiguration of the border as law, and both begin with a perception of law, under the stable border of the modern sovereign, as the “exception” or crisis necessary for the meaning of sovereignty within the international legal system (how global conflicts are managed). The “neutral space” within which reconfiguration is permitted (between self and other) may have its weaknesses, but at least posits the possibility of choice and thus the non-inevitability of the death-erotic complex of the discourse on genocide.

There is a difference between eradicating borders altogether and reconfiguring the borders that divide. The fantasy of fusion offers a vision of human community as mad. Abjection and the fear of fusion, in turn, are an index of the surveillance and control of the borders used to countermand the excess of the other, translated within the juridical as the proper maintenance of the self against the terror of violence. The borders *define* the violence as external and foreign to the self.

The project, then, is to reconsider borders: of innocence, of safety, of fear. Gaps are opened up only insofar as it is necessary to evacuate the other, rather than to permit the other to reside within the self. Recall, for instance, Ariane’s plaint to Simon, “If you told me all I feel I’d love you less”—compared with his to her: “For me, love is the very opposite.”<sup>137</sup> Surveillance—by first suppressing the erotic-death complex—is permitted and enforced by the central vacuity (de-centeredness) of the subject. The borders are necessary to maintain control. Borders have thus been endowed with the incidents of power: along the parapets of the wall, the sovereign polices its territory and protects itself from incursion. Within the discourses of imperialism and genocide, borders are the site of rule and command.

In this section, I propose to reconsider borders with two premises in mind. First, borders themselves are not the problem to be eliminated since, given the imperialist script, their eradication merely ratifies a dream of fusion that is itself problematic. The dream, of course, is powerful and persuasive. Second, borders, as the site of rule and command, are also the site of desire with respect to both capital and libidinal investments. For Deleuze and Guattari the border, in the figure of the Oedipal, controls “the economy of flows. The flows and productions of desire will simply be viewed as the unconscious of the social productions. Behind every investment of time and interest and capital, an investment of desire, and vice versa.”<sup>138</sup> This again argues against the eradication of borders. As Miroslav Volf notes (in the religious context), “A demarcation line exists,

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<sup>136</sup> “We are afraid to discover not that we are mortal but, rather, that we are *immortal*.” See ŽIŽEK, *supra* note 17, at 69.

<sup>137</sup> LA CAPTIVE, *supra* note 47.

<sup>138</sup> Mark Seem, *Introduction to ANTI-OEDIPUS: CAPITALISM AND SCHIZOPHRENIA*, at xv, xviii.

but the focus is not on ‘maintaining the boundary’ but ‘on reaffirming the center.’”<sup>139</sup>

## B. EROTIC MOMENTS

*The return to oneself leads the individual to question his truth . . .*  
—Julia Kristeva<sup>140</sup>

Kigali, Rwanda: fall, 1995. I am a member of the United Nations Human Rights Mission to Rwanda (UNAMIR). There are fourteen of us, all lawyers, from different parts of the world: United States, Canada, United Kingdom, Spain, France, Sweden, Austria, Peru, Ecuador, Greece, and Ghana (that would be me). It is mid-September and we have been here for about a month. My duties in Kigali include centralizing the reports from the field teams, which involves frequent trips to the prefectures. I’m responsible for three such teams, all in the north. One day, I accompany the team responsible for Kibungo prefecture to the west of Kigali. We visit the Ntarama Church, the site of one of the worst massacres in 1994. It is a year later, but the church has been cordoned off and the bodies still lie rotting on the grounds and within the church itself. The local *gendarmes* let us onto the grounds; a desk has been set up near the church entrance, upon which have been piled bones and skulls collected from the grounds and the outlying area. We are accompanied by Jacques,<sup>141</sup> a senior U.N. officer assigned to Rwanda in the immediate aftermath of the genocide; he’s been with the mission, in other words, for about a year. He took a leave of absence from his job as lecturer at a university in Québec.

I have come out of the church and feel nauseous, dizzy. People are taking pictures of the bodies, of the small collection of curious children standing on a knoll. I lean against the church wall, too undone even to swat the flies away. In front of me is a tall, very handsome Rwandan *gendarme*. He picks up a skull from the table nearby and shakes it; a two-inch long nail rattles about inside the skull. The *gendarme* looks at me, his eyes seeming for an instant to blaze. But as I look, his face becomes a mask. He puts the skull down. Jacques is next to him, takes his arm, and leads him away, speaking softly. I’ve heard that they are lovers. Love, suddenly, amongst all this; I feel amazed, and envious, and then ashamed.

It is now mid-November. The mission has been exhausting, relentless, intensely rigorous, depressing. Our sense of connection to the outside world seems tenuous: the O.J. Simpson trial, the Canadian referendum on self-determination, all coming to us like a pantomime through a veil, vaguely irrelevant and yet crucially important, the link to other lives. Our sense of connection to the people here seems equally tenuous: their grief is

<sup>139</sup> VOLF, *supra* note 20, at 71. The statement is made with respect to the recentering of the decentered self by the “crucifixion,” and as such may be controversial, to say the least, within the secular context. It does offer an alternative to the eradication of borders which seems, at face value, to be the solution proposed by postmodernists, as I suggest in the following. See also Tawia Ansah, *Surprised by Sin: Human Rights and Universality*, 30 SYRACUSE J. OF INT’L L. & COM. 307 (2003) (discussing the decentered self).

<sup>140</sup> Kristeva, *supra* note 51, at 101.

<sup>141</sup> All names changed to preserve privacy.

unfathomable, the intense competition between returning Tutsi refugees and local Tutsi survivors seems all-consuming, and yet a deflection from other, deeper issues; the hot tension between Hutus and Tutsis, the presumptively guilty and the innocent, still percolates, often erupting in violence. And then there is the welter of languages, of missions, intergovernmental and nongovernmental organizations, local and foreign, all with different mandates and agendas, all throwing money and ideas and demands and information at the hapless Rwandans.

The sense of connection is further attenuated by the sheer scope of the problems: so many rape victims, so many orphaned children, so many scarred and embattled bodies and psyches, and so much mask-like stoicism and silence. We bond amongst ourselves, but this too becomes incestuous. Jealousies and national rivalries flare up as the Canadians vie against the Americans, the Europeans against both and amongst each other, the South Americans and Asians forming and breaking alliances, the whites and blacks beginning to speak of the “privileges” of the other, and so on. Connectedness is in short supply.

I accompany one of my teams on a field trip in the northern prefecture of Ruhengeri. I’m delighted to get out of the capital and spend some time with my good friend Perikles. We visit a detention center deep in the forests, having received reports of prisoner abuse. The trip is largely pro forma: the team interviews various local officials as the villagers gather around and look on, curiously. The soldiers patrol the vicinity. The detention center itself, known as a “*cachôt*,” is a small square building with a bare floor and a motley collection of detainees, many apprehended with nothing more than a pointed finger and the word, “*Interahamwe!*”<sup>142</sup> Because they are Hutu, nothing more need be said; this is, after all, only a year after the genocide. But it is part of our job to see that they receive due process, hence the interviews and the record checks.

I wait outside the *cachôt* for my colleague Catha to conclude her interviews so we can head out to the next village before sunset. A *gendarme* leaves the office building nearby, and the soldiers around the *cachôt* seem to straighten up. The *gendarme* comes toward me, his Kalashnikov slung over a shoulder. I’m struck by his beauty, but this is not unusual in Rwanda. He takes my hand, says he’s the new commander-in-chief of the *gendarmes*, is pleased to meet me, and asks me my name. And then something happens, something strange. We connect. In my mind I see Jacques and his lover; I think of other stories of international workers having liaisons with the locals. He holds my hand; his name is Pascal. Time stops as we stand just so, staring at each other. I fancy myself in love. And then he talks, in French: “Here in Rwanda, we are still suffering not only the effects of the genocide, but the genocide goes on,” he says. “The woods around here are full of *interahamwe*. I have authority to shoot them on sight if they are suspects and resist arrest.” I remember

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<sup>142</sup> The Kinyarwanda word means “those who struggle together” and was used by the civilian militias who began the slaughtering in April 1994, aided and trained by government armed forces. See, e.g., <http://www.fas.org/irp/world/para/interahamwe.htm>.

remonstrating, something gentle, effete. He justifies himself. His words are alienating, but his hand and his eyes are soft, caressing. “Just the other day—surely you understand, given our situation—I had to give the order to shoot two of them, running through the forest like wild beasts. We have no light here, no generator. I gave the order to shoot them in the dark. What could I do?” We had been walking slowly toward the jeep parked in the front yard, still holding hands. Pascal is intelligent, articulate. I feel as if I’m sinking. Pascal says he hopes to see me again. I collect a sense of his confiding tone, as if I were privy to secrets, as if I alone can understand him, as if he knows this. I clamber into the jeep, and off we go.

My colleagues ask me what we discussed and I give them the substance. They reply with scorn, with words such as “absence of any rule of law,” “revenge-killings,” and so on. I only half listen, feeling an acute sense of loss. . . .

Boston, U.S.A.: summer, 2004. I reflect upon the above incidents, which took place almost ten years ago. And yet, there it is, this memory cropping up in a discussion of genocide discourses. Why here, and why now? My analysis of genocide and its discourses has touched upon the eroticization of death within two contexts: first, the eroticism as a specific and encoded sexual encounter between two consenting parties, and second, the discourse on genocide as erotic *dispositif* in terms of the construction of the parties, self and other in specific, coded ways. The incidents described above, the “memoir” moment of this text, belong neither to the *dispositif* nor to the discourse on genocide, properly speaking.

And yet, they suggest an erotic dimension to the lived experience of the human rights encounter, or the context within which the discourse on genocide, specifically the law, is deployed and operationalized. The stories represent a sort of private space that interrupts the public sphere within which my role and Pascal’s are dictated by the mission. Nevertheless, the moment with Pascal, whether described as lust, or love’s potential, or simply human contact, and whether borne of physical attraction regardless of the context, or attraction because of the context—the starvation for a connection, the longing to bridge the narrative gaps between us, the kinkiness of fancying a man in uniform, the juxtaposition of tenderness with the violence of his words, his role—is a kind of refusal, transgressive, however muted.

But even had the attraction been consummated in sex, it would, in material terms, simply have been an erotic encounter between consenting parties, notwithstanding the surrounding context: death, violence, disaggregated narratives. Neither would it have any real effect on the discourse of genocide as such; the mission would still go on, reports would still be written, international legal standards would still apply and be shaped by their application and implementation in Rwanda. (For instance, there would be others in the chain of authority beyond me and Pascal who would contest Pascal’s story of an “ongoing genocide” as justification for the denial of due process to suspected *interahamwe*, because the legal

definition of genocide had already been determined to apply to events in Rwanda that did not extend beyond July 1994).

