

Diaspora, Law and Literature

Law & Literature

Edited by
Daniela Carpi and Klaus Stierstorfer

Volume 12

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ISBN 978-3-11-048541-7

e-ISBN (PDF) 978-3-11-048925-5

e-ISBN (EPUB) 978-3-11-048821-0

ISSN 2191-8457

Library of Congress Cataloging-in-Publication Data

A CIP catalog record for this book has been applied for at the Library of Congress.

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

© 2017 Walter de Gruyter GmbH, Berlin/Boston

Printing: CPI books GmbH, Leck

☉ Printed on acid-free paper

Printed in Germany

www.degruyter.com

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Daniela Carpi

Foreword

Diaspora studies afford a critical perspective on the very visible thematic field of cultural migrancy and on debates about transnationalism and postcoloniality – debates which find a resonance in the resurgent multi-cultural debates.¹

Although the term diaspora often refers to a catastrophic dispersion, we must now extend the strict literal meaning of diaspora to include trade, labour, and cultural diasporas. In fact the discourse on diaspora is intertwined with issues concerning multiculturalism, neocolonialism, and transnationalism under the large umbrella term of Cultural Studies. Multiculturalism, in particular, means at the same time variety and cohesion; it implies deracination from one's homeland and re-contextualization within a new environment, while keeping one's original cultural roots. How to combine the right to keep one's culture with the necessity of adapting oneself to new surroundings? In this sense the term diaspora can also be used as a metaphor: a person may fit into a new country while keeping a diasporic consciousness. In other words diaspora can mean geographic displacement, while at the same time entailing a diasporic sensibility that cannot be suppressed. All this is further complicated by a world economy which is getting more and more transnational.

To some extent global economy has superseded the concept of diaspora, because everybody is part of a widespread economic system that supplants barriers and private interests. In other words the idea of diaspora may slowly fade away and become only a question of cultural memory. But the issue of identity construction within cultural differences still remains. As Robin Cohen points out:

In the postmodern world [...] identities have become de-territorialized and constructed and deconstructed in a flexible and situational way; accordingly, concepts of diaspora had to be radically re-ordered in response to this complexity.²

Whereas traditionally diaspora entailed living in the interstices of a society as a consequence of the global economy we have all become diasporic individuals deprived of the illusion of a fixed identity and cultural role. Even in this sense the term diaspora carries within itself a negative conception of liminality and incompleteness.

1 Samir Dayal, "Diaspora and Double Consciousness," *The Journal of the Midwest Modern Language Association* 29.1 (1996): 46–62, 46.

2 Robin Cohen, *Global Diasporas* (London and New York: Routledge, second ed. 2008): 2.

The discourse of diaspora displaces the obsession with (particularly bourgeois) individual identity and the whole apparatus of normativity that sustains it.³

Global consumerism thrives on cultural hybridities.⁴ Actually, hybridity has always been part of the cultures of the world, thus intrinsically annulling the “myth” of the integrity, purity, and nationality of cultures.

Discourses on diaspora must also take into consideration the concept of human rights. There are some fundamental rights for the individual that go beyond any nationalism and which intrinsically pertain to the individual qua human being. For instance: everybody has a right to life (Section 1, art. 2 of the “European Convention for the Protection of Human Rights and Fundamental Freedoms,” 1953), no one shall be subjected to torture (Art. 3) or shall be held in slavery (Art. 4.1), everyone has the right to liberty and security of person (Art. 5.1), everyone has the right to respect for his private and family life, his home and his correspondence (Art. 8.1), everyone has liberty of religion. These rights must be respected for the sake of the individual in whatever community he/she happens to move. Human rights therefore go beyond the concept of diaspora: the fact is that each individual enjoys these rights wherever he/she ends up living. To some extent, human rights annul the sense of diaspora: you are at home in the world.

At the present time diaspora is therefore a complex issue to confront because its traditional meaning is becoming outdated. What I observe is that the term tends to survive as a metaphor for identity crisis or alienation, as double consciousness or as a problematization of multiculturalism or even as “internal and shifting imbalances of power within Western democracies, and among minorities.”⁵

Consequently, it is necessary to distinguish between the cosmopolitan, the refugee, and the exile: the former does not share the same cultural condition as the latter ones.

Whether or not it is regarded as a phenomenon coextensive with the histories of decolonization, diaspora is admittedly far from providing an adequate ‘explanation’ or account of recent transformations of nation-states.⁶

Some of these questions are dealt with in this volume which represents an insightful addition to an important ongoing debate. Even in a de-territorialized concept of identity the ideas of ‘home’ and ‘homeland’ remain powerful discourses and here the concept of diaspora is set against this linguistic background.

3 Dayal, “Diaspora and Double Consciousness,” 54.

4 See Brian Massumi, *A User’s Guide to Capitalism and Schizophrenia: Deviations from Deleuze and Guattari* (Cambridge: MIT P, 1992): 185.

5 Dayal, “Diaspora and Double Consciousness,” 48.

6 Dayal, “Diaspora and Double Consciousness,” 51.

Klaus Stierstorfer

Introduction: Exploring the Interface of Diaspora, Law and Literature

Diaspora has become a central term in the study of the continual, and indeed exponential, rise in global migration and dispersion. The concept has acquired its own inter- and transdisciplinary field of studies which has shown itself as eminently dynamic, vibrant and topical. In fact, diaspora studies can now be considered a widely established research paradigm: Diaspora is canonized by its inclusion in the 'Very Short Introductions' series of Oxford University Press; it has its Reader, and its own journal.¹ While in this recent rise of the field, the early years of diaspora studies show a predominance of the social sciences – with names such as William Safran, Robin Cohen, Avtar Brah or Roger Brubaker starring that firmament – further disciplines have meanwhile joined the discussion with much verve and enthusiasm. Among these, literary and legal studies have only recently moved towards a more focused consideration of the diaspora paradigm, but now generate a particular interest. This is not only because these two disciplines can contribute valuable insight and new perspectives to the field as much as they are set to draw further enrichment from their engagement with the study of diaspora; law and literature have themselves mutual overlaps and stimulating interrelations, so that an exciting, productive triangulation between diaspora studies, legal studies and literary studies appears on the horizon.

While all three bilateral connections – between diaspora studies and literary studies, between diaspora studies and legal studies and, finally, between law and literature – have each received considerable scholarly attention individually, the innovative claim of the collection of essays presented here is that they actually attempt to ally all three fields in various ways and bring that alliance to scholarly fruition. In this rigidly circumscribed way, the present volume ventures onto new ground. To cast this profile into relief, it will, however, be helpful to recall the existing connections between the disciplines involved.

¹ Kevin Kenny, *Diaspora: A Very Short Introduction* (Oxford: Oxford University Press, 2013); Jana Evans Braziel, Anita Mannur, ed., *Theorizing Diaspora: A Reader* (Oxford: Blackwell Publishing, 2003); Klaus Stierstorfer, Janet Wilson, ed., *The Routledge Reader in Diaspora Studies* (London: Routledge, forthcoming 2016); *Diaspora: A Journal of Transnational Studies*, ed. Khachig Tölölyan (Toronto: University of Toronto Press) 1– (1991–).

The literature of various diasporas has received plentiful attention by literary scholars. Thus, studies of literary works from and about the Indian diaspora total 254 entries in the MLA Bibliography (up to 2015), with such magisterial studies as Vijay Mishra's *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (2007) among them, and famous authors of Nobel and Booker Prize fame such as V.S. Naipaul or Salman Rushdie to boast of. Vijay Mishra therefore rightly claims that "it may even be argued that it [the literature of the Indian diaspora; K. St.] is one of its [the Indian diaspora's; K. St.] greater accomplishments, as the literature produced is among the best writing in English in the second half of the 20th century and after."² Similar prominence will be attributed to the literature of the African diaspora and of the Chinese diaspora, with many smaller diasporic groups to be added to this list, frequently holding a prominent place in the literatures of both the host cultures and the respective cultures of 'origin.' As the multiplying studies of such diasporic literatures and their importance for identity formation and a host of further issues show, the role of a diaspora's literary output is significant with regard to the image it projects of itself as a diaspora and of the diasporic imagination governing its relations to the culture of origin and the host culture, as well as, possibly, to other diasporas.³

Although legislators, legal practitioners and researchers in legal studies have been aware of the reverberations of global migration and dispersion in their field, the focused consideration of legal studies in and for a diaspora context is only beginning to take shape. Clearly, foundational works such as Seyla Benhabib's seminal monograph *The Rights of Others* (2004)⁴ have been paving the way for a change of perspective, away from consolidating the basis of the law within the framework of the nation state, and towards a more sophisticated, multi-layered approach that could do justice to the numerous individuals and groups within a state who may not feel they belong (ever, or as yet) to the nation. Meanwhile, more work in this direction has been forthcoming, as documented by volumes such as *Migration, Diasporas and Legal Systems in Europe* (2006), edited by Prakash Shah and Werner Menski. Even if this is not (yet) a systematic approach to the legal challenges posed by diaspora and migration, Shah and

² Vijay Mishra, "Voices from the Diaspora," in *The Encyclopedia of the Indian Diaspora*, ed. Brij V. Lal, Peter Reeves, Rajesh Rai (Honolulu: University of Hawai'i Press, 2006): 120–139, 139.

³ The fact that neither Kevin Kenny in his *Very Short Introduction* nor Braziel and Mannur in their *Reader* so much as mention literature shows that a fair assessment of the contribution of diaspora literature still needs to mature and develop in inter- and transdisciplinary diaspora research.

⁴ Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* [2004] (Cambridge: Cambridge University Press, 2007).

Menski have begun to collect case studies and instances of explorative research in various legal fields and in various areas or on various groups in Europe. As Shah and Menski summarize it in their Introduction:

Recent migration trends are a reversal of those that have been dominant for several centuries, [... when] legal transplantation tended to occur [...] through the export of European legal models to other parts of the world as Europeans carried their cultural and legal baggage with them.⁵

The kind of critical rethinking within the legal discipline to be observed here has a traditional precedent within the interdisciplinary exchange between law and literature. The perception of law and literature as closely allied, if not mutually dependent, goes back in modern times at least as far as Jakob Grimm's much-quoted phrase that law and literature had, as he saw it, "risen from the same bed."⁶ In more recent times, the "law and literature movement" which started in the United States, partly in reaction to the "law and economics"-approach, in the late 1970 s has given this interdisciplinary field a major impetus. Initiated and pioneered by such galleon figures as James Boyd White or Richard Weisberg, the American impact has generated renewed interest in research in many parts of the world. Thomas Sprecher's erudite and massive bibliography can give a first idea of how expansive this highly productive field of research has meanwhile become and what rich traditions it can draw from.⁷ The law and literature approach as an integral, interdisciplinary venture is in so far highly relevant to diaspora studies as it is carried by a keen awareness of the need to 'humanize' the law and adapt it to ever changing social challenges, thereby emphasizing the humanist foundations of law and legal thinking.

With such pairings of the three fields of diaspora, law and literature more or less well institutionalised, the additional benefit of bringing together the three individual disciplines, including their established linkages, becomes immediate-

⁵ Prakash Shah, Werner F. Menski, "Introduction: Migration, Diasporas and Legal Systems in Europe," in *Migration, Diasporas and Legal Systems in Europe*. ed. Shah, Menski (London, New York: Routledge-Cavendish, 2006): 1–12, 1.

⁶ "Dasz 'recht und poesie miteinander aus einem bette aufgestanden waren, hält nicht schwer zu glauben" (Jakob Grimm, "Von der Poesie im Recht," § 2, in *Zeitschrift für die geschichtliche Rechtswissenschaft* 2.1 [1816]: 25–99, 26).

⁷ Thomas Sprecher, *Literatur und Recht. Eine Bibliographie für Leser* (Frankfurt: Vittoria Klostermann, 2011); see also James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1973); Richard Weisberg, *Poethics and Other Strategies of Law and Literature* (New York and Oxford: Columbia University Press, 1992); for a survey see Guyora Binder, Robert Weisberg, *Literary Criticisms of Law* (Princeton: Princeton University Press, 2000).

ly apparent with intuitive insight. Specifying and pinning down the issues which this tri-disciplinary approach would be best geared to tackle and the answers these engagements might yield is, however, a much harder task which this volume can only begin to embark on. It does so in the various discussions presented in the following, which reach out within the field triangulated by diaspora, law and literature in many productive directions. Roughly, three main aspects can be differentiated in these essays, subdividing the volume in three larger sections. A first set of essays deals with various foundational aspects of the interdisciplinary triangle of diaspora, law and literature. This is followed by a series of case studies in the second part, where individual authors or topics are specifically focused on, before a final collection of contributions opens the vista, so to speak, by looking at issues further afield, using the preceding discussion as a starting point of bringing in further media as well as exploring a broader and more metaphorical use of the concept of diaspora.

Pier Giuseppe Monateri opens the first group of essays in his foundational exploration documenting how political, spatial, religious and literary aspects relate in the emergence of a specifically Western concept of diaspora. He shows how St Paul's letters ended the Jewish diasporic constitution by subverting the traditional concept of the Law as a distinguishing feature of the Jewish diaspora, implementing the tradition of letter writing as a genre specifically geared to this purpose. Riccardo Baldissoni follows in this philosophical note by pointing out the duality between individual and society. This he describes as complemented by space as its defining entity, which is where the diasporic element comes in and can be contextualised, historically most lucidly in the concept of the much understudied *ius gentium*. Jeanne Gaakeer takes her departure from Johann Gottfried Herder's *humanitas*-concept, from which she develops a cautionary philosophy of diaspora. Paola Carbone then reflects on the legal principle of 'fair hearing' and sees diasporics in the position to need an 'intercultural hearing'. She argues that the legal principle of the fair hearing in court can provide a pattern on which intercultural dialogue could be established. Peter Schneck starts out from the thesis of a conceptual interdependence between the diasporic and the indigenous subject. He at the same time emphasizes the differences between the two, which are principally strategic and political in negotiating kinds of legal and literary subjectivities which may even result in an antagonistic juxtaposition of the two 'modes of belonging'. Bringing the focus back to literature, Florian Kläger unites literature, law and diaspora by highlighting the reflexivity which is inscribed in all three of them, but he also ferrets out the differences between the three fields by showing how they respectively treat and approach this reflexivity. Finally, Emma Patchett illustrates the ways in which law and literature diaspora studies can bring out the overlap of sometimes contrastive sover-

eignities. Such ‘transjurisdictionalism’ is shown in readings of literature from around the world, set in the Romani diaspora in Europa, the British-Asian diaspora in London and the Aboriginal diaspora in Australia.

In the second part, a series of case studies can at least adumbrate the wealth of ideas and directions which the volume’s themes can combine to develop. Thus, Fabian Wittreck analysis the medieval Lawcode of the Armenian diasporic community in Lemberg and comes to the astonishing conclusion that the law code in question never really functioned as a directory for legal procedures but, more in the sense of literature, as an instrument of diasporic identity. Melanie Williams reads Derek Mahon’s poetry both with a view to the Irish diaspora in America and a more general theme of displacement and its legal reverberations, such as in recent ruling on asylum seekers coming to Ireland. Daniela Carpi approaches the concept of diaspora through the lens of Philip Roth’s novel *Operation Shylock*, which highlights the importance of the Jewish diaspora for the European heritage and the gap the Holocaust has left, advocating a new diasporism as a counterpoint to Zionist understandings. Franziska Quabeck’s reading of Kazuo Ishiguro’s novel *Never Let Me Go* brings out the power of recognition (or the lack of it) of the rights of social groups such as diasporics and migrants: In Ishiguro’s stark allegory, oppressed groups regularly lack the cultural clout to fend for their own, even most basic rights which, by implications, must be read as a loud appeal for the need for protection of such groups in societies. Sidia Fiorato, in her reading of Michael Ondaatje’s novel *Anil’s Ghost*, brings in a nuanced view of the various (self-)constructions of complex diasporic identities, especially pronounced in the law-inspired strategies deployed by Anil who is trained as a forensic anthropologist. Section two then concludes with Nilufer Bharucha’s tour de force of the Indian Diaspora with a focus on the laws faced by and tailored to Indian diasporics; laws to be created for Indian indentured labour after the abolishment of slavery to differentiate it from slavery to the legal changes within India with a view to the Indian diaspora abroad.

In the volume’s last section, some new departures and directions are sketched out. Avtar Brah begins with a reading of Mohsin Hamid’s novel *The Reluctant Fundamentalist* and, based on her findings, profiles citizenship as a central concept connecting law, literature and diaspora, which is then refracted by gender issues and multicultural perspectives. Taking the gender theme in another direction, Janet Wilson considers the utility of queer readings for the topic at hand. She successfully expands the field of diaspora studies by showing remarkable parallels between the politics of sexuality and gender issues on the one hand and the situation of diasporics on the other. In her choice of novels, a further twist is negotiated in so far as both sides, that is, biographies with both queer and diasporic life lines in them, are intertwined. Chiara Battisti adds photogra-

phy as a highly relevant medium for diaspora studies. She analyses short stories by Jhumpa Lahiri and shows how the author uses ekphrastically the frozenness of the photographic picture in depicting the static memory of the diasporics' lost homeland in the past. Leif Dahlberg, finally, scrutinizes Caryl Phillips' short story "Northern Lights" by harking back to Sigmund Freud's analysis on melancholy and the bearing this can have on understanding the diasporic situation. Phillips' use of the elegiac form in his short story helps to frame the diasporic situation of its protagonist and thus hints at possible remedies.

As becomes evident from this roll call of essays reaching out in so many directions, the present volume cannot (yet) pretend to a systematic mapping of the field defined by diaspora, law and literature. Although much has been added, both in further thought and discussion as well as in entire further essays, the volume still quite consciously retains some traces of its germ and origin in a symposium of scholarly *conversazioni* at Villa Vigoni, Italy, in May 2012. It was this open, and in many ways less rigorous format in the beginning that made it possible for scholars from so many disciplines to come together and converge on a common enterprise, encouraging them to cross disciplinary boundaries and embark on a transdisciplinary exploration. The editors are therefore grateful to the German Research Council for funding this initial meeting at Villa Vigoni, and for the continued encouragement and support of Prof. Dr. Immacolata Ammodeo, Generalsekretärin des Deutsch-Italienischen Zentrums für Europäische Exzellenz Villa Vigoni e.V.

Pier Giuseppe Monateri

Diaspora, the West and the Law

The Birth of Christian Literature through the Letters
of Paul as the End of Diaspora

1. Introduction: Back to the Western Diaspora and Beyond

My claim in the following is that we must reappraise the birth of Christianity in diasporic terms: that is to say that we need to use modern results of diaspora studies to reinterpret even the Jewish Diaspora, and to settle her problems properly within the legal and political setting of the Greek cities of the time, through the emergence of new literary genres, as the gospels, and the active use of letter writing, as a kind of stereotyped but evolving genre. In this way, I maintain, we can also critique and investigate the same notion of *diaspora* in its current evolution.

Diaspora has in fact become a central term in the literary debate, from Vèvè Clark to Robin Cohen,¹ Greg Egan,² Kevin Kenny,³ and so many others, but it is especially with reference to the path-breaking works of Vèvè Clark that I want to address this subject in relation to law *and* literature.

Vèvè Clark uses the special label of *Diaspora literacy* to flag the ability to understand and read the multi-layered meanings of stories, words, and other folk sayings within any given community, with a peculiar reference to the African diaspora. These meanings supersede those of “Western or westernized signification.”⁴ They go beyond literal or typical literal interpretation into an

1 Vèvè A. Clark, “Developing Diaspora Literacy: Allusion in Maryse Condé’s ‘hérémakhonon’” in *Out of the Kumbia: Caribbean Women and Literature*, ed. Carole Boyce Davies, Elaine Savory Fido (Trenton, NJ: Africa World P, 1990): 303–319; Robin Cohen, *Global Diasporas: An Introduction* (London: Routledge, 2001); Robin Cohen, *‘Diaspora’: Beyond the Jewish Experience* (Cape Town: Jacob Gitlin Library, Western Province Zionist Council, 2003).

2 Greg Egan, *Diaspora* (Brno: Návrat, 2005).

3 Kevin Kenny, *Diaspora: A Very Short Introduction* (New York: Oxford UP, 2013).

4 Hortense J. Spillers, *Comparative American Identities: Race, Sex, and Nationality in the Modern Text* (New York: Routledge, 1991): 40–60, 42.

area of folk understanding that could only be recognized by those skilled in such an understanding.

Even if we find in this theory a rather common *academic claim* to own a given field, from which outsiders, not peculiarly trained or initiated in it, are to be taken strictly outside and cease to have a right to speak, what is implied in Clark's discourse on African studies is remarkably linked to a given European theological background, which is of the greatest importance in understanding the Jewish Diaspora and its literary meaning.

Clark's model is, to a large extent, a specification of the theoretical concept of interpretative communities stemming from reader-response criticism promoted by Stanley Fish.⁵ According to this theory a text does not have meaning outside of a set of cultural assumptions regarding both what the characters mean and how they should be interpreted. In this context, I maintain that Fish's theory is but a secularization of the theological debate of the beginning of the twentieth century around the interpretation of early Christian writings, turning, especially by Ernst Käsemann,⁶ the focus of inquiry from the source itself, or the author, to the community receiving a text and interpreting it, by rewriting and transmission, according to their needs and their historical situation. Remembering that gospels, acts, and other writings are typically folk narratives – full with miracles, extraordinary facts, and contradictions – this shift of the focus from author and text to community and reader has had, at its first appearance, mainly a theological impact, more than a mere literary meaning. The role of communities and their communal life in order to read and understand the process of writing and transmission of the sayings of Jesus and the folk stories related to him, played an immense role in reshaping the theological debate on Jesus and his story. In this case, once more, as Northrop Frye suggested,⁷ we find a theological ancestor of a modern critical concept, having a political impact. As Ernest Bormann has argued, a political community first requires the formation of a rhetorical community bound together by shared myths and languages that underscore the uniqueness of the community.⁸

5 Stanley Eugene Fish, *Is There a Text in This Class?: The Authority of Interpretive Communities* (Cambridge, MA: Harvard UP, 1980): 147–174.

6 Ernst Käsemann, *Exegetische Versuche und Besinnungen 2.2* (Göttingen: Vandenhoeck & Ruprecht, 1964): 82–104.

7 Northrop Frye, *The Anatomy of Criticism* (Princeton, NJ: Princeton UP, 1957): 76

8 Ernest G. Bormann, "Symbolic Convergence: Organizational Communication and Culture," in *Communication and Organizations, an Interpretive Approach*, ed. Linda Putnam, Michael E. Pacanowsky (Beverly Hills, CA: Sage Publications, 1983): 99–122, 100–106; Alastair Iain John-

Diaspora literacy, from this perspective, is precisely based upon several different theoretical concepts. The first concept is that diaspora is the phenomenon and history of a displacement. Secondly, that displaced people come to embrace an awareness and appreciation of the political, cultural, and creative self as something unique in itself and thus not required to conform especially to European aesthetics. The third and final concept is that of signifying, as a literary concept developed by Henry Louis Gates Jr. to underlie the apprehension of dominant stories and the fact of imbuing them with cultural meanings and signs related to the particular diasporic culture of the concerned group.⁹ By receptions and reversals one would then see the creation of a Diasporic literary canon, imbued with a Diasporic language that only a literary examination of the intricacies of the cultures could interpret.

I think that all these concepts are of peculiar interest for studying that unique offspring of the Jewish Diaspora which has been represented by the rise of a different style and content of the early Christian literature precisely along the lines of the new awareness developed by these communities, within the political setting of ancient world cities (*Poleis*), including a deep re-thinking of the entire Jewish tradition. In a way, this theory reproduces precisely the history and phenomenon of the birth of Christianity within the Western Jewish Diaspora, from the start of a new awareness to the real production of a diasporic canon which became the Canon of the Bible. In a way the whole of the theory behind African diaspora studies is the reproduction of the theological upheaval which happened with the birth of Christianity within the Jewish Diaspora, giving us back a new insight on those ancient facts. Thus, modern diaspora studies are changing our perspective on our own European origin, refreshing an understanding of ourselves which derives from the ways others attempt to define themselves superseding European signification. From this standpoint we can see a kind of 'Eliot effect' at work in this field, where the past becomes altered by the present as much as the present is directed by the past. An overall cultural order, which is modified by the introduction of the new (the really new) work of thought. Indeed the studies on Jewish diaspora and the rising of Christianity paved the way to the shift toward the reader as preached by Fish, building up a theory of communities and transmission which served as a basis to Diaspora studies applied to non-European cultures, which now can be used to reappraise and illuminate most of the diasporic roots of European cultures.

son, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History* (Princeton, NJ: Princeton UP, 1995): 160.

⁹ Henry Louis Gates, *The Signifying Monkey: A Theory of Afro-American Literary Criticism* (New York: Oxford UP, 1988).

Thus what I shall try to do in this chapter is, first, to develop the peculiar diasporic context characterizing in a singular way the Jewish Diaspora in the West. Then I shall try to outline the practical, political and legal problems of these diasporic communities within the institutional arrangement of the Greek polis. Thirdly, I shall analyse the feelings related to this peculiar political and legal situation, in order to appraise the literary response represented by the early Christian writings that developed a new Theology and simultaneously produced a political change in the history of the Diaspora. All this will be done, here, just with reference to Paul's undisputed letters, as the privileged place where this new consciousness was developed to its most obvious conclusions.

2. Diaspora and the Law

Currently the term diaspora has spread essentially as a metaphor, the more and more separated from any particular reference, to designate the same condition of living in a globalized world, with a complete shift from the very idea of being delocalized from a concrete space like Eretz Israel. A real space that can have an ontological meaning, and that gives sense to the same term of diaspora, since a diaspora is possible only in relation to a meaningful place. Today we experience, however, a shift in the sense of diaspora toward the conception of a world in which space has no longer any real significance.

The very fact of being delocalized becomes such a universal condition that since everybody is, no people is immune from it; whereas, I maintain, the term diaspora has a concrete, and *polemic* meaning only insofar part of a community is dislocated, but another part is not. And this term keeps a referential content as long as there is a real space in relation to which you can affirmatively define what it means to be delocalized. In order to keep a proper meaning of the word diaspora, you need to maintain its own geopolitical reference.

From this standpoint, the term diaspora has always been afflicted by a kind of paradox, since it is patently a Greek word adopted also to describe a peculiar historical event in the life of Israel. In this way it has always been a superimposed foreign word, an alien portrait, which assumed an overwhelming national character in relation to the self-portrait of the people of Israel living in exile. According to me the adoption of the Greek term by the diasporic communities displays simultaneously the soft power of the ruling Aryan elites of the time, and the willingness by the dominated to accept this dominance even to define themselves. As such it is ironic that this word became a label for studies directed to self-awareness beyond European signification, when it represented a major ex-

ample of this process of signification attributing to the Jews the category of ‘aliveness’ to plot their history.

And besides the Greek word can mean as well a collective trauma, a banishment, where one dreamed of home but lived in exile, or mere migration, without any nostalgia, as well as it can mean even colonization. No language has ever been more ambiguous than the Greek, which is maybe the main reason for its everlasting charm. But what does it mean from a Jewish perspective to be labelled by a foreign Greek word as diaspora?

Of course the best translation of diaspora is ‘dissemination’. But this is a nice word, which has to cover the traumatic aspects of diaspora in the history of Israel. As a nice, and very meaningful, word in literary studies it is important, I think, to follow all the paths it can bring us to, and to open all the links which are allowed by its connotative features, but as long as its denotative plan is concerned I think that first of all this term raises *legal* questions.

Diaspora – as an historical fact affecting Israel – has been the result of the Law of War, and the Law of Nations, and still to-day the status of the Diaspora is highly determined by the Law of Return, and the perennial matter of *Who is a Jew* according to the Law.

Here the Law is dislocating all other meanings, and also feelings. It is enough to change, for instance, the Law of Return to affect the sentiments which are bound to the experience of being disseminated in the world. And it is in relation to Law, I maintain, that we may perceive the multiple meanings of diasporic phenomena even within the unique History of Israel.

As we all know the first diaspora derived from the outcome of the Assyrian War, which destroyed the Northern Kingdom and transplanted most of Judah and Benjamin into Babylonia, certainly not to ‘disseminate’ them, but to keep them under control in a foreign land, according to a practice of the Assyrian Empire normally adopted toward any conquered enemy. This community received a legal status, and self-maintained itself through the ritual observance of the Law. And it was a decree from the Persian emperor, after the collapse of the Assyrians, which allowed a Persian servant, Nehemia, to re-establish a Palestinian community, raising huge conflicts, especially on property and land possession, with those who remained at home. This legal landscape is crucial to understand Diaspora and the connected events, as these events offered a template for other future efforts to destroy and disseminate Israel. The spatial element here is determined by the East, and henceforth what the Eastern Diaspora means, a widespread community conserving in Babylon a Davidic descendant as its nominal chief, is strictly determined in relation to the space occupied by *Eretz Israel*. Jerusalem was of course *East* for the Greeks, but it was a centre of its own, having an absolute *East*, Babylonia, and an absolute *West*, Athens and then Rome.

This first Diaspora and the Coming Back of many from exile created the intricate problem of who really is Israel: those who were left at home, the people of the land –*Am Ha-Aretz* – or those who came back to re-take the possession of it? A question which became a recurring theme in the history of Israel, and that became a key factor in its own self-definition.

The second Diaspora has been, at the beginning, less traumatic, due to the cosmopolitan era created by Alexander the Great, where a real dissemination of Jews in Greece, and especially in Egypt, took place. This dissemination produced a strong Western Diaspora with very different features in relation to the Eastern one. The Western Diaspora played a pivotal role when the third major traumatic historical event happened: the national disaster of 66–70, the destruction of the Temple, and then the war of 135 CE and the final legal ban of the Jews to inhabit the land of Israel.

This last great Diaspora has thus been the result of a peculiar law, never adopted against any other people by the Romans, representing a real apprehension of the land of Israel by a foreign power, changing the same ontology of all places, to the point that Jerusalem was transformed into Aelia Capitolina, and a great altar dedicated to Jupiter Capitolinus was erected over the ruins of the Temple.

What then becomes crucial, in our current debate, is what happened in the 30 s and the 50 s CE in Jerusalem, but in strict relation with the Western Diaspora: I mean that great antinomian movement of Greek-speaking Jews which is normally known as Christianity, within the context of the imminent outburst of the 60 s. In this span of time not only the Law determined, to a great extent, the nature of the Diaspora, but also the feelings toward the Law determined, after the collapse of the Temple, the historical destiny of a large part of the Diaspora and of the most of Europe. Feelings which have been elaborated by adopting peculiar literary genres as the ‘letters’ and then inventing the new literary genre of the *gospels*. It is precisely the adoption of these genres, operated to unfold a narrative that could give a theological sense to all this political turmoil and reversal that we shall try to outline in the next paragraph.

3. The Canon of Letters and Paul’s Reading Practice

Having seen the different features of multiple diasporas which occurred during the history of Israel, we can now focus on the birth of the first Christian literature, as a body composed at its very beginning by the letters of Paul.

Paul is indeed the best polemic, but as such concrete witness that we have of the Western Diaspora in the crucial moment of the first Christian affirmation. All we can know derives from his letters, dating from the 50 s of the first century, but referring to events – as Paul’s own conversion – of approximately only three years after the Crucifixion, when the writing of the gospels was still, at least, 35 years in the future.

To understand Paul’s letters properly,¹⁰ we need to know something about the practice of letter-writing in the ancient world,¹¹ quite a common activity in those days. The Hellenistic letter-writing tradition called for certain stereotyped forms. There would be a salutation (*A to B, greetings*) and a wish for the health of the recipient; in the body of the letter there would be much conventional language that sounds stilted to our ears; and at the end there would be a farewell formula (rarely a signature). Paul’s letters are part of this tradition. They are genuine letters, not epistles, in the sense of a fictive letter written for publication rather than for mailing. They are written in the standard Koine Greek. In any case we know that they were not written for publication in a book, where they now stand. They were meant to be read aloud to the assembled congregation that Paul addressed. They are a substitute for Paul in person, and they are all addressed to congregations in cities. Organized Christianity from the start was an urban movement characteristic of the Western, Greek-speaking Diaspora, and what, undoubtedly, emerges from these letters is a strong opposition to the Law.

It was Paul’s genius to see that Christianity could not survive if it were tied to the Jewish Law: the 613 separate commandments found in the Torah, with all their ramifications through the daily lives of believers and the whole narrative embodying them within the paradigm of *Halakah and Haggadah* (substantially translatable as *Law and Literature*) forming together the body of the writings to be interpreted for legal purposes.

Paul saw not only the practical difficulties caused by requiring gentile converts to submit to circumcision and obey other features of the Jewish Law but also the theoretical confusion that such a requirement would institutionalize. So he challenged the so-called Judaizers directly, and most important of all, he provided something to put in place of the Law through his doctrine of justification by faith, a doctrine he pretended to find not only in the sayings of Jesus

¹⁰ The undisputed letters of Paul are: Romans 1–2, Corinthians, Galatians, Philippians 1, Thessalonians and Philemon.

¹¹ For all that follows on letter-writing, cf. John B. Gabel and Charles B. Wheelers, *The Bible as Literature* (Oxford: Oxford UP, 1990): 215.

himself – he cites just a couple of them – but in the Old Testament itself. And all this was achieved through his letters.

Someone, after Paul's death, thought of assembling them and publishing them as a collection. So great was Paul's prestige that imitators quickly followed him, borrowing the form of the Pauline letter and sometimes Paul's name. Thus Paul was responsible – quite unintentionally – for the introduction of a biblical genre, the letter, just as Mark was responsible for introducing the frequently imitated genre of the Gospel.

The key features of narrative, and henceforth of thinking, that we may find in these letters – as is well known – are first of all related to an *expectant waiting* that the world was very soon coming to an end. A reader who misses this point can understand very little else about Paul. This means, of course, the coming end of human history and the irrelevance of any political or ontological discourse and distinction, as the history and the ontology of this world are at an end. This means also something very important about the Law, as the Law was deemed to be the fabric of this world's own ontology, and the distinct problem of the Diaspora. As a well-educated and zealous Jew, Paul was intimately familiar with the Law. As a Christian, however, he was convinced that the Law no longer applied!

After the Coming, so to speak, the world entered a final state of exception, a final struggle between opposite powers, a war, where the Law has been superseded. The Law was meant all along to be only an interim arrangement before the next phase of God's plan unfolded with the coming of Jesus. For those who believe in Christ, the Law has become completely invalid. And they will be saved not for their obedience to a Law which became obsolete in this state of exception, but for their faith.

We must imagine a kind of universal ontological state of exception, when the Law, and its distinctions, also of what is clean and unclean, enter a final state of confusion, when only faith in a new incarnated law, the Christ, can save us from annihilation. The believers will pass through this state of emergency untouched, when all the rest will be dissolved. Faith is a protection, just as the law had been before the present times. The political consequence of this ontology of a cosmic emergency is the end of the distinction between Israel and the nations, as it was based on the acceptance and the practice of a Law which has now ceased to be valid.

The literary device by which this theory is produced in the letters is a peculiar non-interpretative reading of the scriptures.¹² This literary device of Paul is

12 For a definition of *non-interpretivism* as a use of texts which purport to give a sense to it with-

normally called *typological* interpretation as it aims to see in all the text of the Tanakh the signs and traces pre-figuring the advent of the Christ in the person of Jesus. So it is really a matter of signification as a process to produce specifically new and diasporic meanings as an appropriation of the text once it is transplanted from its place of origin into the communities of the West, adopting an alien language to express a text which once was thought to be so rooted in its own physical consistency that the first duty of the Scribes was to count its consonants, in order to be sure that each copy was really a perfect reproduction of the scroll in the Temple.

Paul is, in his own way, lifting passages out of context or combining passages from different sources, laying special significance on arbitrarily chosen words, ignoring the original author's intention. The text is disrupted, deconstructed, used only for its citational and polemic possibilities given that he already knows, by other means, the truth: that Jesus is the Lord, and that the final struggle has begun. It is this knowledge giving him the meaning of the texts allowing a reading of it that does not even tries to be interpretative. In a way this is the paradigm of the circle of legitimation in the process of reading. The text is giving a legitimation to the life and death of Jesus, as long as it is forecasting these events, but now the Advent of Jesus is also giving authority to the text as long as this text is speaking of Him. It could also be seen here the working of a peculiar 'Eliot Effect': the Coming of Jesus has changed our perception of the Tanakh so that the old books receive their meaning from the latest events. And it is this *Eliot Effect* that legitimates Paul's use of an alien blend, the Greek, to build up his *Typological* interpretation of the received authorities for the Diaspora, and in a diasporic setting. The power to speak of Paul derives from his reading of the text, but also the text now maintains a power to speak only insofar it is interpreted in this way.

Following this line of thought we could say that the perceived state of exception is re-produced through the same reading technique which brings us to see it as part of God's plan, as well as the end of the Law – and of its binding rules – is produced by discarding all proper rules of reading. Paul's text is portraying in itself what he pretends is ontologically happening. His letters display a refold of the reading upon itself, mirroring the ontological reversals of the world, while producing, in political terms, the end of Israel; and henceforth the end of the Diaspora and the Greek world as separate entities. A real ontological revolution: If there is no more Israel, there is no more Diaspora, but also there are

out trying to *interpret* it, see Pier Giuseppe Monateri, "'All of this and so much more': Original Intent, Antagonism and Non-Interpretivism," *Global Jurist Frontiers* 1.1 (2001), Art. 1.

no more Gentiles. It is just the existence of an Israel which dislocates such an ontology of the world and its spaces.

We have here a perfect parallel between the reading of the past, the construction of the actual text and the events which it is simultaneously describing and producing. As Paul himself says the *morphè*, the shape of this world, is about to pass, and there will be no more Jews and no more Greeks; and, I add, no more Diaspora.

4. Polis as an Institution and the Antinomian West

As we have seen especially in the writings of Paul peculiarly addressed to the Western Diaspora within the Greek speaking world, Christianity assumed at first the attitude of a movement against the Law, and that mainly against its prescriptions upon 'purity' in relation to food and rituals.

My theory is that this matter of food had an overwhelming importance for public life in a Greek Polis. As we know a Polis is not simply a space with buildings and roads, but a peculiar cultural and legal arrangement of a space. It is not immaterial that the Greek word *Nomos* means at the same time *Law* and *District*. The *Nomos tes Athenes* means the *County of Athens*. *Nomos* is a *legally organized territory*; there can be no Law without a territory. No city is a Polis if it has not a square for public meetings (*agorà*), a gymnasium, and at least one theatre to represent what were anyway deemed to be religious spectacles in honour of the gods. From this standpoint Jerusalem has never been a Polis in Greek terms, since it never had any kind of similar political, cultural and legal space. Moreover a Polis had to have space for many different temples, devoted to city gods, but *also to alien gods* of other communities with which the Polis had *political* relations. It was common practice all over the world of antiquity to share gods to signify an alliance, or the establishment of commerce; and temples were also banks, where valuables could be deposited and transferred from one place to another under the protection of a god.

Within the Polis public life was scheduled according to communal gathering during feasts when meat was served from sacrifices to different deities. Participation in these ceremonies was absolutely binding so as to have a public life, to access public administration, and to exercise any leading social role.

From this standpoint it is clear that ancient Judaism was an immense bar to 'normal life' in a Greek Polis, and besides it was not *understandable* for the

Greek mind.¹³ The Law of Purity barred the Jews from eating food coming from pagan sacrifices, forbidding their participation in public life and public events, impeding their political role in city administration. And especially the practice of having only one Temple, in Jerusalem, and the impossibility to share it with others, opening, for instance, a dependence of it in Athens, as well as the parallel refusal to accept within Jerusalem other temples devoted to alien gods, was felt by the Greeks as a sign of misanthropy, a strong hatred for the rest of the human community¹⁴: Jews were patently enemies of humankind, they despised it, refusing to accept and share common practice, manners, uses and even gods (!) in their social, political, international and religious interactions with other nations.

The clash on these matters was made apparent during the attempt of Antiochus IV Epiphanes to transform Jerusalem into a real Greek Polis with the building of a gymnasium, provoking the Maccabean Revolt. In Christian times the clash on food purity is still witnessed by the Acts,¹⁵ since the Christian Jews refused to share the same table with the Christian Gentiles for purity reasons, so that the primitive Church had to invent the *Deacons* to arrange separate tables and separate food for all the participants. As Erik Peterson already described his study, the mystery of the primitive Church had to be *simultaneously* the Church of the Jews *and* the Gentiles.¹⁶

Now it is clear that the emancipation of the Diaspora from the prescriptions of the Law, as preached by Paul in his letters, was a real liberation for all the early Christian Jews, allowing them to participate in public life, and so to exercise a standard political and administrative influence in the Greek Poleis. From this point of view Paul is very concrete: Jesus makes you free, because He has superseded the Law, and now you may eat whatever you want, and you may even receive at home your pagan friends. In his narrative the Law introduced the sin into the world, because without the Law there is no sin, and no impurity. It is only the law establishing it. It is the Law discriminating between what is clean and what is unclean. As Paul says openly, Jesus is ontologically transforming the world, because there is no more distinction between a Jew and a Gentile.¹⁷

13 Peter Schäfer, *Judeophobia: Attitudes Toward the Jews in the Ancient World* (Cambridge, MA: Harvard UP, 1997).

14 Tacitus, *Histories*, 5, 4–5; see < <http://www.sacred-texts.com/cla/tac/h05000.htm> > (acc. 21 Dec 2015)

15 Acts 6:1–7.

16 Erik Peterson and Jacques Maritain, *Il mistero degli ebrei e dei gentili nella Chiesa* (Milano: Edizioni di Comunità, 1946).

17 Galatians 3:28; Colossians 3:11.

Of course this narrative represents in Paul's letters a major ontological shift, which has not received due attention. For him the Law becomes performative, so that there is no impurity outside the Law. On the contrary for standard Judaism such beasts as snakes or snails are – really, ontologically – unclean; and the Law is there just to advise us: be careful because eating a snake is unclean. The Law is a sign of God's love for his people because the law is true; the world is really full of hazards and evil, and God, giving the Law, is assisting his own people instructing it on how to behave in this world. Paul here – but his use of rhetoric is so marvellous that the point goes quite unnoticed – is entirely changing the relation of the Law to the World, reversing the same distinction between that which is descriptive, and that which is performative in the legal field.

Quite naturally all these reversals and significations made by Paul were felt by many as a suppression of Israel, because if there is no longer any purity distinction, there is no longer any Israel. But certainly for many others Paul's reading was perceived as the possibility to finally live as normal people in a Greek city. It is easy now to understand that all these issues were peculiar to the West and its societal organization, just since there were no Polis in the East.

The issues that we have now sketched were not at stake in the East, where the institution of the Polis was absent. The Community in Babylon, for instance, received its own peculiar legal status, and had not to participate to public meetings or theatre for the simple reason that there were no such meetings and gatherings. So, in a way, and this is one of my peculiar points, it was the overall institution of the Polis, comprising its democratic attitude, the very existence of a political public life, to determine the main problems of the Western Diaspora, and part of its destiny. It was the device of the Polis, dislocating all aspects of life, from athletics to drama, from feasts to assemblies, which made Christianity possible, first of all, in the West.

5. Conclusion: *Being Within and Without* and Diaspora Studies

In the first section we have seen the importance of actual diaspora studies to re-appraise the first century Jewish Diaspora through the analysis of the literary genre of Paul's letters. The second section has been devoted to outline how important it is to consider the matters related to Diaspora from the standpoint of the Law and of a Legal Analysis. In this way the third section has analysed the way adopted by Paul in his letters to reinterpret Jewish sources in order to preach, on the basis of the Law itself, an end of the Law. In this paragraph

we have traced a parallel between the theological reading of Paul of the events happened during his lifetime and the theory of the state of exception as the legal theory concerning the suspension and the end of the Law in emergency situations. From this standpoint we have all along considered the issue of the Law, and its prescriptions, as the key factor of the split, within the Western Diaspora, between Christian and traditional groups inside the same diasporic community. In the fourth section we have linked this peculiar event of the Western Diaspora to the same institution of the Greek Polis, conceived as a device dislocating all aspects of private and social public life. A device especially linked to the democratic nature of the Polis, giving room for a public political life absent in other parts of the world.

In this way we have appraised the concurrence of political, spatial, religious and literary factors in the rising of peculiar diasporic concepts in the West, starting from legal rules and legal prescriptions, and the problem of their observance. Our major point is precisely that a Polis is a 'political device' locating spaces and scheduling life, and, as such, moulding Diaspora in the West in a way which was different from other diasporas. Polis has been an overall device.

From this standpoint we must consider that there has always been something totalitarian at the root of Western European democracy, and some cunning link between it, as a political concept, and the city-religion as an all-pervading ideology, concerning all aspects of life, and requiring from free citizens a total acceptance and compliance with shared and accepted standards of behaviour. A kind of societal totalitarianism cohabiting with political freedom, as an enduring feature of the West. Otherwise the democratic polis of Athens would have never sentenced Socrates to death for atheism. And the only official constant title of the Roman Emperors would have never been that of Pontifex Maximus, High Priest.

What is the most remarkable, in relation to the diasporic historical existence, is the extent to which ancient Anti-Judaism, as displayed even by Tacitus and other authors, was rooted precisely in this democratic-totalitarian religious conception of the urban space as a public political space, around which all the world had to be organized. It is the same democratic notion that a political life must be a public life, with public discussions and debates that provoked the problems of the Western Diaspora. A theory of the political so widely shared in the Greek World that Herodotus¹⁸ held that the Persians, the most important Empire of his times, did not have a political existence, since in their form of gov-

¹⁸ Rosaria Vignolo Munson, *Telling Wonders: Ethnographic and Political Discourse in the Work of Herodotus* (Ann Arbor, MI: U of Michigan P, 2001).

ernment everything was decided in private meetings among the members of the inner circle of the Emperor.

Here it becomes essential to conclude by investigating the *literary* aspect produced by the Polis-device and the experience of being a Jew in a Greek city. I think that this situation can be captured using a citation from Francis Scott Fitzgerald's *The Great Gatsby*:¹⁹

I wanted to get out and walk eastward toward the park through the soft twilight, but each time I tried to go I became entangled in some wild, strident argument which pulled me back, as if with ropes, into my chair. [...] I was within and without, simultaneously enchanted and repelled [...].

For me this existential condition of being “simultaneously within and without” is something that can be perceived through Paul's narrative in his letters. The very fact of being “simultaneously enchanted and repelled” by ‘city’ institutions, and simultaneously accepted and excluded by them. A diasporic Jew was within a Polis but without it, not allowed by his own law to participate in communal life, and at the same time he was within Israel, but without its space, its land, Eretz Israel, and, in a way, also, at the same time accepted, but a bit excluded by the ruling elite of Jerusalem.

This fact of living “within and without” is not a matter of being “captured in a threshold”, because no threshold is possible between cleanness and uncleanness, as well as between public life acceptance and its refusal. A Jew in the Western Diaspora was simply both a displaced subject, and someone having to develop the particular consciousness of belonging to two irreconcilable legal and political spaces. A life contended between two diverging *nomoi*: a *double bios*. There is only just one *zoè*, a bare life, but this life is divided between two *ways of life*, two *bioi*.

In these terms Judaism and Hellenism were following opposite ways in defining every aspect of daily life and the peculiar *literary* position of the Diaspora in the West was that of developing the consciousness of being simultaneously within and without. I think that this is the peculiar *literary position* which may have been at the root of the first diasporic Christian communities, mixing memory and desire: the frozen memory of being part of Israel, and the desire of becoming full members of the Polis. A kind of double binding which goes far beyond the concept of being simply displaced, or the idea of dissemination, since it becomes, and reveals, the *nomi*c conflict at the root of a particular historical existence.

19 F. Scott Fitzgerald, *The Great Gatsby* [1925] (New York: Scribner, 2004): 35.

The key factor in a diasporic life is perhaps this simultaneity, the experience of contradictory bounds and ties. As Robert Cover has written, a Nomos is a peculiar legally organized space, a world with its own ontology, more than simply its own rules, and, at the very end, we inhabit a Nomos.²⁰ In a diasporic condition we inhabit simultaneously different Nomoi, we experience different ontologies.

Paul, and many other Jews with him, arrived at a moment of decision, to supersede this condition, not through mere assimilation, but through a specifically diasporic attempt to adopt a new *signification* of this world's ontology, one that was not imposed either by the Greek elites or by the Jerusalem ruling class, and that produced something, that eventually has fostered the emergence of a new theology.

In a way the concept of diaspora has to deal with the existence of a double ontology, produced by the coexistence of two different Laws, so that diaspora assumes the meaning of experiencing the juxtaposition of contrasting laws and their ontologies. If one assumes this point of view diaspora becomes the emblem of living in a clash of norms, in a world governed by contrasts. Something that perhaps can explain Walter Benjamin's famous proposition that the exception may become the rule.²¹ Something which displays a parallel between diasporic life and the state of exception.

That is why, I believe, Christianity can be grasped as a product of Western Diaspora, operating, through its own literature, from Letters to Gospels, an ontological rupture of the ancient world with its entities and spatiality, rendering the Greek Polis politically liveable for all the converters.

Paul is keen to emphasize that the distinction between Greeks and Jews has passed. This passage is crucial in his writings for the contention of his urgency that the shape of the actual world is passing. Things, entities are to flow away and a new ontology is about to be established, governing the world in a totally different way and, above all, without any distinction between Israel and the 'nations;' a contention that is simultaneously a liberation, allowing many to inhabit a Greek Nomos, and the end of Israel, which is achieved precisely through the end of the Law, and that of diaspora.

²⁰ Martha Minow, Michael Ryan, Austin Sarat, ed., *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor, MI: U of Michigan P, 1992).

²¹ Walter Benjamin, *Über den Begriff der Geschichte: VIII. geschichtshistorische These* (1940) in: *Gesammelte Schriften* unter Mitwirkung von Theodor W. Adorno und Gershom Scholem, ed. Rolf Tiedemann, Hermann Schweppenhäuser. vols I–VII, suppl. I–III (in 17 vols) (Frankfurt a.M., 1972–1999), vol. I/2: 697.

Of course, the end of Israel is also simultaneously the end of the diaspora. Christianity supersedes diaspora by closing its experience. The New Israel is open to everybody, Gentile or Jew, and has no precise land of reference, nor is it dominated by the Law, but shepherded by Love. The Love of the Lord is ending the historical experience of the Diaspora, as it is blurring away any special distinction of Israel as such, toward a universalism that is not simply assimilation, because it pretends to convert all the pagans to a form of Religion which is the offspring of Judaism. In a way all the world will become Israel, simultaneously with the end of the historical Israel; and indeed the Church will proclaim to be the New Israel in the very fact of being a single body eating the same bread and drinking the same wine, trying to establish, through the birth and affirmation of this body, a new spatiality of the ancient world: a new geography of the *Nomos*.

Riccardo Baldissone

Towards a Grammar of the Multiverse

A Genealogical Reconsideration of Humans, Places and Diasporas

When all the 72 (so goes the story¹) translators of the תנ"ך [Tanakh], or Jewish Bible, decided to render with the same Greek neologism διασπορά [*diaspora*] five different Hebrew words,² they could not even imagine the tragic success to come of their creative translation. 22 centuries later, in 1991, the introductory article to the first issue of the journal *Diaspora* included in the semantic domain of the homonymous word such terms as immigrant, expatriate, refugee, guest-worker, exile community, overseas community, ethnic community.³ The article was meant to provide the readers with a sort of preface to the new editorial enterprise, and in its closing paragraph, it peremptorily stated: “the chain of analogies that once joined the image of the safely enveloped individual body (the site of unique personal identity) to the homogeneous territorial community (the site of national identity) is no longer plausible.”⁴

I do not want to question the plausibility of this statement. I would rather use it as a symptom of our perception of the relation between humans and places. More precisely, I would like to construct this sentence as a quasi-symptom,⁵ as I will make it say probably more than what its author intended to. For sure,

1 The story of the Greek translation of the Bible called the Septuagint is first attested in the second-century BCE letter of the pseudo-Aristeas. The letter recalls how 72 translators took 72 days to produce a Greek version of the Bible at the request of King Ptolemy II of Egypt.

2 The Seventy probably derived the noun *diaspora* from the verb διασπείρω [*diaspeirō*], to scatter or spread about. The Greek word *diaspora* was later associated with the Hebrew term גלות [*galuth*], exile, which is still often misleadingly quoted as the original reference for the Greek translation. See Stéphane Dufoix, “Deconstructing and Reconstructing ‘Diaspora’: A Study in Socio-Historical Semantics,” in *Transnationalism: Diasporas and the Advent of a New (Dis) order*, ed. Eliezer Ben Rafael, Yitzhak Sternberg with Judit Bokser Liwerant, Yosef Gorny (Leiden: Brill, 2009): 47–74.

3 Khachig Tölölyan, “The Nation-State and Its Others: In Lieu of a Preface,” *Diaspora: A Journal of Transnational Studies* 1.1 (1991): 3–7, 4.

4 Tölölyan, “The Nation-State and Its Others,” 7.

5 I proposed elsewhere a quasi-symptomatic hermeneutic approach, which would underline our responsibility in the construction of the new problematic of which the textual material becomes a symptom, as a result of our chosen hermeneutic strategy. See Riccardo Baldissone, “Sovereignty Forever: The Boundaries of Western Medieval and Modern Thought in a Quasi-Symptomatic Reading of Schmitt’s Definition of Sovereignty,” *Polemos* 7.2 (2013): 307–320.

the metaphor of the body as a site that mirrors the bigger site of the communal place has a long history in Western culture.

The parallelism between the citizen and the city structures one of the founding texts of Western thought, Plato's *Republic*.⁶ The ideal government of both the individual and the community is entrusted by Plato to their highest faculty. In particular, he attributes to the λογιστικόν [*logistikón*] or rational soul in the head the control over the other two centres: the Homeric chest-soul θύμος [*thymos*], which Plato renames as θυμοειδής [*thymoeides*], and the επιθυμητικόν [*epithymetikon*], the desirous soul set in the abdomen.⁷ These three levels of the Platonic soul match the three classes of the Platonic ideal city, the δημιουργοί [*dēmiourgoi*], or producers, the φύλακες [*phylakes*] or soldiers and the ἄρχοντες [*archontes*], or philosopher-kings, who are to rule over the previous two ones.⁸

Christian thinkers restate the metaphorical mirroring of the individual body and the body of the community. Paul first defines the member of the community as a member of the body of Christ,⁹ and then he describes Christ as the head of the body, which is the congregation of the faithful.¹⁰ We may notice that Paul's metaphors put the emphasis on the individual, as it is the community of the faithful that is represented as a (bigger) body. Later on, Augustine turns the earthly city into a pale and insufficient image of the city of god.¹¹

The association of the adjective 'mystical' with the body of the Church emerges in the twelfth-century writings of Peter Lombard. Peter actually uses the Latin word *caro*, flesh, as a metonymy for body.¹² He portrays the Church as a *caro mystica*, a mystical body, both in his theological commentaries and

6 Following Rosenstock-Huessy, we may describe Plato's individual as a *micropolis*, a small city, as compared to the *macropolis*, the big (and actual) city. See Eugen Rosenstock-Huessy, *Lectures on Greek Philosophy* [1956], in Eugen Rosenstock-Huessy, *The Collected Works on DVD* (Essex, VT: Argo Books, 2005).

7 Platon, *Rep.* 5.439d.

8 As to the gender distribution of roles, because Plato acknowledges that natural capacities are distributed (διεσπαρμέναι, *diesparmenai*, a form of the same verb *diaspeirō* from which the Seventy were to derive the word *diaspora*) among human beings, he does not deny to particularly talented women the access to the roles of command. See Platon, *Rep.* 5.455d.

9 1 Cor. 12.12–27.

10 Col. 1.18. As the authenticity of the letter is disputed by many scholars, the metaphorical shift of Christ from body to head could be justified by the change of author.

11 See Augustine, *The City of God against the Pagans*, trans. R. W. Dyson (Cambridge: Cambridge UP, 1998).

12 *Patrologia Latina*, vol. 191, 1642; *Patrologia Latina*, vol. 192, 857; *Petri Lombardi Sententiae*, IV, d. 8, c. 7, 2, ed. PP. Collegii S. Bonaventurae Ad Claras Aquas, vol. II: Liber III et IV, (Grottaferrata 1981), 285.

in his collection of sentences that is to remain the major theology textbook until the sixteenth century.

From the twelfth century on, not only the body of the Church, to which the faithful belong as limbs, becomes a mystical one: more important, the head of the body is identified with the Roman Pontiff as the vicar of Christ.¹³ By analogy, also medieval kings are depicted as the head of the mystical body of their kingdom.¹⁴ The fourteenth-century legal theorists Baldus even describes the city corporation as men (sic) assembled into one mystical body.¹⁵

Renaissance authors revive instead the classical double image by constructing the human body as a reduced mirror image of the world. For example, Jean Bodin works out the well-being of both the individual and the commonwealth precisely as a microcosm and a macrocosm, a small and a big world, mirroring each other.¹⁶

On the contrary, one of the founders of modern politics, Thomas Hobbes, invents the modern state by recovering the medieval mystical body, which he calls Leviathan, in good Biblical fashion. On the frontispiece of the homonymous book, the Leviathan is depicted as a huge body, which is composed of the multitude of the citizens' bodies, and topped with the head of the king.¹⁷

If we reconsider the initial quotation in the light of my previous brief genealogical sketch, we will notice that whilst the classical analogy between the individual and the city linked two ordered multiplicities – the inner multiplicity of the soul and the outer multiplicity of the city – both its Christian and modern recastings rendered the communal term as a homogeneous entity, first as a mystical body and then as the undifferentiated body politic. Moreover, modern the-

13 Though the absolute power of the pope is already claimed in the 1075 *Dictatus papae*, the explicit definition of the pope as vicar head of the body of the church appears in pope Boniface VIII's 1302 bull *Unam Sanctam*: "Therefore, of the one and only Church there is one body and one head, not two heads like a monster; that is, Christ and the Vicar of Christ, Peter and the successor of Peter."

14 In the words of the fourteenth-century jurist Lucas de Penna: "The Prince is the head of the realm, and the realm the body of the Prince. Just as men are joined together spiritually in the spiritual body, the head of which is Christ, so are men joined together morally and politically in the respublica, which is a body the head of which is the Prince." Qtd. in: Ernst Hartwig Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, N.J.: Princeton UP, 1957): 216.

15 Baldus, ad C.7.53.5, fol.236r.

16 Jean Bodin, *De Republica Libri Sex* [Six Books of the Commonwealth] (Parisiis: Apud Iacobum Du-Puys sub signo Samaritanae, 1586): I.I.

17 Abraham Bosse created the etching for the book's famous frontispiece after lengthy discussion with Hobbes. See Thomas Hobbes, *Leviathan* (London: printed for Andrew Crooke, 1651).

orists even reduced the other term, namely the individual, to an equally homogeneous entity, which was endowed with univocal reason and a conscience.¹⁸

Though this reduction first took place in the texts of seventeenth-century natural philosophers such as Hobbes, Descartes and Leibniz,¹⁹ the modern isolated and self-consistent individual also appeared in legal and literary texts. On the one hand, legal texts translated the theological notion of free will into the full responsibility of the individual subject, who could then be held accountable and punished for his (and even her) behaviour. On the other hand, literary characters, from Bunyan's Pilgrim²⁰ to Defoe's Robinson,²¹ performed the uprooting of the modern individual from his context.

The critique of this modern self-consistent individual slowly emerged in philosophical texts. As a very short summary, we may recall that the philosophical concept of the consistent self was challenged by Hume,²² fluidified, so to speak, by Hegel,²³ refused by Stirner,²⁴ dissolved by Marx into the network of social relations,²⁵ and eventually mocked by Nietzsche.²⁶ And yet, it is in the liter-

18 The last instantiation of Western modern universalism, namely the human subject of the 1948 *Universal Declaration of Human Rights*, is precisely "endowed with reason and conscience" (art. 1).

19 See René Descartes, *Discourse on Method and the Meditations* [1637], trans. F.E. Sutcliffe (London: Penguin, 1968); Gottfried Wilhelm Leibniz, *Monadology: And Other Philosophical Essays* [1720], ed. Paul Schrecker, trans. Anne Martin Schrecker, Paul Schrecker (Indianapolis: Bobbs-Merrill, 1965).

20 See John Bunyan, *The Pilgrim's Progress: From This World to That Which Is to Come Delivered under the Similitude of a Dream* [1678] (London: Lutterworth, 1961).

21 Daniel Defoe's novel *Robinson Crusoe* was originally published in 1719 with the rather explanatory title *The Life and Strange Surprizing Adventures of Robinson Crusoe, of York, Mariner: Who lived Eight and Twenty Years, all alone in an un-inhabited Island on the Coast of America, near the Mouth of the Great River of Oroonoke; Having been cast on Shore by Shipwreck, wherein all the Men perished but himself. With An Account how he was at last as strangely deliver'd by Pirates.*

22 In the introduction to his *Treatise of Human Nature*, Hume sardonically remarks that human beings, "setting aside some metaphysicians [...] are nothing but a bundle or collection of different perceptions, which succeed each other with an inconceivable rapidity, and are in a perpetual flux and movement." David Hume, *A Treatise of Human Nature* [1739–40], ed. P. H. Nidditch, L. A. Selby-Bigge (Oxford: Clarendon P, 2nd ed. 1978), 252.

23 See Georg Wilhelm Friedrich Hegel, *Phenomenology of Spirit* [1807], ed. J. N. Findlay, trans. Arnold V. Miller (Oxford: Clarendon P, 1977).

24 See Max Stirner, *The Ego and Its Own* [1845], ed. David Leopold, rev. trans. Steve Binynton (Cambridge: Cambridge UP, 2000).

25 Young Marx argues in his sixth thesis on Feuerbach that human nature "in seiner Wirklichkeit ist es das Ensemble der gesellschaftlichen Verhältnisse." [in its reality is the ensemble of

ary field that Dostoyevsky first gave expression to the inner multiplicity of the self.

Dostoyevsky depicts the endless dialogue between the various parts of the individual self and its resonance within other multiple selves.²⁷ Moreover, in Dostoyevsky's literary characters the acknowledgement of the inner otherness does not exclude the self, which, as it were, does coexist with its other. More precisely, Bakhtin underlines that in each Dostoyevskian character coexist both я и другой [*ya i drugoi*],²⁸ the I and another, which are in continuous communication. Moreover, inner and outer dialogues are intertwined, to the point of being sometimes indistinguishable. This relative indistinction transcends the limits of the modern isolated and self-consistent individual.

Following in Dostoyevsky's footsteps, Freud puts forth an alternative model to the modern self-identical self. He also emphasizes the necessity of an ongoing negotiation between its various psychological components. Nevertheless, as indicated by his personal motto "*wo Es war, soll Ich werden*,"²⁹ where Id was, there Ego shall be, Freud's pluralization of the self does not go too far. In particular, Freud confines the multiplicities that refuse to converge towards a unified will to the field of psychosis, which is a pathological realm that exceeds the reach of psychoanalytical treatment.³⁰

Whilst from then on, more and more philosophical, psychological and literary texts engage with human inner multiplicity, quite often they cannot escape the temptation to make this multiplicity converge towards some kind of unity. This should not be surprising, if we consider, as I tried to show, that such convergence was somewhat prepared by Plato's hierarchical soul; that it found a

human relations], in Karl Marx, Friedrich Engels, *Werke*, ed. Institut für Marxismus-Leninismus beim ZK der SED (Berlin: Dietz, 1969) 3:6.

26 For example, Nietzsche [1887], writes in the *Genealogy of Morals*: "But there is no such substratum, there is no 'being' behind doing, working, becoming; 'the doer' is a mere appanage to the action." Friedrich Nietzsche, *Genealogy of Morals* (New York: Boni and Liveright, 1918): 28.

27 Dostoyevsky first makes emerge the split self as a terrifying *doppelgänger* in Двойник [*Dvoynik*], *The Double*, which appears in print in 1846. In his later novels he lets the various psychological components of the characters interact in a polyphonic dialogue, in the words of Bakhtin.

28 Mikhail Bakhtin, "Toward a Reworking of the Dostoyevsky Book," in *Problems of Dostoyevsky's Poetics*, ed., trans. Caryl Emerson (Minneapolis: U of Minnesota P, 1984): 283–302, 293.

29 Sigmund Freud, "New Introductory Lectures on Psycho-Analysis [1932]," in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, ed., trans. James Strachey (London: Hogarth P, 1964): 22:3–182, 80.

30 Despite his various investigations and hypotheses on the aetiology of psychoses, Freud tellingly describes psychoanalysis' understanding of psychosis as "a glimpse beyond the wall," in "An Autobiographical Study [1924]," in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, ed., trans. James Strachey (London: Hogarth P, 1959): 20:1–74, 61.

theological justification in Christian thought; that it was then construed in theory by early modern thinkers and it was eventually realized in practice through the disciplinary procedures of mass societies,³¹ which spread in both worlds of colonizers and formerly colonized.³²

At this point, we may set the notion of diaspora within such genealogical landscape. By striving to link personal identity with a place, the very idea of diaspora apparently undermines the de-contextualization of the modern individual. However, if my genealogical remarks hold true, in Western thought the human subject has always been construed as a term of a couple, which included as its other term a social entity, be it the Greek city, the Christian community or the modern nation state. Hence, the displacement stigmatized by the claims of diasporas is a confirmation of the traditional coupling, as it were, of small and big subjects.

Rather than questioning the modern individual and state, diasporas instead bring out the role of a third entity, namely place, in the joint construction of individual and social identities. The crucial role played in this joint construction by a specific place appears paradoxically through the loss of this very place, as a result of processes of displacement and dispersion. Hence, we may say that diasporas point to the threefold solidarity between the identities of individuals, communities and places.

I already sketched a very rough genealogical account of the joint production of the identities of individual and collective subjects. I will now attempt to supplement this sketch with a brief narration of the Western production of place.

In Western narrations, the notion of place overlaps with that one of space. Homer deploys the verb $\chi\omega\rho\acute{\epsilon}\omega$ [*chōreō*]³³ to describe a movement of withdrawal,

31 Foucault explores at length the deployment of disciplinary procedures for “the ordering of human multiplicities.” See in particular Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage, 1977).

32 The historical contingency of colonization universalized in practice Western concepts and frameworks that were supposed to be universal in theory. Later on, whilst on the one side political and cultural decolonization processes have been provincializing the West, on the other side neo-colonial globalization processes have been universalizing the neoliberal approach, which is deeply rooted in Western conceptual history. The cornerstones of neoliberal ideology, namely the Individual and the Market, would be unthinkable outside of the entity-based theoretical framework that seventeenth-century natural philosophers inherited from twenty centuries of Western speculation. Hence, the relevance of a radical reconsideration of the canonical history of Western thought goes well beyond the Western horizon.