So I tell these stories not to suggest something new about the erotic-death complex, nor something further about the discourse on genocide, but rather to suggest the limits of those narrative mechanisms, those codes or barriers which function as rule and command. Perhaps someone less desperate for connection, less psychologically or sexually pliable (I concede noting, naturally), would not have been affected by Jacques or Pascal, and would be none the worse for it; he would have continued in role. And to be sure, my emotions as I watched Jacques and his lover, as well as my conduct with Pascal, were merely the playing out of alternative roles, not the revelation of some core, stable essence of my self. Each moment called for a different mapping of borders and centers, none of which would have made a difference to the discourse on genocide.

But that is precisely the point in these stories: as memoir, they interfere with the narrative flow even of this text, its generalities regarding the erotic encounter when played out in a field of pain and death (to use Robert Cover's phrase regarding the law), or when seen from the vantage point of the borders of innocence. Memoir asks you to reconfigure the self and other, to recenter the self in its relation to the other by incorporating the other. Fusion, borderlessness (deterritoriality), ego-lessness, are at one extreme of this reconfiguration. Whereas the code (eroticized death) ends in fusion or its violent renunciation and abjection, the discourse normalizes the mantle of self-virtue and the expulsion of violence to the "out there" in order to achieve, once again, disaggregated self and other. In other words, both device and discourse contain an inherent longing for connection; whether in the first as the dream of fusion or, in the second, in the attempt to collect, incorporate and aggregate the plethora of voices, instruments, and players regarding the operation of the law within the context of genocide. It is an attempt that left a thirst for contact and connectedness, for continuity between nationalities, languages, races, and other barriers. The law, in short, was one-size-fits-all, and we strove to fulfill this promise (in part by a suppression of the erotic).

The incidents at Ntarama and in Ruhengheri held out the possibility of transcending the barriers. Just because the erotic moments or intimations occurred within the context of death does not mean they are ipso facto examples of the erotic device. On the contrary, these moments—and the memoir style within the context of an analytical piece—suggest the *discontinuity* that is requisite to critiquing the discourse (and, by analogy, the device).

But discontinuity per se is not the solution being proposed here. As noted, a critique of the juridical discourse will allow us to take account of our investment in the violence of the other, the violence "out there." In order to achieve that object, one must reconfigure the borders that create a sense of the innocence and guilt of self and other respectively. As such, merely substituting "discontinuity" as the law's dream instead of



continuity/fusion, is to propose a dream that the law already accommodates: witness the disaggregation of the narratives that on their own lead to a sense of alienation, even as the law as a discourse is being operationalized, implemented on the ground. The law allows for uncertainty and ambiguity, for the eruption of the erotic moment, the secret sexual liaison. Loneliness and a feeling of despair in the face of the enormity of genocide by itself does not “critique” the discourse, on the contrary, it only means, at least in part, that there will be the assurance of a turnover in the workforce.

The promise of fusion, or the promise of narrative aggregation—the law’s desire for unity and uniformity—is not itself the initial focus of attention, and is therefore not itself critiqued by the eruption of the erotic in moments such as those suggested in the stories from the field. Rather, memoir invites a view of eroticism at the molecular level, to return the self to its ambivalence, and to reconsider the self’s potential for connection or abjection. By extension, if the discourse on genocide, the one in which we are engaged as we deploy the law, as we engage in the “semantic debate,” maintains the a priori self/other relationship—by such mechanisms as the will to (and failure of) fusion—that we locate the critique and ask whether and how we might reconfigure the borderline between them.

The analysis of the discourse is a three-tiered process. First, I have looked at the operation of the discourse, and the disciplinarity, if you will, of the erotic within the context of death and suffering. How does the self see the other across the border (law) as the repository of its antagonism (alterity)? I have suggested that the self is encoded with the law’s fantasy, which allows the law to accommodate and/or suppress the eruption of the erotic as connectedness or love, i.e., as the anomaly, within itself. The eruptions are offered as evidence of the possibility of an escape from the encoded discourse.

There are two ways in which the moments as “return to the self” critique the discourse: one is internal, the other external. The internal critique goes something like this: the law is able to accommodate uncertainty and ambiguity, at a cost. The cost is the energy expended in maintaining the discursive borders by suppressing these moments, or ridding itself of the parties that engage in this subversive or transgressive behavior vis-à-vis the operation of law. The stories of the moments, therefore, suggest that the derepression of these moments is itself a clarification of the way the law works, the way it maintains its fantasy of unities and the Negative, even as it imbibes and colonizes the Ethical with respect to the makeup of the self in its relation to the world.

The second, or external, critique suggests that these moments of an erotic eruption provide an alternative model to the operation of the law, provide a model of flows and multiplicity, of disunity of discourse, and allow all stories to constitute the juridical discourse (whereupon Pascal’s alternative definition of genocide would carry weight, at a cost to the law’s requirement that suspects be accorded due process). If we characterize

those erotic moments as the promise of love, of real connectedness within an alienated discursive desert (apply the law, strengthen the parapets, maintain the borders), then an alternative model of flows becomes appealing.

Both, however, have their weaknesses: if the law already accommodates ambiguities by rewriting or suppressing them, this merely speaks to the evolution of the law. If there was a critical mass of erotic eruptions—let's say sex was rampant, and the lovers insisted that their Pascals were right and the official record was wrong—surely the law would shape itself to this reality. In the particular context, the law would carve out an exception: in Rwanda, the incursions of the *interahamwe* from across the border are so pervasive as to redefine the territorial and temporal jurisdiction of the courts adjudicating the crime of genocide, without necessarily changing the legal definition or the discourse. In other words, the internal critique, at least as posited by the erotic eruption, says something about what the law already does,<sup>143</sup> but may not critique the law as such.<sup>144</sup>

The second, external critique suffers from a similar weakness. If the alternative model of flows were indeed realized, its logical conclusion would be fusion, notwithstanding that unity or fusion may not be the ostensible object of the model of flows and multiplicity.<sup>145</sup> To be sure, intimations of fusion within the flows may be provisional, contingent, fragile, but the possibility of a mystical totality,<sup>146</sup> as Freud put it, would remain immanent, haunting the discourse of flows as it enabled many more perspectives and voices to be heard. If fusion is then the spectral object of the model, at the end of the day it too is no different from the operation of the discourse as engine or basis for the system as stasis (antagonism).

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<sup>143</sup> An example from the domestic context is provided by MARJORIE HEINS, *SEX, SIN, AND BLASPHEMY: A GUIDE TO AMERICA'S CENSORSHIP WARS 1-2* (1993):

Sex, sin, and blasphemy became major political issues—in the real world but also, increasingly, in the world of art and imagination. Symbols, words, ideas, and images were being blamed for social ills. If only America could rid itself of all those pesky artists, all that crude and irreverent and sometimes violent popular entertainment, surely our social problems would fade away. And so 'censorship' became a key word in political debate.

*Id.* at 1. Heins goes on to argue, "Does the First Amendment give absolute protection to freedom of speech? Though the words of the amendment are unequivocal—'Congress shall make no law . . . abridging the freedom of speech'—society and the courts have always recognized exceptions . . ." *Id.* at 1-2.

<sup>144</sup> There is of course the argument that the law, in this exercise, not only reforms itself from within (exceptionality), but also, paradoxically, exhausts itself and is thereby enervated, static, by continually combating internal ex-judicial irruptions of the id or unconscious.

<sup>145</sup> The object, at least one of them, may be absorption. "The means of the private and individual apprehension of values are dissolved: with the appearance of Empire, we are confronted no longer with the local *mediations* of the universal but with a concrete universal itself." HARDT & NEGRI, *supra* note 30, at 19. (emphasis added).

<sup>146</sup> Both senses of fusion relate to religion. For Hegel, the "Absolute Mind" is rationality divorced from faith, a transcendence. See, e.g., Alastair Hannay, *Introduction* to SOREN KIERKEGAARD, *FEAR AND TREMBLING* 10 (Alastair Hannay trans., 1985). For Freud, the mystical totality or the "oceanic" expresses the religious experience, which he repudiates. See, e.g., FREUD, *supra* note 70, at 11. "It is a feeling which he [Romain Rolland in a letter to Freud] would like to call a sensation of 'eternity,' a feeling as of something limitless, unbounded—as it were, 'oceanic.'" *Id.*

What purpose, then, do the stories of erotic eruption provide? They permit a different perspective on the realization of the self, and by analogy, of the meaning of sovereignty. By their disruption or insistence within the juridical narrative (and their substantive absence, their discursive potentiality), they reflect upon the operation of the law in terms of the will to centrality, totality, and univocality. But further than that, if those moments represent the possibility of love, then they bend our attention to the lovers who, regardless of the basis of those feelings, suggest the space for feeling, for love at the borderline. The moments provide an alternative to the *dispositif* in its central vacuity within, and pursuant to, the juridical narrative, because the moments are inspired by a desire to connect rather than absorb and, through the failure of unity, to expunge.<sup>147</sup>

Following then is a closer look at borders as suggestive of that which lies beyond the desire for stability and boundedness: an examination of borders as porous with respect to the model of flows, and borders as porous with respect to the possibility of an opening-out to the other, a resituation (recentering) of the “otherness” within the self.

#### IV. POROSITY

##### A. THE NORMATIVITY OF STABLE BORDERS, UNDERMINED

*Ah, you who join house to house,  
who add field to field,  
until there is room for no one but you,  
and you are left alone in the midst of the land!*<sup>148</sup>

In this section, I use the erotic moments in the above analysis of eroticism and the juridical narrative to examine the “stable” border between self and other in its alternative figurations. The main point will be that the maintenance of borders is in part a quest for purity. Genocide, or annihilatory violence, is the ultimate construction of borders, the ultimate quest for purity through violence. The investment in the discourse on genocide is the quest for purity through the specular displacement.

As noted, the erotic moments suggested two ways of thinking about absence (suppression of the erotic) within the discourse. On the one hand, the moments themselves were wholly extrinsic to the discourse, the work of the mission continued apace. On the other, each moment expressed something about the self and its situation within the context of the human rights work or narrative: in the first story I experienced shame, and in the second, a sense of loss.