33 See, e.g., Hom. *Il.* 4.505; 12.406; 13.324.

which makes room for another. The (scarce) space left is named with the word *χώρη* [*chōrē*],³⁴ which also define a (presumably reoccupied) place.³⁵

In the *Theogony* by Hesiod, who is the first Greek alphabetic writer, the notion of space takes shape as a primordial generative character, *χάος* [*chaos*].³⁶ Though the English word ‘chaos’ is used since the late sixteenth century as the opposite of order,³⁷ Hesiod’s word *chaos* is the result of the nominalization of the action of gaping, which in the previous Homeric epic is rendered with the verb *χαίνω* [*chainō*].³⁸ Hence, the Hesiodic *chaos* is not the personification of an original condition of disorder, but it is rather a chasm, a wide-opened space.

This use of the word *chaos* is still in place in the sixteenth century, when the English Catholic translators of the 1582 Rheims New Testament choose the English borrowing ‘chaos’ to translate the Latin word *chasma*, which in turn twelve centuries before was used by Jerome to render the Greek word *χάσμα* [*chasma*], chasm, in *Luke* 16.26.³⁹

In the meantime, after Hesiod the Greek notion of space as a chasm also informs Plato’s recasting of the Homeric word *χώρη* [*chōrē*], which in the Attic dialect is spelled as *χώρα* [*chōra*]. The Platonic character Timaeus narrates in the homonymous dialogue a cosmogony where *chōra* plays the fundamental role of a third kind of reality,⁴⁰ alongside immutable and mutable things. *Chōra* is immutable too, but she⁴¹ also contains all born things.⁴² Timaeus calls her “the nurse of becoming.”⁴³

Aristotle moves another decisive step towards the definition of place by putting at work the powerful inquiring tool first used by Socrates, and then by Plato: in the *Physics*, Aristotle both formally asks the fateful question “what is place?”⁴⁴

34 See Hom. *Il.* 16.68; 17.394; 23.521.

35 See Hom. *Il.* 6.516; 23.349.

36 Hesiod, *Theogony*, 116.

37 “They make their volumes no better than [...] a huge Chaos of foule disorder.” Stephen Gosson, *The schoole of abuse, containing a plesaunt inuectiue against poets, pipers, plaiers, iesters and such like caterpillers of a commonwelth* [1579], (London: Shoberl, 1841): 43.

38 See, e.g., Hom. *Il.* 4.182.

39 Full text available at <http://quod.lib.umich.edu/t/rheims/>.

40 Platon, *Tim.*, 52a8.

41 The Greek word *chora* is feminine.

42 Platon, *Tim.*, 52b1.

43 Platon, *Tim.*, 52d4–5.

44 Aristotle, *Phys.* 209a3. Aristotle uses the word *τόπος* [*topos*], which is already attested in Herodotus.

and attempts to formulate an answer alternative to Plato's.⁴⁵ Given the shift in Homeric language, it is not surprising that Aristotle begins his enquiry by grounding the very existence of place on the experience of mutual replacement.⁴⁶ On the same basis, he takes for granted that two bodies cannot occupy the same place.⁴⁷

Aristotle carries on his search as an exploration of language, by considering the ways in which something is said to be in something else. He then acknowledges that place is only conceivable because of movement: it is because the whole universe is moving that we conceive of place as the container, so to speak, of moving bodies.⁴⁸ On the basis of this consideration, Aristotle moves away from the genetic and dynamic Platonic metaphor of the nurse, and he puts forth the static image of a non-movable vessel.⁴⁹ Aristotle writes: "Hence the place of a thing is the innermost motionless boundary of what contains it."⁵⁰ It is worth recalling that in Aristotle's stable cosmological order, things fittingly move towards their proper place,⁵¹ where they also tend to remain.⁵²

The epistemic notion of place as defined by Greek philosophers is not the only major classical contribution to the Western genealogy of place. A key influence is also the set of normative interventions that in Roman law regulate the dealing with non-Roman citizens, and which is referred to as *ius gentium*, the law of peoples.

Ius gentium is the legal acknowledgment of the presence of foreigners in republican Rome first, and then of the coexistence of Roman legal jurisdiction with other legal systems in the territories of the Empire. Hence, in its first formulation *ius gentium* recognizes that foreigners carry with them, so to speak, not only their territorial identity but also their law. By analogy, Roman legal scholars later build on this recognition the acknowledgement of the overlapping of legal systems in the conquered territories outside Italy.⁵³ Playing with Aristotelian

45 "I mention Plato," Aristotle writes in *Phys.* 209b16–17, "because, while all hold place to be something, he alone tried to say *what it is*." *The Complete Works of Aristotle. The Revised Oxford Translation*, ed. Jonathan Barnes, 2 vols (Princeton: Princeton UP, 1984), I, 357.

46 Aristotle, *Phys.* 208b1–2.

47 Aristotle, *Phys.* 209a6–7.

48 Aristotle, *Phys.* 211a12–13. See also 212b28–29.

49 Aristotle, *Phys.* 212a15–16.

50 "ὅστε το του περιέχοντος πέρας ακίνητον πρῶτον, τουτ' εστιν ο τόπος", Aristotle, *Phys.* 12a21, *Complete Works*, I, 361.

51 Aristotle, *Phys.* 212b30.

52 Aristotle, *Phys.* 212b34.

53 From the beginning of the first century BCE on, as a result of the social (from *socii*, allies) war, Roman citizenship is extended to the inhabitants of the Italic territories.

terms, according to Roman jurisprudence two bodies of law occupy the same place.

After the fall of the Western Roman Empire, both Greek philosophical and Roman legal written sources are lost to the West⁵⁴ for more than half a millennium. When they both reappear, between the eleventh and the twelfth century,⁵⁵ they are incorporated within the Papal revolution's hegemonic attempt to face Western medieval fragmentation with the grandiose mission of Christian universalism.⁵⁶ In the fourteenth century the project of political hegemony of the Church is shattered by the rise of the French nation-state: and yet, its theological, legal and political theoretical apparatuses keep reproducing the new model of principled order, which eventually seventeenth-century natural philosophers transfuse in their construction of modern nature.

The new Galilean physics rejects the Aristotelian doctrine of proper places, so that each object, if not hindered, would not move towards its natural position (or stay there), but it would rather maintain its condition, be it of motion at a constant speed or rest.⁵⁷ Galileo thus puts in ideal motion Platonic and Euclidean ideal shapes, and he obtains an equally ideal model of moving objects.

With regard to place, Descartes goes even further, as his geometrical formalization of space seizes, as it were, the position of each point by determining the numerical values of its coordinates. But it is Newton who reduces movement to an accidental feature of accidental bodies, by devising the mathematized notion of absolute space. There is no doubt about the theological derivation of this sort of ultimate container, as Newton himself describe it as the Sensory, or the organ of sense of god.⁵⁸

In general, the seventeenth-century inventors of modernity dismiss the attempt to reach a balance between the local and the global dimension, which in the Renaissance could still produce the recalled mirroring of microcosm

54 In this case, the term West only describes the Christian-ruled part of Western Europe.

55 The text of the *Corpus Iuris Civilis*, or Body of Civil Law, that collects the Byzantine compilations of Roman Law codes, is recovered *in toto* about 1070. The copies and the Latin translations of classical Greek philosophical works begin to reach Christian non-orthodox Europe in mid-twelfth century. Willem de Moerbeke translates the bulk of extant Aristotelian texts only in the thirteenth century.

56 See Eugen Rosenstock-Huussy, *Out of Revolution: Autobiography of Western Man* (Berg: Oxford, 1993).

57 Whilst the principle of inertia is only explicitly formalised by Newton, it is already implied in Galileo's physical theory.

58 "[T]here is a Being incorporeal, living, intelligent, who in infinite Space, as it were in his Sensory, sees the things themselves intimately." Isaac Newton, *Opticks* (London: W. and J. Innys, 1718): 345.

and macrocosm. We may say that in the theoretical constructions of early modern authors, space largely overpowers place.

However, as Stephen Toulmin suggests, the seventeenth-century natural philosophers' rejection of the local dimension is part of a more general reaction to the trauma of religious wars, so that the new scientific universalism is expected to reconnect European intellectuals beyond the religious divide.⁵⁹ The alleged descriptive order of universal natural laws is then the counterpart of the prescriptive Westphalian order, in which place, that is the limited totality of the state, dictates the rules of subjectification.⁶⁰

This bipolar modern order only begins to be openly questioned in the late twentieth century. On the one side, the rising scepticisms towards grand narratives, in the language of Lyotard,⁶¹ undermines the universalist ideological pole. On the other side, the various and even conflicting modes of transnationalization of the economic and political spheres challenge the (relative) autonomy of local arrangements, from village economies to nation states.

Current reactions to the implosion of ideal modernities and to the shift of powers within and without national political agencies still often cling to the pattern of total belonging as an alternative to the spreading fragmentation. And yet, on the horizon of my genealogical sketch, the total identification with a localized identity (be it individual, sectarian, communitarian or national), and the total adherence to a global perspective (be it religious, cosmopolitan or ecologist) appear as the two faces of the same coin. The monistic construction of modern place only allows it to be filled with one physical body, one community, one body politic, one god, one ecosystem, one universe.

Against this genealogical background, I will now attempt to tame the complexity of the issues at stake by proposing a simple scheme, which is undoubtedly also an oversimplifying one. And yet, my clear-cut depiction of two alternative ways of constructing diasporas can show at once the limitations of understanding diasporas on the basis of the notion of identity, and the possibility to transcend it.

⁵⁹ See Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (New York: Free P, 1990). As the wars of religion replicate on a bigger scale the struggle that takes place within the faithful's conscience, we might well define them as clashes of subjectifications.

⁶⁰ Well before the 1648 peace of Westphalia, the 1555 Augsburg principle *cuius regio, eius religio*, or "whose realm, his religion," establishes the priority of local politics as a veritable geo-theological order.

⁶¹ See Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington, Brian Massumi (Manchester: Manchester UP, 1984).

The first way conceives of diasporas as anomalies in regard to a threefold distribution of individual, national and territorial identity. By making space for individuals and communities within this threefold distribution, the diasporic condition of individuals and communities would be supposed to become more temporary than permanent. Of course, such a process of integration would also imply some kind of flexibilization of the modes of attribution of identities, which in turn would require some kind of adjustment of legal instruments and, more in general, of the narratives of identity construction.

The alternative way would instead consider diasporas as the inevitable and not exceptional result of the processes of production of identities. In turn, these processes would be deemed as part of specific social, political and economic strategies, so that the system of individual, national and territorial identities would appear as an ongoing performative task rather than a state of fact. In other words, the simple, sole and stable identity of human beings, human collectives and places would be understood as the eventual and temporary result of competing processes of identity construction, rather than preliminary conditions or, in philosophical jargon, ontologies. Hence, both specific identities and the very notion of identity would be regarded as mere historical contingencies.

Such a perspective would reopen the decision about the opportunity to continue repeating the operation of *reductio ad unum*, or reduction to one, of individual, collective and place identities. In this case, we could think to assess the cost of production of the identities of individuals, collectives and places. And we may even realize that we pay a double price: not only the terrifying amount of dysfunctional minority leftovers, from prison and asylum inmates to diasporic subjects and victims of genocide, but also the no less dysfunctional majorities of individuated subjects.⁶²

Does this second view imply the universal indictment of both the West and the Westernized world? The answer would be both yes and no. We have in place a myriad of practices that already transcend identity reductionism. For example, literary texts not only were able to expose the construction of identities as a narrowing down of human multiplicities, but, at least from Dostoyevsky on, they could also perform such multiplicities as inner and outer dialogical interactions. And also legal practices happen to overcome the strictures of legal procedures and to construct actual legal subjects as narrative paths, or existential trajecto-

⁶² This is the bulk of the “deviant majority,” to put it in the words of the eponymous study by the critical psychiatrist Basaglia. See Franco Basaglia, Franca Ongaro Basaglia, *La maggioranza deviante* (Torino: Einaudi, 1971).

ries, which go well beyond the bottleneck of the univocal reconstruction of a criminal event.

Nevertheless, these and other non-reductionist practices are subject to the tremendous pressure of the ubiquitous repetition of operations of construction of identities as uniform entities. These operations include Western languages' formatting of realities, which are constrained within the straitjacket of conceptual typologies. By continuing to pose the Platonic question 'what is?' to the individual, the nation, place and, of course, identity itself, we surreptitiously reconstruct the individual, the nation and place as something-that-is, and which thus can be captured with a definition.

In the face of this apparatus of capture that continuously emerges from the very words we use, we need theoretical tools that could help us to overstretch the Procrustean bed of identity. Literature can offer us extraordinarily effective narrative tools to construct subjects and places as trajectories and not as entities. Law could make use of these tools both in the exercise of its openly prescriptive role, as well as in the more general construction of human subjects by legal means. Diaspora studies could integrate these narrative and performative aspects of non-reductionist practices in the double construction of analyses and proposals about human displacements and dispersals.

As an example of alternatives to identity reductionism, I would consider here a series of texts that not only may be placed close to either side of the supposed boundary between literature and philosophy, but which may also be thought of as blurring this very boundary. Moreover, regardless of textual taxonomies, if we envisage philosophical writing as the *mise en scène* of ideas, we may think to borrow some narrative tools from philosophical performances too.

Plato invents philosophy as we know it by staging virtual theatrical performances in the pages of his dialogues. Though Platonic characters never entirely disappear behind the topics of their discussions, these very topics take centre stage as the actual protagonists of the dialogues. The narrative priority of ideas is even enhanced by the elusive character of their definitions, which are always presupposed and (almost) never reached.

Nietzsche's *Genealogy of Morals* is both an alternative and an answer to Platonic dialogues, as moral concepts *and* their transformations are the main characters of the Nietzschean narrations.⁶³ In the *Genealogy*, Nietzsche operates on the Platonic model of a double reversal, because each concept is traced genea-

⁶³ See Friedrich Wilhelm Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge UP, 2007).

logically as if it had a human ancestry, and it is turned from a stable entity into a trajectory.

More in general, Nietzsche seems to walk in the reverse direction of the Greek classical path that led the icastic Homeric idiom towards a language of abstractions. Péguy appears to embark on the same reversed trip, as he even dares to revive Greek allegorical representation in the person of Clio, the muse of history.⁶⁴ Throughout a text that defies classification, Péguy lets the eponym deity undertake a reflection on history that literally turns upside down the canonical approach to temporalization.

Possibly drawing on Bergson's construction of possibility as a retroactive projection onto the past,⁶⁵ Péguy's Clio contends that past occurrences repeat successive ones. In the perspective of substituting an entity-based framework with a cartography of paths, Clio's idiosyncratic remarks are a precious reminder that we always reconstruct past trajectories from their future, that is, our present.

Whilst a muse can afford the hybris of monologue, in the *Philosophical Investigations* Wittgenstein more modestly performs the Platonic dialogue of *psychē* – the individuation principle – with herself, but he takes it in a decidedly non-Platonic direction.⁶⁶ Wittgenstein recovers analogy as a pluralizing tool, so that each word is multiplied into the multiplicity of its uses.

For example, whilst considering the word 'game,' Wittgenstein recalls that there is no meaning that is common to all the definitions of the various kinds of games. And yet, we keep using the word 'game,' because all its uses are linked through a network of similarities, which Wittgenstein likens to family resemblances.⁶⁷

The family resemblances that link the different uses of the (morphologically) same word make this very word turn into an expanding semantic constellation, which can no longer be constrained within a sole conceptual identity. And yet, there are words, such as, for example, 'immortal,' 'infinite' and 'absolute,' which may be claimed to resist this pluralization, as their supposed univocality cannot be put to the test of human uses.

Jorge Luis Borges bypasses this apparently insurmountable obstacle through acts of literature, to say it with Derrida. More precisely, Borges puts the words of absoluteness – which are the models on whose inhuman scale human identities

⁶⁴ See Charles Péguy, *Clio, Dialogue de l'Histoire et de l'Âme Paienne* (Paris: Gallimard, 1932).

⁶⁵ See Henri Bergson, *The Creative Mind*, trans. Mabelle L. Andison (New York: The Citadel P, 1992).

⁶⁶ See Ludwig Wittgenstein, *Philosophical Investigations*, trans. Gertrude Elizabeth Margaret Anscombe (New York: Macmillan, 1953).

⁶⁷ Wittgenstein, *Philosophical Investigations*, §§ 66–67.

have been long construed as insufficient copies – to the narrative test of his wondrous stories. The practical implementation of absoluteness within the fictional world of Borgesian narrations produces odd effects on human lives. For example, immortality is shown as being practically unbearable,⁶⁸ and absolute power appears in the end as useless,⁶⁹ just like absolute memory and absolutely identical reproductions.⁷⁰

We may argue that Borges narratively performs the Nietzschean celebration of the gift of mortality. However, this is never a celebration of mere human limitation, but rather of unlimited production. This unceasing production is acknowledged by Simondon as the very fabric of individuation.⁷¹

Simondon indicts Aristotle for the codification of the teleological model of individual entities that focuses on the result rather than the process of individuation. Simondon argues instead that individuation never stops, and individuals are never completely determined (or individuated), but they still always carry the residues of their pre-individual or natural stage. He defines this inexhaustible inner component with the Greek term *apeiron*, or indeterminate, which he recovers from a textual fragment of the pre-Platonic philosopher Anaximander.

According to Simondon, the persistence of some residual *apeiron* within each individual would always allow her relation with other individuals as a call for a further individuation, which thus would be at once a transindividual one.

Following Nietzsche, Deleuze takes further Simondon's derivative notion of individual identity by claiming the more general priority of difference over identity. In his works with Guattari,⁷² this claim becomes an invitation to embrace our multiplicity,⁷³ and to replace both the notion and the practice of individual iden-

68 See Jorge Luis Borges, "The Immortal," in *The Aleph and other Stories*, trans. Andrew Hurley (New York: Penguin, 2000): 3–19.

69 See Borges, "The Writing of the God," in *The Aleph and other Stories*, trans. Andrew Hurley (New York: Penguin, 2000): 89–94.

70 See Borges, "On Exactitude in Science," in *The Aleph and other Stories*, trans. Andrew Hurley (New York: Penguin, 2000): 181.

71 See Gilbert Simondon, *L'individuation psychique et collective* (Paris: Aubier, 1989).

72 See Gilles Deleuze, Félix Guattari, *Anti-Edipus: Capitalism and Schizophrenia*, trans. Robert Hurley, Mark Seem, Helen Lane (London: Continuum, 2004); Gilles Deleuze, Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, trans. Brian Massumi (Minneapolis: U of Minnesota P, 1987).

73 Deleuze in conversation with Foucault, in Michel Foucault, "Who speaks and acts? It is always a multiplicity, even within the person who speaks and acts," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. Donald F. Bouchard, Simon Sherry, trans. Donald F. Bouchard (Ithaca: Cornell UP, 1977): 206.

tity with paths of becoming that at once pluralize the self and transcend its boundaries.

Foucault rethinks the individual subject in processual terms by exploring the social practices of *assujettissement*, that is, the construction of subjects as subjugated ones.⁷⁴ However, he also recovers from the classical world the more positive and proactive notion of subjectification as productive care of the self.⁷⁵ In both cases, he emphasizes the process of construction of subjectivities, as opposed to the various ontologies of the subject as an entity.

The transindividual link claimed by Simondon is conceived of by Stiegler as a process of transindividuation.⁷⁶ Moreover, this process not only connects subjective paths but also engages with objects, which Stiegler constructs as prostheses that are indispensable tools for hominization.⁷⁷ Whilst Stiegler particularly focuses on produced objects as a result of human technological activities, also places may be similarly recast both as result of human production and as indispensable prosthetic contributions to the processes of subjectification.

Latour and Lowe explicitly attempt to reconceive objects as trajectories. In writing about a piece of art, they notice that it could not survive without repeated interventions, which include maintenance and restoration activities. Hence, they claim that “a painting *has always to be reproduced*. [Italics in the original]”⁷⁸ Moreover, in order to take account of the transformations of the object, they propose to imagine it as “a catchment area, a river along with its estuaries, its tributaries, its rapids, its meanders, and, of course, its hidden sources.”⁷⁹ This hydrological system would include both the object of art and its history or, borrowing a word popularized by anthropologists, its career.

74 Cf. Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. Richard Howard (London: Routledge, 2001); Michael Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception*, trans. Alan Sheridan (New York: Vintage Books, 1975); Michael Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977).

75 See Michel Foucault, *The History of Sexuality Volume 1: An Introduction*, trans. Robert Hurley (London: Allen Lane, 1978).

76 See Bernard Stiegler, *De la Misère symbolique: Tome 2, La Catastrophe du sensible* (Paris: Galilée, 2005).

77 See Bernard Stiegler, *Technics and Time, 1: The Fault of Epimetheus*, trans. R. Beardsworth, G. Collins (Stanford: Stanford UP, 1998).

78 Arthur Lowe, Bruno Latour, “The migration of the aura, or how to explore the original through its facsimiles,” in *Switching Codes*, ed. T. Bartscherer, R. Coover (Chicago: U of Chicago P, 2011): 275–97, 284.

79 Lowe, Latour, “The migration of the aura,” 278.

We may well extend to places the image of the watershed, provided we do not simply use it as a more flexible representation of something that is already out-there, regardless of reproducing interventions. In this case, we should also be ready to acknowledge each place as a multiplicity not only over time, but also in relation to different subjectivation paths.

I argued for such a ‘subjectivating’ multiplication of objects, whilst attempting to construct the trajectory of the tomb of Cyrus the Great in Pasargadae in the terms suggested by Latour and Lowe:

[W]e could reasonably suppose that after the Islamic invasion, the tomb in the *Morghab* plain was at the same time a different object for different people. I would push further the expression of this difference, and I would argue that for an amount of time that I am not able to quantify, two tombs, as it were, shared the same place. The first one was the tomb of Cyrus, according to those former subjects of the Sassanid Empire who kept this attribution alive; the other one was the tomb of the Mother of Solomon, according to the Islamic invaders, and then to an ever-increasing number of Islamized Persians. The second tomb was to completely replace the first one, but the process was reversed in the course of the twentieth century, when the archaeological attribution of the tomb to Cyrus reproduced a duplicity of objects that probably has not yet completely disappeared.⁸⁰

If we applied similar considerations to a place such as the city of Jerusalem, we would be confronted by a perturbing proliferation of places, according to the different narratives of the Jewish גלות [*galuth*], the exile, of the Christian *Via Sancti Sepulchri*, the way to the holy sepulchre, and of the Palestinian يوم النكبة [*Yawm an-Nakba*], the day of the catastrophe, respectively.

And yet, the apparently inconceivable co-presence of at least three places in the same place would not be so disconcerting in the pluralist perspective of the Roman *ius gentium*, which, as previously noted, emerges precisely from the co-presence of a multiplicity of bodies of law. Of course, the Roman legal multiverse presupposes the imperial domination, and the Roman destruction of Jerusalem witnesses the ambiguous cohabitation of pluralism and hierarchical centralization.

However, we may recast the Roman model of legal pluralism according to the theoretical double shift, from entities to processes and from representation to production, which I endeavored to show. In this case, we may imagine for *ius gentium* an encompassing limit that is different from the imperial border. In-

⁸⁰ Riccardo Baldissone, “The Costs of Paradise: Temporalisations of Place in Pasargadae,” in *World Heritage in Iran: Perspectives on Pasargadae*, ed. Ali Mozaffari (London: Ashgate, 2015): 115–138.

stead of conceiving it as the Aristotelian pre-existing fixed boundary, we may understand it as part of an ongoing task, namely the task of *producing* place as a shared place.

This task would be more in line with Aristotle's acknowledgement of the priority of movement (which I suggested is derived from action-oriented Homeric Greek) than with his attempt at capturing movement with an ultimate gesture of representation. By constructing place as a result rather than a precondition, we may understand its limiting ability as the effect of an operation of closure.

In this case, as I previously suggested, we might well assess the costs of this operation of closure, which constructs the univocality of place. And though the costs of producing the univocal identity of Jerusalem exceed by far those of the sole attribution of the area surrounding the tomb of Cyrus, we could easily detect that in both cases similar procedures of exclusion are at work.

If we now come back to my proposed scheme, we may realize that if diasporas are conceived of as anomalies in the distribution of the identities of individuals, collectives and places, they can only be addressed through a fairer and more inclusive redistribution of these identities.

And yet, though inclusion is the logical opposite of exclusion, its practice either involves the assimilation to a pre-existing common order or – as in the case of Roman legal pluralism – the submission to a higher and possibly benign authority, which would grant identity niches.

My proposed alternative way of constructing diasporas would instead consider them as the inevitable result of the processes of production of univocal identities. Hence, in order to properly address diasporic conditions, we would need to renounce the Sisyphean task of producing simple, sole and stable identities for human beings, human collectives and places.

In this case, we might want to follow Simondon, and recast individuals as processes of individuation, which, as Stiegler suggests, are at the same time processes of transindividuation, because they only happen in the relation with the others. This construction would turn both individual and collective identities into multiplicities (in the sense of Deleuze and Guattari), which are constantly undergoing processes of subjectification (in the language of Foucault).

In turn, the construction of places as narrative trajectories would imply their pluralization according not only to their transformations in time but also to the multiplicity of human perspectives. This is why I would argue, taking a cue from

William James,⁸¹ that we humans do not inhabit a *cosmos*, or a single universe, but rather a *polycosmos*, or a multiverse.

Such a pluralization of place could allow us to address diasporas not as the effect of the imbalance between the alleged scarcity of places and resources on the one side, and of the overabundance of peoples on the other, but as the missed acknowledgement, both in theory and in practice, of the multiplicity of each human and place. This long due acknowledgement would not require us to define a once-for-all repartition of roles and places, but to engage in never-ending negotiations.

Inasmuch as literary narrations would help us imagine ourselves, our communities and our places in a state of becoming, such stories would help us to elude the formatting power of identities. In this case, the very proliferation of stories would challenge in practice the paradigm of scarcity, which long justified the identity straitjacket.

We have never stopped producing stories, but in modern times supposed rational criteria have turned their profusion into excess, and their richness into overgrowth. It is maybe time to accept the gift of abundance.

⁸¹ See William James (October 1895), "Is Life Worth Living?," *International Journal of Ethics* 6 (1895): 10.

Jeanne Gaakeer

Close Encounters of the ‘Third’ Kind

[M]emory is an integral part of any system of justice, [...] it is precisely the act of forgetting that makes it possible for law to be applied indiscriminately and therefore unjustly.¹

1. Introduction

My starting point is the basic idea that the common bond of law and literature is language and that language is our way of being in the world, i.e., our only way, too, to express our humanity.² Since times immemorial this has been connected to power and autonomy. Recall the story of the tower of Babel that occurs after the Flood when Noah’s descendants are the only ones left on earth (and aren’t they diasporic creatures too?). In the Bible’s Book of Genesis, we read how the whole earth had one language and one speech, i.e., people used the same words, and how the people decided to build a tower and make a name for themselves, “lest we be scattered abroad upon the face of the whole earth” (Genesis 11:4, AV). God’s interpretation of this human action is based on fear of losing authority, because “now nothing will be restrained from them, which they have imagined to do” (Genesis 11:6, AV). The divine reaction is to cause linguistic diaspora. God confuses the people’s language and, as a result, precisely what they feared might happen, occurs. They are scattered abroad, – the literal meaning of the Greek root *diaspererein* being to sow or to scatter – and the original relation between language and the individual is destroyed.

Viewed metaphorically, this early example of diaspora inspires me to investigate the topic of Law and Literature’s importance for diaspora discourse by means of an analysis of the concept of *Humanität* as developed by Johann Gottfried Herder (1744–1803) and to connect that to contemporary ideas about the value of literary-legal *Bildung* for (the topic of) our common humanity by asking whether the genre of the *Bildungsroman* is a feasible lens with which to view literary-legal representations of diaspora. If we keep in mind the current emphasis put on empathy, (self-) reflection and education in humanistic studies, a turn to relevant aspects of the history of ideas on how literatures function as binding

¹ Michael Blumenthal, “Poetic Justice, Legal Justice,” *Legal Studies Forum* 31.1(2007): 29–37, 36.

² Or, as Martin Heidegger said in his letter on humanism, “die Sprache [ist] das Haus des Seins” (*Über den Humanismus* [Frankfurt am Main: Klostermann, 1981]: 24).

agents within and without diaspora, in my view at least, can also help to shed a new light on the question how to accomplish the aim of finding a *third* that can give form to the bond of law, literature and diaspora and, at the same time, it can illuminate the ongoing importance of the meta-level discussion on the very idea of interdisciplinarity itself.³

For methodological as well as epistemological reasons, my suggestion would be to try and think of interdisciplinarity itself as the result of a diasporic movement. That is to say, why not apply the idea of diaspora figuratively to think about the nineteenth-century differentiation of disciplines, or *Ausdifferenzierung*? This process has resulted in autonomous, academic disciplines, and, also as far as the subsequent development of a positivistic approach to law is concerned, in the idea that the autarchy of the discipline is a precondition for the objectivity of its results. This differentiation may well be looked upon as a form of diaspora when we recall the unity of law and humanities until the eighteenth century and the subsequent development of sociology, economy and anthropology that occurred when scholars trained as lawyers, with Karl Marx and Emile Durkheim as well-known examples, began to leave the mother discipline of law. Or, even more provocatively perhaps, we may turn the argument upside down and think about the reaction to the very idea of autonomous disciplines since the 1970s in the form of various *Law and ...* – movements as diasporic themselves, paradoxically perhaps given their return to the idea of unity, but feasible from another point of view, if we think of them as driven away from the safety of the monodisciplinary methodologies of the disciplines they originally came from, in the case of *Law and Literature*, from the safety of doctrinal black letter law. Viewed this way, what can the *Law and*s as diasporic phenomena teach us?

These topics are acute. On the one hand, because the function of humanism as constitutive of friendship between people across borders, literally and metaphorically, is contested for reasons as varied as a loss of faith in the Grand Narratives of the Western Tradition, as Lyotard already put it in his 1979 analysis of the postmodern condition, and technological developments in the field of com-

³ I am inspired here by Homi K. Bhabha's view that cultural identity cannot be understood simply as a synthesis of two original sources but rather as a new form constructed in a contradictory third space that destroys any "hierarchical claims to the inherent originality or 'purity' of cultures" (*The Location of Culture* [London: Routledge, 1994]: 2) and, as far as the perspective of *Law and Literature* is concerned, by James Boyd White's view on interdisciplinarity as a form of translation and integration, i.e. the effort to put two things together with the hope to make something new with a meaning of its own (*Justice as Translation* [Chicago: U of Chicago P, 1990]: 21).

munication, with new possibilities for the creation of identity and social cohesion in diasporic situations.⁴ Whereas, on the other hand, fields such as *Law and Literature* and/or *Law and Humanities* strongly emphasize the value of literature for other disciplines, law obviously included, by means of a focus both on the edifying function of literary *Bildung*, and on language, generally, in the form of narrative. That is to say, as far as the latter is concerned, the focus is on the ontological view proposed by James Boyd White:⁵

One fundamental characteristic of human life is that we all tell stories, all the time, about ourselves and others, both in the law and out of it. The need to tell one's story so that it will make sense to oneself and others may be in fact the deepest need of that part of our nature that marks us as human beings, as the kind of animal that seeks for meaning.

At the same time, there is the epistemological perspective proffered by Jerome Bruner, that “[...] narrative is also our simplest mode of imposing a moral structure on experience” so that “a principal function of narrative is to explore alternative versions of the human condition, ‘possible worlds’ as it were,” with as a result of our going back and forth between fiction and the world we find ourselves in, that we can gain a better understanding of our own experiences and learn to empathize with other people’s experiences as well.⁶ Such counterfactual engagement is important for our ethical development.⁷ And, put more broadly, it is closely connected to the political aspect of the educative function of culture for the development of democracy as found in ancient Greece in the idea that attendance at theatrical performances of the tragedies triggers the imagination to accept the world presented before us so that we can not only learn to empathize with others, but also to reflect on their and our own experiences as a vital

4 Peter Sloterdijk, *Regeln für den Menschenpark: Ein Antwortschreiben zu Heideggers Brief über den Humanismus* (Frankfurt am Main: Suhrkamp, 1999): 7, 10; Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington, Brian Massumi (Minneapolis, MN: U of Minnesota P, 1984).

5 James Boyd White, *Heracles’ Bow* (Madison, WI: U of Wisconsin P, 1985): 169.

6 Jerome Bruner, “The Reality of Fiction,” *McGill Journal of Legal Education* 40.1 (2005): 55–64, 58.

7 For the counterfactual aspect, see Jürgen Habermas, “Philosophy and Science as Literature?,” in *Postmetaphysical Thinking: Philosophical Essays*, ed. Jürgen Habermas, trans. William Mark Hohengarten (Cambridge, MA: MIT P, 1992): 205–227, 211; “A literary text is marked by the fact that it does not come forth with the claim that it documents an occurrence in the world; nonetheless, it does want to draw the reader into the spell of an imagined occurrence step by step, until he follows the narrated events *as if they were real*.” On the ethical aspect, see Steven L. Winter, “Law, Culture and Humility” in *Law and the Humanities: An Introduction*, ed. Austin Sarat, Matthew Anderson, Cathrine O. Frank (Cambridge: Cambridge UP, 2014): 98–121.

element of our shared, peaceful co-existence in the *polis*. This is important, whether or not we think of diaspora as a challenge to the nation state or in terms of the formation of a new community, imagined or real. The play that comes to my mind here in relation to the subject of diaspora, is Euripides' *The Trojan Women*. Related in a later age is Thomas Paine's comparison in *Rights of Man* (1791) of the aims of the republic of letters and those of the best form of government: to bring forth the best literary works and the best law.⁸ At the same time, to strike a fair balance between an idealistic and a more pragmatic approach, we should recognize as Elaine Scarry asks us to, "[...] the severe limits of imaginative accomplishment" because "[t]he human capacity to injure other people has always been much greater than its ability to imagine other people" and, arguably, in the end the juridical-political litmus test of the imagination is whether we are prepared to act on it and change the law.⁹ All of the above matters, I would claim, when we seek a humanistic approach to the phenomenon of diaspora broadly conceived, it being a container concept with dispersal and dislocation of people(s) as its core meaning, the sense in which I use it here.

2. "Tis all in pieces, all coherence gone"¹⁰

Johann Gottfried Herder's thought and its possible contribution to a literary-legal perspective on diaspora discourse can only be fruitfully investigated if we take into consideration the rationalist quest for certainty of his immediate predecessors such as Gottfried Wilhelm Leibniz. A short historic recapitulation of the prelude of modernity is therefore in order, to ask which forces were at work at decisive moments in European history, i.e., what the ideas were that moved Europe forward and what the accompanying constitutive narratives were.¹¹ Suffice it to say, first, that the Renaissance replaced the medieval emphasis on tradition and authority by the spirit of tolerance especially from a religious view-

⁸ Thomas Paine, *Rights of Man* (Harmondsworth: Penguin, 1985): 180; See also, more recently, Terry Eagleton, *The Event of Literature* (New Haven, London: Yale UP, 2012): 47, "exhibiting the complexities, ambivalence, and fragility of human relations is by no means just a 'literary' purpose, if by this is meant one confined to that realm."

⁹ Elaine Scarry, "The Difficulty of Imagining Other People," in Martha C. Nussbaum et al., *For Love of Country: Debating the Limits of Patriotism, with respondents*, ed. Joshua Cohen (Boston: Beacon P, 1996): 98–110, 103–105.

¹⁰ John Donne, "An Anatomy of the World" [1611], in *John Donne: The Major Works*, ed. John Carey (Oxford: Oxford UP, 1990): 207–218, 212.

¹¹ Peter Sloterdijk, *Falls Europa erwacht* (Frankfurt am Main: Suhrkamp, 2002): 33.

point to which the 1598 Edict of Nantes that granted French Protestants certain civil rights bears testimony,¹² by experimental curiosity and trust in what man could accomplish, i.e., the idea that man is the measure of all things. The Renaissance world was one of complexity and diversity accepted as inextricably bound up with the human condition. The period after, roughly, 1580, however, was one of social and political instability (and diaspora) as a result of warfare, such as the Dutch Eighty Years' War of Independence against the Spanish (1568–1648), the Anglo-Spanish conflicts between 1585 and 1604, and the Thirty Years' War fought on German grounds (1618–1648).¹³ The Peace of Westphalia, signed in Münster and Osnabrück in 1648, marked the onset of a new era in which, as a reaction, the desire for stability and order became prominent. A desire for unity and certainty rather than diversity began to characterize the period.¹⁴ The treaty formed the basis for the development of a European system of nation-states that continued to exist well into the twentieth century.

In science, the quest for certainty started with the elaboration of Francis Bacon's empirical methodology, and René Descartes' rationalism based on the method of deduction, the duality of mind and matter and the principle of fundamental doubt as expressed in his *Cogito, ergo sum* in the 1637 *Discourse on Method*. It ended in a mechanistic worldview that put everything in the perspective of causal relations, the dreams of which Toulmin describes as those of a uniform method aimed at universal application, a perfect language as the ultimate representation of objective reality, and a unitary system of nature.¹⁵ Cultural and other diversities were thought of as interesting only insofar they elucidated universal principles. What Cartesian rationalism meant for the natural sciences was extended to ethics a century later by Immanuel Kant (1724–1804) in the abstract categorical imperative as the guideline for human action.

Gottfried Wilhelm Leibniz (1646–1716) elaborated on the idea of unity to prevent war and dissension by means of a uniform language, i.e., shared meaning on the plane of linguistics. Leibniz was obsessed by the ideal of the *charac-*

12 It should at once be noted that religious tolerance did not extend to Jews who were expelled from Spain in 1492 and from Portugal in 1497. And French tolerance was short-lived if we note the diaspora of French Huguenots after the revocation of the Edict of Nantes in 1658.

13 Cf Bertolt Brecht's 1939 play *Mutter Courage and her Children* set in the Thirty Years' War. The English internal strife culminating in the trial and beheading of the sovereign, Charles I, in 1649 of course also contributed to the unrest.

14 For a brilliant treatment of the modernist ideal of unity, see Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (New York: The Free P, 1990), the title referring to the ancient ideal of harmony on the combined basis of the natural order of the cosmos and the social order of the polis destroyed at the dawn of modernity.

15 Stephen Toulmin, *Return to Reason* (Cambridge, MA: Harvard UP, 2001): 67–82.

teristica universalis, a universal system of characters not only for different peoples to share and communicate by, but especially as a neutral medium to convey the results of sensory perceptions and rational thought.¹⁶ The Leibnizian design failed because it was logically impossible: a people's language cannot be dissociated from its way of life and what is more, language itself as it were provides the categories with which we think and perceive, so reciprocity rather than linguistic transparency is the keyword. What culminated philosophically in the twentieth century in the late Wittgenstein's *Philosophical Investigations* (whereas his *picture theory of meaning* in the *Tractatus Logico-Philosophicus* (1922) was still strongly influenced by Leibnizian ideal of correspondence between word and world) and empirically in the Sapir/Whorf-hypothesis, was already presaged by Johann Gottfried Herder.

The falling to pieces of the *cosmopolis* and subsequent rise of dichotomies such as mind versus matter, and nature versus culture, led to a dualistic worldview that affected law and legal theory as well.¹⁷ The reception of Roman law throughout continental Europe from the rediscovery of the *Corpus Iuris Civilis* from the eleventh century onward was a gradual one, in which local law became permeated by this *ius commune* as the dominant force, also when it came to interpreting local customary law. Roman law, in short, epitomized the law held in common because of its generally accepted claim for legitimacy and because it formed the basis for the subsequent development of specific areas of law.¹⁸ After the legal humanist philology of the sixteenth century, following Desiderius Erasmus (1469–1536) and Thomas More (1477–1535), had already advocated a return to the sources (in Erasmus' words, *Ad fontes*) of the *Corpus Iuris Civilis*, rather than adding to the text as the *glossatori* and *post-glossatori* of the previous centuries had done, and as a result had questioned its claim of universal applicability, seventeenth-century

16 "The general tool for investigation was to include a universal language for spoken and written communication, another language of symbols for scientific analysis and synthesis (the universal characteristic), a calculus for using them in discovery and analysis, and a universal encyclopedia based on this characteristic and logic," Leroy E. Loemker, *G.W. Leibniz: Philosophical Papers and Letters* (Dordrecht, Boston: D. Reidel Publishing, 1976): 9.

17 John M. Coetzee, *Diary of a Bad Year* (New York: Viking, 2008): 83. "If anyone in the picture is naïve, it is the person who elevates the operating rules of Western science into epistemological axioms, arguing that what cannot be demonstrated scientifically to be true (or, to use the more timid word used by science, *valid*) cannot be true (valid), not just by the standard of truth (validity) used by practitioners of science but by any standard that counts."

18 "Diese Rechtswissenschaft war nicht nur europäisch in ihrem Geltungsbereich, sie war auch universal ihrem Gegenstand nach. Alle Materien, vom Staatsrecht zum Privatrecht, vom Seerecht zum Strafrecht, fanden in dieser Rechtswissenschaft ihre Grundlage." Helmut Coing, *Die ursprüngliche Einheit der europäischen Rechtswissenschaft* (Wiesbaden: F. Steiner, 1968): 12.

legal theorists responded to the period's instability by emphasizing the human intellect or *recta ratio*. This led to the development of rational natural law initiated by the Dutch scholar Hugo Grotius (1583–1645) as a response to international war and strife, for example in his *De iure belli ac pacis* (1625). In Germany, Samuel Pufendorf (1632–1694) and Christian Wolff (1679–1754) followed suit and built a legal system *more geometrico*, i. e., by means of a deductive method as propagated by the natural sciences, and implemented already in England by Thomas Hobbes (1588–1679) in his *Leviathan* (1651) with the social-contract theory of sovereignty.

The view of law based on human reason contributed to the Enlightenment ideal of rational law in the second half of the eighteenth century and, subsequently, to the idea of law as a system of codified rules and the concept of democracy under the rule of law. Roman law faded into the background as the *ratio scripta* of Europe and became obsolete with the rise and consolidation of European nation-states which led to a rapid growth of interest in national legal systems at the end of the eighteenth century. With it came the codifications of national positive law, such as the French Napoleonic *Code Civil* (1804) and the Austrian codification of 1812. This development was accompanied by the notion originating in Montesquieu's *The Spirit of the Laws* that the judge is *la bouche de la loi*, the literal spokesperson who tells us what the lawgiver intends, at least in the interpretation that positivist thinkers gave to it. On the positivistic view, law and justice coincide. The (Hobbesian-Leibnizian) language view behind this is that the instrument of language can adequately fulfil its task of objectively and comprehensively describing the world as it truly is.¹⁹

Only in Prussia did Roman law survive a bit longer, but there it derailed into formalism. In his fierce struggle against codification Friedrich Carl von Savigny (1779–1861) posited the true legislator in the spirit of the people, the *Volksgeist*. On the view that its development could be traced throughout the ages, the study of Roman law was deemed essential for the very reason that this law itself had developed from the very same consciousness of the people. Or, turned the other way around, German law was the natural synthesis of Roman law. Paradoxically, von Savigny and his followers of the Historical School then used Roman law, more specifically the *Digests* or *Pandectae*, to build a strict system of legal concepts of a kind totally unknown to original Roman law itself, case-based as it was. This *Pandektenwissenschaft* resulted in a deductive, formalist jurisprudence

¹⁹ The simultaneous existence of a variety of types of legal systems along the lines of nationhood is also a legacy of Hobbes given the superiority attached to the state as the sole legislator, i. e., when it comes to the very creation of law as such.

of concepts, the *Begriffsjurisprudenz*, devoid of any ethical or social notion.²⁰ So much is clear, the general Roman law-based view of law was forced to give up its territory to the study of national jurisdictions and the new field of comparative law.

3. *Humanus, Humanität, Humanity:* Johann Gottfried Herder

Von Savigny's thesis that the root of law is to be found in the people builds on Herder's views on the organic relation between language and culture. This is not only interesting for the topic of nationality and diaspora, but also for recent developments in interdisciplinary legal studies such as the renewed interest in the relation of law to culture in *Law and Popular Culture* and, closely connected to this, for the history of ideas of the differentiation of law. As far as the latter is concerned, it should be noted that the process of the late eighteenth-century differentiation of *knowledge* into separate academic disciplines and its effect on law in the nineteenth century in the form of an external differentiation resulting in the new disciplines of economics, anthropology and sociology, found its twentieth-century counterreaction with the development of interdisciplinary fields such as sociology of law and legal anthropology. The contemporary trend to rethink the bond of law and culture (be it high culture or popular culture) more broadly, however, again moves beyond current sociological and anthropological issues and harks back to early views on the cultural rootedness of law and language as found in Herder. This is important to note, if only because the external differentiation of law resulted in the development of separate scholarly communities each with their own disciplinary culture in the sense of conceptual and professional languages and frameworks, methodologies and values, that is to say a cognitive and intellectual diaspora that contemporary interdisciplinary fields now attempt to overcome when they aim at developing a third with a language of its own.

²⁰ Fortunately, Rudolf von Jhering (1818–1892), the great theorist of this jurisprudence of concepts (as elaborated upon in his *Der Geist des Römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, 4 vols. [Leipzig: Breitkopf und Härtel, 1852–1865]), eventually recognized its dangers. He then rejected the idea that the *Volksgeist* directed the development of law and designed a more sociological jurisprudence on the basis of the interests of individual persons in society, the so-called *Interessenjurisprudenz* (in Rudolf von Jhering, *Der Zweck im Recht*, 2 vol., [Leipzig: Breitkopf und Härtel, 1877–1884]).

Onward to Herder then. His own *Bildung* significantly started in Königsberg.²¹ He went there to study medicine but he also attended lectures by Immanuel Kant whom he later praised in the *Briefe zur Beförderung der Humanität*, but of whose Enlightenment stance he was also critical. In Königsberg he read Milton and Shakespeare together with the Enlightenment critic Johann Georg Hamann. In 1764 he went to Riga to teach. Around 1770 he befriended Goethe, and one of the topics of their almost daily conversations was the immaturity of German literature as they perceived it. Herder by then had already fulminated, albeit anonymously, in *Fragmente über die neuere deutsche Literatur* (1766–1767) against the lack of originality of German literature, the cause of which he took to be the Romanist influence pervasive in German society. So it should come as no surprise that he dedicated himself to the task of setting things right as far as language and literature were concerned.

Demanding the right to speak about his language, nation and times as he deems fit, as he writes in the Introduction,²² Herder claims that one cannot separate a people's literature from their language, and that language is not a mere instrument but formative of thought itself; it is a storehouse, also, of what can be said, and of what has been said, i. e., a historic source and a characteristic of a nation, a *Volk* in Herder's terminology, meaning a people with a shared language and culture.²³ This is especially pertinent if in literary-legal terms we think of Benjamin Cardozo's view on the unity of form and content in writing; in short, the idea that the what and the how of any text are intimately connected.²⁴ What is more, Herder immediately turns to the cognitive aspect of language when he writes of the impossibility of a 100 percent correspondence between language and thought and critically engages with the concept of translation,

21 For biographical information on Herder I draw on Everard Jean François Smits, *Herder's Humanitätsphilosophie* (Assen: Van Gorcum and Co. N.V., 1939).

22 References are to the second edition of the *Fragmente* in Johann Gottfried Herder, "Die Sprache überhaupt," in *Werke. Herder und der Sturm und Drang 1764–1774*, ed. Wolfgang Pross (München: Carl Hanser Verlag, 1984): 1:71–90.

23 Herder, "Sprache," 71, "Nicht als Werkzeug der Literatur allein muss man die Sprache ansehen; sondern auch als Behältnis und Inbegriff; ja gar als eine Form, nach welcher sich die Wissenschaften gestalten," and, 74, "Nun ist aber die Sprache mehr als Werkzeug: sie ist gleichsam Behältnis und Inhalt der Literatur." See also Robert E. Norton, *Herder's Aesthetics and the European Enlightenment* (Ithaca, NY/London: Cornell UP, 1991): 99, who translates "Behältnis und Inhalt der Literatur" as "its contents and quintessence."

24 Benjamin N. Cardozo, "Law and Literature," *Yale Review* (1925): 489–507. The point is elaborated by Richard Weisberg, *Poethics and Other Strategies of Law and Literature* (New York: Columbia UP, 1992): 251 and *passim*.

comparable to the one that James Boyd White discussed for literary-legal studies in *Justice as Translation*.²⁵

In one breath, Herder points to the importance of semiotics to decipher the human soul behind its linguistic utterances and offers the interdisciplinary and comparative argument, both diachronically and synchronically, that to be able to understand language as the source of knowledge a researcher has to combine philosophy, history and philology as well as speak foreign languages to be truly able to judge his own.²⁶ Thus, to Herder, reciprocity characterizes the relation between language and thought: language gives form to human knowledge because we think in language, and the limits of language are the limits of what can be said, or as Wittgenstein later defined it, the limits of my world.²⁷

25 Herder, "Sprache," 71, "Man trotzte meiner Behauptung, und übersetzte Homer in das Holländische, ohne ihn zu travestieren" and "Sollte man nicht in jedem Gebiet der Wissenschaften Gedanken und Schriften haben, die für diese und jene Sprache durchaus unübersetzbar sind?", and, 79, "die Form der Wissenschaften, nicht bloss in welcher, sondern auch nach welcher sich die Gedanken gestalten: wo in allen Teilen der Literatur Gedanke am Ausdrücke [sic] klebt, und sich nach demselben bildet." James B. White points to the fact that any translation causes modification of the original in more than one way. First, there is the given that a reduction of meaning takes place whenever the translator chooses the meaning he will use from the range of possibilities offered by the original. Secondly, there is the idea of meaning as culture-specific, a point forcefully brought home by White's example: "The German 'Wald' is different from the English 'forest,' or the American 'woods', not only linguistically but physically: the trees are different." (White, *Justice*, 235)

26 Herder, "Sprache," 76, "Allein die Stelle eines solchen Sprachforschers ist freilich schwer zu besetzen, weil in sie ein Mann von drei Köpfen gehört, der Philosophie und Geschichte und Philologie verbinde – der als Fremdling Völker und Nationen durchwandert, und fremde Zungen und Sprachen gelernt hätte, um über die seinige klug zu reden [...].", 78.

"Alsdenn würde man erst einzelne Schriftsteller charakterisieren können, dass ihr Bild in der Geschichte der Wissenschaften lebte: alsdenn erst Schriftsteller verschiedner Nationen gegen einander stellen können, um sie zu vergleichen [...] alsdenn erst würde man ein Feld der Literatur aus dem andern kennen [...]." Cf. Stephen Greenblatt who writes, "I am not at all sure that we have made much conceptual progress beyond Francis Bacon who notes, in the expanded Latin version of *The Advancement of Learning*, that 'the History of Literature is wanting'." That is to say, Bacon, given his epistemological project, "appears to envisage a comparative study," so the study of literature must be, "[...] cross-cultural; there is nothing to be gained by staying within one's own national boundaries because a culture's fitness for a particular discursive practice can only be grasped by setting it against another's." Stephen Greenblatt, "What is the History of Literature?," *Critical Inquiry* 23 (1997): 460–481, 470 [footnote omitted].

27 Herder, "Sprache," 80: "Wir denken in der Sprache" and "Jede Nation spricht also, nach dem sie denkt, und denkt, nach dem sie spricht." Cf. Ludwig Wittgenstein, *Tractatus Logico-Philosophicus*, *Logisch philosophische Abhandlung* (Frankfurt/Main: Suhrkamp, 2003): proposition 5.6.

The same applies to literature.²⁸ In view of the topic of diaspora, it is therefore essential to note that Herder consistently emphasizes the idea of language as a “crucial determinant of cultural identity.”²⁹ No people should diminish its own language and culture in favour of foreign elements, literally and figuratively, because in the end we are all *αυτοχθόνες*.³⁰

In his 1770 *Abhandlung über den Ursprung der Sprache* Herder offered a more systematic treatment but his core argument remains the same.³¹ He clearly distances himself from the Enlightenment view on the relation between language and reality, between the word and the idea it aims to express, as found in Hobbes's *Leviathan* and Locke's *Essay Concerning Human Understanding*.³² That is, that language is only a vehicle for the communication of our thoughts to others, the *adequatio rei et intellectus*, the idea of full correspondence between the thing and its reproduction in language, the scholastic pretence that remains difficult to suppress, if we consider the continued dominance of Enlightenment methodological individualism in, for example, strands of contemporary *Law and Economics*.³³ Herder's constitutive view on language takes its leave of the Leibnizian prioritizing of human cognition, i.e., that language is only a mirror of thought. To Herder, the births of language and thought coincide, and they form the basis for human reason and culture. His epistemology is anthropological: to be able to know is a human characteristic, and ontologically human being *as being* is prior to thought.

Isaiah Berlin in his seminal study on Vico and Herder pointed to the implications of this view. At the level of human co-existence, or “expressionism,” i.e. “the doctrine that human activity in general, and art in particular, express the entire personality of the individual or the group, and are intelligible only to

28 Herder, “Sprache,” 81: “Die Literatur wuchs in der Sprache, und die Sprache in der Literatur.”

29 Sonia Sikka, *Herder on Humanity and Cultural Difference: Enlightened Relativism* (Cambridge: Cambridge UP, 2011): 160.

30 Herder, “Sprache,” 91, “Können wir uns also nicht für *αυτοχθόνες* ausgeben, die aus eigenem Grund und Boden hervorgewachsen [...] sind [...]?”

31 Johann Gottfried von Herder, *Sämtliche Werke*, ed. Bernhard L. Suphan, vols. 33 (Berlin: Weidman, 1885). See Norton, *Herder's Aesthetics*, 108, for the context that occasioned Herder's *Abhandlung*, viz. the Berlin academy's question for the prize contest of 1770 on the subject of whether or not people left to their own faculties would be able to invent language and, if so, how?

32 Thomas Hobbes, *Leviathan*, (London: J. M. Dent and Sons, Everyman's Library, 1987); John Locke, *Essay concerning Human Understanding*, ed. Roger Woolhouse (Harmondsworth: Penguin, 1997).

33 Cf. Norton, *Herder's Aesthetics*, 87.

the degree to which they do so,”³⁴ the idea that words and ideas are one suggests that “[...] the entire network of belief and behaviour that binds men to one another, can be explained only in terms of common, public symbolism, in particular by language.”³⁵ And since intelligence is unthinkable without language, – Herder calls this Utopian – language is the cement of human solidarity given that it is the instrument of human communication, between individuals and between nations, hence also the need for comparative linguistic and literary research. The political implication is that once language is a people’s determinant, nation and state do not necessarily coincide. In other words, in the ideal situation a state is both a legal institution and “a community bound by spiritual ties and cultural traditions, a *Kulturstaat* as well as a *Rechtsstaat*.”³⁶

But what if this is not the case? Herder’s views obviously spring from his desire to bring institutional and cultural unity, and political cohesion too, so that a disparate group of small states, or *Kleinstaaten*, could form a German nation-state. He even wrote a plan for this process in 1787. But if the premise is that ideally *Volk* and language coincide, the political and methodological consequence of the situation in which the idea of culture is not in accordance with the rule of law (or the other way around) may well serve as a strategy of, first, exclusion and, secondly, expulsion, the dark side of this line of thought drawn to its – illogical but historically demonstrable – conclusion. Nevertheless, differentiation of human beings as part of nations along these Herderian lines may, by contrast, prove fruitful for our thought on group-identity as a form of unity when we think of diasporas and/or minorities, namely when we look upon a shared language as an element of an argument for cultural and political recognition, given Herder’s insistence on the connection between place and identity.³⁷

What is more, the prominent position that Herder awards to scholars of language and literature extends to the political plane when it comes to shape cohesion and national identity. Extended to contemporary research in (law and) the humanities, it is a call to arms to the humanities to play a more prominent role in the public debate on big societal issues if they would take up the challenge and thus create more impact for their own work too. One thing is clear, for Herder (the study of) language and literature deserves our social and political attention

³⁴ Isaiah Berlin, *Vico and Herder: Two Studies in the History of Ideas* (London: The Hogarth P, 1976): 153.

³⁵ Berlin, *Vico and Herder*, 168, referring to Herder, *Sämtliche Werke*, 13:357, i.e., “Briefe zur Beförderung der *Humanität*.”

³⁶ Frederick M. Barnard, *Herder’s Social and Political Thought* (Oxford: Clarendon P, 1965): 141.

³⁷ Sikka, *Herder on Humanity*, 160–191.

and they should be developed for reasons both of individual *Bildung* and of *Bildung* of the community as a whole, because we always live in a world that we help build ourselves. This ties in with a seminal concept in literary-legal studies, i.e., *nomos* as the normative universe of narratives which we inhabit, a view developed by Robert Cover.³⁸ The consequence for law is that in the normative legal world, law and literature are inseparably related and that this relation is located in narrative when the concept of narrative is taken broadly, i.e. as the way in which all human experience finds its expression, and on the understanding that every narrative asserts its prescriptive point, its moral. Thus, as a methodology for jurisprudence, the narrative paradigm can be especially fruitful when the moral dimension of law is the topic of discussion. This is also a feasible lens with which to view diaspora in relation to the idea of national literatures (and jurisdictions) functioning as binding agents or not, i.e., the combined ideas of literature as an institution that serves to constitute and legitimate nationhood and as an instrument to criticize nationalist ends.³⁹

38 Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983): 4–68, 4–5 "We inhabit a *nomos*—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void [...]. The rules and principles of justice, the formal institutions of the law, and the conventions of the social order are, indeed, important to that world; they are, however, but a small part of the normative universe that ought to claim our attention. No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for every decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live."

39 See also, from a culturalist point of view, Simon During, "Literature – Nationalism's other? The case for revision" in, *Nation and Narration*, ed. Homi K. Bhabha (London, New York: Routledge, 1990):138–153, 138. For US foundational narratives, this idea is elaborated upon by Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, MA, London: Harvard UP, 1984) and Brook Thomas, *Cross-Examinations of Law and Literature* (Cambridge: Cambridge UP, 1987). In *Lines of Equity, Literature and the Origins of Law in Later Stuart England* (Ithaca, NY, London: Cornell UP, 2008). Elliott Visconsi does so for British law and literature of the Stuart era, with the salient suggestion that emotional identification is central to most early modern models of political obligation. The cultural moment when law and literature are integrated provides a good starting point for further investigation. To me as a Dutch citizen, the example of the playwright and poet Joost van den Vondel comes to mind here. Vondel wrote acerbic plays and poems on the political situation of the Dutch Republic of his days, criticizing the stadtholder and his faction for their view on the religious shape that the community should take (see Jeanne Gaakeer, "Law and Literature: Batavische Gebroeders (1663)" in *Joost van den Vondel (1587–1679): Dutch Playwright in the Golden Age*, ed. Jan Bloemendal, Frans-Willem Korsten (Brill: Leyden, 2012): 459–487. In the nineteenth century the struggle of the Belgian people to gain independence also took the form of a struggle for literary and linguistic autonomy in the sense that the Flemish Movement wanted Flemish-Dutch literature to acquire the same importance as the

Interrelated to the language and knowledge view is his concept of *Humanität* as developed in his remarks on *Humanität Erziehung* and *Briefe zur Beförderung der Humanität*.⁴⁰ *Humanität* is “a notoriously vague term” as Berlin aptly noted,

connoting harmonious development of all immortal souls towards universally valid goals: reason, freedom, toleration, mutual love and respect between individuals and societies [...].⁴¹

Nowhere does Herder offer a working definition other than the circular “Alle Ihre Fragen ueber den Fortgang unsres Geschlechts [...] beantwortet [...] ein einziges Wort: *Humanität*, Menschheit” and, “*Humanität* ist der Charakter unsres Geschlechts; es ist uns aber nur in Anlagen angeboren und muss uns eigentlich angebildet werden.”⁴²

Humanität is not translatable as humanity, humankind or humanitarianism, although it includes aspects connoting all of these terms. To Herder, the human being is born to live in a community and the long period of his education shows it. Attaining *Humanität* is therefore the purpose of human life, i. e., to try and develop as best as one can one’s capabilities, a notion that presages Martha Nussbaum’s capabilities approach as delineated in *Frontiers of Justice* and *Creating Capabilities, the Human Development Approach*. Thus *Humanität* is teleological and Aristotelian in outlook and pertains both to the individual and the whole, the nation, for as a *zoon politikon* the individual contributes to his community.

The process is universal, but not to be viewed *in abstracto*, hence there are no fixed rules by means of which success is guaranteed. It is relative to time and place, or rather context-dependent as can be deduced from the existing differences between people and nations, also, in view of the problem of translation that Herder posits, as far as the mental images that words conjure up before a speaker of a specific language’s eye, a contemporary illustration of which can be found in the translation of legal terms in countries such as Canada with two official languages, or in the official languages used in the European Union or for the European Convention of Human Rights. The very idea of a right to a common-law-trained British jurist viewed against the background of a long tradition of an unwritten constitution is dissimilar not only as far as the place of the concept of

Francophone. The battle cry of the movement was: Language is the entire people (see the constitutive work of the novelists Hendrik Conscience and Charles de Coster as well as that of the influential lawyer-writer Anton Bergmann).

⁴⁰ Johann Gottfried Herder, *Schriften: Eine Auswahl aus dem Gesamtwerk*, ed. Walter Flemmer (München: Wilhelm Goldmann Verlag, 1960): 175 – 179, 196 – 205.

⁴¹ Berlin, *Vico and Herder*, 193.

⁴² Herder, *Schriften*, 180, 196.

a right in his legal system is concerned to that of the French *droit*, but more importantly it is culturally dissimilar against the background of the *Ancien Régime* and the French Revolution.⁴³

With the combined aim of cultivating *Humanität* individually and nationally, Herder allows for the simultaneous existence of cultural similarities and differences while acknowledging that these are relative, and without precluding the possibility that there are attitudes or characteristics common to all humans such as, precisely, language, so that we can understand other people(s) (and, historically, other ages), and the desire for freedom. Herder's relativism is definitely not of the cynical *anything goes*-type. It is rather a pluralism *avant la lettre* that rejects Enlightenment abstractions. It should at once be noted that contrary to the reproach sometimes hurled at Herder that his views immediately open the door to fascist theories of *Volk* in the sense of a superior people, his aim is not mono-cultural dominance.⁴⁴

This idea of human situatedness can obviously serve our discussion of culture in connection to diaspora. One reason is that *Humanität* and nationality are not mutually exclusive but organically connected, and the term nation in the political sense may include more than one nationality.⁴⁵ What is more, the realization of actual inequalities does not preclude, as Sikka quite rightly points out, that our common *Humanität* serves as a bulwark to the "[...] inhumanity of oppressors and assassins."⁴⁶ The latter group includes royal despots, as well as colonials and slave owners. Herder looks upon colonialism and slavery as the negation of *Humanität*, as crimes against *Humanität*, because he favours cooperation rather than coercion, and culturally speaking, is against forced assimilation.⁴⁷

⁴³ I elaborate on the topic in "Iudex translator: the reign of finitude" in *Methods of Comparative Law*, ed. Pier-Giuseppe Monateri (Cheltenham UK, Northampton USA: Edward Elgar, 2012): 252–269, 259–261. Cf. Walter Benjamin, "The Task of the Translator" in *Illuminations*, ed. Hannah Arendt (London: Fontana P, 1973): 69–82, 74–75, on translatability: on how the word *Brot* means something different to a German than the word *pain* to a Frenchman while they point to the same object.

⁴⁴ Cf. Sikka, *Herder on Humanity*, 9–12, and Berlin, *Vico and Herder*, 211 "Herder is not a subjectivist. He believes in objective standards of judgment that are derived from understanding the life and purposes of individual societies and are themselves objective historical structures, and require, on the part of the student, wide and scrupulous scholarship as well as sympathetic imagination."

⁴⁵ Robert Ergang, *Herder and German Nationalism: Studies in History, Economics and Public Law no. 341* [1931], (New York: Octagon Books, 1966): 8.

⁴⁶ Sikka, *Herder on Humanity*, 21.

⁴⁷ Barnard, *Herder*, 101–102.

These views are the result of what Herder deems essential in the concept of *Humanität* and that is – very important also for literary-legal studies – the connection of *Humanität* to the Roman *humanus*, and with it, the differentiation between the legal and the just. *Humanität* finds its root in *humanitas* and *humanus*,

Rom hatte harte Gesetze gegen Knechte, Kinder, Fremde, Feinde; die oberen Stände hatten Rechte gegen das Volk, u.f. Wer diese Rechte mit grösster Strenge verfolgte, konnte gerecht sein, aber dabei nicht menschlich. Der Edle, der von diesen rechten, wo sie unbillig waren, von selbst nachliess, der gegen Kinder, Sklaven, Niedere, Fremde, Feinde nicht als römischer Bürger oder Patrizier, sondern als Mensch handelte, der war *humanus*, *humanissimus*, nicht etwa in Gesprächen nur und in der Gesellschaft, sondern auch in Geschäften, in häuslichen Sitten, in der ganzen Handlungsweise [...]

Da bei den Römern also die *Humanität* zuerst als eine Bezähmerin harter bürgerlicher Gesetze und Rechte, als die eigentliche Tochter der Philosophie und bildenden Wissenschaften einen Namen gewonnen hat, der sich mit diesen nachher weiter vererbte: so lassen sie uns ja Namen und Sachen ehren. Auch in den abergläubigsten, dunkelsten Zeiten, erinnerte der Name *humaniora* an den ernstesten und schönsten Zweck, den die Wissenschaften befördern sollen.⁴⁸

Humanität as the attitude with which to deal decently with other people closely resembles practical wisdom or *phronesis* as developed by Aristotle in the *Nicomachean Ethics*, a concept that the Greeks and Romans used in order to mitigate the harshness of the general rule. It is the law of equity as well as the golden rule of not doing to others what you would not wish them to do to you. So Herder's thought ties in with the prominence of the topic of equity in literary-legal studies these past few years, yet another reason to promote Herder studies.⁴⁹ The problem of the human, individually and as a nation, is that we do not always succeed in following the true *studium humanitatis* as exemplified in Greek and Roman culture. For any failure, however, we ourselves are responsible for we constitute ourselves in our various roles and relations and, in the Kantian vein, Herder adds that we should follow reason as a law.⁵⁰ A sign of the value Herder attaches to *Bildung*, is expressed in the following claim:

Alle Einrichtungen der Menschen, alle Wissenschafte und Künste können, wenn sie rechter Art sind, keinen anderen Zweck haben, als uns zu humanisieren, d.i. den Unmenschen

⁴⁸ Herder, *Schriften*, 198.

⁴⁹ Cf. Daniela Carpi ed., *The Concept of Equity, an interdisciplinary assessment* (Heidelberg: Winter, 2007) and Daniela Carpi ed., *Practising Equity, Addressing Law: Equity in Law and Literature* (Heidelberg: Winter, 2008).