Shame is a kind of “eye power,” as Leon Wurmser describes it: “*Seeing meant the ultimate defense against self-loss in merger*, shame anxiety

<sup>147</sup> See, e.g., VOLF, *supra* note 20, at 79. “Hegemonic centrality” as analogous to the erotic device: “we penetrate in order to exclude, and we exclude in order to control—if possible everything, alone.” *Id.*

<sup>148</sup> *Isaiah* 5:8.

pointed to the ultimate danger when such seeing was vanquished: disappearance.”<sup>149</sup> In a sense, the shame expresses my violation of the discursive code within which the (ocular) moment occurred (the intertext, so to speak, of the story and the discourse), whereby my desire and envy threatened to swallow me within the transgression, to deny merger within the discursive code, and to exclude me. Shame anxiety, then, is a form of “rescue and restoration.”<sup>150</sup> I am returned to the discourse, to the mission, and to my ethical role, even as that role threatens to “disappear” me (a stipulation of the dream of fusion).

Seeing, and the eroticism involved, is an escape from the encoded discourse, a return to the self (or self-interrogation). The second erotic moment, then, is experienced as a loss of the self as I return to the code, the recognition that the code represents my ultimate disappearance. But the importance of such moments is that one returns from oneself to the code with a different perspective. I take back with me the sense of shame, of loss; my own parameters have been altered, even if slightly, in relation to the code. The code’s calibrations of my own boundaries are therefore subject to interrogation. The code’s construction of the other as the repository of violence (the border around the other that segregates him) is no longer entirely tenable, and this is the caution, the pull, that prevents my disappearance through or within a narrative of innocence.

But shame has also functioned as a form of purification. It returns me to the code, it warns me that I will be excommunicated unless I return to the code, it cautions me that the way to configure the border between self and other is to maintain the purity of the discourse and the innocence of the self. Anything else would be disruptive of the code, of “the way things are.” My return, in shame, has brought with it the absence, or insistence, of an alternative or different way of seeing the relationship between self and other within the code. The absent alternative, if you will, clarifies the object of the code, i.e., its calibration of the relationship.

The tension at the border, then, is between an *openness* to alternatives, which threatens the self with loss of community, and the suppression of, or *closedness* to, alternatives (purified code), which threatens the self with disappearance within the community. As such, the cycle of a visit to the self and the return to the code continually clarifies, even exacerbates, the porosity of the borderline, reiterates its constructedness, and engenders a complex of choices and ethical frameworks, such as flows or stasis, multiplicity or unity, as a function of the imbrication of self and other within the discourse.

Writing about conflict, Kristeva notes that “[s]tability is provisional. It is the conflicts that are eternal because there is pleasure in conflict.”<sup>151</sup> Any conceptualization of the border must take this into account. Thus, both

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<sup>149</sup> WURMSER, *supra* note 67, at 122.

<sup>150</sup> *Id.* at 122–23.

<sup>151</sup> JULIA KRISTEVA, REVOLT, SHE SAID 101 (Brian O’Keeffe trans., 2002). She continues: “The individual, in this return to him or herself, experiences division, conflict, pleasure and jouissance in this fragmentation. This is the modern version of psychic truth.” *Id.*

visions of porosity that I will discuss here—the model involving flows, or the model involving the repentant, recentered self—may be viable provisionally, i.e., depend for their exercise on conflict, even as their *teloi* (totality or perpetual peace) are antithetical to conflict.

Behind the competing visions of porosity lies the conception of borders as strong, resistant and established. Again, Kristeva: “Pleonexia, greed, is etymologically the desire ‘to possess always more’; it connotes an appetite that cannot possibly be sated, and that links it, in the writings of Paul for instance, to sexual transgressions and flesh in general; for the cause of this appetite resides in idolatry as disobedience to divine speech.”<sup>152</sup> The visit to the self is thus envisaged as a form of pleonexia, an idolatry of the flesh that competes with the “divine speech” of the code (law as the “decision” of the sovereign<sup>153</sup>). The erotic self in transgression is the self that interrogates, but the norm of stable borders is strong and persuasive, valorizing the choice for decisional sovereign, the strong (secure) state. Indeed, the idea that a return to the self is transgressive suggests the power of the normativity of stable borders.

Thus, we have three considerations with respect to the border. First, there is the stable border, solid and impermeable. Then, there is the porous border conceived in two different ways: on the one hand, porosity is contingent, the wall opening up only insofar as it permits the entry to the center, to reconstitute it as an interdependence of self and other. This is the theological view. On the other hand, porosity is imagined as a continuous state, whereby self and other engage in endless, circular flows of desire, a stream of subjects “decentered and deterritorializing.”<sup>154</sup> In the first, a model of “recentering” is proposed; in the second, a model of “re-territorialization.” Porosity, then, is imagined as different visions of an escape from the normative framework of the stable, unscalable border.

The stable border is normative precisely because of a fear that the border can be traversed. Thus, scalability is cast as transgressive, idolatrous. But witness what happens to the self as stabilized by the wall, or code: stability leads to “hegemonic centrality,” because it involves exclusion. An example is provided by Volf: “The fate of the indigenous population [of North America] at the hands of the colonizers is not unique; it is the extreme example of a stable pattern,” whereupon Volf quotes from Isaiah’s judgment upon “those who dispossess and drive out others so that they alone can be the masters of the land.”<sup>155</sup> He continues:

<sup>152</sup> JULIA KRISTEVA, *POWERS OF HORROR: AN ESSAY ON ABJECTION* 123 (Leon S. Roudiez trans., 1982).

<sup>153</sup> SCHMITT, *supra* note 34, at 5.

<sup>154</sup> HARDT & NEGRI, *supra* note 30, at xii–xiii:

It [i.e., Empire] is a *decentered* and *deteritorializing* apparatus of rule that progressively incorporates the entire global realm within its open, expanding frontiers. Empire manages hybrid identities, flexible hierarchies, and plural exchanges through modulating networks of command. The distinct national colors of the imperialist map of the world have merged and blended in the imperial global rainbow.

*Id.*

<sup>155</sup> VOLFF, *supra* note 20, at 78. As noted, this is also the model of Empire in its insatiable desire for absorption. See HARDT & NEGRI, *supra* note 30, at xii.

We exclude because we want to be at the center and be there alone, single-handedly controlling “the land.” To achieve such “hegemonic centrality,” we add conquest to conquest and possession to possession; we colonize the life-space of others and drive them out; we penetrate in order to exclude, and we exclude in order to control—if possible everything, alone.<sup>156</sup>

The cycle of returns—to self, to code, and back again—articulates the normative pull of the code (stability), vests my self with a sense of stability, independence, and autonomy. As Jacqueline Rose puts it, the very spectre of traversal, of the “broken identity,” more often than not leads to its opposite: “More simply, I am suggesting that the fixity of identity—for Freud, for any of us—is something from which it is very hard to escape.”<sup>157</sup> going on to suggest that “[f]ragmentation can engender petrification.”<sup>158</sup>

In Qalqilya, West Bank, “the wall or fence or barrier—it is all these things in different places,” is “transforming the physical and mental landscape of the Israeli-Palestinian conflict,” writes Robert Cohen.<sup>159</sup> He quotes Tom Segev, a historian, to the effect that, ““There is a feeling that you cannot resolve this situation for the coming decades, you can only manage it. . . . The wall is ugly and terrible, but it is also a way of managing.””<sup>160</sup> On the other side of the fence, Mutassem Abu Tayem, a Palestinian farmer, with access to his farm only through a tunnel built under the fence, says, ““We are living in a prison and are treated like beasts.””<sup>161</sup>

The felt need for security under embattled conditions is very real, Cohen notes,<sup>162</sup> but so is the logic of identity-formation within the discourse of stable borders. Identity, under the code, tends toward fixity (petrification), the building of walls of protection that bolster the security and the hegemonic centrality of the self, leading to accumulation on the one hand and dispossession/exclusion on the other, which in turn leads to fragmentation between self and other, and so the cycle continues.

The Israeli-Palestinian border, 430 miles long and projected to cost over \$1 billion, has tunnels. Surely this suggests a kind of porosity? Or are they, like the law, the exceptions that prove the rule of stability? The tunnels are heavily guarded and monitored. In discussing the various ways people exclude, Volf notes two forms: exclusion by elimination (genocide

<sup>156</sup> VOLF, *supra* note 20, at 78–79.

<sup>157</sup> Jacqueline Rose, *Response to Edward Said*, in FREUD AND THE NON-EUROPEAN 63, 74 (2003).

<sup>158</sup> *Id.* at 76: “Fragmentation can engender petrification, just as it can be a consequence of historical alienation that a people, far from dispersing themselves, start digging for a history to legitimate the violence of the state.” *Id.*

<sup>159</sup> Robert Cohen, *Building for Calm by Giving Up on Peace*, N.Y. TIMES, July 18, 2004, § 4, at 14, available at [www.nytimes.com/2004/07/18/weekinreview/18cohe.html?8h](http://www.nytimes.com/2004/07/18/weekinreview/18cohe.html?8h) (last visited July 18, 1994).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

If Israelis are going to the beach and to clubs again, and if bombings have become rare, it is thanks in large part, they insist, to these ditches and guard towers and coils of barbed wire and miles of wire fencing that separate two peoples, demarcating the gulf between them. . . . A fence makes the task of Palestinians who want to kill them harder.

*Id.*

in Bosnia, Rwanda),<sup>163</sup> and exclusion by assimilation: “You can survive, even thrive, among us, if you become like us; you can keep your life, if you give up your identity . . . exclusion by assimilation rests on a deal: we will refrain from vomiting you out (anthropoemic strategy) if you let us swallow you up (anthropophagic strategy).”<sup>164</sup> Volf also notes exclusion by domination,<sup>165</sup> and exclusion by abandonment.<sup>166</sup> All, however, are forms of symbolic exclusion: “Before excluding others from our social world we drive them out, as it were from our symbolic world.”<sup>167</sup>

Volf thus advocates the development of “a complex notion of identity” that “includes the other.”<sup>168</sup> He then names exclusion as such as an “objective evil,”<sup>169</sup> and as “sin,” to wit:

Sin is here the kind of purity that wants the world cleansed of the other rather than the heart cleansed of the evil that drives people out by calling those who are clean ‘unclean’ and refusing to help make clean those who are unclean. Put more formally, sin is ‘the will to purity’ turned away from the ‘spiritual’ life of the self to the cultural world of the other, transmuted from spirituality into ‘politics’ broadly conceived . . . .<sup>170</sup>

It is, then, “the pursuit of false purity,”<sup>171</sup>—of blood, territory, origins, and goals<sup>172</sup>—that engenders exclusion, and the creation and maintenance of stable borders to keep the other out. Volf’s enterprise is to “decenter” this “wrongly-centered self,” and to “recenter” the self “by being nailed to the cross.”<sup>173</sup>

Now, although Volf’s discussion of borders and exclusion is theological, I hope to suggest that in its outlines it provides three points germane to the discourse on genocide as a particular “code”: first, there is a parallel, indeed a fit, between his definition of exclusion and the meaning

<sup>163</sup> VOLF, *supra* note 20, at 75.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* “We subjugate them so we can exploit them in order to increase our wealth or simply inflate our egos.” *Id.*

<sup>166</sup> *Id.* “Like the priest and the Levite in the story of the Good Samaritan, we simply cross to the other side and pass by, minding our own business.” *Id.*

<sup>167</sup> *Id.* “Even where explicit and public exclusion is forbidden by formal rules, implicit and private exclusion still continues, often in the form of unconscious but nonetheless effectual aversion.” *Id.* at 75 n.5.