⁵⁰ Herder, *Schriften*, 199, "Der Mensch hat einen Willen, er ist des Gesetzes fähig; seine Vernunft ist ihm Gesetz."

oder Halbmenschen zum Menschen zu machen, und unserm Geschlecht zuerst in kleinen Teilen die Form zu geben, die die Vernunft billigt, die Pflicht fordert, nach der unser Bedürfnis strebt.⁵¹

He warns against *Nationalwahn* (excessive nationalism), and the dangers of war, and incites us to apply *Humanität* in our dealings with other nations, for individual *Bildung* and national *Bildung* are two of a kind.

This humanist approach makes Herder valuable because he goes beyond the Enlightenment views of his days that favour explanatory processes of verification after rational investigation. Herder's hermeneutics are those of *Verstehen*, the empathetic understanding of the humanities, not of *Erklären*, the explanatory method of the natural sciences, and this is the bond also between Herder and Giambattista Vico. This can also be seen in the dialectics internal to *Humanität* in its combining the subjective and the objective element: we confront the contingent local situation into which we are born – and like Montesquieu before him in *The Spirit of the Laws* Herder also attaches great importance to the totality of environmental factors rather than formal, drawing-table legislation which he criticizes⁵² – and our response to it shows the extent to which, by means of our *Bildung*, we are able to recognize our mutual dependence. To Herder, self-reflection leads to self-knowledge and constitutes both our capability of self-determination and our empathy for others. That is why from early youth onward, we should be formed to attain our full *Humanität* and education is essential in the process.⁵³

With regard to the task of literature in the sense mentioned above in paragraph one, Herder points to the classic Greek and Roman authors, especially Cicero's well-known definition of what we now call the humanities:

[...] artes quae ad humanitatem pertinent, ad humanitatem informant, also Wissenschaften, die uns menschlich machen, die uns zu Menschen bilden: man könnte sie also auch vielleicht am besten *bildende* Wissenschaften nennen.⁵⁴

51 Herder, *Schriften*, 200.

52 I.e., Montesquieu for law and Herder for culture both emphasize the important influence of geographical particularities. Cf. Johann Gottfried Herder, *Auch eine Philosophie der Geschichte zur Bildung der Menschheit* (Frankfurt am Main: Suhrkamp, 1967): 80–98, 83, “Es gab eine *Zeitalter*, wo die Kunst der *Gesetzgebung* für das einzige Mittel galt, Nationen zu bilden [...]”, and 89–90, “Kann man sich etwas über jene *Regierungskunst*, das System! [...] denken?”

53 As can be deduced from the title, “Vom Begriff der schönen Wissenschaften, insonderheit für die Jugend,” Herder, *Schriften*, 188–193.

54 Herder, *Schriften*, 189 [italics mine]. Herder refers to Cicero's “Pro Archia Poeta” (his defense speech for the poet Archia) in which it says, “Etenim omnes artes, quae ad humanitatem perti-

He does not do so, however, to incite us to imitate the classics but to emulate them as it were in developing our own national literatures. Thus Herder differs from those Enlightenment literary theorists who focused on the development of rules with which to write, e.g., following Boileau's *Art Poétique* and French dramatists such as Corneille.⁵⁵ His is indeed a *Sturm und Drang* proposal to find a local literary form and content, a habitation and a name, suited to the people and sprung from their cultural background. It is reflected in his research into folk songs or *Volklieder* (*Stimmen der Völkern in Lieder, 1778–1779*) as the medium for the expression of popular or democratic sentiment, and shows in his folk and fairy tales, the latter also influential on Jacob and Wilhelm Grimm's research that culminated in their 1812 *Kinder- und Hausmärchen*, while his general idea of organic growth served von Savigny and Grimm as jurists.⁵⁶

4. Humanism and *Bildung*

Herder, I claim, therefore still matters widely for contemporary literary-legal studies, for a practical approach as advocated by Martha Nussbaum to cultivate humanity with the help of the combined study of the humanities in higher education,⁵⁷ as well as for a return to a more fundamentally humanistic approach that Costas Douzinas envisages. Douzinas turns to the term *humanitas* in the Roman republic, in the sense of the *eruditio et institutio in bonas artes* that we would now call *Bildung* as Herder saw it, because it goes beyond the auxiliary function of the humanities as instruments of education and encompasses an attitude and the worldview of precisely *Humanität*, of empathy, one that originates in the circumstance that as humans we can stand back as it were from an actual experience and reflect on it.⁵⁸

Underlying the literary themes of *Sturm und Drang* was the idea of the formation of the human and his individual personality to attain the ideal of *Humanität* and Goethe's *Wilhelm Meister* exemplifies it. At the same time, the ancient

nent, habent quoddam *commune vinculum* (the common bond of those arts pertaining to humanity [trans. and italics mine]) et quasi cognatione quadam inter se continentur.”

55 Cf. Ergang, *German Nationalism*, 185.

56 Cf. Berlin, *Vico and Herder*, 147.

57 Martha C. Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Cambridge, MA, London: Harvard UP, 1997).

58 Costas Douzinas, “A Humanities of Resistance: Fragments for a Legal History of Humanity,” in *Law and the Humanities: An Introduction*, eds. Austin Sarat, Matthew Anderson and Cathrine O. Frank (Cambridge: Cambridge UP, 2010): 49–72, 49.

idea of tragic conflict resulting from the clash between the individual and the (moral) law returns in *Tasso*. This bond as far as the latter is concerned with Greek tragedy is good cause to again think in terms of the educative function of the literary work as noted above in paragraph one. Since *Bildung* is the key word in German neohumanism that developed on the basis of *Humanität*,⁵⁹ the former as an example of the *Bildungsroman* should alert us to the possibility of renewed use of the genre and concept in circumstances different from those of its origins. While Sloterdijk may be right that in contemporary societies literature by now has reached its final stage as a subculture *sui generis*, I disagree with his conclusion that the era of humanism and *Bildung* is therefore over.⁶⁰ I contend that it is precisely in our common *Humanität* that we can find the justification for our continued effort to bring in the humanities to discuss and confront issues that traditional approaches deal with only from an instrumental, socio-political point of view.

In this view, the *Bildungsroman* and its characteristics deserve our continued attention because, as Moretti claims, it was the narrative form that dominated the 'Golden Century of Western narrative,' i.e., the nineteenth century.⁶¹ Since that is also the epitome of modernity, the novel of formation and acculturation remains an acute topic also from a point of view of the history of ideas in that "the conflict between the ideal of *self-determination* and the equally imperious demands of *socialization*" is reflected in the development of nation-states and their struggle for national legal systems,⁶² free from the empire that was Roman law. What is more, the dichotomy when perceived at the level of an individual's struggle offers a fruitful paradigm with which to view diaspora situations when combined with both mechanisms of textual organization that Moretti sees at work in the *Bildungsroman* as a genre. That is to say, the "classification" principle that makes "a story [is] more meaningful the more truly it manages to *suppress itself as story*," with marriage and the renouncement of freedom as the emblematic form of closure, and "the transformation principle" that creates meaning by means of "its narrativity, its being an open-ended process."⁶³ The idea of socialization as the possible renunciation of a person's individuality can be elevated to the diasporic group to discuss subjects such as assimilation,

59 Hans-Christof Kraus, *Kultur, Bildung und Wissenschaft im 19. Jahrhundert* (München: R. Oldenbourg Verlag, 2008).

60 Sloterdijk, *Regeln für den Menschenpark*, 14.

61 Franco Moretti, *The Way of the World: The Bildungsroman in European Culture* (London: Verso, 1987): 3.

62 Moretti, *Way of the World*, 15.

63 Moretti, *Way of the World*, 7.

the cultural assumptions internal to a diasporic group, and the possibility of cultural transformation. This is especially acute when we think through the circumstance that in diasporic situations when memories of home occur in a different cultural context, there is always the risk of a distortion of views so that a hermeneutics of suspicion remains urgent for our readings of diaspora.⁶⁴ While I am well aware of the fact that the era of production of the *Bildungsroman* is behind us and we should therefore keep in mind its historical contingency, I am nevertheless convinced that my argument holds in the sense that the process of becoming, not being, is crucial in literary-legal diaspora studies.

So the need to question one's own reflection and stand back as it were in order to (re)view one's situation is always in order and with Herder's humanism and the *Bildungsroman* we have an interesting starting point for a methodology of self-knowledge, in the individual life as much as in the larger setting of society.⁶⁵ I wholeheartedly agree with Slaughter when he contends that "an infringement on the modern subject's ability to narrate her story" was a good lens with which to view abuses of human rights and I claim that it can equally fruitfully be applied to diaspora discourse.⁶⁶ That is to say, the humanistic idea of narrative self-determination and an independence of voice seen in terms of modernity's emphasis on the individual when combined with insights derived from Herder's linguistic and culturalist view ties in with current debates in *Law and Literature*, and can provide a new form of investigation in the way in which various cultural forms and cognitions work in the world, particularly, of course, when "culture-bound knowledge confronts its own limits" as is the

64 And think of diasporas of the kind experienced by the Hungarian people when after the Treaty of Versailles (1919) they suddenly found their country reduced to one third of its original area, and as a consequence a great number of people found themselves in the bizarre diasporic situation that the country had left them.

65 Early on in *Law and Literature*, Robin West already argued that the bond between law and literature also consists of the narrative component itself that every theory of law has and that can be fruitfully analyzed in a way analogous to the methods used in literary analysis, on the view that any theory is a form of narrative. She applied Frye's subdivision of narrative to jurisprudential developments. The two contrasting methods of story-telling which Frye calls romance and irony are linked to natural law and legal positivism; the two contrasting world views, the comic and the tragic vision, find their legal counterpart in liberalism and statism. This connection of a typology adopted from literary theory to legal theory has undeservedly disappeared from scholarly sight and needs reviving in the context of literary-legal contributions to diaspora discourse. See Robin West, "Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory," *New York University Law Review* 60 (1985): 145–211, referring to Northrop Frye, *Anatomy of Criticism* (Princeton, NJ: Princeton UP, 1957).

66 Joseph R. Slaughter, "A Question of Narration: the Voice of International Human Rights Law," *Human Rights Quarterly* 19 (1997): 406–430, 413.

case when literary-legal insights are combined with, or applied to diaspora discourse.⁶⁷

5. Diaspora and Interdisciplinarity

When we view the above with an interdisciplinary lens, the question of the whatness of the co-operating fields then becomes acute, lest we pass as ships in the disciplinary night.

What do we mean by *diaspora* in diaspora studies? According to Jennifer Brinkerhoff, “modern diasporas [are] ethnic minority groups of migrant origins residing and acting in host countries but maintaining strong sentimental and material links with their countries of origin – their homelands.” Again, the combination of dispersion, (commitment to) a collective memory and myth about the homeland, the hope of return and consciousness of one’s hybrid identity emerge as the decisive criteria of diaspora.⁶⁸ Or is it only a matter of the dispersal of any population from its destroyed home-land and its settlement in another territory with trauma and victimization as a result?⁶⁹

The same goes for culture, and even more specifically so, given the longer tradition of scholarly attention to the subject. The number of definitions of culture that have vagueness as their common characteristic is abundant.⁷⁰ This ob-

67 Joseph R. Slaughter, *Human Rights Inc. The World Novel, Narrative Form, and International Law* (New York: Fordham UP, 2007): 78. One of the texts that Slaughter cites by way of epitaph is “To undergo Bildung is to identify with humanity: a humanity that is itself an ongoing process of self-realization or becoming” (citing Marc Redfield, “The Bildungsroman” in *Oxford Encyclopedia of British Literature*, ed. David Scott Kastan (Oxford: Oxford UP, 2006): 191–194, 86).

68 Jennifer M. Brinkerhoff, *Digital Diasporas, Identity and Transnational Engagement* (Cambridge: Cambridge UP, 2009): 29, 31.

69 Andoni Alonso and Pedro J. Oiarzabal, “The Immigrants’ Worlds, Digital Harbors, an introduction,” in *Diasporas in the New Media Age, Identity, Politics, and Community*, ed. Andoni Alonso, Pedro J. Oiarzabal (Reno, NV, Las Vegas: U of Nevada P, 2010):1–15, 2. See also Jana Evans Braziel and Anita Mannur, “Nation, Migration, Globalization: Points of Contention in Diaspora Studies,” in *Theorizing Diaspora, a reader*, ed. Jana Evans Braziel, Anita Mannur (Oxford: Blackwell Publishing, 2003): 1–22, 3 for caution against an unreflective application of the term diaspora to any and all contexts of global displacement.

70 Austin Sarat and Thomas R. Kearns, “The Cultural Lives of Law,” in *Law in the Domains of Culture*, ed. Austin Sarat, Thomas R. Kearns (Ann Arbor, MI: U of Michigan P, 1998):1–20, 3 for the view that traditionally the study of culture was the study of “that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.” Such a definition is a broad umbrella under which practically every topic finds shelter, and it disregards aspects of socialisation and acculturation

viously leads to new conceptual Babels when talking about cultural locations from which to start new research, or about topics such as cultural identity or cultural supremacy.⁷¹ So Homi Bhabha is right when he starts his discussion of the cultural representation of the ambivalence in modern society of the idea of nation by pointing “to competing dispositions of human association as *societas* (the acknowledgement of moral rules and conventions of conduct) and *universitas* (the acknowledgement of common purpose and substantive end)” in the European tradition and distinguishing between national consciousness and nationalism, as Herder did.⁷² Speaking about (dis)similarities requires clarity when it comes to what Bhabha wittily calls “DissemiNation.”⁷³

And what is law? Is it a state institution, a power structure, a system of rules, an instrument of justice or oppression? Is it a theoretical structure or a practice? Or is it all of the above?⁷⁴ And given the replication of the problem in the cultural studies of law as well as the cultural lives of law,⁷⁵ i.e., when law deals with cultures, we will do well, as Cotterrell asks us to,⁷⁶ to specify how and where culture

connected to culture. Peter Burke, on the other hand, defends a broad definition that includes “[...] attitudes, mentalities and values and their expression, embodiment or symbolization in artefacts, practices and representations” (*Cultural Hybridity* [Cambridge: Polity P, 2009]: 5). For an extended treatment of the topic, see Jeanne Gaakeer, “Reverent Rites of Legal Theory: unity-diversity-interdisciplinarity,” *Australian Feminist Law Journal* 36 (2012): 19–43.

71 See Stuart Hall, “Cultural Identity and Diaspora” in *Theorizing Diaspora: A Reader*, ed. Jana Evans Braziel and Anita Mannur (Oxford: Blackwell Publishing, 2003): 233–246, theorizing two ways to reflect on cultural identity, i.e., understood as a collective, shared history among individuals affiliated by race or ethnicity that is considered to be fixed or stable and understood as unstable, and marked by similarities as much as by differences.

72 Homi K. Bhabha, “Introduction: Narrating the Nation,” in *Nation and Narration*, ed. Homi K. Bhabha (London, New York: Routledge, 1990): 1–7, 2.

73 Homi K. Bhabha, “DissemiNation: Time, Narrative, and the Margins of the Modern Nation,” in *Nation and Narration*, ed. Homi K. Bhabha (London, New York: Routledge, 1990): 290–322. See also Simon During, “Literature – Nationalism’s Other? The Case for Revision,” in *Nation and Narration*, ed. Homi K. Bhabha (London, New York: Routledge, 1990): 138–153.

74 See Jeanne Gaakeer, “The Future of Literary-Legal Jurisprudence: Mere Theory or Just Practice?” *Law and Humanities* 5.1 (2011): 185–196.

75 See Priska Gisler, Sara Steinert Borella and Caroline Wiedmer, “Setting the Stage: Reading Law and Culture,” in *Intersections of Law and Culture*, ed. Priska Gisler, Sara Steinert Borella, Caroline Wiedmer (Houndmills, UK: Palgrave Macmillan, 2012): 1–13; Austin Sarat and Thomas R. Kearns, “The Cultural Lives of Law,” in *Law in the Domains of Culture*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor, MI: U of Michigan P, 1998): 1–20.

76 Roger Cotterrell, “Law in Culture,” *Ratio Juris* 17.1(2004): 1–14. Cotterrell distinguishes six different interrelations of law and culture, to which I would add the point that law itself is also a site of cultural heritage in the sense that traditionally at least legal codification is an affirmation of existing views in society.

and legal research meet, when it comes to analysing diasporas. Austin Sarat already suggested that legal education should focus on questions such as “How ought law to be understood as a cultural system? [...] How have legal institutions embraced and constructed, as well as silenced and stigmatized, various national, social, cultural, and personal identities?,”⁷⁷ and this line of research also works for diaspora studies.

As far as I am concerned, all of the above questions are extremely salient. When it comes to the project that motivates this volume, creating an interdisciplinary ‘third’ in the form of literary-legal-diaspora studies, what then should be taken into consideration in order to engage in the close encounters of this article’s title? Obviously for the project to be successful, we need to address questions of each separate discipline’s terminology, values and methodology, for Homi Bhabha is right when he writes that “Cultural difference emerges from the borderline moment of translation that Benjamin describes as the ‘foreignness of languages’,”⁷⁸ and points to “the radical incommensurability of translation” as Walter Benjamin did before him and as James Boyd White has consistently argued with his metaphor for law: justice as translation. According to White, the central premise for understanding and claiming meaning is that translation between languages as much as between disciplines has to deal with the impossibility of total correspondence. On this view, translation or integration as a form of establishing the right relations is a process that also depends,⁷⁹ as does interdisciplinary co-operation on the meta-level, on the success of cross-cultural fertilization. This is important, for when we ask whether the *and* in any *Law and...* actually works, we should always highlight the underlying idea that no exchange or translation of any disciplinary concept in crossing disciplinary cultures can take place isolated from the cultural background it originated from. So the linchpin of this volume’s project is and remains linguistic, although honesty compels me to admit that as a legal practitioner I am firmly rooted in the idea of law as text and therefore strongly favour – yet recognize my own disciplinary bias here – the idea of language as our predominant cultural software.⁸⁰ Given our humanistic outlook, we obviously cannot escape the hermeneutic circularity that Hans Georg Gadamer already acknowledged because we never start from a *tabula rasa*. But, as Herder kept emphasizing,

77 Austin Sarat, “Situating Legal Scholarship in the Liberal Arts,” in *Law in the Liberal Arts*, ed. Austin Sarat (Ithaca, NY: Cornell UP, 2004): 4.

78 Bhabha, “DissemiNation,” 314, 317.

79 White, *Justice*, 230.

80 Jack M. Balkin, “Ideology as Cultural Software,” *Cardozo Law Review* 16 (1995): 1221–1233, 1228.

I have proven that the use of reason is not only ‘not very well’ possible without signs, but that not even the slightest use of reason, not even the simplest distinct recognition, not the most basic judgment of human reflection is possible without a distinguishing mark: the difference between two things can only be recognized through a third.⁸¹

Combined with his view that *Bildung* starts at birth,⁸² this speaks for continued attention to Herder’s suggestion on how to deal with sites of cultural and discursive, disciplinary translations by means of comparison as the preferred methodology as discussed above in paragraph three. The humanistic tradition of self-reflection to gain self-knowledge is admirably suited to this end and as far as diaspora studies are concerned, an interesting example of “the meta-critical art, the *techne*, of witnessing the witness of the event called diaspora criticism” that feeds on multiple disciplines is already developed by Sudesh Mishra in the concept of *diaspoetics*.⁸³

The topic of interdisciplinary theorizing ties in with the topic of modernity as discussed above in paragraph two. Modernity’s methodological individualism, as found in empirical sociology and early *Law and Economics*, finds its root in the central idea of the individual’s deliberate agreement to subject himself to the sovereign in exchange for peace and is one of the logical conclusions of the quest for certainty. The ongoing dominance of this methodology can be a drawback for contemporary interdisciplinary work. As Evans Braziel and Mannur quite rightly point out, diaspora as a concept cannot “[...] stand alone as an epistemological or historical category of analysis,” i.e., separate from concepts of gender, race, class.⁸⁴ Methodological individualism is also connected to the natural sciences paradigm of scientific positivism of philosophers such as Auguste Comte, John Stuart Mill and Herbert Spencer, and it culminated in legal posi-

⁸¹ Johann Gottfried Herder, *Abhandlung über die Sprache*, qtd. in Norton, *Herder’s Aesthetics*, 114.

⁸² Herder, *Schriften*, “Über den Charakter der Menschheit,” 180–185, 180, “4. Mit dem Leben des Menschen fängt seine Erziehung an.” Cf. Sikka, *Herder on Humanity*, 7, “For Herder, cultures are the products of *Bildung*, of processes of education and cultivation involving the active exercise of specifically human, reflective faculties.”

⁸³ Sudesh Mishra, *Diaspora Criticism* (Edinburgh: Edinburgh UP, 2006): 14 [italics in the original]. The use of *techne* I take to be Heideggerian for Mishra speaks here in terms of the methodology of “a bringing forth” as proposed by Heidegger in “The Question Concerning Technology” in Martin Heidegger, *The Question Concerning Technology and Other Essays* (New York: Harper & Row, 1977 [1954]): 3–35.

⁸⁴ Jana Evans Braziel, Anita Mannur, “Nation, Migration, Globalization,” 5. Evans Braziel and Mannur offer an important list of “future diasporic paths” (14), one that can fruitfully be combined with the alternative list given in Sudesh Mishra, *Diaspora Criticism* (Edinburgh: Edinburgh UP, 2006): 15.

vism in the nineteenth century. The idea behind legal positivism is the presupposed correspondence of the word and the world and this favours an interpretive theory that takes the lawgiver's volition as decisive when it comes to ascertaining legal meaning. This, too, is a logical conclusion of the quest for certainty as noted above in paragraph two. Here is also the root of the ongoing methodological dispute between the natural sciences and the humanities on the use of empirical findings by the former and the supposed lack of them in the latter.

This makes me wonder whether on the meta-level of a discussion of the very idea of interdisciplinarity (methodologically as well as epistemologically), we could think of interdisciplinarity as itself the result of a diasporic movement. In other words, when we apply the idea of diaspora – if only metaphorically perhaps – to think about the nineteenth-century differentiation of disciplines or *Ausdifferenzierung* resulting in autonomous (academic) disciplines, and, also as far as the development of a positivistic approach to law is concerned, in the idea that the autarky of the discipline is a precondition for the objectivity of its results, what implications for, and/or suggestions to any intersection that includes diaspora does this have? I do not have an answer to this question but I think I have good reason to bring it forward. The movement from the disciplinary unity of the heyday of humanism to the differentiation of knowledge in academic pigeonholes occasioned the development of separate disciplinary languages and methodologies and as a result concepts long shared diverged. In other words, disciplinary differentiation viewed as diasporic is the root of the problem of terminological and conceptual (un)translatability between disciplines. To me, this speaks for our continued attention to the history of ideas and we will therefore do well to keep in mind Herder's remarks on *Humanität* as well as Matthew Arnold's assertion that "[...] literature [contains] the materials which suffice for [...] making us know ourselves and the world" and "the humanist's knowledge is [...] a knowledge of words."⁸⁵ For as Nicholas Carr recently claimed in his defence of the humanities, "What's stored in the individual mind – events, facts, concepts, skills – is more than 'the representation of distinctive personhood', that constitutes the self [...]. It's also 'the crux of cultural transmission'."⁸⁶

There is yet another reason to do so, because the reaction to the very idea of autonomous disciplines since the 1970s in the form of the development of various *Law and ...*-movements can, paradoxically perhaps in view of their return to the idea of unity, also be looked upon as diasporic from yet another point of

⁸⁵ Matthew Arnold, "Literature and Science" [1882], in *The Norton Anthology of English Literature*, seventh ed. (New York : W. W. Norton, 2000): 2:1545 – 1558, 1547, 1550.

⁸⁶ Nicholas Carr, *The Shallows, what the Internet is doing to our brains* (New York, London: W.W. Norton & Co, 2010): 196.

view. That is, if we think of them as driven away from the safety of the monodisciplinary methodologies of the disciplines they originally came from; for example, in the case of *Law and Literature* from the safety of doctrinal black letter law. I aim to provoke here. When the decline of job opportunities in the humanities drove graduate students of literature away from their home discipline – a form of diaspora – and they sought refuge in law,⁸⁷ they often favoured their own epistemological and methodological backpack so to speak and began to theorize from that basis. The development and application of philosophical and literary deconstruction as a methodology for law comes to my mind as one of its effects. While many of such contributions have been and are of great value to interdisciplinary legal studies, they suffer from a lack of attention to legal practice. Not only does this diminish the (academic) impact of interdisciplinary studies, the practice of law always being the combination of knowing and doing, any tendency to stick to theorizing *per se* also runs the risk of continuing conceptual Babels and this is unhelpful in the context of diasporic studies aiming not only to illuminate intellectually but also to contribute practically.

So my caveat for interdisciplinarians would be not to imitate Gustave Flaubert's Bouvard and Pécuchet who probe the cognitive worth of one discipline after another when they find that no single methodology suffices to give answers to all of their questions or to solve all problems. Bouvard and Pécuchet's diaspora led them into an epistemological desert for lack of practical wisdom to do what the circumstances required. When Pécuchet, finally exasperated, asks "What is the point of it all?," Bouvard answers "Perhaps there isn't a point,"⁸⁸ and this should be our caveat too, i.e., not to engage in an ongoing disciplinary diaspora that cannot but lead to methodological shallowness.

⁸⁷ Richard Posner, "Law and Literature: A Relation Reargued," *Virginia Law Review* 72 (1986): 1351–1392, 1353, "[...] the displacement of many graduate students, and some faculty, from the humanities into law, following a decline in academic job opportunities in the humanities that began around 1970"; Harold Suretsky, "Search for a Theory: An Annotated Bibliography of Writings in the Relation of Law to Literature and the Humanities," *Rutgers Law Review* 32 (1979): 727–739, 727, "Perhaps some of the interest is the result of recent economic troubles affecting humanistic studies which have no doubt led many would-be graduate students of literature to knock at the doors of the nation's law schools," Martha Minow, "Law Turning Outward," *Telos* 73 (1987): 79–100, 91, "The first simple explanation is that the job market for Ph.D.'s constricted dramatically in the last 15 years. Bluntly put, people who in the past would join academic departments instead went to law school and joined law faculties. These people brought with them questions and methods of inquiry common in nonlegal disciplines, and subjected law to scrutiny."

⁸⁸ G. Flaubert, *Bouvard and Pécuchet* (tr. A.J. Kreilsheimer), Harmondsworth UK, Penguin Books, 1978, at 85

A short tale in conclusion, and to shift the balance and end on a positive note: In 1688 the Swiss Johannes Hofer obtained his doctorate at the faculty of medicine of the University of Basel with a dissertation in which he coined a new term, *nostalgia*, in order to describe the mental suffering (*algos*) caused by an intense longing, diagnosed in Swiss mercenaries fighting in France and wanting to go home (*nostos*).⁸⁹ In the context of this volume's topic of interdisciplinary diaspora studies, the aspect of nostalgia frequently found in those in diasporic situations, leads me to suggest that as interdisciplinarians we should not wallow in nostalgia for, nor rejoice in conceitedness about our own disciplinary homelands, but neither should we "flee in terror" from what other countries have to offer.⁹⁰

⁸⁹ Johannes Hofer, "Medical Dissertation on Nostalgia," trans. Carolyn Kiser Anspach, *Bulletin of the Institute of the History of Medicine*, vol. 2 (Baltimore: Johns Hopkins Press, 1934).

⁹⁰ Mishra, *Diaspora Criticism*, 22 n.15, on the meaning of diaspora, pointing to *Deuteronomy* 28:28 and the rendering of the Hebrew *Za'avah* as diaspora in the Greek of the Septuagint which denotes "fleeing in terror."

Paola Carbone

Fair Hearing and Fair Play in Multicultural Societies

Diasporic Narrations from the Commonwealth

Literature has always played a leading role in the interpretation and representation of national ideologies, therefore it has always been co-responsible for the portrayal of the Other even when, in a negative tone, the Other is identified with the barbarous, the enemy or, more generally speaking, with an unknown (that is 'not yet identified' and thence perceived as a potentially dangerous) subjectivity such as the diasporic one. Regardless of the postmodern idea of subjectivity as a form of narration, we can say that literature shapes the Self and the Other from the inside of a dialogical praxis which confronts a net of lines of reasoning involving characters and readers. In so doing, literature suggests different configurations of reality, even when it is the normative statute of the collective mind-set to prevail. In particular, since fiction can be a tool of propaganda both for and against the Western political hegemony, we must acknowledge that the juxtaposition of different cultural identities, as one of the most distinctive phenomena of our contemporary multicultural society, can unveil the rhetorical structures of the colonial canon.

By unmasking the semiotic, semantic and rhetorical devices used to produce reality and meaning, literature creates a keen awareness of the 'living speech' or of a 'truth' rooted in dialogical relationships, which I suggest to translate in legal terms as the disclosure of a fair hearing. I intend to consider the judicial hearing as a cognitive model useful to observe and to understand some of the cultural boundaries of a multi-ethnic society. I am not suggesting to cross-examine the existence of a diasporic presence in a given country, but to point out the need for a dialogical exchange between divergent identities in accordance with well-defined rules. A confrontational attitude can be overcome by the right to the *audiatur et altera pars*, that is the right to a fair hearing (before an impartial judge) even if out of the courtroom. This Latin caption refers to the distich from Seneca's *Medea* "Qui statuit aliquid parte inaudita altera, aequum licet statuerit, haud aequus fuit" (2.2.199–200) meaning that even an equitable judgment is unfair unless all the parties have been heard: only the *right form* of the judgement conveys justice. The philosophical premises imply that the structure of the fair hearing is the structure of reality: no judgment (that is no discourse on reality and truth) should be formulated away from an unbiased dialogical context. Provided that the fair judgement is a right, a method, a principle and a norm which

gives form to the Western legal civilization, why should not it be metaphorically and procedurally used to understand the reasons of a diasporic identity? Judgment is here not so much connected to a question of legality or to the act of being lawful, but to issues of cultural values which should be formally free of prejudice. It is an action towards knowledge. In my opinion a multicultural society based on a dialogical practice should be potentially able to encourage and foster the ideal of *humanitas*, which implies human refinement as well as respect for the rights and dignity of all persons.

One of the problem in court is to find a method that makes the *audatio* possible, which means to define the praxis of the hearing (its rhetorical premise) by means of shared knowledge and rules. For example, in common law during the pre-trial the tentative demurrer is a way for the lawyer to ask the judge in advance a legal rule so as to know the issues of facts or of law to raise for the jury, that is, how to build an argumentation.¹ Here the judge concretely becomes part of the hearing in view of the fact that from the beginning he is asked to be responsible for the practice and procedure of the trial and, as a consequence, for the rhetorical mechanism of the dialectical synthesis – sentence – he will produce in order to ascertain a legal truth from two opposing discourses. Whatever is not taken into consideration by the parties during the hearing (evidence, depositions, statements, legal norms, regulations, laws, etc.) cannot be taken into account by the judge when he writes the sentence. The proof is made in the concrete factual context of the trial and therefore also the legal truth. The concept of ‘truth’ in law is an important issue, but as Francesco Cavalla states, truth is useful because the search for it unveils the criteria of judgement and certifies not only possible mistakes in the final judgement but also the vulnerabilities of the opposing argumentations.² On the one hand, the fair hearing is an epistemological category rooted in *ius* while, on the other one, it is a narrative praxis, because it defines how the lawyers state the case and consequently how the judge re-writes a possible truth out of the debate. The rhetoric of the judgment relies on shared diegetic constructions in order to attain a legal truth, that is, a truth emerging from the *narratio* itself. Traditionally, the rhetorical truth of a fair hearing is the result of a logical reasoning (a narration of past events) applied to a litigation.

¹ See Giuseppe Rossi, “Contraddittorio processuale e formazione della regola di diritto,” in *Audiatur et altera pars. Il contraddittorio fra principio e regola*, ed. Maurizio Manzin, Federico Puppo (Milano: Giuffrè Editore, 2008): 321–340, 334–335.

² Francesco Cavalla, ed. “Retorica giudiziale, logica e verità,” in *Retorica, processo, verità: principi di filosofia forense* (Milano: Franco Angeli, 2007): 17–84, 20.

Equally important, a fair hearing is the only way to assert one's rights in front of the court. If one does not have the right to speak out and to be heard, one cannot even ask for rights: we should simply think about the principle of Due Process of Law which, in its specific differences, shares across-the-board approval almost all over the world. Since the law establishes rights, duties, and privileges that are consistent with the values of society, how can a multi-ethnic society ignore the values of part of its citizenry? The implementation of the cognitive model of the fair hearing to a multi-ethnic society should grant the right to a principle of reality, that is, the respect for the human being and his/her human rights over the race. It is my opinion that we should reckon with such premises when we theorize literature from the perspective of legal Diaspora studies. It might seem an impractical, idealistic scheme, but as the legal process removes a rift in justice by means of a dialectical *agon*, so intercultural dialogue, as a verbal challenge, should provide a solution to social ambiguities or, even better, it should make such social conflicts epistemologically explicit.

Ultimately, we must recognize that a fair hearing becomes significant only when a specific case is taken into court, that is, when both parties take an interest in confronting each other. On the whole, a multicultural society is not always equitable because the parties do not have the same power, and so their dispute is intrinsically asymmetric: the clash with an imperialist culture is unbalanced, and the subordinates are submitted to judgement and to an instance of uniformity (integration) or rather enforced conformity to dominant norms (assimilation), even though we must admit that also migrants are often unwilling to engage in dialogue. James Boyd White says that the law is "living speech,"³ or the voice of a nation or the voice of a national identity. It is my opinion that literature registers the gaps in the, so to say, 'intercultural hearing' of diasporic identities.

1. Fair Hearing and Self-Representation

Many works of literature are structured around the archetypical conflict between protagonist and antagonist. Postcolonial literature in English is often inspired by the presence of an expatriate from the former British colonies who is not accepted in England as a *civis Britannicus*, that is, he is not recognized as part of a political and social community. It is my intention to force this limit and to suggest a multiplicity of 'cases,' in order to underline the complexity of a diasporic litera-

³ James Boyd White, *Living Speech, Resisting the Empire of Force* (Princeton: Princeton UP, 2008): 210.

ture and cinema from the Commonwealth. An inalienable element is the fact that the diasporic subjectivity is obliged to *narrate* himself, that is to represent himself within the language of the other, as Edward Said, Salman Rushdie, Arjun Appadurai have widely underlined. The storytelling of a postcolonial multi-ethnic society is more like a monologue than a real fair hearing, but the arts highlight such lack of intra-communication.

The problem of self-representation lies midway between diaspora and fair hearing. In both contexts, from a rhetorical, as well as procedural, viewpoint *topoi* and commonplaces (cliché and stereotypes) are fundamental firm beliefs to ground the argumentation when in a debate there are no shared premises.⁴ A *topos* facilitates the *narration* of the conflict, since it guides the *ingenium* of the rhetorician (lawyer) in presenting his own legal reasoning in order to *shape* the reasoning of the interlocutors. The discourse on multicultural conflict arises from such commonplaces, which are to be considered neither true nor false, but shared knowledge among speakers. In this way, a case is set into a social-cultural context so to become a potential discourse, that is, a dialogue.⁵ If the pre-trial defines the matter of law to be debated, as the prerequisite for a fair hearing on which to ground the *topoi*, in a multicultural society things are more difficult because subjects are not always dealing with ‘illegal’ behaviours but mostly with prejudicial, unjust, unsuitable ones (also with respect to human rights). All fair hearings need a conflict, that is, either an offence or a recognized threatening harm. Hence, just like a lawyer identifies the correct legislation for the type of violation, in a diasporic society the main interlocutors need to make the potential danger explicit, that is, visible as well as audible. Diasporic subjectivities must struggle to understand, first of all, what make them different, then why they are perceived as such, and, eventually, they must make people understand that they do not put the hosting society at risk.⁶ By playing the double role of the defendant and the lawyer, the diasporic subjectivity is not supposed to insist upon his or her truth, but to let the weakness of the antagonist’s reasoning and emotions emerge. The commonplace defined, the

4 Cavalla, “Retorica giudiziale, logica e verità,” 30.

5 Cavalla, “Retorica giudiziale, logica e verità,” 25.

6 It might be interesting to read what Mudrooroo writes about ‘white masters’ in Australia: “the master constructs stereotypes of the Other as Woman, as Native, and all he is doing is building on his own emotions, his feelings, which want everything to conform, so to be controllable, to be amenable to his own well-being. [...] The master refuses to see the Other, the Native, as being equal, as being capable. It is a colonial discourse, a way of speaking which seeks to disarm, a way of removing a threat,” Narogin Mudrooroo, *Us Mob: History, Culture, Struggle: An introduction to Indigenous Australia* (Sydney: Angus & Robertson, 1995): 4–5.

cognitive model of the fair hearing – conceived more as a method than a norm – becomes useful to reject the premise of an unjust attitude in order to settle differences.⁷

An example of narrative representation of a cultural conflict is offered by the movie *West is West* (2010), the sequel of the 1999 hit film *East is East* (1999) directed by Andy De Emmony and inspired by Ayub Khan Dyn's homonymous play.⁸ The story is about George Khan, who moves to England in the 1960s, leaving his first wife and two daughters in Pakistan. Once in the West, he marries a white British woman – Ella, called “Mrs Khan #2” – who gives him six children, despite the fact that he keeps sending money to his ‘first’ family. When the two women eventually meet in Pakistan, and they both confront themselves with their husband's life choice to walk away from his country to live in England as a subjectivity in-between two cultures, at first they feel in competition with each other. Nonetheless, they immediately acknowledge their own right to live under the same roof since both of them are George's legal wives. At first they keep silent, they scrutinize each other from their personal cultural standpoint, and they hold a reciprocal grudge. Then they shout their reasons and prejudices in their own languages but without making the attempt to listen to each other, and only afterwards they start talking. Even if they communicate through gestures, symbols and photographs, in quite a primitive form of dialogue, they succeed in re-localising their truths no longer as abstract ideals (*topoi*), but in terms of human and cultural values. They both face the reasons of the ‘adversary,’ that is life-long assumptions of responsibility: Ella had coped with discrimination from her family because of her ‘Paki’ husband, but she had also worked hard to send money to Mrs Khan #1; Mrs Khan #1 had taken on all the duties George avoided in the face of society and her children. In their confrontation, the narration of their similarities emerges. In this context the presence of an independent judge is useless since the ‘sentence’ emerges naturally as the *form* itself of the hearing, which provides an equal solution to the conflict.

When they first argue, they are mainly ‘suggestive’ as they try to psychologically stress the counterpart, but with no logically structured argumentation and legitimate knowledge of the other. In this case the effect is null and void, as well as the contents obscure. In trial, when a consensus is based on such obscure arbitrary premises it is too fragile to be considered for a sentence.⁹ On the contrary,

7 See Cavalla, “Retorica giudiziale, logica e verità,” 30.

8 Ayub Khan-Din, *East is East* (London: Nick Hern Books, 1996).

9 Cavalla, “Retorica giudiziale, logica e verità,” 27 – 31. That is also what happens in *A Passage to India* by E.M. Forster, when one of the pleaders, Mr Mahmoud Ali, tries to make use of the emotions and rage of the crowd to manipulate the judgement.

the intimate dialogue between the two women does not lead to a ‘conviction’ but to the ‘acquittal’ of their husband, who is the only one to be blamed. Indeed, they are both victims of a diasporic subjectivity since he has obliged them to live in-between two realities, customs and legislations: albeit polygamy is legal in Pakistan and Ella did not know about Mrs Khan #1 when she got married, she has accepted to live as a second wife. As the wise man asks Ella’s youngest child, Sajid, when at last he accepts his Pakistani origin without rejecting his British culture, “What needs changing? The boy? Or the world around him?”,¹⁰ the world is always the same, but the gaze is different.¹¹ Each woman has convinced the other one of her own reasons without losing her dignity, that is, in the respect of their legitimate cultural difference. They have shown their skill in changing their self-representation without forgoing their cultural identity.

As far as George is concerned, we must say that while in England he obsessively remembers his homeland to the point that it becomes the space of negotiation of his own identity, once in Pakistan he can witness his wives’ contentions from within as well as from without their conflict.¹² As in England, also in Pakistan he feels alone because he is always displaced and he does not truly belong to any community. Besides he does not have a counterpart to argue with, because he has not contravened any law, but a civil and moral responsibility. Therefore, we see him engaged in a sort of *auto-da-fé* in order to find – as a judge – an equitable solution to a conflict *he* has created.

10 In the movie *West is West*, at a certain point, the old wise man has a conversation in front of a mirror with Sajid at Khari Shirid, known for housing the Shrines of Sufi Saints: “I do not know what they want. I do not know who I am supposed to be”, “But you still look like you. What needs changing? The boy? Or the world around him?”

11 Ayub Khan-Din stated that both *East is East* and *West is West* are based on his personal experiences: “It was an interesting time in my life – to be taken to this whole new place, Pakistan, and living for a while with my extended family. It made me understand my father better – it gave me an idea of where he was coming from and why he was the way he was. [...] Khan is a slightly different man in the sequel. He’s desperate for his youngest son to accept his way of life, but finds a new side to himself in the process.” Aniruddha Guha, “Ayub Khan Din: Not his Father’s Son” (24 April, 2011), *DNA INDIA*, <<http://www.dnaindia.com/entertainment/report-ayub-khan-din-not-his-father-s-son-1535426>> (acc. 18 March, 2014).

12 See Edward W. Said, *Representations of the Intellectual* (New York: Vintage, 1993): 44.

2. Politics of Audibility and (In-)Visibility

The two wives do not recognize George as a cultural construct, but as a man who was led astray by his licit and innocent aspiration, and for this reason they almost never come into a real intercultural conflict with him. George is a Pakistani in England and an Englishman in Pakistan. Different territories, or living places, see different rules and jurisdictions, but also different perceptions of reality.

A diasporic identity is always asked to find new ways to be human, new images of him- or herself,¹³ and that is often connected to his or her physical appearance since the migrant ‘trans-lates’ his or her body from one land to the other.¹⁴ I wonder if the complex matter of *habeas corpus*, and in particular the “Habeas corpus, ad subjiciendum iudicium!” (“You should have the body for submitting”), which is conceived to determine whether the custody is unlawful, can be useful to unveil discriminatory rules. In a multi-ethnic society the body often becomes the pretext for discrimination. The display of different cultural identities can be a limit to a good dialogue, albeit we must keep in mind that also a non-verbal, physical confrontation can assume the value of a fair hearing if grounded on an equal comparison.

Literature and cinema have exploited the controversial relationship between the visibility vs. invisibility of the Other. Cultural studies highlight how the body is a social marker which emphasises differences in an us/we vs. they/them relationship. If on the one hand, abuse and oppression are directly put into practice on the mind and the body of the human being, on the other hand the body might become the ‘ground’ where to root a constructive intercultural dialogue. It happens that the visual image of a body does not only become the metonymy of a national (or racial) identity, but also a ‘location’ that enquires as well as a ‘location’ enquired into. Once the self is embodied in a given situation, the body can be seen as a situated self, therefore by making oneself visible, one becomes the agent of one’s own presence in the community. We might argue that the visualization of the identity re-codes the personal semiotics by additions, deletions, and revisions, in what actively constitutes and motivates the operative ‘I.’¹⁵ It

¹³ See Salman Rushdie, *Imaginary Homelands* (London: Granta Books, 1991): 277–278.

¹⁴ See Silvia Albertazzi, *Lo sguardo dell’Altro. Le letterature postcoloniali* (Roma: Carocci 2000): 127–149.

¹⁵ See Edwin Thumboo, “Conditions of Cross-Cultural Perceptions. The Other Looks Back,” in *Embracing the Other. Addressing Xenophobia in the New Literatures of English*, ed. Dunja M. Mohr (Amsterdam, New York: Rodopi, 2008): 11–36, 11–13.

happens that the visual semiotics of one's own identity becomes a form of narration which could be more or less efficient in a fair *intercultural* hearing. Let's take for example Gandhi's outfit during his visit to England in 1931 and in particular to Buckingham Palace, when he decided to wear the loincloth of the poorest Indian farmers. His aspect was eloquent not only of the living conditions of the most disadvantaged Indians, but also of the British imperialist responsibilities towards his country.

We cannot forget that the display of the diasporic identity forces the West to reassess itself as a centre, since any 'alien body' makes also the peculiarities of the 'domestic body' visible thanks to a dialogical hermeneutics guided by *differ-ance*, which is favoured by the physical distance of the migrant from his own country. A variation in the proxemics fosters the complexity of the signified and the awareness of racial individual features. Caroline Nagel and Lynn A. Staeheli maintain:

Bodies are imbued within ideas about difference and sameness. [...] Integration, in this sense, needs to be understood as a visual practice and politics that involves identifying particular visible differences as meaningful and placing these differences in wider narratives of belonging and social membership.¹⁶

With respect to the delicate and long debated theme of integration and assimilation, the impossibility to cancel the physical difference of the foreign body has come to the fore. It might be worthwhile remembering what Henry Hopkinson, Foreign Minister in 1954, addressing the House of Commons, stated:

As the law stands, any British subject from the colony is free to enter this country at any time as long as he can produce satisfactory evidence of his British status. This is not something we want to tamper with lightly. [...] We still take pride in the fact that a man can say *civis Britannicus sum whatever his colour may be* and we take pride in the fact that he wants and can come to the mother country¹⁷ [My italics].

But also what Enoch Powell said in his (in-)famous "The River of Blood"-speech:

To be integrated into a population means to become for all practical purposes indistinguishable from its other members. Now, at all times, *where there are marked physical differ-*

16 Caroline Nagel, Lynn A. Staeheli, "Integration and the Politics of Visibility and Invisibility in Britain: The Case of British Arab Activists," in *New Geographies of Race and Racism*, ed. Claire Dwyer, Caroline Bressey (Farnham: Ashgate Publishing, 2008): 83–94, 86.

17 Ian R.G. Spencer, *British Immigration Policy Since 1939: The Making of Multi-Racial Britain* (London, New York: Routledge, 1997): 23.

*ences, especially of colour, integration is difficult though, over a period, not impossible*¹⁸ [My italics].

In both statements the body becomes the social marker of a cultural construction associated to a value judgment, that is, the superimposition of a striated territory which creates the opportunity for a war. It is a good space for a war-machine, as Deleuze and Guattari would say.

In such a context, politics *legitimately* (even if *unfairly*, sometimes) makes territorial rights prevail, so to say that if ordinary language is flexible with respect to meaning, the language of law tends to avoid ambiguities (inclusion, exclusion, estrangement),¹⁹ as the British laws of migration reveal. In the 1940s the formula “European workers” was much more appreciated than ‘foreign workers’ since migrants from the Commonwealth were regarded as foreigners, being most of them coloured and so less eligible as Britons (British Nationality Act, 1948); in the 1960s the Commonwealth Immigrants Act explicitly talks about “coloured colonial workers” since white migrants were considered more suitable candidates for assimilation; in 1971 the Race Relations Act stated that immigration was forbidden for “black people” enforced by patriotic rhetoric based on traditional values.²⁰ While the narration of one’s identity is culturally and psychologically determined by the observer and the social context, the law insists on its truth.

In postcolonial literature, many characters make experience of the dispossession of their coloured body in favour of the white-body, as the only pure and authentic one, which is followed by the re-territorialization or re-location of the black body in a new social and geographical territory. We can generally recognize different attitudes, which create a dialogical barrier and reveal the ambiguity of any representational system, that is, the provisional truth of any cultural construction. In London in the mid-fifties, the Caribbean protagonist of Naipaul’s *The Mimic Man*, Ralph Singh, says:

In the great city, so three-dimensional, so rooted in its soil, drawing colour from such depths, only the city was real. Those of us who came to it lost some of our solidity; we were trapped into fixed, flat postures. And, in this growing dissociation between ourselves

18 Enoch Powell, “Enoch Powell’s ‘Rivers of Blood’ speech,” (6 November, 2007), *The Telegraph* <<http://www.telegraph.co.uk/comment/3643823/Enoch-Powells-Rivers-of-Blood-speech.html>> (acc. 17 March, 2014).

19 See Cavalla, “Retorica giudiziale, logica e verità,” 33.

20 See Linda McDowell, “On the Significance of Being White: European Migrant Workers in the British Economy in the 1940 s and 2000 s,” in *New Geographies of Race and Racism*, (Farnham: Ashgate Publishing, 2008): 51–66, 51–56.

and the city in which we walked, scores of separate meetings, not linked even by ourselves, who became nothing more than perceivers: everyone reduced, reciprocally, to a succession of such meetings, so that first experience and then the personality divided bewilderingly into compartments. Each person concealed his own darkness.²¹

The figure of the mimic man pervades all postcolonial literature, since it ideologically implies an assimilation to a supposedly more valuable civilization and seducing mores. In this case the intercultural dialogue is denied from the beginning in view of the fact that the diasporic individual aspires to cancel differences: conformity to a situated body rather than confrontation. But it can also happen that the concealment of the body or the denial of its narration might be a matter of life-and-death struggle. In *My Place* by the Australian writer Sally Morgan, the grandmother of the narrator hides her aboriginal origin from her nieces and neighbours because she is scared of government officers and worried about social discrimination. Her attitude comes from the trauma for being victim of abuse in her early years, like any other Australian ‘blackfella’ (see the stolen generation, transportation and the outback movement):

‘Hmmp, you think you know everything, don’t you?’ she replied bitterly. ‘You do not know nothin’, girl’. You don’t know what it is like for people like us. We are like those Jews, we got to look out for ourselves’ [...]

‘In this world there is no justice, people like us’d all be dead and gone now if it was up to this country.’ [...]

‘Nan’, I said carefully. ‘What people are we?’

She was immediately on the defensive. She looked sharply at me with the look of a rabbit sensing danger. ‘You’re tryin’ to trick me again. Aaah, you can’t be trusted. I’m not stupid, you know. I’m not saying nothing. Nothing, do you hear.’²²

Metaphorically, we might state that she denies herself the right to a fair hearing and along with it also her right to be free to show what she is: a ‘blackfella’ not a black Indian migrant, as she lets people think. Albeit indigenous, she can be considered a diasporic subjectivity as a consequence of the peculiar British occupation of Australia. The woman narrates herself in relation to the danger she had experienced for being Aboriginal. Because of the violence she went through, the grandmother accepts to be narrated by the white Australians or, metaphorically speaking, by the counterparty: as Salman Rushdie states in *The Satanic Verses* “They describe us, [...] That’s all. They have the power of de-

21 V.S. Naipaul, *The Mimic Men* (Harmondsworth: Penguin, 1980): 27.

22 Sally Morgan, *My Place* (Fremantle: Fremantle Arts Centre P, 1987): 105.

description, and we succumb to the pictures they construct.”²³ But this kind of description is a monologue, not a dialogical praxis which could promise truth and equity with respect to the concept of *humanitas*. We might observe that a balanced right or duty of description or self-narration is often undermined. Literature shows that a co-existence of a subjectivity which belongs to a tradition and a subjectivity defined by social membership is the result of a mature collaboration between will, action and consciousness. It is worthwhile remembering what in the late sixties Wole Soyinka said about Leopold Senghor’s Négritude Movement: “A tiger does not shout its tigritude, it acts”: representation is the line of action of a subjectivity within the community. As I have tried to point out, the praxis of representation makes the ‘rule’ emerge.

Literature highlights the *nuances* of characters and thematic significances hard to discern in reality: the more the detailed charting of the self is *defined*, the more the perception of the other is *refined*. A careful logical argumentation makes similarities rather than more obvious cultural differences come to the fore so that a narration of co-existence turns into knowledge for the entire readership. The ‘race’ becomes thought-in-action working on hegemonic attitudes, that is stereotypes and mainstream. In a multicultural context, citizenship relies on the *agency* the members of the community exercise in order to be ‘visible,’ that is ‘audible,’ in their statements. As I have already said about *West is West*, visibility and audibility are assumptions of responsibility which imply the right to dignity and freedom.

Similarly, stereotypes might make the confrontation difficult and turn into silence but also violence: from the forum to the battlefield. A work which exemplifies this last approach is the short story and movie by Hanif Kureishi, *My Son the Fanatic*,²⁴ where a group of second-generation Muslims engages in an identitarian struggle mediated by their ‘fashionable’ and highly visible bodies as a form of “resistance to the white men, the dismissal of Christian meekness” as Kureishi himself maintains in his essay “The Rainbow Sign.”²⁵ In *My Son the Fanatic* Kureishi thematizes this process as an initiation to tradition which leads second-generation migrants to fanaticism and fundamentalism. The story highlights the hyper-visualization of the identitarian body: Farid dresses in a white suit with a Muslim cap, lets his beard grow, and speaks Arabic or some Pakistani language. At the beginning, Farid is very well integrated in British society and

²³ Salman Rushdie, *Satanic Verses* (London: Viking, 1988): 178.

²⁴ Hanif Kureishi, *The Black Album / My Son the Fanatic: A Novel and a Short Story* (London: Scribner, 2009).

²⁵ Hanif Kureishi, “The Rainbow Sign,” in *My Beautiful Laundrette and The Rainbow Sign* (London: Faber and Faber, 1986), 78.

his father is proud of it, but then he decides to take up his Muslim culture, so that he becomes an integralist. The boy is actually looking for an ideological, ancestral pureness, which is quite far from his cultural and socio-political surrounding (both British and Pakistani). Religion becomes a transnational identity, and its hyper-visualization leads to the detachment from a territorial identity. Likewise, in *The Black Album* Chad takes on his religious transnational identity to avoid being considered a foreigner. He hides himself behind his Muslim clothes, so as to be the 'Islamic brother' and no longer the 'Paki.' He prefers being considered a threatening harm rather than engaging in dialogue, but in this way he misrepresents himself.

Still Kureishi writes:

I saw the taking up of Islam as an aberration, a desperate fantasy of world-wide black brotherhood; it was a symptom of extreme alienation. It was also an inability to seek a wider political view or cooperation with other oppressed groups – or with the working class as a whole – since alliance with white groups was necessarily out of the question.²⁶

As a matter of facts, Chad/Farid is unable to represent himself, so he plays the newcomer who puts on stage his own conquest of England. Louise Bennett, the Caribbean poet, talks about a "Colonization in Reverse": while you make yourself extensively visible, you are colonizing a cultural as well as a physical space. It is my opinion that the British did the same in India, when they imposed their civilisation through their political and visual behaviour, that is, by keeping Indians at a distance. But we must point out that in *My Son the Fanatic* we are far from those counter-narrations²⁷ Homi Bhabha talks about as the only discourse able to break the ruling ideology. Indeed, Farid deliberately and ostensibly hyper-visualizes himself to create a visual lexicon of difference, in opposition to the phenomenon of mimicry or even to (his previous) social assimilation. In so doing, he opens himself to scrutiny, misrecognition, dissonance: *contra* not *versus*. If in open court the evidence is the result of a dialectical argumentation of opposing positions regulated by the fair play, Farid puts himself *contra* – against – rather than *versus* – towards – opening the way for intolerance and violence since he denies any kind of dialogue and shared knowledge of the cultural *hiatus*. First of all, fair play means respect for the fair hearing, since only the right method provides the right evidence for a legal truth. By accepting the fair play, the parties accept also to hear a counter-evidence in order to attain

²⁶ Kureishi, "The Rainbow Sign," 10.

²⁷ See Homi Bhabha, "DissemiNation. Time, narrative, and the margins of the modern nation," in *Nation and Narration*, ed. Homi Bhabha (London: Routledge, 1998): 291 – 322.

the knowledge required by the court to come to a sentence (not to a verdict!). Farid cannot break out of his own cultural and linguistic constructions, and that is the ideological boundary of his discourse on diaspora. Once again Kureishi writes: “the debasement of one race and the glorification of another in this way inevitably leads to murder.”²⁸

3. Diasporic Identities in the Court of Law

I would consider the relationship between diaspora studies and law with respect to what happens in the Court when a diasporic subjectivity is one of the opposing parties.²⁹ So far we have talked about fair hearing as a metaphor, but it might also be worthwhile considering the role played by the independent judge, who is responsible for an equitable sentence as well as for the implementation of the law in a multicultural case.

Naively, we might believe the court to be the place where truth³⁰ and the values of a democratic society (that is to say *humanitas* and equity) are protected, and with them also the dignity of the migrant once he claims his fundamental right to be heard. But the practice of law can be full of shadows sometimes. What does the principle of ‘equality before the law’ or ‘under the law’ mean in a multicultural context? If we accept the idea that the law can resolve conflicts only when the judicial process is rooted in the history and moral principles of a culture, a ‘multicultural judicial’ might present a cognitive and juridical bewilderment: there is no fair hearing unless the parties and the judge share the same assumptions and acknowledgment of the legal rule.³¹ As James Boyd White maintains, “a statute is not to be read as an order or a command, as a rule, but as a text that is to be harmonized to the extent possible with the entire cultural and political inheritance that is the law,”³² which is comparable to what Celsus meant by *ius est ars boni et aequi* in the second century A.D.³³ During the proceedings this prospective harmony must be put into effect in collaboration

²⁸ Kureishi, “The Rainbow Sign,” 9.

²⁹ In my reading of *Where the Green Ants Dream* and *A Passage to India*, I will consider both Aborigines and Indians as ‘diasporic subjectivities’ at their own home since, although British subjects, they are not utterly perceived as British.

³⁰ See also Michael Lynch, *True to Life. Why Truth Matters* (Cambridge, MA: MIT P, 2005).

³¹ See Rossi, “Contraddittorio processuale e formazione della regola di diritto,” 323.

³² White, *Living Speech, Resisting the Empire of Force*, 95.

³³ See D.1.1.1, <<http://droitromain.upmf-grenoble.fr/Corpus/d-01.htm>> (acc. 19 Dec 2015).

with the judge who is involved in understanding the legal reasoning of the lawyers. Such reasoning is made within the law and it shapes the law.³⁴

A clear example of a cultural clash in a High Court is narrated in the well-known movie *Where the Green Ants Dream* (1984, *Wo die grünen Ameisen träumen*) by Werner Herzog.³⁵ The film, set in Australia, is about an action which Aborigines bring against a mining company claiming that an area the mining company wishes to work on is the place where their green ants ancestors dream, which means a sacred site. At the beginning of the judicial hearing, the Judge states:

I think it is important to say at the outset that this case before this High Court is not merely run by *Aborigines* dispossessed of their Ancestral land by the *white man* finding in the activity of the Ayers Mining Company a *final assault in their beliefs*. It is also a case that traces fundamental, moral questions of great complexity. We must here discover whether the Aboriginal plaintiffs hold *in fact in common law* a land rights title valid before 1788 tutelarities enacts by Governor Phillips, who by hoisting the flag claimed all of this vast continent for the British Crown.³⁶

Firstly, the speaker underlines a cultural difference between the parties, which are identified as ‘the Aborigines’ (the plaintiffs) and ‘the white man’ (the defendant along with the Commonwealth of Australia), but he lets the parties believe a fair hearing is possible even when members of a society have different amounts of wealth, prestige, and power, but even more when some of the citizens are openly perceived as distinct from the other ones and their Government. Secondly, he points out that the economic reasons of the defendant collide with the deepest religious beliefs of the plaintiffs, which means that he is aware of disparate social, religious and moral values in play. The judge is maintaining that *ius* can mediate between religion and economy, and that is possible because the sentence will conform to common law, that is not in the light of Aboriginal law, which is inherently connected to the sacredness of the songlines, but ac-

³⁴ See Rossi, “Contraddittorio processuale e formazione della regola di diritto,” 326.

³⁵ The movie is very politically oriented and therefore caused considerable controversy. It is about the *Milirrpum* decision, of 1971, by the Supreme Court of the Northern Territory. An Aboriginal community living in the Gove peninsula, claimed property rights, based on continuous occupation of a portion of land, in order to prevent mining activities. Justice Blackburn dismissed the claim, holding that, though the Aboriginal community certainly had a very strict system of rules, mostly of a spiritual nature, which might well be called ‘laws,’ the relationship between people, or individuals, and land, governed by such very detailed rules, may not be treated as ‘property,’ in any sense.

³⁶ *Where the Green Ants Dream*, dir. Werner Herzog, 2006 (United States: Infinity Media Holdings LTD: Tango Entertainment, 2006).

ording to a Western idea of property as a power *de facto* over material goods. It is in the customary law that equity must be looked for, but, as we all know, during the colonization of the Australian continent the British have interrupted the symbiotic physical relationship Aboriginal peoples had with the land (that is the songlines). As a consequence, the hearing is represented as culturally defined and the rule is fixed since the beginning: no cultural mediation is foreseen but only the enforcement of a juridical system. At first, experts testify for the defending party by explaining Aboriginal culture, that is to say the Dreamtime and the clan relationships, so to make the reasons of the native people clear to the ‘white’ (or non-Aboriginal) court. But the Solicitor General, who represents Australia and the mining company, wants “proofs and facts” instead of “presumptions and theories.”

As a sort of counterbalance, Aborigines always (self-)translate from their language into English whatever they say – despite the fact that they all know English – with the purpose of asserting their cultural difference and identity in the (theoretically) neutral space of the court.³⁷ In order to establish a good communication among the parties and the judge, a foreigner usually has the right to either an interpreter or a translator, although a cultural hiatus might persist when the two cultures are deeply different from each other. In fact, Herzog highlights how even bodily language is part of the Natives’ idiom, but for the Solicitor General – “Can you translate a gesture in English?” – they are so vague and even disrespectful of the court, that the judge fairly decides that the transcript should include indication of the descriptive gestures of the plaintiffs. Here the judge seems to defend the actors’ rights: in the scene a cultural mediator is missing, but more than once the judge states that he is the warrantor of a fair hearing and impartiality: “this court will decide in this case and in all others before it what is and what is not admissible evidence.” According to what we have previously said about the structure of the fair hearing as the structure of reality, it is evident, on the one hand, that Australian society is not socially equal and, on the other one, that only an “independent” third party can provide justice. But we need to verify if this is really the case.

Even if the proceedings seem to be formally respected, meaning and negotiation are not. A positive disposition of the judge to understand the parties does not always suffice: when an inconsistent debate takes place, the judgment cannot take into consideration the legal reasoning suggested by the parties. More than a question of visibility or audibility, this is a problem of non-recognition. All

37 Traditionally, the songlines are also called the “way of the law” because it is on the dreaming tracks that the law is implemented.

that becomes clear when, in the attempt to reach a legal solution, the Aboriginals accept to prove their bond to the land by bringing in front of the High Court of Australia their *tjuringa*, their law or the sacred text of their tradition, the most important thing for their life and their feelings, as one of the plaintiff says. The actors (naively) seem to be aware of the common law countries' rule *iura aliena non novit curia*, i.e., judge may not rely on his own knowledge of foreign law, but the party who relies on it must give "judicial notice of foreign country law," with experts giving witness of its consistency under examination and cross-examination. Aboriginals fail in their attempt because their cultural roots go unheeded since the Aboriginal law and the Commonwealth Law are incompatible for this Court. The judge is merely able to describe to the court reporter the external appearance of the 'object' shown, without making a narrative synthesis between what he sees and what he hears: "The markings indecipherable. The significance of the markings not plain to this Court."³⁸ The sacred *tjuringa* is not an evidence because trans-jurisdictionally worthless.

The judge dismisses the claim of the plaintiffs since it is in contrast both to the Commonwealth Law, which is the only 'official' law of the nation, and to the culturally and legally compromised concept of property. On the one hand, Herzog tells us the Natives accepted to be judged according to common law, which means that they could not change the rule underway; on the other one, the *tjuringa* is not an evidence of the existence of a property right. In legal truth terms, Aboriginals could not prove their 'possession' of the land according to the Western idea of property as a right, because for them 'possession' refers to the duty a man has to keep the earth and the environment in good repair, as it has been passed down as Law from the Dreamtime. This case is utterly set into a social-cultural context, but it is difficult to say that the sentence is not law-abiding, at least it is neglectful of a cultural dimension: the cultural relations of the Aboriginals with their land is not lawfully relevant for Commonwealth Law.³⁹

Before sentencing, the judge thanks the parties for their civil behaviour: both parties have talked, both parties have been heard, so that the trial could formally come to life with fair play, but the sentence will evaluate more the legal authority than the legal reasoning advanced by the parties. We must admit that in this case Aboriginals are not able to conform their language to the Court's. As Cavalla would say,⁴⁰ they chose the wrong commonplace to claim their rights. It is only the judge who decides the legal rule, even if it might imply a debasement

³⁸ *Where the Green Ants Dream*, dir. Werner Herzog.

³⁹ In 1992, the sentence will be overturned by the *Mabo v Queensland* sentence, where the plaintiff asked to have his 'native title' recognized instead of his 'property right.'

⁴⁰ See Cavalla, "Retorica giudiziaria, logica e verità," 44.

of the legal dialectics. Obviously, this is a very politically oriented movie, but it represents how a fair hearing can be undermined by a different conception of Right. What makes this position hard to accept is the fact that we are not dealing with a cross-border legal relationship, because Aborigines are the native peoples of the Continent.

The creation of a rule might seem neutral, but it is the outcome of a political agency. In order to understand the difficult relationship between law and cultural integration, it might be important to bear in mind the way the British had administered justice throughout the Empire. As for example, in India the *Hindu Gains of Learning Act* of 1930 was meant to help “English-educated males to safeguard their individual earnings out of the realm of the joint-family pool. The act stipulated that all gains of learning (income earned through professional qualifications) would be the exclusive and separated property of a Hindu male even if he had been supported from the funds of the joint-family property. The other members of the joint family could have no access to these earnings. So the benefits of the maintenance from the earnings of joint-family property, upon which a woman could stake a claim by way of a charge on the property,⁴¹ became diminished in this process and women, once abandoned by their husband or in widowhood, would be left with no economic protection. The British did not take into consideration the cultural tradition of the complex Indian family. Here the legislator betrays the ideal of a law as a living speech, since in so doing he imposes silence to a great part of the (female) population.

A literary example of a cultural conflict in a criminal court is the proceedings described by E.M. Forster in *A Passage to India*,⁴² where Dr Aziz is charged with rape against Miss Quested, before Mr Das, the Indian magistrate. Ignoring all the verbal and satirical implications, we must point out that the author calls the attention of the reader to the correct procedure of the hearing, although it is an open intercultural conflict that is taking place. The accused and the victim embody two different cultural and political powers, so that any action during the debate is conceived as culturally compromised. At first the judge denies the British to sit on a platform since, as the pleader Amritrao objects, it would spectacularize their authority with the effect of intimidating the Indian witnesses. Then we are told that the Judge “continued to listen to the evidence, and tried to forget that later on he should have to pronounce a verdict in accordance with it”

41 Flavia Agnes, “Women, Marriage, and the Subordination of Rights,” in *Community, Gender and Violence: Subaltern Lies*, ed. Partha Chatterjee, Pradeep Jeganathan (London: Hurst & Company, 2000): 106–137, 121.

42 E.M. Forster, *A Passage to India* (London: Penguin Books, 1952). Further references in the text, abbreviated as “*PI*”.