Symbolic exclusion is often a distortion of the other, not simply ignorance about the other. We demonize and bestialize not because we do not know better, but because we *refuse* to know what is manifest and *choose* to know what serves our interests. That we nevertheless believe our distortions to be plain verities is no counter-argument; it only underlines that evil is capable of generating an ideational environment in which it can thrive unrecognized.

*Id.* at 76.

<sup>168</sup> *Id.* at 66.

<sup>169</sup> *Id.* at 68. “In my vocabulary, in any case, ‘exclusion’ does not express a preference; it names an objective evil.” *Id.*

<sup>170</sup> *Id.* at 74.

<sup>171</sup> *Id.* at 74.

<sup>172</sup> *Id.*

The origin and the goal, the inside and the outside, everything must be pure: plurality and heterogeneity must give way to homogeneity and unity. One people, one culture, one language, one book, one goal; what does not fall under this all-encompassing ‘one’ is ambivalent, polluting, and dangerous. It must be removed . . . .

*Id.*

<sup>173</sup> *Id.* at 69.

of the code. Where Volf calls exclusion an “objective evil,” I have suggested that the sex-death complex (code or *dispositif*) is “imperialistic” (*lex imperii*). Second, both have “colonized” the self.<sup>174</sup> Volf uses the language of evil and sin to describe exclusion, but in its operation the code leads to the spiral of evil engendered by the promise of purity and “petrified” identity, especially in the context of conflict.<sup>175</sup> Third, although Volf’s perspective is religious, which means that he stipulates to basic definitions of right and wrong, good and evil, he recognizes that the views espousing the “evil” of exclusion as concomitant with a system of oppression and hierarchy is historical, that it comes “from below,” just as much as the critique of the code is anti-imperialistic,<sup>176</sup> or the subaltern’s discourse. In addition, both critiques have in common an escape from oppression (or, more exactly, self-oppression) by an interrogative “return to the self.”<sup>177</sup>

Because the theological enterprise takes the same critical stance toward the code and its insistence on stable borders, it is interesting to see how that critique unfolds, and where it ends up. The religious (or more properly speaking, the Christian), critique of the self begins with the necessity of borders (and as such is in agreement with the code and radically differs from the postmodernists with respect to porosity), but suggests that those borders be “open” in a particular way. It ends, I suggest, with the institution of an alternative, bordered universe, a universe of eternal peace and the terrifying prospect of immortality. I shall compare this with the postmodern calibration of a borderless world and its *telos* in a different kind of totality: the transcendence of identity and of death.

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<sup>174</sup> *Id.* at 89.

Why are we such docile, even enthusiastic captives to the system of exclusion? Why is there so little need for surveillance and force? Why are the subtle disciplinary mechanisms so effective, to use a phrase of Michel Foucault? Because our very selves have been shaped by the climate of evil in which we live. Evil has insinuated itself into our very souls and rules over us from the very citadel erected to guard us against it.

*Id.* Also, “If people acquiesce, it is not because they are *forced* to acquiesce, but because there is something in the texture of their selves that resonates with the logic of exclusion.” This relates to creating borders: “The formation and negotiation of identity always entails the drawing of boundaries, the setting of the self as distinct from the other . . .” *Id.* at 90–91.

<sup>175</sup> *Id.* at 99.

The stronger the conflict, the more the rich texture of the social world disappears and the stark exclusionary polarity emerges around which all thought and practice aligns itself. No other choice seems available, no neutrality possible, and therefore no innocence sustainable. . . . Tragically enough, over time the polarity has a macabre way of mutating into its very opposite—into ‘both us and them’ that unites the divided parties in a perverse communion of mutual hate and mourning over the dead.

*Id.*

<sup>176</sup> *Id.* at 100.

As I read the Christian Scripture, a good deal of its message is written from below, from the perspective of those who in some sense suffer at the hand of the mighty. The Hebrew prophets make the injustice of the “little people” into the primary lens through which they view the mighty, and in God’s name they demand that the mighty mend their ways.

*Id.*

<sup>177</sup> *Id.* at 92. “It is in the citadel of the fragile self that the new world of embrace is first created.” 2 *Corinthians* 5:17.



## B. NON-EXCLUSIONARY BORDERS

Volf begins with the question of borders. First, Volf suggests that we are dialogical beings, the self always and already in relation to the other: “as Paul Ricoeur has argued in *Oneness and Another*, ‘the selfhood of oneself implies otherness to such an intimate degree that one cannot be thought of without the other.’”<sup>178</sup> Second, contrary to Michel Foucault and other postmodernists, who would “level all the boundaries,”<sup>179</sup> Volf suggests that “Adequate reflection on exclusion must satisfy two conditions: (1) it must help to name exclusion as evil with confidence because it enables us to imagine nonexclusionary boundaries that map nonexclusionary identities; at the same time (2) it must not dull our ability to detect the exclusionary tendencies in our own judgments and practices.”<sup>180</sup>

There are two elements to Volf’s development of nonexclusionary boundaries: differentiation (“separating-and-binding”) and judgment. A third is the specification of the meaning of exclusion as sin, or as the creation of “impenetrable barriers that prevent a creative encounter with the other. They are a result either of expulsion or indifference.”<sup>181</sup> With respect to differentiation, Volf suggests that separation, by itself, “would result in self-enclosed, isolated and self-identical beings.” When combined with “binding,” the lines of separation are also lines of connection, barriers as bridges. The Genesis story illustrates the point:

At first there is a “formless void” (Genesis 1:2); “everything in the universe is all jumbled together,” writes Plantinga, and then continues:

“So God begins to do some creative separating: he separates light from darkness, day from night, water from land, the sea creatures from the land cruiser . . . At the same time God binds things together: he binds humans to the rest of creation as stewards and caretakers of it, to himself as bearers of his image, and to each other as perfect complements.”<sup>182</sup>

Thus, “boundaries are part of the creative process of differentiation. For without boundaries there would be no discrete identities, and without discrete identities there could be no relation to the other.”<sup>183</sup> Without boundaries there would only be absorption, the erasure (exclusion) of the otherness of the other.

<sup>178</sup> VOLF, *supra* note 20, at 66.

<sup>179</sup> *Id.* at 62–63. “Foucault shares a distaste for boundaries with other postmodern thinkers, such as Jacques Derrida or Gilles Deleuze. . . . A consistent drive toward inclusion seeks to level all the boundaries that divide and to neutralize all outside powers that form and shape the self,” noting that “Radical indeterminacy of negative freedom is a stable correlate of a consistent drive toward inclusion that levels all boundaries.” *Id.* As such, the struggle against exclusion, where it envisages the erasure of boundaries, “consists in falling into the abyss of nonorder in which the struggle against exclusion implodes on itself because, in the absence of all boundaries, we are unable to name what is excluded or why it ought not to be excluded. . . .” *Id.* at 64. Volf also asks, “Does not such radical indeterminacy undermine from within the idea of inclusion, however? I believe it does. Without boundaries we will be able to know only what we are fighting against but not what we are fighting for.” *Id.* at 63.

<sup>180</sup> *Id.* at 64.

<sup>181</sup> *Id.* at 67.

<sup>182</sup> *Id.* at 65.

<sup>183</sup> *Id.* at 67.

Exclusion is countermanded by differentiation (separation and binding), and judgment. Whereas judgment is generally “deemed an act of exclusion,”<sup>184</sup> to be repudiated along with other kinds of boundary (for the postmodernists in their quest for inclusion), Volf attempts to distinguish the two: in effect, judgment is in fact “the distinction between ‘differentiation’ and ‘exclusion,’” i.e., some judgments, as with boundaries, are good (nonexclusionary), others bad (exclusionary). For the postmodernists such as Richard Rorty, borders and judgments are eliminated when we concede that all are contingent and oppressive. Volf replies that “contingency does not, as [Rorty] puts it, go ‘all the way down,’ and that there are values which ‘time and change’ cannot alter because ‘time and change’ did not bring them about.”<sup>185</sup> Precisely one of those judgments is that exclusion (rather than differentiation) is defined as an “objective evil.”<sup>186</sup> Whereupon, “[a] judgment that names exclusion as an evil and differentiation as a positive good, then, is itself not an act of exclusion. To the contrary, such judgment is the beginning of the struggle against exclusion.”<sup>187</sup>

The crux of the difference between Volf and the postmodernists, or between their competing visions of porosity, is precisely in the different *positive* content (or lack of content) of those visions. Whereas the postmodernists depend upon a negative frame of reference, indeed a negative center of the self (decentered selves),<sup>188</sup> Volf and the Christians suggest the opposite: the self is always centered, always in dialogical relation to the other, and always in the creative process of maintaining a center.<sup>189</sup> The belief in a centered self is antipodal to the belief in a decentered self. Indeed, it is this idea of the self as a vessel, a container, which is radically different from the postmodern project. This is also evident in Volf’s definition of the borders, at every point taking the negative index and infusing it with substance: separation (negative) is coupled with binding (positive); judgment (exclusion, negative) is coupled with values, or the positive belief in the evil of exclusion (not just its contingency) and in the stipulation of “right and wrong beliefs.”<sup>190</sup>

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 68 (quoting RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* xv (1989)).

<sup>186</sup> *Id.* “I reject exclusion because the prophets, evangelists, and apostles tell me that this is a wrong way to treat human beings, any human being, anywhere, and I am persuaded to have good reasons to believe them.” *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 70. “If there is no center to the self, then there are only different ways of weaving new candidates for belief and desire into antecedently existing webs of belief and desire.” *Id.* (quoting RORTY, *supra* note 185, at xv). Volf adds, “The ironic stance is a posture of a centerless self.” *Id.*

<sup>189</sup> *Id.*

Though the self may lack an ‘objective’ and ‘immovable’ center, *the self is never without a center*; it is always engaged in the production of its own center. ‘Weaving’ would be a rather innocent way to describe this production, possibly a fitting image for how Rorty’s books are written but not for how human selves are shaped. ‘Struggle’ and ‘violence’ come closer to being an adequate description.