(*PI*, 216); besides, he remembers that only evidence emerging from the debate could be considered for a sentence, therefore since neither side called for Mrs Moore neither could quote her as evidence (*PI*, 218); moreover, he expects Mr Mahmoud Ali, one of the Pleaders, to apologize for his intemperance. But he feels hard pressed when Mrs Qusted withdraws the charge and the audience reacts so loudly that he is obliged to take the debate to an end. After Dr Aziz is released, we read: “Mr Das rose, nearly dead with the strain, he had controlled the case, just controlled it. He had shown that an Indian can preside” (*PI*, 224). The British decided Mr Das was the right judge because they thought an Indian magistrate would have unequivocally displayed impartiality, but they were sure of the guilty verdict.

Can a truly independent judge have a racial and national identity? Mr Das is aware of the original prejudice in the charge of a *civis Britannicus* – Dr Aziz, the Indian defendant – but he also knows the trial would continue out of the courtroom in the streets. This is a political and social event. Merely the conformity to the procedure and the truth told by the accuser make the judge pass an impartial judgment against unequal intercultural premises. But for Miss Qusted’s change of mind, the sentence would have been influenced by prejudice. The presence of a judge guarantees a sentence, but only an impartial judge should be able to recognize the cliché and the commonplaces. James Boyd White says that we cannot talk about the language used by lawyer and judge in terms of analytic acuteness, skill in presentation, and intellectual coherence, but in terms of openness to other ways of thinking, responsiveness to questions, honesty in facing difficulties, sensitivity to historical and social context, understanding of the situations and motives of others; awareness of the real costs and dangers of a particular decision, the capacities to make sense of the case as a whole, both standing alone and in connection with other cases.⁴³

5. Conclusion

In the final analysis, the fair hearing, conceived as a right, a method, a principle, but also as a narrative process and an epistemological category, can be a powerful tool for the interpretation of a multi-ethnic society and a ‘diasporic citizenship.’ A diasporic identity challenges the assumption that there is a ‘simple’ direct relationship between ethnicity and territory, since it is a ‘variable’ of that complex unity we call human being. Self representation and a multiplicity of

⁴³ White, *Living Speech, Resisting the Empire of Force*, 210–211.

viewpoints make the *vulnera* of human interactions emerge. The law provides the rules for a civil co-existence, as well as the rules for a 'fair dialogue.' Fair hearing and fair play walk side by side. Whereas fair play promote a *dynamic understanding* of multicultural relationships, a judicial proceeding conducted with fair play should conform to fundamental concepts of justice and equality.

It is my opinion that rather than a multicultural or intercultural logic, nowadays we should concentrate on a deeper knowledge of single cultures. No form of cultural synthesis is allowed unless there is an honest knowledge of the living speech of the Other. Instead of a 'contradictory third space' I wish for a third space emerging from a fair right to hearing.

Peter Schneck

Critical Subjects of Belonging

Diaspora, Indigenism and Human Rights

1. Conceptual Conundrums and Critical Intersectionality

The following remarks are concerned with some conceptual and methodological challenges presented by the divergent conceptualization of the diasporic and the indigenous subject, respectively, both in law and in literature. On the one hand, diaspora and indigenism may largely appear as two rather distinct, even contrasting conceptual categories within the larger field of post-colonial literary and legal studies in general; on the other hand both may also stand for rather distinct interests, approaches and debates from the perspective of the specific theoretical and methodological concerns at the center of law and literature studies. The most fruitful challenge for the latter, I think, presides precisely in the dialectical relation – the conceptual complicity, even – between the diasporic and the indigenous subjects as critical subjects of belonging.

The discussion to follow will thus be based on two basic assumptions. One is that there is an implicit conceptual relation or even mutual dependency which links the diasporic and the indigenous subject as distinct and central notions in legal and literary negotiations of postcolonial personhood and subjectivity. Another assumption is that the challenges brought about by critically addressing this vastly unacknowledged conceptual complicity can help to expand and enrich our readings of literary and legal texts in the contemporary critical study of the complex relation between law, literature and culture.¹

As both diaspora and indigenism are based on contemporary critical and analytical conceptualizations of postcolonial subjects, the problem I want to ad-

¹ To say that the complicity is ‘vastly’ unacknowledged should not imply that it is completely unacknowledged – in fact, there are obvious attempts to address and discuss the complex relation and potential conceptual mutuality of the two terms in current critical work, some of which will consequently be referred to in the course of the argument. However, there is still a strong (and mainly unreflected) resistance against such intersectional approaches or theoretical syntheses which illustrates the lack of acknowledgement still dominant both in diaspora studies and indigenous studies.

dress could be described as the challenge of critical intersectionality, as it were, since the focus of the interdisciplinary perspective I try to project involves both the contrasts and the intersection between two specific theoretical conceptualizations; i.e. the diasporic and indigenous subject, respectively.

On the one hand, critical intersectionality, as I understand it in the following remarks, thus means to acknowledge the vast body of scholarship and critical work which has evolved in connection both to the concept of diaspora and the concept of indigenism over the last decades in all its diverse and divergent aspects, and yet to approach that work in terms of its critical synergies and overlaps, rather than in terms of the implicit or even explicit differences between the central concepts.

On the other hand, the particular interest in and insistence on the inherent critical complicity of contemporary conceptualizations of post-colonial and post-modern subjectivities in law and literature is also driven by the acknowledgement of the crucial ways in which the indigenous and the diasporic subject have evolved as analytical and critical categories to conceptualize collective subjects of human rights both in law and in literature.

This acknowledgment regards the more or less obvious ways in which both conceptualizations have contributed to and, at the same time, have been shaped by, the emergence and increasing significance of the discourse on human rights in global contexts in general, but also more specifically in the interdisciplinary scholarship concerned with the relation between law, literature and culture.²

In other words, the following discussion rests on the basic hypothesis that the critical investment over the past decades in concepts like diaspora and indigenism, despite their avowed differences, converges in principle, if not in practice, on the implicit dialectic which aligns these concepts in relation to a more general and more universal conceptualization of human rights and the human rights subject. Once this convergence is acknowledged, and the implicit dialectic between the two concepts is made explicit, the acknowledgement of this critical intersectionality may help identify and develop more suitable and appropriate ways to connect literary and legal negotiations from different cultural contexts and historical backgrounds. This will also help to formulate and sketch out a more integrated literary history which traverses and transcends national identity

² This includes not only work in legal, literary, and cultural studies per se, but also and more importantly the salient contributions in established fields like legal anthropology or in more recent emergent fields, e.g. cultural legal studies. See *Culture and Rights. Anthropological Perspectives*, ed. Jane K. Cowan, Marie-Bénédicte Dembour, Richard. A. Wilson (New York: Cambridge UP, 2001); Rosemary J. Coombe, "Honing a Critical Cultural Study of Human Rights," *Communication and Critical/Cultural Studies* 7.3 (2010): 230–246.

discourses, their thematic restrictions as well as their formal predilections in favor of a transnational history of literary forms and expressions concerned with the defense and negotiation of rights, especially human rights in reference to national and international literary canons and existing bodies of law.

As a consequence, my remarks will also contain a strong element of speculation, partly out of necessity, but partly for strategic reasons as well. To discuss the potential conceptual complicity between the diasporic and the indigenous subject as they exist as analytical tools and critical abstractions must entail a reflection on their strategic position in the interdisciplinary correlation or rather coupling of legal and literary studies. This seems especially significant in regard to the subject of human rights – a subject which arguably could be said to have emerged as a common project of literature and the law, or more precisely, as a shared projection of the literary and the legal imagination. From this perspective, both the indigenous and the diasporic subject of belonging must be seen as emerging from the gradual conceptual but also disciplinary differentiation or separation of the legal and the literary projection of the human rights subject from the eighteenth century onward. Yet they also already contain a critique of that projection as they specifically address and question the human rights subject as it has been conceived, say, by classical political philosophy, as a subject in crisis and thus as a critical subject. This is obvious, for instance, in the way in which both indigenism and diaspora center on questions of collective rights, cultural identity and the survival of groups in general and, more specifically, on the protection of collective rights as a necessary element for the preservation of collective cultural identity.

2. Challenging Subjectivities

From the point of view of literary and legal studies, the diasporic subject may appear at first sight as the more ‘post’-colonial and more ‘literary’ subject, i.e. ambivalent and hybrid, dynamic and full of ambivalence and potentially conflicting meanings. In contrast, the indigenous subject is likely to appear more authentic and original, somehow more ‘pre’-colonial, possibly even archaic, still linked to a specific geographical point of origin (whether through physical attachment or by narrative association) but potentially also threatened by displacement, dislocation and extinction. To call the indigenous subject a more ‘legal’ subject is of course not meant to deny the obvious literary presence and negotiation of native subjectivities throughout the modern history of human rights, but rather to recognize and emphasize the fact that the attempt to conceive the indigenous subject as a legal subject – more precisely, a collec-

tive legal subject – has resulted in specific legal instruments and human rights declarations, most obviously, the UN Declaration on the Rights of Indigenous Peoples from 2007.³ As Ronald Niezen has argued, the struggle of indigenous peoples all over the world for the recognition of their precarious conditions of existence and survival and their tenuous status as legal subjects and bearer of human rights has resulted from successfully introducing and subsequently establishing indigenism as a “legal category that is now the focus of numerous human rights, health and development initiatives in the UN system.”⁴ In face of the fact that the “use of the term ‘indigenous’ in reference to a distinct human group or community with rights of self-determination” is only “fairly recent,” as Niezen concludes, the ascendancy of the indigenous as a legal category and as a universal term for a collective identity “providing a common collective rubric for a significant number of people from many parts of the world who saw it as descriptive of themselves and their communities” must appear astounding. The 2007 UN Declaration of the Rights of Indigenous Peoples is thus only the last and most recent illustration of the increasing “legal concretization” of the term ‘indigenous’ over the last 50 years.⁵

3 See e.g. James S. Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford UP, 2004); Ronald Niezen, *The Origins of Indigenism. Human Rights and the Politics of Identity* (Berkeley: U of California P, 2003); Benjamin Richardson et al. eds. *Indigenous Peoples and the Law* (Portland: Hart, 2009). As Anaya, among others, has argued, indigeneity must be regarded as an inherent aspect of the emergence and subsequent development of modern international law since the fifteenth century. Moreover, as the example of Francisco de Vitoria’s treatise on the Indians clearly shows, the question of the rights of indigenous subjects as a collective was clearly at the center of this development, the ‘Indians’ were both literary and legal subjects from the beginning of modern international law which precedes, but also preforms the legal and literary imagination of the human rights subject in the eighteenth century.

4 Ronald Niezen, *The Rediscovered Self. Indigenous Identity and Cultural Justice* (Montreal: McGill-Queens UP, 2009), 26.

5 Niezen, *Rediscovered Self*, 26, 27–28. Karen Engle has pointed out the important fact that post-WWII developments in international human rights and international indigenous rights movements have different trajectories and despite their obvious similarities also diverge on central issues such as the status of individual rights versus collective or group rights (especially cultural rights). Since the issue of collective rights almost inevitably turns on the question of (group) identity, there is an implicit and continuing tension between the (individual) subject of human rights and the (collective) subject of indigenous rights. See Karen Engle, “On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights,” *EJIL* 22:1 (2011): 141–163. On the status of indigenous rights as collective human rights, see Cindy Holder, “Self-determination as a Basic Human Right: The Draft UN Declaration on the Rights of Indigenous Peoples,” in *Minorities within Minorities: Equality, Rights and Diversity*, ed. A. Eisenberg, J. Haalev-Spinner (Cambridge: Cambridge UP, 2004): 294–316.

No similar form of ‘legal concretization’ can be observed in regard to the concept of diaspora or the diasporic subject over the last decades. Thus, as Anupam Chander has stated, in contrast to the strong interest in diaspora in the humanities in general and literary studies in particular since the 1990s, and the enormous theoretical potential and critical influence of the concept across a range of other disciplines including sociology and political science, legal scholarship for a long time remained rather reluctant to respond to the concept and the phenomenon of transnational diasporic communities:

The legal literature treats diaspora as a historical or perhaps a cultural phenomenon, but ignores its political and legal relevance. [...] Little attention is paid to the transnational ties of diasporas, especially their concern for their homeland. In fact, the concepts of the homeland and the transnational community built by a diaspora [...] make only rare appearance in legal scholarship.⁶

Writing in 2001, Chander observed: “Where law has faltered, the humanities have forged ahead” by establishing “diaspora as a central focus of inquiry in understanding our time” and investigating in particular “the impact of diasporas on fundamental legal concepts such as immigrant, citizen and nation.”⁷ If we follow Chander then, the humanities may have discovered and pushed the legal potential of the diaspora concept way before the law or legal studies did – yet the legal acknowledgment of the conceptual weight and charge of the concept of diaspora obviously still lags behind the universal acceptance of ‘indigenity’ as a legal and a conceptual category. It might get there eventually, but it does not have the same credentials.

This comparison between the two concepts in regard to their respective purchase in legal and literary discourse seems at first a bit far-fetched and beside the point. The contrast is far from accidental, however. In fact, one could argue that the reason for the very success of ‘indigenism’ as a *legal* category is precisely what makes it difficult to accept and integrate it into the framework of diaspora as a *literary* category. The resistance, furthermore, is mutual: What makes the concept of diaspora essentially unacceptable within the framework of indigenism is its inherent critical antagonism to some of the central aspects that allowed for the translation of the indigenous into a potential legal subjectivity in the first place.

⁶ Anupam Chander, “Diaspora Bonds,” *New York University Law Review* 76 (2001): 1005–1099, 1008–1009.

⁷ Chander, “Diaspora Bonds,” 1009.

In one of the most influential and substantial contributions to the continuing metacritical debates on the conceptual foundations of diaspora studies, James Clifford argued as early as 1994, that the conceptual claims of diaspora discourses as “political struggles to define the local, as distinctive community, in historical contexts of displacements” are at odds with similar claims for distinctive communities brought forward by tribal communities, despite the fact that there may be “significant areas of overlap.” Clifford writes:

[T]he specific cosmopolitanisms articulated by diaspora discourses are in constitutive tension [...] with indigenous, and especially autochthonous, claims. These challenge the hegemony of modern nation-states in a different way. Tribal or ‘Fourth World’ assertions of sovereignty and ‘first nationhood’ do not feature histories of travel and settlement, though these may be part of the indigenous historical experience. They stress continuity of habitation, aboriginality, and often a ‘natural’ connection to the land. [...] Tribal cultures are not diasporas; their sense of rootedness in the land is precisely what diasporic people have lost.⁸

The tension between diasporic and indigenous conceptualizations of legal and literary subjectivities is deeply political; once one realizes the strategic and pragmatic orientation of the essential aspects of the respective notions, the diasporic and the indigenous appear more and more mutually exclusive. For the Canadian scholar of global culture Diana Brydon, for instance, “the concepts of diaspora reach their limits in the claims to indigeneity”⁹ pointing to an unresolved and potentially irreconcilable antagonism between the strategic objectives and political pragmatics of the two concepts. This antagonism is felt most poignantly in cultures and societies that are as much shaped by postcolonial diaspora communities as they are by the resistant remnants of indigenous communities struggling for their rights. As Sophie McCall comments on the Canadian situation:

For the past several years [McCall is writing in 2012; P.Sch.], a growing split has become increasingly evident in critical studies of diasporic and Aboriginal literatures in North America: while most critics of diasporic literatures engage with questions of migrancy in an era of transnational corporatization, the majority of critics of Aboriginal literatures have turned to the language of sovereignty and nationhood in an era of land claims, self-government agreements, and modern days treaties.¹⁰

⁸ James Clifford, “Diasporas,” *Cultural Anthropology* 9:3 (1994): 302–338, 308–309, 310.

⁹ Diana Brydon, “It’s Time for a New Set of Questions,” *Essays on Canadian Writing* 71 (2000): 14–25, 23.

¹⁰ Sophie McCall, “Diaspora and Nation in *Métis* Writing,” in *Cultural Grammars of Nation, Diaspora, and Indigeneity in Canada*, ed. Christine Kim, Sophie McCall, Melina Baum Singer (Waterloo: Wilfried Laurier UP, 2012): 21–41, 21.

As these and other similar remarks make clear, there is an inherent tension between concepts of diaspora and concepts of indigeneity; a tension, in fact, which turns each one of the terms into the conceptual ‘inversion’ or even negation of the other. This becomes rather clear in Clifford’s seminal discussion, when early on he rejects the attempt to define diaspora in its various forms according to a set of inherent characteristics or features, proposing instead to “specify the discursive field diacritically”:

Rather than locating essential features, we might focus on diaspora’s borders, on what it defines itself against. And, we might ask, what articulations of identity are currently being displaced by diaspora claims. It is important to stress that the relational positioning at issue here is not a process of *absolute othering*, but rather of *entangled tension*. Diasporas are caught up with and defined against (1) the norms of nation-states and (2) indigenous, and especially autochthonous, claims by “tribal” people.¹¹

Despite Clifford’s proviso that the correlation between diaspora and indigeneity should best be conceived of as one of ‘entanglement’ and critical ‘tension’ rather than mutual exclusion and opposition, the conceptual antagonism between the terms has played out much more effectively than the critical acknowledgment of their troublesome kinship. For once, the claims of indigenous or “tribal” people (Clifford’s skeptical use of the quotation marks is rather telling here) have been almost completely ignored throughout the increasing ‘globalization’ of diaspora as a critical discourse. Rather tellingly, the series on *Global Diasporas*, published by University College London since 1997, which opened with an eponymous volume *Global Diasporas. An Introduction*, describing and discussing the widespread contemporary global phenomenon of diasporic identities and communities within a broad historical perspective did not include any discussion in reference to the particular historical fate and current situation of indigenous peoples. Despite its obvious interest in the historical analogies and dynamics which link diasporic communities over historical times and across geographical spaces, the volume proceeded as if the history of ancient and modern day diasporas could be discussed without any acknowledgement of the conceptual complicity – to say nothing about the historical links – which have tied and still tie the diasporic to the indigenous. It is as if the two terms have come to designate two forms of postcolonial subjectivities that are separated by their shared historical experience.

This radical opposition has also been emphasized from the perspective of indigenous or native studies, and especially so where the political and concep-

¹¹ Clifford, “Diasporas,” 307; my emphases.

tual claims towards legal and cultural identity have come to be based on forms of alternative and resistant nationalism. The development of *American Indian Literary Nationalism*, for instance, is a clear indicator of the particular critical way in which the relation between the ‘norms of the nation state’ and ‘the claims by tribal people’ are interpreted and transformed into activism by native writer and scholars. In this respect, Tom King’s strong reaction to the category of the post-colonial in his famous 1990 essay “Godzilla vs. Post-Colonial” can be read as an early, but clearly radical opposition against the claims of ‘hybridity’ and ‘diaspora’ in the context of the historical struggle of native literature for an alternative subjectivity which always had sustained (and still sustains) itself in opposition to the abstract norms of the nation state.¹²

All these critical statements, as well as many other similar comparative assessments of diaspora and indigenism, strongly suggest that the two concepts are not simply incompatible because they stand for distinct and basically incomparable conditions and constellations and thus refer to different – legal and literary – subjectivities. More importantly, the indigenous and the diasporic are seen as mutually exclusive in essential ways, i.e. they cancel each other out, as it were, as critical and analytical tools. Commenting on William Safran’s early attempt to establish a more refined definition of diaspora in the introductory programmatic volume of *Diaspora*, Renate Eigenbrod observes that Safran’s “comparative discussion of various diasporas [...] does not include Indigenous communities,” and concludes:

This not surprising as indigeneity and diaspora are, *or should be*, seen as opposite sides of a people’s expressions of belonging and home since ‘Indigenous’ connotes a sense of home as living on the land you were born into, i.e. not displaced from, while notions of diaspora originates in the description of the Jewish dispersion ... and means a scattering, an exile [...].¹³

The inserted conditional ‘should be’ points at the conceptual function of the difference between diaspora and indigeneity, meaning that their respective analytical value comes to depend on their implicit – or in this case explicit – opposition. The particular opposition which Eigenbrod emphasizes is that between geographical dispersal and displacement on the one hand and continuity of ge-

¹² Tom King, “Godzilla vs. Post-Colonial,” in *World Literature Written in English* 30.2 (1990): 10–16.

¹³ Renate Eigenbrod, “Diasporic Longings, (Re) Figurations of Home and Homelessness in Richard Wagamese’s Work,” in *Cultural Grammars of Nation, Diaspora, and Indigeneity in Canada*, ed. Christine Kim, Sophie McCall, Melina Baum Singer (Waterloo: Wilfried Laurier UP, 2012): 135–151, 135–136; my emphases.

neological and historical habitation in one place on the other. Yet this opposition is hardly as obvious as it appears to be on first sight, since it would mean that the second generation of a diasporic community, for instance, may become ‘indigenous’ over time as long as it remains within the same geographical space. On the other hand, it also hints at the possibility that the diasporic identity of a community could be sustained by the historical and genealogical transference or tradition of exile as a form of (be-)longing from one generation to the next. In other words, both concepts refer to a specific relation or better calibration of two forms of identity formation and sustenance – one of which refers to a sense of historical continuity in relation to collective dislocation from one specific place and another one which refers (in ways that are comparable yet also somehow inverted) to the sense or claim of a genealogical continuity in regard to a specific location.

This particular internal tension has also been noticed and commented upon by more recent critics who have attempted to negotiate the conceptual framework of diaspora theories in relation to the framework of neighbouring theories of transnational cultural and social studies. “Classic definitions of diaspora,” Russel King and Anastasia Christou, for instance, have argued in reference to (among others) Clifford and Safran’s earlier attempts to come up with general analytical categories of diaspora, that these very categories “tend to portray a rather static entity” or, more precisely,

a historical process of spreading and scattering to produce a particular ‘ethnic’ population distribution and a ‘state of being’ or ‘diasporic consciousness’ that likewise does not stress further movement, except perhaps in terms of a ‘floating’ liminality and hybridity. [...] This may indeed have been the case in the past, and may still be so in some diasporas for whom *the point of origin* no longer exists or cannot be identified.

It is almost as though the very definition of diaspora assumes that diasporic populations aspire but *cannot* return. [...]

In contrast to these earlier concepts which emphasized diaspora as a state (of homelessness or dislocation) and thus defined the diasporic subject in sharp distinction to the indigenous subject, King and Christou point out that

[i]ncreasingly [...] a combination of the diasporic ethnic (or other) identity and improved means of long-distance travel enables a return to the land of parents and ancestors to become a reality.¹⁴

14 Russell King, Anastasia Christou, “Diaspora, Migration and Transnationalism: Insights from the Study of Second-generation ‘Returnees,’” in *Diaspora and Transnationalism. Concepts, The-*

There is an unsettling quality in these observations, if not already in the developments observed; unsettling precisely in regard to the conceptual and critical distinction and purchase we may invest in and assign to terms like diaspora and belonging, on the one hand, and notions like homeland and indigeneity, on the other. It must also be unsettling, and maybe even more so, in light of the most recent waves of refugees and migrants throughout the world since in obvious and tragic ways the possibilities of long-distance travel and transportation also produce new forms of displacement, dislocation and diasporic communities world-wide.

Thus, if the more recent definitions of diasporic and migrant subjectivities appear to be more flexible and less static and better attuned to the global dynamics of an unprecedented and ever increasing mobility of capital, goods, and people, this conceptual attunement comes with the price of an inevitable tendency towards abstraction. The more encompassing the concept of diaspora becomes as a central analytical tool to tackle the contemporary complexities of migration and dislocation on a global scale, the less it may be able to convey a specific sense of belonging and a distinct form of imaginary attachment to a lost home, which over time have come to be inscribed in, and expressed through, rather specific narratives and histories about the collective experience of dislocation, persecution, and continuing exclusion, resulting in an identity built on collective remembrance rather than individual experience. As a consequence, the figure of the migrant has become the most obvious contemporary representation of postmodern and postcolonial subjectivity. As migrant subjects, contemporary diasporic subjects have become global subjects, and especially in literature, these new diasporic subjects observed by King and Christou have almost acquired the status of ‘default’ subjects in fictional narratives, especially in the field critically claimed as ‘new literatures in English’ since the 1980s. Ironically (or quite consequentially, depending on one’s point of view) this is the same field which has also rather consistently and emphatically made the case for the global reach, but also local and even native character of these new ‘glocal’ literatures which of course are anything but English in a conventional restricted sense of a ‘national’ literature, and rather constitutes an expanding international or transnational literary field of its own.¹⁵

ories and Methods, ed. Reiner Bauböck, Thomas Faist (Amsterdam: Amsterdam UP: 2010): 167–184, 181.

¹⁵ A telling example for the global reach of the ‘default’ subjectivity of the New Literatures in English – including a good description of the German development of the field as well – can be found in Maria Teresa Bindella and Geoffrey V. Davis, ed., *Imagination and Creative Impulse in the New Literatures in English* (Amsterdam: Rodopi, 1993). The point to note is not that there are

In regard to our more immediate concern with the potential critical intersectionality between concepts of diaspora and of indigeneity in the context of law and literature, one could argue that their “entangled tension” (Clifford) has grown into a fully formed conceptual dialectics. The emergence and successful establishment of indigeneity as a globally representative and thus universally acceptable ‘legal’ subjectivity for ‘tribal people’ and their common claims for the protection of their rights, resonates in dialectic fashion with the equally successful development and acceptance of ‘diasporic’ subjectivities as the most dominant and representative *literary* representation of a globally universal experience of dispersion, dislocation and displacement. The issue of (human) rights throws this dialectic into most obvious relief and it is here, in the triangulation of diaspora, indigeneity and human rights that the critical intersectionality, i.e. the entangled tension between the two basic concepts may become most challenging, but also most fruitful and productive.

Thus, for instance, it would appear difficult to discuss a novel like Michael Ondaatje’s *Anil’s Ghost* (2000) and its specific concerns with human rights without referencing the particular way in which the narrative unfolds in various layers and strands by establishing and contrasting two distinct, yet also clearly complementary perspectives on the horrific effects of the civil war in Sri Lanka, especially during the 1990 s. The perspective of the major protagonist Anil is obviously diasporic, i.e. it represents an outside-in perspective that is somewhat alienated from its point of (cultural) origin and appears ‘westernized’ in its initial patterns of observation and assessment. In contrast, the perspective of the second major character, Sarath, clearly presents a more complex and complicated ‘inside-out’ vision which appears more ‘native’, closer and more attuned to the cultural traditions and knowledge of the island and its tormented history. What becomes increasingly clear over the course of the narrative is both the inherent conflictual tension between the two perspectives, but also their implicit interdependence – which also demands a constant negotiation of both viewpoints by the reader. I will return to the novel at the end of my discussion, for now, the specific constellation between the diasporic and the native perspective suggested by Ondaatje’s novel was meant to stress what I called the potential dialectic between the two points of view, especially in regard to the question of the

no distinct histories or narratives to be found here – the collection is full of rather individual and specific literary examples – rather, that all of these stand for a more general and abstract post-colonial subjectivity in reference to which they become more or less exchangeable representatives of a subject that is neither national, nor local, nor native to begin with, but always already dislocated and shifting between these (or any other) conventional positions, and thus characterized exactly by a “floating’ liminality and hybridity” (King, Christiou).

diasporic and the indigenous as critical post-colonial subjectivities. More precisely, the second part of my discussion seeks to address the ways in which the two allegedly oppositional or even mutually exclusive subjectivities can be brought into a form of critical and productive dialogue, both in law and in literature. My examples and arguments for this dialogue will therefore be taken from the context of legal conflict and struggle as well as literary representation and criticism, respectively.

3. (Re-)Claiming Narratives: Resistance and Reconciliation

In order to understand the conceptual complicity between diaspora and indigeneity as critical, i. e. abstract and analytical categories or subject positions, one has to dispense with them as stable definitions of a substantial identity – collective or individual – and look at them rather as strategic, i. e. pragmatic or practical categories in the sense of positions within a struggle (for justice, for restitution) that can be or must be taken for a specific purpose or a project. This reconceptualization appears not only useful but even necessary in light of the increasing breadth the concept could acquire in theoretical debates about transnationalism, postcolonialism and globalization over the last four decades. In his critical assessment of the emergence and subsequent development of the diaspora concept since the 1980s in general, and specifically its radical expansion since the late 1990s, the sociologist Rogers Brubaker observed in 2005 that “the application of the term diaspora to an ever-broadening set of cases: essentially to any and every nameable population category that is to some extent dispersed in space [has stretched] the category [...] to the point of uselessness.”:

If everyone is diasporic, then no one is distinctively so. The term loses its discriminatory power – its ability to pick out phenomena, to make distinctions. The universalization of diaspora, paradoxically, means the disappearance of diaspora.¹⁶

To defy the increasing uselessness of the category, Brubaker proposes to take a look beyond its continuing “dispersion in semantic and conceptual space” in

¹⁶ Rogers Brubaker, “The ‘Diaspora’ Diaspora,” *Ethnic and Racial Studies* 28.1 (2005): 1–19, 3.

order to “identify three core elements that remain to be understood to be constitutive of diaspora.”¹⁷

Even though this radical conceptual extension of the term diaspora does not touch upon the concept of indigenism (whose conceptual reach during the same time was similarly increasing, or better, becoming more concrete as a legal concept), the central criteria which Brubaker subsequently isolates as the universal ‘core elements’ which constitute the notion of diaspora also can be recognized in their bearing on the (ever more) universal definition of indigenism developed in the wake of ILO activism and UN declarations.¹⁸ On the face of it, the three essential constitutive aspects named by Brubaker look rather straightforward. What defines any diasporic identity/subjectivity on the most general or abstract level is a) (spatial) dispersion resulting in a sense of ‘dislocation’ and ‘alienation’ or distance; b) a strong and lasting orientation towards a ‘homeland’, real or imaginary, and c) a form of persistent ‘boundary-maintenance’ as the most indispensable form of claiming and maintaining a sense of a “distinctive community.”¹⁹

Yet, even on this most general and abstract level, these essential terms are rather ambivalent as to how they are more concretely determined. Thus, dispersion also has a “metaphorical” dimension (Brubaker) which suspends its straightforward relation to national space or territory; in similar fashion the homeland orientation can be real but also purely imaginary; and finally even the most indispensable category of boundary-maintenance is threatened by its inherent drift towards hybridity and heterogeneity. Referring to Stuart Hall’s assertion about the inherent hybridity of diasporic experience, Brubaker concludes:

Although boundary-maintenance and the preservation of identity are ordinarily emphasized, a strong counter-current emphasizes hybridity, fluidity, creolization and syncretism. In an oft-quoted remark by Stuart Hall, the ‘diaspora experience [...] is defined, not by essence or purity, but by the recognition of a necessary heterogeneity and diversity; by a conception of ‘identity’ which lives with and through, not despite, difference, by *hybridity*.’ [...] There is thus a tension in the literature between *boundary-maintenance* and *boundary-erosion*.²⁰

17 Brubaker, “Diaspora,” 5.

18 See Claire Charters, “Indigenous Peoples and International Law and Policy” in *Indigenous Peoples and the Law*, ed. B. R. Richardson, S. Imai, K. McNeil (Portland: Hart, 2009): 161–191.

19 Brubaker, “Diaspora,” 5–6.

20 Brubaker, “Diaspora,” 6, 7; emphases in the original. See Stuart Hall, “Cultural Identity and Diaspora,” in *Identity: Community, Culture, Difference*, ed. Jonathan Rutherford (London: Lawrence and Wishart, 1990): 222–237, 235.

Even when reduced to the three core elements of dispersion, homeland orientation and boundary-maintenance, diaspora unfolds as an inherently ambiguous and ambivalent concept. It does so precisely, because it implicitly refers to or even explicitly insists upon essentialist notions of identity – in order to identify a diasporic group or community (which obviously includes the attempt to identify with such a group or community as well), there must be an exclusive set of features (what Brubaker calls “strong definitions”) which can be taken as the sign for a distinctive identity. It is easy to see how such forms of identification, no matter whether they are due to self-ascriptions or rather the result of processes of external stereotyping, actually produce the ‘entity’ they are meant to describe and thus boundary-maintenance can be achieved by identifying a diaspora which can be both a strategy of inclusion and of exclusion.²¹ As Brubaker comments succinctly:

Where boundary maintenance and distinctive identity are emphasized, as they are in most discussions, familiar problems of ‘groupism’ arise. The metaphysics of the nation-state as a bounded territorial community may have been overcome; but the metaphysics of ‘community’ and ‘identity’ remain. Diaspora can be seen as an *alternative* to the essentialization of belonging; but it can also represent a non-territorial *form* of essentialized belonging. Talk of de-territorialization of identity is all well and good; but it still presupposes that there is ‘an identity’ that is reconfigured, stretched in space to cross state boundaries, but on some level fundamentally the same.²²

There are three points here that deserve special notice in the context of our discussion of the conceptual complicity of diaspora and indigeneity. On the one hand, the ostensible conceptual distinction between diasporic and indigenous (group-) identities in terms of spatial displacement and temporal continuity appears increasingly difficult to uphold since spatial displacement is no longer a defining condition for diasporic subjectivities and temporal continuity (maintaining identity as a group) defines both diasporic and indigenous subjectivities. On the other hand, neither homeland orientation nor boundary maintenance are exclusive traits of a diasporic identity; in fact, one could argue that these two ‘core elements’ that are ‘constitutive’ of diaspora arguably are constitutive for indigeneity as well.

²¹ The German debate about ‘Leitkultur’ and ‘Parallelgesellschaften’ is a more recent example for the strategic use of such definitions of boundary-maintenance. In this case, Muslim communities were cast as one large ‘diasporic’ collective which resists cultural assimilation by strong forms of boundary-maintenance – at the same time, however, the specific cultural ‘identity’ of the Muslim diaspora which the political discussion projected (and strongly rejected) was clearly meant to strengthen the boundaries of a German ‘Leitkultur’-identity.

²² Brubaker, “Diaspora,” 11 – 12.