*Id.*

<sup>190</sup> *Id.* at 69. “[T]here are *right* and *wrong* beliefs and desires, not only *antecedent* and *subsequent* beliefs and desires.” *Id.*

The self's center is constituted by those negative indexes without the balance of the positive ones. This is why, for the postmodernists, it is a "decentered self": it is constituted by exclusion. That is, the postmodernists make two moves: they define all borders as disciplinary and oppressive, and advocate their erasure; and they define the self as constituted by these disciplinary measures, thereby eliminating, along with "essential essences," any center altogether: the self is pure contingency. The self *is* the Negative: it is not. It is empty, pure "irony," in Rorty's terms. For the postmodernists, this is its strength: the negative is freedom (negative liberty, freedom from the oppressiveness of borders). But for Volf, decenteredness as the Negative means, in effect, a centeredness constituted by exclusion itself. Thus, to counteract the Negative, the first move is to define the Negative, to make a judgment (a boundary) based on an a priori value system, to mark the limit of the Negative with a positive value. That move is to define "decenteredness" as in fact the "wrongly-centered" self. And that move has been anticipated by defining exclusion itself as an objective evil. If the self as "decentered" is the Negative, then a fortiori it has already excluded all, including the other: it is in fact constituted by exclusion. In a word, the self is "centered" by evil.

Volf's project is to decenter this self and recenter it; that is, to fill it with content, or rather, with a substantively Positive value to defeat the Negative.<sup>191</sup> As a wrongly-centered (or decentered) self it is, qua exclusion, prey to the two performances (enactments) of emptiness: accumulation and dispossession. It is the very model, in short, of the fixed and stable border, of the imperialist self. This is the substance of Volf's critique of the postmoderns: that the very model of inclusion, based upon a philosophy of negative liberty,<sup>192</sup> advocated by emptying the self of content—eradicating all boundaries, locating contingency "all the way down," articulating the self, the "I," in flows and transient inscriptions, the self utterly free to weave its own beliefs and desires—is in fact the fulfillment of the imperialist drive. The decentered self is the code.

The opposite of this self constituted by exclusion and severance is the self that is committed and bound: instead of freedom, love.<sup>193</sup> But this is

<sup>191</sup> *Id.* at 70. "Whichever way the 'centering' takes place and whatever its result, the self should be decentered, claims Paul. The word he uses to describe the act is 'crucified,' a word which tells a story whose high points are Good Friday and Easter." *Id.* Also, "[t]he self is both 'de-centered' and 're-centered' by one and the same process, by participating in the death and resurrection of Christ through faith and baptism." *Id.*

<sup>192</sup> *Id.* at 102.

Both liberal and socialist projects—the two major visions for organizing social life under the conditions of modernity—center on the idea of freedom. As Zygmunt Bauman observed in *Postmodern Ethics*, the Grand Idea at the heart of modern restlessness, [the] guiding lantern perched on the prow of modernity's ship, was the idea of emancipation: an idea which draws its meaning from what it negates and against which it rebels—from the shackles it wants to fracture, the wounds it wants to heal—and owes its allure to the promise of negation.

*Id.* As such, "Oppression is the negativity, liberation its negation, freedom the resulting positivity." *Id.*

<sup>193</sup> Volf suggests substituting this "negative" quality with something positive:

The categories 'oppression/liberation' seem ill-suited to bring about reconciliation and sustain peace between people and people groups. . . . As a consequence, we need to reject 'freedom' as the ultimate social goal. . . . The father of Latin American Liberation Theology, Gustavo Gutiérrez, was right to insist that love, not freedom is ultimate.

not so simple, and herein lies the rub. Recentering the self requires a return to the self that is described by some as “destroying,”<sup>194</sup> others (including Volf) as a “crucifixion.” And in that word is packed all the violence and passion that is required of the self to overcome the Negative.

In large, historical and political terms, the self has been battered; indeed, Volf suggests that the tendency to exclude—including the exclusion or escape from one’s own traumatized self—is often a consequence of having suffered exclusion from others,<sup>195</sup> just as the tendency to “petrify” is a result of the trauma of self-fragmentation, especially within the context of conflict. Cohen suggests that Israelis, terrorized and exhausted by the suicide bombs, were by and large grateful for the wall, even if it was merely a form of “damage limitation”; but the cost of the panacea, of course, is that they have given up the hope for peace.<sup>196</sup> The first critique of Volf, then, is that the decentered self, the self that is in fact continuous with the code (the self from which I experienced shame as I momentarily, in a moment of lust, “escaped” it), is the product of strongly felt and perdurable historical and cultural forces. To give up that self, to relinquish the desire for stable borders, the quest for fusion and a self that belongs to a community by blood, soil, origin, or goal, to open the wall to the other, is in fact revolutionary; it is a violent and radical act. It is an act of renunciation (renouncing the flesh, the I as the engineer of change<sup>197</sup>).

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*Id.* at 104–05.

<sup>194</sup> *Id.* at 70: “‘Destroying’ is the word Reinhold Niebuhr used in *The Nature and Destiny of Man* to render Paul’s ‘crucifying.’” Volf suggests that the word is “too radical, for Paul clearly has in view a continued life of that same self after its ‘crucifixion.’” *Id.*

<sup>195</sup> *Id.* at 92.

The desire for identity could also explain why so many people let themselves be sinned against so passively—why they let themselves be excluded. It is not simply because they may lack a sufficiently strong will to be themselves, but because one can satisfy the will to be oneself by *surrendering to the other*. Their problem is not so much exclusion of the other from their will to be oneself, but a paradoxical exclusion of their *own* self from the will to be oneself—what feminist theologians call ‘diffusion of the self’ (Saiving 1979, 37f.). As a rule, exclusion of the self from the will to be oneself comes about as a result of acts of exclusion that we suffer. Hence it is not so much sin as it is an evil that cries for remedy. The exclusion of the self from the will to be oneself not only damages the self, but makes the slippage into exclusion on the part of the other and therefore further damaging of the self so much easier.

*Id.*

<sup>196</sup> Cohen, *supra* note 159.

Most Israelis are tired of the conflict, exhausted by it. They want to forget what goes on over there, in the West Bank. A wall helps them do that. They feel peace was within reach in the 1990’s, but now the best that can be hoped for is damage limitation. A fence makes the task of Palestinians who want to kill them harder.

*Id.*

<sup>197</sup> VOLF, *supra* note 20, at 110.

For Christian faith to give up the *hope* for the final reconciliation—for reconciliation that can neither be surpassed nor undone—would mean to give itself up. Everything depends, however, on how we understand the final reconciliation and its implications for life in a world of enmity. I will offer here only three brief disclaimers. First, the final reconciliation is not a work of human beings but of the triune God. Second, it is not an apocalyptic end of the world but the eschatological new beginning of this world. Third, the final reconciliation is not a self-enclosed “totality” because it rests on a God who is nothing but a perfect love. The hope for such “nontotalitarian” final reconciliation is the backdrop against which Christians engage in the struggle for peace under the conditions of enmity and oppression.

*Id.*

The second critique regarding the project of porosity proposed by Volf is that the self as Negative, notwithstanding the will to death (nothingness) it adumbrates, has enabled hybridity, multiplicity, human rights, and freedom. It may be a negative freedom, and radically flawed for its false promises or the underside of self-alienation, but Volf concedes its benefits:

To a person, such as myself, who experienced ‘all the blessings’ of communist rule, the suggestion that there is no truth to the liberal narrative of inclusion and the claim that its consequences are mainly unfortunate sounds not only unpersuasive but dangerous. Similarly, most women and minorities would not want to give up the rights they now have; and most critics of liberal democracies would rather live in a democracy than in any of the available alternatives. The progress of ‘inclusion’ is one important thing to celebrate about modernity.<sup>198</sup>

The project whereby “[t]hose who are conveniently left out of the modern narrative of inclusion because they disturb the integrity of its ‘happy ending’ plot demand a long and gruesome counter-narrative of exclusion”<sup>199</sup> is true. And even they, traumatized by conflict, trodden underfoot by hegemony, or disenfranchised even within the enlightened democracies, will not easily give up the story of inclusion and its promises.

The third critique of the project of love subtends its own content. We exclude, we judge, in “the pursuit of false purity,” as Volf says. And yet, we live in a material world of dangers and compromises: openness to the other may still require us to secure our homes and persons from the threat of violation. It is true that conflict exacerbates the tendencies toward closedness of identity, but even in the “rich texture of the social world”<sup>200</sup> I face the possibility of my own disappearance in small ways.

A fourth critique, probably the most obvious to the secular mind, is the question of repentance. If I acknowledge that I am filled with sin (the Negative), and must repent, then redemption comes in the form of a particular belief system and access to a new community, indeed, a new code. I must be “born again, not of corruptible seed, but of incorruptible, by the word of God, which liveth and abideth for ever.”<sup>201</sup> This code, like the old one, has bordered selves (but the borders are “nonexclusionary”) and centered subjects (but the center is filled with “self-giving love”<sup>202</sup>). Its positive content, like the negative emptiness of the old code, also holds the promise of stability and fusion with God, and with the brethren of “unfeigned love.”<sup>203</sup> It promises forgiveness and reincorporation for the sin of transgression (my moment of shame), especially for the transgression of traversing the spiritual will to purity by excluding the other on the basis of culture or politics (false purity, false judgment). Its *telos* is the life hereafter. “For now we see through a glass, darkly, but then face to face:

<sup>198</sup> *Id.* at 59.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 99.

<sup>201</sup> 1 *Peter* 1:23.

<sup>202</sup> VOLF, *supra* note 20, at 71. “For Christians, this ‘decentered center’ of self-giving love—most firmly centered and most radically open—is the doorkeeper of the self.” *Id.*

<sup>203</sup> 1 *Peter* 1:22.

now I know in part; but then shall I know even as also I am known.”<sup>204</sup> The discursive, material, and imperialist code, meanwhile, also has its *telos*, through an eroticization of the violence of the I, in death.

Despite these critiques or, depending on one’s point of view because of them (and the immanence they promise), the beauty of Volf’s project is in what it permits us to apprehend about the discursive code, about ourselves, about the potential and the choices, that there are in fact choices with respect to our situation within the code. The project clarifies the “passivity beyond passivity”<sup>205</sup> of the code and the possibility, indeed the urgency, of active engagement with the juridical discourse, the self, and alterity-antagonism.

Thus, Volf’s project of a return to the self may on the one hand be similar to the yearning for stable borders (as in the discourse on genocide) but characterizes “exceptions” as the neutral space within which the self is permitted, albeit violently, to encounter its alterity. It is the antagonistic struggle as “agon,”<sup>206</sup> in Mouffe’s expression. Volf meets the violence of the code with a violence of its own, a turning away from the other *as* violence (exporting or displacing the violence to the other “out there,” intervening to “redeem” the other), a turning toward the other as other in dialogical relation to the self; it is the violence of the recentered and interrogating self (crucifixion, repentance,<sup>207</sup> self-redemption).

But the porosity proposed by postmodernism, and critiqued by Volf, also has some common elements with the code (stable borders), as well as, perhaps counterintuitively, with Volf’s project. The theological posit of porosity is an escape from exclusionary borders and returns eroticism to love beyond the self (God, the hereafter). The secular postmodern proposal similarly takes the self beyond self-interrogation to a oneness with nature and the universal.<sup>208</sup> In the following, I will briefly outline how postmodernism, and in particularly Hardt and Negri’s critique of the postmodern sovereign, shares with Volf’s vision specific fundamental elements: each involves a form of what Edward Said refers to as

<sup>204</sup> 1 *Corinthians* 13:12.

<sup>205</sup> GILLIAN ROSE, MOURNING BECOMES THE LAW: PHILOSOPHY AND REPRESENTATION 13–14 (Cambridge Univ. Press 1996) “Levinasian ‘passivity beyond passivity’, the idea of ethics as the egoless substitution of one for ‘the other.’” *Id.*

<sup>206</sup> MOUFFE, *supra* note 61, at 4.

<sup>207</sup> Volf defines repentance as follows:

But he [Jesus] demanded more than a radical alteration. To repent means to make a turnabout of a profound moral and religious import. Repentance implies not merely a recognition that one has made a bad mistake, but that one has *sinned*. Jesus stated explicitly that he came ‘to call not the righteous but the sinners’ and the evangelists report that he was engaged in the practice of ‘forgiving sins.’

VOLF, *supra* note 20, at 113.

<sup>208</sup> See, e.g., Seem, *supra* note 138, at xxi:

Once we forget about our egos a non-neurotic form of politics becomes possible, where singularity and collectivity are no longer at odds with each other, and where collective expressions of desire are possible. Such a politics does not seek to regiment individuals according to a totalitarian system of norms, but to de-normalize and de-individualize through a multiplicity of new, collective arrangements against power. Its goal is the transformation of human relationships in a struggle against power.

*Id.*

“askesis”<sup>209</sup> (renunciation): in Volf, it is repentance, whereas in the secular critiques it is “deterritoriality,” ego-lessness. Both critiques of the code depend upon a transcendent<sup>210</sup> being, whether the Messiah or the Anti-Oedipus, for purification and redemption.<sup>211</sup> Both also, even as they critique the code, replicate many of its basic elements, such as an ultimate vision of stability and, indeed, fusion (freedom and/or love).<sup>212</sup> And finally, both are religious or quasi-religious responses to the problem of the self and its relationship to the other. This should not be surprising; as Benedict Anderson has noted, “The extraordinary survival over thousands of years of Buddhism, Christianity or Islam in dozens of different social formations attests to their imaginative response to the overwhelming burden of human suffering—disease, mutilation, grief, age, and death.”<sup>213</sup> He goes on to note, “The great weakness of all evolutionary/progressive styles of thought, not excluding Marxism, is that such questions are answered with impatient silence.”<sup>214</sup> On the contrary, however, I suggest that evolutionary/progressive thought—notwithstanding Freud’s famous dismissal of religion<sup>215</sup>—to the extent at least that such thought is exegetical it borrows from religion’s “imaginative response” to human woes.

<sup>209</sup> SAID, *supra* note 14, at 14. See also various definitions of “*ascesis*,” available at [www.sicetnon.com/text/florilegium/ascesis.htm](http://www.sicetnon.com/text/florilegium/ascesis.htm) (last visited July 21, 2004). “‘To overflow,’ that is the secret liquid passion, the one that knows no measure. And over-flowing does not signify plenitude, but emptiness, the excess by comparison to which fullness is still lacking.” (citation omitted). *Id.*

<sup>210</sup> For the connection between fusion/unity and transcendence, see, e.g., GARY B. MADISON & MARTY FAIRBAIRN, *THE ETHICS OF POSTMODERNITY: CURRENT TRENDS IN CONTINENTAL THOUGHT* 9 (Northwestern Univ. 1999).

Charles Scott addresses one of the longstanding issues in ethical theory: transcendence. He seeks to put thoroughly in question the sense of transcendence that is our philosophical heritage in order to maximize the struggle in it, to interrupt the powerful suggestion of unity that the sense of transcendence often carries with it.

*Id.*

<sup>211</sup> See, e.g., Seem, *supra* note 138, at xxiii.

Anti-Oedipus is an individual or a group that no longer functions in terms of beliefs and that comes to redeem mankind, as Nietzsche foresaw, not only from the ideals that weighed it down, ‘but also from that which was bound to grow out of it, the great nausea, the will to nothingness, nihilism; this bell-stroke of noon and of the great decision that liberates the will again and restores its goal to the earth and his hope to man; this AntiChrist and antinihilist . . . . *He must come one day.*’ (citation omitted).

*Id.*

<sup>212</sup> See, e.g., *id.* for the similarity between the erotic device and the anti-oedipal: with the “oedipalization of desire” comes “the effusion in it of a death instinct [that must be] exorcise[d]” by the anti-oedipal. This purification program is also expressed in the following: “The first task of the revolutionary, [Deleuze and Guattari] add, is to learn from the psychotic how to shake off the Oedipal yoke and the effects of power, in order to initiate a radical politics of desire freed from all beliefs.” *Id.* at xx–xxi.

<sup>213</sup> BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 18 (Verso 1983).

<sup>214</sup> *Id.*

<sup>215</sup> See, e.g., FREUD, *supra* note 70, at 22.

The whole thing is so patently infantile, so foreign to reality, that to anyone with a friendly attitude to humanity it is painful to think that the great majority of mortals will never be able to rise above this view of life. It is still more humiliating to discover how large a number of people living today, who cannot but see that this religion is not tenable, nevertheless try to defend it piece by piece in a series of pitiful rearward actions.

*Id.*

As such, in the following, I suggest the points of commonality between all three “territorial,” if you will, systems of address to the self: (a) the code’s requirements for fixity and its promise of fusion; (b) Volf’s “porous” borders, a porosity that largely promises a substantive alternative to the code; and (c) Hardt and Negri’s critique of the postmodern sovereign’s “porosity” that also represents another anti-imperialist alternative to the code. The alternatives see the code as both postmodern and imperialist, even as postmodern thought promises a “way out” of imperialism. Deleuze and Guattari, for instance, promise to discover “the *desiring-machines* that escape such codes [i.e., the Oedipal as the imperial] as *lines of escape* leading elsewhere.”<sup>216</sup> The task ahead is to conceive of a neutral space, an “elsewhere” that permits the self to face its alterity and, thereby, disinvest in the stabilizing displacement of its violence to the elsewhere.

### C. BORDERLESSNESS: RENUNCIATION AND REVOLUTION

*[S]pace contributes to a feeling of coherence and safety; to be without a home is to be a refugee—bewildered, disoriented, psychically frozen.*  
—John Lahr<sup>217</sup>

Addressing the extent to which the postmodern vision of flows and hybridity is similar both to the discourse on genocide as a mode of imperialism and to the Christian return to the self requires, once more, a review of the erotic as a disciplinary *dispositif*.<sup>218</sup> One indication of this common principle is found in Hardt and Negri’s analysis of postmodern imperialism, and their insistence on the “newness” of the postmodern sovereign. Because of this newness, new tools are needed to contest it. It is within the rhetoric of newness that is found the religious or quasi-religious dimension of their project. There, elements in common with Volf’s proposal include messianism, secular repentance/renewal, and an ultimate vision of the oneness of mankind, a kind of fusion<sup>219</sup> with its promise of stability. The (postmodern) concept of renunciation incorporates these elements.

My argument here is that when we apprehend the redemptive register of the discourse on genocide, we may understand both how our ethical agency with respect to the other has been shaped by the discourse, and how the discourse intimates alternatives, within the gaps. Redeeming the other is *what we do* within the discourse, how we define and situate victims,

<sup>216</sup> Seem, *supra* note 138, at xvii.

Against the Oedipal and oedipalized territorialities (Family, Church, School, Nation, Party), and especially the territoriality of the individual, *Anti-Oedipus* seeks to discover the ‘deterritorialized’ flows of desire, the flows that have not been reduced to the Oedipal codes and the neutricized [sic] territorialities, the *desiring-machines* that escape such codes as *lines of escape* leading elsewhere.

*Id.*

<sup>217</sup> John Lahr, *Down and Out: Twenty-Seven Characters in Search of a Play*, THE NEW YORKER, May 31, 2004, at 93.

<sup>218</sup> “Disciplinary society is that society in which social command is constructed through a diffuse network of *dispositifs* or apparatuses that produce and regulate customs, habits, and productive practices.” HARDT & NEGRI, *supra* note 30, at 23.

<sup>219</sup> Empire evinces “the tendency toward the centralized and unitary regulation of both the world market and global power relations.” *Id.* at 23.



martyrs, evildoers, and the juridical outsider capable of salvific intervention. Whereas Volf fights the violence with a violence from within (spiritual “purity of heart”), Hardt and Negri suggest *using* the violence within (we are constituted or im-mediated by the sovereign, it has exhausted time and space) to fight the violence without (supranational power of rule). Secular postmodernism promises a kind of fusion that transcends the border of difference, thereby overcoming the “psychically frozen” homelessness of the self.

Postmodern hybridity (borderlessness) begins with the negation of self (Volf calls this “exclusion” pure and simple), but, unlike the *dispositif*, without the borders. The *dispositif* expunges the violence of the self to the other, whereupon it becomes a “redemptive” exercise to save the other, imperial force deployed to bring civilization to the savages, and so on.<sup>220</sup> The postmodern sovereign does the same, through its colonization of space and time and, thereby, the “deterritorialization” of the self. The same gesture that enables the sovereign to co-opt the idealist or progressivist agenda also holds out the promise, for the self, of a renunciation. That is, the self may contest sovereignty through an “ethics of refusal.”<sup>221</sup>

One index of renunciation here is in Hardt and Negri’s insistence that the postmodern or “total” sovereign is a new and radical break from the past, the old self: modern sovereignty marks “a paradigm shift,”<sup>222</sup> and the sovereign is “a single power that overdetermines [all former structures of power], structures them in a unitary way, and treats them under one common notion of right that is decidedly postcolonial and postimperialist.”<sup>223</sup> The sovereign is “a new notion of right, or rather, a new inscription of authority and a new design of the production of norms and legal instruments of coercion that guarantee contracts and resolve conflicts.”<sup>224</sup>

This newness is also “ontological,”<sup>225</sup> in the sense that it reveals the deep implication of the subjectivity of the self in relation to the sovereign. In effect, the subject is *created* by the sovereign: “Life has now become . . .

<sup>220</sup> Volf describes this process thus: “Others become scapegoats, concocted from our own shadows as repositories for our sins and weaknesses so we can relish the illusion of our sinlessness and strength.” VOLF, *supra* note 20, at 78.

<sup>221</sup> See, e.g., Tawia Ansah, *Surprised by Sin: Human Rights and Universality*, 30 SYRACUSE J. INT’L L. & COM. 307, 317 (2003). Hardt & Negri propose an alternative to refusal:

Beyond the simple refusal, or as part of that refusal, we need also to construct a new mode of life and above all a new community. This project leads not toward the naked life of *homotantum* but toward *homohomo*, humanity squared, enriched by the collective intelligence and love of the community.

HARDT & NEGRI, *supra* note 30, at 204.

<sup>222</sup> HARDT & NEGRI, *supra* note 30, at 8.

<sup>223</sup> *Id.* at 9.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 10.

While studying and critiquing the new forms of international and supranational law, then, we will at the same time be pushed to the heart of the political theory of Empire, where the problem of supranational sovereignty, its source of legitimacy, and its exercise bring into focus political, cultural, and finally ontological problems.

*Id.*

an object of power.”<sup>226</sup> It is also “exhaustive.”<sup>227</sup> It could not be more radical, nor more in line with Schmitt’s absolute state.<sup>228</sup> That is, the ethical agenda of the modern sovereign is the same: “The traditional concept of just war involves the banalization of war and the celebration of it as an ethical instrument.” Secularism attempted to expunge these concepts, but “[t]hese two traditional characteristics have reappeared in our postmodern world: on the one hand, war is reduced to the status of police action, and on the other, the new power that can legitimately exercise ethical functions through war is sacralized.”<sup>229</sup> Coupled, then, with the radical newness of the sovereign is this sacral purpose of empire at the core.<sup>230</sup> The postmodern sovereign, through war as the rule, promises a “return” to the pure or ethical self, but it is the old, imperial self, newly consecrated (sacralized).

The new sovereign engenders hierarchical stability, which resembles the stability and obduracy of the stable borders (the *dispositif*) in another way:

[It is] a machine that creates a continuous call for authority. The machine seems to predetermine the exercise of authority and action across the entire social space. Every movement is fixed and can seek its own designated place only within the system itself, in the hierarchical relationship accorded to it. This preconstituted movement defines the reality of the process of the imperial constitutionalization of world order—the new paradigm.<sup>231</sup>

If this rigidity seems antithetical to the self constituted by the sovereign state as the site of “deterritorialized and reterritorializing”<sup>232</sup> flows of desire, consider again the similarity to the disciplinary *dispositif*: the free flows engender the very constraints that channel them; this is the essence of the negative liberty here achieved. Naming “corruption” as “the sign of the absence of any ontology,” Hardt and Negri suggest that

Imperial sovereignty thrives on the proliferating contradictions corruption gives rise to; it is stabilized by its instabilities, by its impurities and

<sup>226</sup> *Id.* at 24 (quoting Michel Foucault, *Les Mailles du Pouvoir*, in DITS ET ÉCRITS 194 (Paris: Gallimard 1944)).

<sup>227</sup> There is “an ethico-political dynamic at the heart of is juridical concept” with two fundamental elements: “a boundless space” and “all time . . . Empire exhausts historical time.” *Id.* at 11.

<sup>228</sup> The “production” of life refers to the power of the sovereign to wage war: “The state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing of the lives of men. The *jus belli* contains such a disposition. It implies a double possibility: the right to demand from its own members the readiness to die and unhesitatingly to kill enemies,” SCHMITT, *supra* note 71, at 46.

<sup>229</sup> HARDT & NEGRI, *supra* note 30 at 12.

<sup>230</sup> “[T]he right of the police is legitimated by universal values.” *Id.* at 18.

<sup>231</sup> *Id.* at 14.

<sup>232</sup> On the erasure of barriers between global and local:

The better framework, then, to designate the distinction between the global and the local might refer to different networks of flows and obstacles in which the local moment or perspective gives priority to the reterritorializing barriers or boundaries and the global moment privileges the mobility of deterritorializing flows. It is false, in any case, to claim that we can (re)establish local identities that are in some sense *outside* and protected against the global flows of capital and Empire.

*Id.* at 45.

admixture; it is calmed by the panic and anxieties it continually engenders. Corruption names the perpetual process of alteration and metamorphosis, the anti-foundational foundation, the deontological mode of being.<sup>233</sup>

It is to escape from this mode of the modern state, to renounce and refuse its “ontological dualism,” and to embrace a different kind of ontology, a utopia of “love,”<sup>234</sup> that sets the anti-imperialist (and communist) schema of the postmodern critical project. But the point requires the *embrace* of the “interiorized”<sup>235</sup> mechanisms of oppression that constitute the sovereign, as well as a *refusal* of the idea of “immediate” sovereignty, that leads to the circularity and reinscription of imperialist thinking. To fight sovereign one must *be* the sovereign; immediation becomes its own strength.

The first embrace is with respect to borders and borderlessness. In a section entitled “There Is No More Outside,”<sup>236</sup> Hardt and Negri outline the various modern and postmodern critiques of the traditional dualities; critiques against the them/us, inside/out dichotomies, they suggest, are no more than the “blackmail of bourgeois realism.”<sup>237</sup> The call for the erasure of borders implicates the erasure of politics.<sup>238</sup> And this is their warning: the nature of power has so changed, so inseminated and invested our bodies and souls, that there is no mediation between subject and supranational power.<sup>239</sup> There is no “outside” that is “evil”; to use the theological

<sup>233</sup> *Id.* at 202.

<sup>234</sup> *Id.* at 186.

Spinoza takes on the theoretical challenge to establish full knowledge of truth and discover the path of the liberation of the body and the mind, positively, in the absolute. . . . Spinoza’s primary objective is the ontological development of the unity of true knowledge and the powerful body along with the absolute construction of singular and collective immanence . . . . The desire (*cupiditas*) that rules the course of the existence and action of nature and humans is made love (*amor*)—which invests at once both the natural and the divine.

*Id.* Hardt & Negri note that Spinoza failed to realize his vision, which resolved in a “search for an outside,” which “seems to run aground and propose merely phantasms of mysticism, negative intuitions of the absolute . . . .” *Id.*

<sup>235</sup> *Id.* at 23.

The behaviors of social integration and exclusion proper to rule are thus increasingly interiorized within the subjects themselves. Power is now exercised through machines that directly organize the brains (in communication systems, information networks, etc.) and bodies (in welfare systems, monitored activities, etc.) toward a state of autonomous alienation from the sense of life and the desire for creativity.

*Id.*

<sup>236</sup> *Id.* at 186.

<sup>237</sup> *Id.* at 185. “The power of the modern critique of modernity resides precisely where the blackmail of bourgeois realism is refused—in other words, where utopian thought, going beyond the pressures of homology that always limit it to what already exists, is given a new constituent form.” *Id.*

<sup>238</sup> *Id.* at 188–89 (referring to the aforementioned “omni-crisis”). For the proposition that the end of politics is the beginning of the polemical, see Alan Wolfe, *The New Pamphleteers: When the Establishment Disappears, Polemics Fill the Void*, N.Y. TIMES, July 11, 2004, § 7 (Book Review), at 13, stating:

Pamphleteering is what happens when no one—editorial writers, university professors, publishing executives—is doing much “filtering.” Without strong political parties and powerful labor unions, Arianna Huffington’s and Sean Hannity’s politics is the kind of politics you get. For all their ugliness of language and unpersuasive fury, then, the current crop of political pamphlets bears a striking resemblance to the increasingly democratic culture in which they flourish.

<sup>239</sup> HARDT & NEGRI, *supra* note 30, at 138.

language of Volf, we are all sinners. Thus, the critiques of the sovereign in terms of porosity and the promise of fusion must be refused.

Hardt and Negri's post-postmodern project, however, not only calls for the acceptance of the sovereign-as-myself as the means of fighting the modern state, it does so in a way that reinscribes the sacrality of the undertaking. First, sacrality is most evident in this refusal of the postmodern project, the renunciation of the reterritorialization of the "I" as the singular and autonomous integer of sovereignty, and in the promulgation of a messianic figure: the self, really, as Everyman, the collective-as-one (an alternative or communitarian reterritorialization). This "return to the self" as collective (recall Volf's "brethren in Christ") depetrifies the homelessness and isolation of the imperial refugee, filled but perdurably emptied by imperial desire. It is a reterritorialization that repudiates the negativity of the erotic *dispositif*. Precisely because the return is to the self as constituted by imperial, immediated power,<sup>240</sup> the return is an "interior" reorganization of borders, an internal reconceptualization, indeed recreation, with intimations of a divine agency involved. This self, with its synthetic,<sup>241</sup> utopic, even religious<sup>242</sup> allusions (the new, militant, and politicized self is beyond the "refusal" of the negative *dispositif*) is ready to do battle with the system "from within":

Today the militant cannot ever pretend to be a *representative*, even of the fundamental human needs of the exploited. Revolutionary political militancy today, on the contrary, must rediscover what has always been its proper form: *not representational but constituent activity*. . . . Here is the strong novelty of militancy today: it repeats the virtues of insurrectional action of two hundred years of subversive experience, but at the same time it is linked to a new world, a world that knows no outside. It knows only an inside, a vital and ineluctable participation in the set of social

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[I]t is important to investigate the utility of [postmodern and postcolonial] theories in the context of the new paradigm of power. This new enemy not only is resistant to the old weapons but actually thrives on them, and thus joins its would-be antagonists in applying them to the fullest. Long live difference! Down with essentialist binaries!

*Id.*

<sup>240</sup> *Id.* at 26. "All the intermediary elements of the process have in fact fallen aside, so that the legitimacy of the international order can no longer be constructed through mediations but must rather be grasped immediately in all its diversity," and further: "This [i.e., Empire] is a radical transformation that reveals the unmediated relationship between power and subjectivities, and hence demonstrates both the impossible or 'prior' mediations and the uncontainable temporal variability of the event."

*Id.*

<sup>241</sup> *Id.* at 132 (referring to the postcolonial politics of Franz Fanon and Malcolm X).

This open negativity is merely the healthy expression of a real antagonism, a direct relation of force. Because it is not the means to a final synthesis, this negativity is not a politics in itself; rather, it merely poses a separation . . . . The real political process of constitution will have to take place on this open terrain of forces with a positive logic, separate from the dialectics of colonial sovereignty.

*Id.*

<sup>242</sup> *Id.* at 393.

The great masses need a *material religion of the senses* [*eine sinnliche Religion*]. Not only the great masses but also the philosopher needs it. Monotheism of reason and the heart, polytheism of the imagination and art, this is what we need . . . . [W]e must have a new mythology, but this mythology must be at the service of ideas. It must be a mythology of *reason*.

*Id.* (citation omitted).

structures, with no possibility of transcending them. . . . This militancy makes resistance into counterpower and makes rebellion into a project of love.<sup>243</sup>

Thus, as the newness of the postmodern sovereign's return to a pure, ethical self is really the reconsecration (resacralization) of an old imperial self, so also the "novelty" of the postmodern anti-imperialism posited by Hardt and Negri is a reconsecration of an old militancy of "two hundred years of subversive experience," promising "a new world" of unity and the transcendence of the individuated self.

So there we have it: within refusal is the construction of a new mode of life, creating "humanity squared";<sup>244</sup> reterritorialization, similar to Vol'f's nonexclusionary borders, is the promise of communalism. And while the secular open space encountering the code's rigid borders appears radical and new (a paradigm shift), the rhetorical register is religious: the "constituent" figure (messianic) at the conclusion of Hardt and Negri's analysis is Saint Francis of Assisi, patron saint of *ascesis*. Hardt and Negri point to his renunciation of the material world (proto-capitalism) in order to use its own captivating and colonizing tools against it. Thus, renunciation goes beyond merely an ethics of refusal, a breed of the Negative, to an ethics of love and the quest for purity and innocence: St. Francis presents a utopian vision of oneness with God, nature, and humankind.<sup>245</sup>

But St. Francis, according to legend, received his ethical and transcendent calling in dreams.<sup>246</sup> And so we return to the code and the fantasy of fusion with which we began. Will either the Christian or the secular alternatives fulfill the dream and thereby obviate the cycle of abjection, projection, and alienation within which we are steeped as discursive subjects of the code? It is not, I submit, a criticism to say that despite, or perhaps because of, the radical nature of the alternatives as

<sup>243</sup> *Id.* at 413.

<sup>244</sup> *Id.* at 26.

<sup>245</sup> *Id.* at 413.

There is an ancient legend that might serve to illuminate the future life of the communist militancy: that of Saint Francis of Assisi. Consider his work. To denounce the poverty of the multitude he adopted that common condition and discovered there the ontological power of a new society. The communist militant does the same, identifying in the common condition of the multitude its enormous wealth. Francis in opposition to nascent capitalism refused every instrumental discipline, and in opposition to the mortification of the flesh (in poverty and in the constituted order) he posed a joyous life, including all of being and nature, the animals, sister moon, brother sun, the birds of the field, the poor and the exploited humans, together against the will of power and corruption. Once again in postmodernity we find ourselves in Francis's situation, posing against the misery of power the joy of being. This is a revolution that no power will control—because biopower and communism, cooperation and revolution remain together, in love, simplicity, and also innocence. This is the irrepressible lightness and joy of being communist.

*Id.*

<sup>246</sup> See, e.g., PASCHAL ROBINSON, *St. Francis of Assisi*, in THE CATHOLIC ENCYCLOPEDIA, VOLUME VI, available at <http://www.newadvent.org/cathen/06221a.htm> (last modified Nov. 3, 2004), stating:

His biographers tell us that the night before Francis set forth he had a strange dream in which he saw a vast hall hung with armor all marked with the Cross. "These," said a voice, "are for you and your soldiers." "I know I shall be a great prince," exclaimed Francis exultingly, as he started for Apulia. But a second illness arrested his course at Spoleto. There, we are told, Francis had another dream in which the same voice bade him turn back to Assisi. He did so at once. This was 1205.

departures from the narrative of stability engendered by the bordered other, there is still the insinuation of the normative discourse present in both. On the contrary, with the necessity of rupture (transgression), the promise of fusion (eroticism as love), and the strong temptation that this promise will draw you back into the code, the alternatives have mandated a return to the self as the site of self-interrogation.<sup>247</sup>

As such, one may ask: is a “neutral space” conceivable at the porous borderline? Can the self face its own antagonistic alterity? Precisely at the border, we see ourselves in relation to the suffering of others. We pause to consider the erotic and sepulchral complicities—political and moral—of the juridical discourse as a seductive fantasy<sup>248</sup> of innocence.

## V. CONCLUSION: MY ALTERITY

*et le nègre chaque jour plus bas, plus lâche, plus stérile, moins profond,  
plus répandu au-dehors, plus séparé de soi-même, plus rusé avec soi-  
même, moins immédiat avec soi-même,  
j'accepte, j'accepte tout cela.*  
—Aimé Césaire<sup>249</sup>

The postmodern sovereign (defining the United States as superpower, or supranationalism as power beyond the allegedly declining Westphalian state<sup>250</sup>) denotes a global world as “a new constellation of power.”<sup>251</sup> The world may seem to be divided between the stable democracies and the many smaller, struggling countries where crises flare up. But when, I suggest, we go behind that conception of “our” situation vis-à-vis “theirs,” and when we consider the nature of modern sovereignty as reinforcing the suppression of “my alterity” by displacing violence to the chaotic other, we

<sup>247</sup> See KRISTEVA, *supra* note 51, at 101. “The return to oneself leads the individual to question his truth, much like what is accomplished with philosophical dialogues, for example Plato’s. Something that prayer and all forms of meditation also accomplish according to St. Augustine.” *Id.* at 100.

<sup>248</sup> For the constructive utility of fantasies of fusion, see FIRESTONE & CATLETT, *supra* note 68, at 35 (discussing on the “fantasy bond” created by the child to compensate for the lack of fusion with the mother at an early age).

Early in the developmental sequence, the infant or child compensates for emotional deprivation by forming the primary defense, which I refer to as the *fantasy bond*. . . . The *fantasy bond*, originally an imagined fusion with the mother or primary parenting figure, is highly effective as a defense because a human being’s capacity for imagination provides partial gratification of needs and reduces tension. This leads to a pseudo-independent posture, and the more an individual comes to rely on fantasy, the less he or she will seek or be able to accept gratification from other people in real relationships.

*Id.*

<sup>249</sup> AIME CÉSAIRE, *CAHIER D’UN RETOUR AU PAYS NATAL* 56 (Editions Présence Africaine 1983) (1939). The poetic language is idiosyncratic, but loosely translated means, “and each day that the black is inferior, mean, barren, stupid, dispersed, the more distant from himself, the more self-deluded, the less in touch with himself—I accept, I accept all of that.” The play on words—*plus, moin*, etc.—suggests a tension between the pregnancy and the emptiness of the epithets. I am grateful to Robert Blaauvelt for his insights in the translation of this passage.

<sup>250</sup> See generally TODD, *supra* note 36, at 6–13. Todd catalogues the work of others who have charted this decline (as well as those who suggest the opposite). Included among the “structural anti-Americans” are Noam Chomsky and Benjamin Barber; those suggesting a “moderate vision” of American power and the “inexorable reduction of its power within a world of rising populations and economic development” are Paul Kennedy, Samuel Huntington, Zbigniew Brzezinski, Henry Kissinger, and Robert Gilpin. See *id.* at 6–7.

<sup>251</sup> CHARLES KUPCHAN, *THE VULNERABILITY OF EMPIRE* 7 (1994).

see the border as less stable than the law's promise of redemption (and with it, my ethical action) may connote.

In this Article I have suggested that there is a link between the larger relations of state or national power and the more immediate relation between the subject and the other within the ethical discourse. I have examined this relationship between the self and other, the ethical "I" and the violence outside, as the interplay of various subterranean desires and imperatives (discourse on genocide). The discourse is inscribed with our investment in the border between self and other; the border enables us to see the suffering of the other, to imagine the ethical, and to configure or suppress our complex desires and projections.

The border protects us from confronting those complex desires, but at the cost of an encounter with the other in his or her alterity. The border as resistance to the encounter is itself invested with a sense of its necessity: to maintain security and safety, to ratify my innocence, to legitimate my moral stance toward the world, and to secure my power. If it is true that the more my power is threatened, and hence the more my walls will be bolstered and policed, then since the discourse is only possible with the expulsion (exportation) of violence as other—what Hardt and Negri describe as the "omni-crisis"—the self will increasingly cleave to a fantasy of safety and security, increasingly find itself, as Césaire puts it, "plus séparé de soi-même."<sup>252</sup> In its solitude, its ethical address to the other—the instinct of love—will engender the replicative corruption of the erotic, specular investment in the other's death, its ultimate escape.

Thus, self-alienation is not only a suppression of self-aggression<sup>253</sup> due to a frustrated desire for fusion and transcendence, but is also the source of the exclusion that creates the very conditions of rule that enable self-configuration as stable and strong. I have suggested two alternative theories for interrupting this narrative of stability, each of which partakes of the stable model but requires a return to the self, to its own antagonistic or alienated violence in the passionate embrace of self-creation. This is the terrifying proposition advanced by both religious and secular alternatives—terrifying because, as Firestone has noted, the resistance to change is deeply embedded since the patterns of alienation function, over time, as the substitute for a sense of the connectedness that has always seemed, in any event, elusive.<sup>254</sup>

In short, my question has been: what are we really saying and doing as we engage in the semantic debate? What is the meaning of genocide? I have discussed the libidinal investments pursuant to the discourse that characterize it as a kind of code, and cast the law (juridical discourse) as a vessel producing and containing (or attempting to) a complex of fears,

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<sup>252</sup> CÉSAIRE, *supra* note 249.

<sup>253</sup> See, e.g., FIRESTONE & CATLETT, *supra* note 68, at 33 (aggression as derived from frustration).

<sup>254</sup> *Id.* "The core of resistance is the fear of giving up the primary fantasy and being left feeling alone. Even though negative thoughts or voices are destructive, they are a form of companionship, and resistance represents a fear of losing that companionship." *Id.*

hopes, frustrations, and desires. The discourse determines the ethical, my ethical, self.

Finally, then, at stake in the “semantic debate,” if we are serious about avoiding harm to others, is the potential for reclaiming the erotic from its infibulated fixation on death, and reimagining the erotic as the domain of love. It requires excavating and confronting the deeply ambivalent desire for the destruction of the other as *the* sign of a will to stability and permanence. If we take Césaire’s advice and accept alterity, the horrible prospect of mass slaughter and suffering in distant countries will not vanish. People have always killed, and they always will. But the persuasiveness of a simplified *juridical* story of genocide as the chaos “out there,” having nothing to do with me, calling me merely to redemption, may become attenuated. What I do, how I see and *know* the suffering of others, matters. And it will matter more as the world grows smaller.