Again, this does certainly not mean that there are no differences at all between diasporic and indigenous identities, but simply that there are no *categorical* differences strong enough to retain the analytical antagonism between the two concepts. Lastly, the collapse of categorical antagonism, i.e. difference in kind, into a case related difference in degree should make us aware that the central motivation of both diasporic and indigenous discourses and the struggles which are expressed and negotiated through these discourses are in strikingly similar ways caused and sustained by the ongoing attempt to resist the external subjection and reformation of one's own collective identity. From this perspective, at least, the discourse on diaspora and indigenism, respectively, are but two expressions of the same resistant impulse. Consequently, one should think of diaspora or indigeneity "not in substantialist terms as bounded entit[ies]," Brubaker argues, "but rather as an idiom, a stance, a claim." As he explains:

We should think of diaspora in the first instance as a category of practice, and only then ask whether, and how, it can fruitfully be used as a category of analysis. As a category of practice, 'diaspora' is used to make claims, to articulate projects, to formulate expectations, to mobilize energies, to appeal to loyalties. It is often a category with a strong normative change. It does not so much *describe* the world as seek to *remake* it.²³

The last point is a most relevant one: Both 'diaspora' and 'indigeneity' are strategic concepts – in the sense that they are used to make claims and realize political and cultural projects. But in doing so they also engage in acts of imaginary revision and projection and thus they are in fact essential concepts for the critical re-imagining of the historical formation of post-colonial identities. In other words, the alternative and resistant histories of diasporic and indigenous *identities* (in literature, in criticism, in theory) may be understood as a response to the historical formation of diasporic and indigenous *subjectivities* (in legal and political discourse).

This becomes more obvious by looking at particular examples where 'diasporic' and 'indigenous' positions come into conflict – specifically in terms of legal claims. In these situations, both the historical and the strategic dimension of the concepts are revealed, as well as their similar potential to negotiate their positions with the help of narratives and imaginary projections.

Thus, for instance, in cases of conflicts over land rights between 'local' and 'diaspora' peoples in Australia (more specifically: Cape York Peninsula), different claims to 'kin' (genealogical continuity) and 'country' (spatial and geographical continuity) come into conflict and have to be negotiated. The possibility of

²³ Brubaker, "Diaspora," 12; emphases in the original.

return to the homeland generates a particularly complex confrontation of diasporic and indigenous identities. Especially when we consider the numerous cases of what Frederick Hoxie has termed “indigenous diasporas.”²⁴ The history of conquest and colonization is also the history of removal, displacement and relocation of indigenous peoples all over the world – who thus must be seen as both indigenous and diasporic. In some areas – especially the area of contested land claims and property litigations – such a double position creates complex constellations, which pitches the diasporic against the indigenous subject, as it were. After the acknowledgment of native title (in land) by Australian common law in 1992 (by the Australian High Court’s famous Mabo decision) and in 1993 by the Native Title Act, aboriginal groups, which had been removed from their original homelands by the government, moved back to reclaim their ancestral land. This return led to legal conflicts with other indigenous groups who had remained in the area. Anthropological research and counsel was offered to support the claims on either side, and to mediate the conflict. What was remarkable about the process was how the concepts of diasporic and indigenous became attached to particular strategic positions and informed the mutual perception and self-perception of the various groups. Whereas the returning groups saw themselves as indigenous – despite the fact that their removal had disrupted their direct relationship to their ancestral ‘country’ and their kin (the two essential conditions which were at the heart of the dispute) – they were clearly regarded as ‘historical’ or ‘diasporic’ by the tribal groups that had stayed in their homelands and who considered themselves as ‘local’ in contrast to the diasporic ‘strangers.’²⁵

Initially, the distinction between the two groups – indigenous and diasporic – had been made on the ground of their distinct knowledge, calling the first ‘traditional’ and the second ‘historical.’ The latter was seen as more removed or less attached to the land, since they were “not in command of such systematic traditional knowledge which associates people with land.”²⁶ This distinction, howev-

24 Frederick E. Hoxie, “Retrieving the Red Continent: Settler Colonialism and the History of American Indians in the US,” *Ethnic and Racial Studies*, 31.3 (2008): 1153–1167, 1162.

25 The terms ‘diasporic’ and ‘local’ are used in the critical scholarly literature and by anthropologists rather than by the Aboriginal peoples themselves, whereas ‘historical’ and ‘stranger’ are used by Aboriginal peoples as well – see Benjamin R. Smith, “‘Local’ and ‘Diaspora’ Connections to Country and Kin in Central Cape York Peninsula,” *Land, Rights, Laws: Issues of Native Title* 2.6 (2000): 1–8, footnote 12.

26 Trigger qtd. in Smith, “Connections,” 2; cf. D. S. Trigger, “Land Rights Legislation in Queensland: The Issue of Historical Association,” in *Aborigines, Land and Land Rights*, ed. N. Peterson, M. Langton (Canberra: Australian Institute of Aboriginal Studies, 1983).

er, became contested both by diasporic groups and by some resident traditional owners of the land in question. Nevertheless, the distinction between local connection and diasporic connection remains to be based on specific knowledge about particular places: “this body of knowledge is seen as inseparable from a direct geographical understanding of place – to know about a ‘*Story (Dreaming) Place*’ means nothing if you don’t know the place itself. Diaspora people’s knowledge tends to be more limited and abstracted from any ‘on the ground’ knowledge of place.”²⁷ Moreover, the perspective of diaspora people in these cases both on the land and on the relation to kin, appeared to be much more tribal than that of local peoples – which is to say, that the diasporic perspective appeared to be more ‘indigenous’ in terms of land claims than the understanding of those claims from a local perspective. It thus made it problematic to “enforce a homogenous tribal model at odds with local perspectives.”²⁸

The only way to resolve these legal disputes through mediation was by way of sharing and exchanging information about kin relationship and genealogical lineages between the two groups (sometimes with the help of anthropologists). This process, as anthropologist Benjamin Smith observed, “tended to rely on the recall of diaspora forebears, assisted by access to earlier anthropological data, by older local people.”²⁹ By connecting the ‘stories’ and the memories of diaspora and indigenous peoples, it became “possible for local people to recognize diaspora people as kin,” as Smith concludes:

Local people – especially where they are treated with a degree of respect mirroring their expectations – will begin to reveal knowledge about kin relation and country, including more specific local-level distinctions, into which the diaspora people begin to be figured. As this process occurs, diaspora people begin to revise their understanding of kin relationship and relationships between people and country. Over time, the relatively distinct groups, and their understandings, reconfigure each other. [...] Diaspora is made local, and local is extended to encompass the wider group of descendants of common forebears within a continuing local descent group and a developing body of Aboriginal customary knowledge, law and practice.³⁰

The Queensland example shows how concepts of diaspora and indigeneity may be mutually negotiated and reconfigured while being contested in a legal conflict about land claims – which basically presents a conflict over claims about the nature and degree of belonging. This negotiation of belonging, I would argue, is

²⁷ Smith, “Connections,” 2.

²⁸ Smith, “Connections,” 4.

²⁹ Smith, “Connections,” 7.

³⁰ Smith, “Connections,” 7–8.

informed by and, at the same time, engages both legal and literary formations of subjectivity: On the one hand, it was through the sharing and the exchange of local and historical knowledge in the form of stories and narratives about country and kin that the legal questions could be managed and eventually be settled. This process of negotiation also had an impact on the anthropological re-conceptualization of the indigenous and the diasporic perspective, respectively.

On the other hand, the production and exchange of narratives in such cases has been and remains clearly motivated and also shaped by certain expectations in relation to the legal acknowledgment of the claims' eligibility. Without the revised legal framework in regard to native title established since the early 1990s by Australian courts and the legislative, these particular narratives and stories would not have been composed and discussed between the Aboriginal groups who also presented legal parties.

The particular situation created by the revision of legal concepts and new statutes and acts also has some important bearings on the conceptual relation between diasporic and indigenous subjectivities, most obviously in regard to their complex mutuality, but also in regard to the similar way in which both concepts implicitly rely on and result from the same historico-political formation, the modern nation state and the colonial expansion of state sovereignty.

It is therefore no accident that in a very different context, Native American historian Frederick Hoxie has demanded a reconceptualization of tribal and indigenous perspectives with explicit references to the revisionary scholarship of Australian and New Zealand anthropologists on the one hand, and a diaspora studies framework on the other hand. Pointing to Paul Gilroy's seminal *The Black Atlantic*, Hoxie argues that the history of America as the "Red Continent" (his term) presents a

landscape of struggle and 'restless discontinuity' where the encounters between native and settler colonial society occurred. [...] Just as the African diaspora altered the cultures that remained in Africa while it scattered people across the western hemisphere and Europe, the expansion of settler states on the Red Continent changed the lives of Indians who remained in their homelands while triggering internal diasporas of indigenous peoples.³¹

Even though these "indigenous diasporas," as Hoxie readily acknowledges, "differed in many ways from the process Gilroy describes in the Atlantic," all diasporas nevertheless share "the common elements of widespread disruption, unanti-

³¹ Hoxie, "Red Continent," 1161–1162.

cupated inventions, and timing. Both processes occurred as ‘modernity’ took hold of the globe.”³²

Within Hoxie’s historical perspective, the indigenous subject cannot be divorced from the diasporic subject, since both positions are fundamentally significant for the experience of Native Americans during settler colonialism, and even until today. Many Native American communities who were forced to migrate or forcefully removed from their original homelands (sometimes more than once across the continent), found new forms of attachment to the land they live on, thus renewing and reviving forms of attachment which are characteristic for indigenous connections to both ‘country’ and ‘kin.’ At the same time, memories of removal and dislocation still figure as central elements in the narratives of most tribal histories; the ‘indigenous diasporas’ in the Americas, as well as elsewhere, thus have produced a most essential modern hybrid identity shaped both by the historical experience of removal and diaspora and by the continuity of resistant indigenous memories.³³

4. Remembering Identity, Identifying Memory

Instead of insisting on the conceptual tension and antagonism between diaspora and indigeneity, these examples suggest that the two concepts may be better conceived of as strategic positions (or positionings) that are moreover contingent on specific historical situations. Thus they are less useful as stable definitions of substantial entities but should rather be understood as ‘categories of practice’ used to “make claims, to articulate projects, to formulate expectations, to mobilize energies, to appeal to loyalties.”³⁴ More importantly, the acknowledgement of the inherent critical complicity or ‘intersectionality’ of the two concepts also challenges the interdisciplinary (critical and cultural) study of law, literature and human rights to become more attentive to the specific historical conditions and developments which have informed (and still inform) the production of diasporic and indigenous subjectivities to begin with. In other words, acknowledging the conceptual complicity between diaspora and indigeneity opens new venues for critically exploring the historical connection, convergence and com-

³² Hoxie, “Red Continent,” 1162.

³³ Sophie McCall emphasizes the convergence even more: “Diasporic and Indigenous communities share common experiences of loss, uprooting, and adaptation; they emphasize in a comparable manner the importance of maintaining the homeland and dreaming of one day ‘returning’ to the homeland.” Sophie McCall, “Diaspora and Nation,” 27.

³⁴ Brubaker, “Diaspora,” 12.

plementarity of diasporic and indigenous practices of subject formation, as well as the practices of resistance to this formation: The diasporic and the indigenous subject are thus revealed as two closely related, even mutually dependent forms of post-colonial subjectivities who share the nation state as a central point of reference, as Christine Kim and Sophie McCall argue:

[...] theories of diaspora and indigeneity, while often critical of the discourses associated with modern, industrialized nation-states, silently re[ly] on nation-based imaginings of collectivities. [...] [D]iaspora and nation are interdependent and mutually constituting, just as indigeneity and nation are reciprocally contingent and responsive.³⁵

Nowhere are these interdependencies and reciprocities more articulate today and also more complex than in the contemporary negotiations and tensions between national and international (civil and human) rights regimes and the subjectivities they project and proclaim. In a time when human rights “have become a major strategy for resisting public and private domination and exploitation” and are seen as “central to a long history of rebellion, resistance, new articulations of injustice, and new understandings of freedom,”³⁶ the diasporic subject, as well as its inverse mirror image, the indigenous subject, have become central concepts to critically question and undermine the nation-state’s conceptual monopoly in regard to citizenship, legal personhood and the subject of (human and civil) rights.

Throughout the history of modern rights, literature has continuously reacted and responded most emphatically and poignantly to the alleged privilege of the state to define and project legal and political subjectivities in terms of their eligibility within the framework of civil society. My concluding remarks are thus dedicated to literature, more specifically to an understanding of literature within the larger context of human rights, cultural identity and the relation between diaspora and indigenism as competing concepts of post-colonial subjectivities.

Most readers will understand Michael Ondaatje’s novel *Anil’s Ghost* (2000) as a diasporic text in more than one sense – on the one hand obviously because of its author’s biography, but on the other also because of the particular position of the novel’s central protagonist as a Sri Lanka immigrant to America, a position which is described early on in the narrative as a confusing mixture of familiarity and estrangement at Anil’s first return to her ‘homeland’:

35 Christine Kim, Sophie McCall, “Introduction,” in *Cultural Grammars of Nation, Diaspora, and Indigeneity in Canada*, ed. Christine Kim, Sophie McCall, Melina Baum Singer (Waterloo: Wilfried Laurier UP, 2012): 1–18, 2.

36 Coombe, “Honing,” 233–234.

The island no longer held her by her past [...] she had now lived abroad long enough to interpret Sri Lanka with a long-distance gaze. But here it was a more complicated world morally. The streets were still streets, the citizens remained citizens. They shopped, changed jobs, laughed. Yet the darkest Greek tragedies were innocent compared with what was happening here. Heads on stakes. Skeletons dug out of a cocoa pit in Matale. At university Anil had translated lines from Archilocus – *In the hospitality of war we left them their dead to remember us by*. But here there was no such gesture to the families of the dead, not even the information of who the enemy was.³⁷

The image of a civil society where all civility has fallen prey to the war – even the civility of war – is carefully constructed right at the beginning of the novel and mediated through the point of view of Anil, who works as a forensic for the UN to investigate human rights violations which had been perpetrated by the various fighting parties during the civil war in Sri Lanka – including the State itself. The initial observation of the shopping, laughing citizens which contrasts sharply with Anil’s knowledge about the atrocities and inhumanities of the civil war creates a cognitive dissonance which increases Anil’s sense of (inner) distance. The image also stands at the beginning of the two major contrasting and conflicting movements or tendencies which dominate the various strands of the narrative. One trajectory clearly moves towards dissolution and absolute destruction and it ends in another image at the closing of the novel with the assassination of the head of state, President Katugala, by a suicide bomber, in a scene which realizes the devastating potential already alluded to in Anil’s first impressions.³⁸ Here the public sphere of the civil state turns into the murderous space where a citizen kills another citizen by killing himself, a violent symbol of the utter self-destruction of civil society and its ethos of civility:

R– [the assassin] had been waiting for this day, when he was sure he would be able to get Katulaga on the street [...] there was no way R– could have entered the presidential grounds [so he] had to approach him in a public place, with all the paraphernalia of devastation sewn onto himself. He was not just the weapon but the aimer of it. The bomb would destroy whoever he was facing. His own eyes and frame were the cross-hairs. [...] At four p.m. on National Heroes Day, more than fifty people were killed instantly, including the president. The cutting action of the explosion shredded Kataluga into pieces. [...] The body, what remained of it, was not found for a long time. (AG 290 – 291, 292)

³⁷ Michael Ondaatje, *Anil’s Ghost* (London: Vintage: [2000] 2011): 7, emphasis in the original. Further references to this novel as “AG”.

³⁸ The name of the president is fictional, the scene refers to the actual assassination of then President Premadasa in 1993, cf. <http://www.nytimes.com/1993/05/02/world/suicide-bomb-er-kills-president-of-sri-lanka.html>; (acc. 4 Jan 2016).

The force of this devastating trajectory is historical in most fundamental ways and the scene, while alluding to a particular horrific event in the long history of civil war violence in Sri Lanka, nevertheless unfolds an almost uncanny familiarity for contemporary readers, less as a historical fiction than as a present day reality, a potential violence which afflicts the modern state, challenging its sovereignty, but most disturbingly, potentially eroding the foundations of the ethos of civility.

The most important and poignant aspect for Ondaatje, however, is that this destructive violence of history – the violence of the process of modernity – obliterates and eradicates all other forms of human history by making humans disappear. The complete disappearance of humans, the radical effacement of their identity, their memory, their culture and all other traces of their existence is the central concern of the novel, and thus the second trajectory of the narrative is marked by an ethos of reconstruction, an ongoing act of resistance to annihilation, a consistent effort to retrieve and revive an identity that is not merely historical but aligned with lived memory. This effort obviously drives Anil's and her collaborators' attempts to recover the identity of the unknown victim, called 'Sailor' whose skeleton they saved from a burial ground. With the help of an artist, Ananda, they attempt to reconstruct Sailor's face in a process of 'head composition', carefully reconstructing the layers of facial muscles to bring out the resemblance that would allow living people to recognize and remember the unknown dead. Even though this forensic reconstruction does not bring about the desired identification – "it was unlikely that identification would occur. There had been so many disappearances" – the figure of Ananda, who calls himself an artificer, is at the center of the closing scene of the novel which must be read as a deliberate contrast to the preceding assassination scene, indeed the two passages form the two alternative endings of the narrative. The last part is titled "Distance" which resonates with and at the same time revises Anil's "long-distance gaze" at the beginning of the novel. The closing act of reconstruction takes place in a sacred space, close to the famous Buduruvagala rock statues, a "region of desperate farming" where the "stone bodies rising out of the earth [...] often were the only human aspect a farmer would witness in his landscape during the day. They brought permanence to brief lives." (AG 295) The sanctity and the permanence of the site, however, have been violated and disturbed, the Buddha figure destroyed: "this was the place where trucks came to burn and hide victims who had been picked up. These were the fields where Buddhism and its values met the harsh political events of the twentieth century." (AG 296)

Ananda's reconstructive task is two-fold; he has been asked "to attempt a reconstruction of the [original] Buddha statue," but he also has been asked to perform an ancient ritual of dedicating a new statue which is being built simul-

taneously “to replace the destroyed god.” This ritual, known as the Nêtra Mangala ceremony, is meant to conclude and at the same time to transform the statue into the figure of the Buddha by painting the god’s eyes. This is being done by looking into a mirror at the face of the statue while painting the eyes: “The boy held up the metal mirror so that it reflected the blank stare of the statue. The eyes unformed, unable to see. And until he had eyes – always the last thing painted or sculpted – he was no Buddha.” (AG 302) Both acts of reconstruction are crucial, they do not compete with but rather complete each other. The reconstruction of the original statue which Ananda finally achieves, recovers the past of a culture in form of a face which reflects and documents the violence of human war and conflict in its scarred and battered look: “Up close the face looked quilted. They had planned to homogenize the stone [...] but [...] Ananda decided to leave it as it was. He worked instead on the composure and the qualities of the face. [...] Now sunlight hit the seams of its face, as if it were sewn roughly together. He wouldn’t hide that [...] torn look in its great acceptance.” (AG 298, 300)

The final eye ceremony in comparison is in a sense also about the recovery of an identity, albeit through the re-enactment of a ritual and the renewal of faith which for Ananda includes the memory of his abducted disappeared wife, another victim of the civil war. While painting the eye of the statue the artificer regains for a moment a fuller, more integrated form of vision:

And now with human sight he was seeing all the fibres of natural history around him. He could witness the smallest approach of a bird every flick of its wing. [...] Ananda briefly saw this angle of the world. There was a seduction for him there. The eyes he had cut with his father’s chisel showed him this. The birds dove towards gaps within the trees! [...] The tiniest of hearts in them beating exhausted and fast, the way Sirissa had died in the story he invented for her in the vacuum of her disappearance. A small brave heart. In the heights she loved and the dark she feared.

He felt the boy’s concerned hand on his. This sweet touch from the world. (AG 303)

It is significant to note that the novel starts out with a diasporic perspective but ends with a form of vision that is deeply informed by a traditional ‘indigenous’ ritual practice and the re-enactment of faith. These two forms do not in any way cancel each other out; Anil’s and Ananda’s attempts in reconstructing identity are at the same time indebted to a historical forensics as they are informed by acts of faith in the transformative potential of justice.

Florian Kläger

Theorizing Reflexivity in Literature, Law and Diaspora

Phenomena of reflexivity are encountered across the three domains of law, literature, and diaspora, and they have been addressed by literary studies, legal studies and diaspora studies in various ways. This chapter proposes to examine the extent to which these discipline-specific treatments are commensurable, and how insight from each field might be usefully applied to the other two and to an intersection of the three. Asking the reader's forbearance for a focus on literature, my primary field of expertise, I begin with three theses on reflexivity in the respective domains, taking 'reflexivity' in its literal sense of something being directed upon itself to refer to the relation that "always holds between a term and itself."¹

In literary studies, (self-)reflexivity – variously dubbed 'metafiction,' 'auto-criticism,' 'immanent poetics,' 'romantic irony,' 'surfiction,' etc. – has been identified as a hallmark of literary writing at large, and an essential constituent of the novel's generic identity in particular. The novel is less of a genre than a meta-genre, it "crystallizes genreness" by "self-consciously incorporating, as part of its own form, the problem of its own categorial status": "What makes the novel a different sort of genre may therefore be not in its 'nature' but in its tendency to reflect on its nature – which of course alters its nature in the process."² Clearly, this characteristic recursiveness makes it difficult to define the form further. *Reflexivity is central to an understanding of art, literature, and specifically to novelistic genre identity.*

Just as the novel genre resists 'external' definition by literary scholars, critics and readers, so the law cannot, by some accounts, ultimately ground its identity on an Archimedean point outside itself: "Only the law itself can say what law is," and the fundamental code's binary distinction between 'legal' and 'illegal' cannot itself be legitimized by the system. Just as any new novel adds to the corpus of existing novels, thus re-defining it, "law-related communications" also "have, as operations of the legal system, always a double function as factors for produc-

1 "Reflexive, adj. and n." (A.7) (2009), *OED Online* <<http://www.oed.com/view/Entry/160948?redirectedFrom=reflexive#eid>> (acc. 1 July, 2015).

2 Michael McKeon, ed., "Genre Theory," in *Theory of the Novel. A Historical Approach* (Baltimore: Johns Hopkins UP, 2000): 4.

tion and as preservers of structure.”³ *The law’s identity as a social system is predicated on its self-reference and self-description.*

Diasporic identity as the object of diaspora studies, finally, is similarly presented by scholars as reflexively constituted: the term ‘diaspora’ describes a phenomenon by which a community is made aware, by itself or others, in a manner that is productive of its group identity, of its difference from other collectives in the ‘diaspora space.’⁴ Thus, Kim Butler asserts that in order for a diaspora to constitute itself, “there must be self-awareness of the group’s identity. Diasporan communities are *consciously* part of an ethnonational group; this consciousness binds the dispersed peoples not only to the homeland but to each other as well.”⁵ *Diasporic identity is the product of reflexive community formation processes.*

These observations are not readily compatible. Among the difficulties concerning their relationship are differences in the scholarly terminology (‘metafiction’ et al. in the novel; ‘self-reference’/‘self-description’/‘autopoiesis’ in law; ‘diaspora consciousness’ in diaspora); the categorial commensurability of the domains (novel as genre; law as social system; diaspora as process of collective identification); and the heuristic value of cross-domain correlations of phenomena of reflexivity. I shall address these issues in their turn, and conclude by considering how, in all three domains, concepts of reflexivity have helped scholars to think about the identity and nature of their subject as a cultural practice.

1. Reflexivity, Mind, and Identity: The Examined Life and Art

By way of approaching the subject, it bears consideration why phenomena of self-reference and (self-)reflexivity should be relevant in the first place. One reason is that indeed, they appear often and in sometimes surprising places. Another is that when and where they appear, they tend to cause no end of trouble. We are aware that Kurt Gödel brought down the elaborate edifice of Russell and Whitehead’s *Principia Mathematica* by showing that their formal system could not accommodate statements about itself and maintain internal consistency, and we

³ Niklas Luhmann, *Law as a Social System* [1993], trans. Klaus D. Ziegert (Oxford: Oxford UP, 2004): 84–85, see also 429–430.

⁴ Cp. Khachig Tölölyan, “The Contemporary Discourse of Diaspora Studies,” *Comparative Studies of South Asia, Africa and the Middle East* 27.3 (2007): 647–655, 649–650.

⁵ Kim D. Butler, “Defining Diaspora, Refining a Discourse,” *Diaspora. A Journal of Transnational Studies* 10.2 (2001): 189–219, 192.

are familiar also with the sense of vertigo induced by M.C. Escher's *Drawing Hands*. In relating phenomena of reflexivity to the mechanisms and structure of human cognition and of products of culture, Douglas Hofstadter has offered highly stimulating and complex observations in his 1979 Pulitzer Prize winning book *Gödel, Escher, Bach. An Eternal Golden Braid* and the more recently published re-statement of its main argument, *I Am a Strange Loop*. Hofstadter presents self-reflexivity of the Gödelian type as a "loop" that allows a system "to 'perceive itself', to talk about itself, to become 'self-aware'," and he argues that "in a sense it would not be going too far to say that by virtue of having such a loop, a formal system *acquires a self*."⁶ He likens these loops to an abstract Möbius strip "in which, in the series of stages that constitute the cycling-around, there is a shift from one level of abstraction (or structure) to another, which feels like an upwards movement in a hierarchy, and yet somehow the successive 'upward' shifts turn out to give rise to a closed cycle."⁷ Such recursion is a crucial aspect of the way our mind works:

Consciousness [...] is an inevitable emergent consequence of the fact that the system has a sufficiently sophisticated repertoire of categories. Like Gödel's strange loop, which arises *automatically* in any sufficiently powerful formal system of number theory, the strange loop of selfhood will automatically arise in any sufficiently sophisticated repertoire of categories, and once you've got self, you've got consciousness.⁸

The idea that complexity produces self-sustaining systems that will also become aware of themselves is developed by Hofstadter at great length, and there is no space to discuss this nexus here in detail. Ernst Cassirer notes that in Western cultural history, self-knowledge is widely acknowledged as "the highest aim of philosophical inquiry" and that man, indeed, "may be described and defined only in terms of his consciousness." From Plato onwards, the fundamental anthropological question, "What is man?", has been answered: "Man is declared to be that creature who is constantly in search of himself – a creature who in every moment of his existence must examine and scrutinize the conditions of his existence. In this scrutiny, in this critical attitude toward human life, consists the real value of human life."⁹

⁶ Douglas R. Hofstadter, *Gödel, Escher, Bach. An Eternal Golden Braid* [1979] (New York: Vintage Books, 1999): 3.

⁷ Douglas R. Hofstadter, *I Am a Strange Loop* (New York: Basic Books, 2007): 101–102.

⁸ Hofstadter, *I Am a Strange Loop*, 325.

⁹ Ernst Cassirer, *An Essay on Man. An Introduction to a Philosophy of Human Culture* [1944] (New Haven, CT: Yale UP, 1992): 5–6.

It is the ubiquity and the apparent centrality of reflexivity for human nature that makes it a worthwhile subject of inquiry on principle. There is, however, a more specific relevance of the subject to the topic of this volume. In aesthetics, reflexivity has proven a very stimulating subject of scholarly inquiry. From the most general and fundamental perspective, reflexivity is a feature of any work of art. The idea behind this claim is that art must signal its own ‘artificiality’ in order to facilitate its actualization as art in the first place. If it fails to do so, it is treated as ‘not-art’ and therefore not actualized – in a case such as Beuys’s famous *Fettecke*, with the direst consequences. Art is seen as self-reflexive in that it reflects the circumstances of its own production (in terms of the contingent historical context as well as those authorial intentions that went into it), although this mode of reflection notoriously involves significant ambiguity and requires the hermeneutic engagement with the artifact. To treat an object as art is to consider it as a medium in a communicative exchange between ‘proffered meaning’ and ‘meaning-seeking’; and the precarious outcome of this exchange is predicated on the reflexive entry into this art-specific mode of meaning-seeking.¹⁰ A different kind of self-reflexivity is also involved when works of art signal their relation to other existing works of art, thus commenting on their status as part of an existing ‘system’ or tradition of art, either approvingly or critically. Genres, for instance, are commonly conceived of as means for the classification of works of art that signal certain communicative properties associated with their specific form, and in the case of literature, they delineate a given text as ‘literary,’ as Derrida argues in “The Law of Genre.”¹¹ Finally (although the list could be much extended), art is also sometimes said to *cause* self-reflexion on the part of its recipient and will tend to further self-knowledge. As Richard Posner puts it, “[i]f you don’t already sense that love is the most important thing in the world, you’re not likely to be persuaded that it is by reading Donne’s love

10 Reinold Schmücker, “Ist Kunst reflexiv?,” in *Die Sinnlichkeit der Künste. Beiträge zur ästhetischen Reflexivität*, ed. Georg W. Bertram, Daniel Martin Feige, Frank Ruda (Zurich: Diaphanes, 2012): 179–187, 181.

11 See Stefan Schenk-Haupt, “Die Einteilung der literarischen Gattungen und die Problematik der Lyrik,” in *Gattungstheorie und Gattungsgeschichte*, ed. Marion Gymnich, Birgit Neumann, Ansgar Nünning (Trier: WVT, 2007): 117–136, 133. Derrida says that genre marks a text, and by reflexively ‘re-marking’ on its own genre-markedness, the text signals its nature as ‘literature’: “this re-mark – ever possible for every text, for every corpus of traces – is absolutely necessary for and constitutive of what we call art, poetry, or literature.” See Jacques Derrida, “The Law of Genre,” *Critical Inquiry* 7.1 (1980): 55–81, 64–65.

poems, or Stendhal, or Galsworthy. But reading them may make you realize that this is what you think, and so may serve to clarify yourself to yourself.”¹²

2. Reflexivity in Literature

The kinds of reflexivity that appear specific to literature have been extensively theorized. The most obvious case is ‘intra-compositional’ instances,¹³ that is, simple formal devices such as rhyme or meter, which use self-reference to highlight the ‘poetic’ function that language assumes in their context and thus, to prompt reflexion about their own status as verbally constituted works of art.¹⁴ This movement from self-reference to self-reflexion applies to other forms of self-reference as well – as readers are alerted to a text doing something ‘poetic’ (in whatever way), they will self-consciously begin to treat the text ‘as literature,’ engaging with it in a manner that differentiates literary texts from newspapers, grocery lists, and instruction manuals. The same is true, for example, of ‘extra-compositional’ references to traditional literary genres, characters or motifs, which are often subsumed under the rubric of ‘intertextuality’ but have the same effect, again highlighting that the given text partakes of those features and functions – whatever they are – that characterize the system of literature at the specific time of its production, thus reflecting about its ontological status in the sense described by Derrida.¹⁵ As with art in general, recipients must ‘actualize’ the work of literature as they read it, relate it to those extra-compositional frames that feed the implicit levels of meaning, and integrate their realization of meta-literary references into their actualization.¹⁶

12 Richard A. Posner, “Against Ethical Criticism,” *Philosophy and Literature* 21.1 (1997): 1–27, 20.

13 The terminology is Werner Wolf’s, see Werner Wolf, “Metareference across Media. The Concept, its Transmedial Potentials and Problems, Main Forms and Functions,” in *Metareference Across Media. Theory and Case Studies Dedicated to Walter Bernhart on the Occasion of his Retirement*, ed. Werner Wolf, Katharina Bantleon, Jeff Thoss (Amsterdam [et al.]: Rodopi, 2009): 1–85, 20. Wolf uses the term to describe a certain kind of ‘meta-reference,’ a concept he distinguishes from ‘mere’ self-reference.

14 Roman Jakobson, “Closing Statement: Linguistics and Poetics,” in *Style in Language*, ed. Thomas A. Sebeok (New York, London: John Wiley & Sons; Technology P of the MIT, 1960): 350–377.

15 Clearly, this presupposes the existence of an institutionalised system of literature.

16 On these and further dimensions of reflexivity, see Georg W. Bertram, “Selbstbezüglichkeit und Reflexion in und durch Literatur,” in *Der Begriff der Literatur. Transdisziplinäre Perspektiven*, ed. Alexander Löck, Jan Urbich (Berlin, New York: De Gruyter, 2010): 389–408.

Peter Lamarque says little about reflexivity explicitly, but nevertheless seems to base his very definition of ‘literature’ on it.¹⁷ By his understanding, literature comes into being only in the double embeddedness of a given work in the context of its origin that marks the work’s identity on the one hand, and its additional situation vis-à-vis conventional frameworks establishing what ‘literature’ at large actually is:

There is the *historical* embeddedness which finds an essential connection between the identity of a work and its origins in a historical act of creation. And there is the additional *institutional* embeddedness according to which a work only counts as literature within a cultural practice of intention, expectation, and reception. In fact these are closely intertwined. The historical context of origin determines the particular identity of a work – that which makes this work distinct from any other – and the institutional context determines the work’s identity as of one kind rather than another. No work would be a unique work of literature if it were not grounded in both kinds of context.¹⁸

Literature, then, emerges from the consciously realized reference to its own specific origins and to the structures that determine its place in the literary system. Since Lamarque talks about identity, one might say that he attends to the combination of the work’s individual features and those of the ‘collective’ of which it forms a part. Both of these aspects of identity are reflected upon in the actualization of literature. Note the nexus between specimen (or token) and kind (or type), as well as the curious nature of literary production between unique invention and institutional determination. Concerning the relationship between the two, I want to emphasize that individual works of literature are only actualized as such within their institutional frame, but through their actualization, they also perpetuate that frame, if only in transformation. Not even *Ulysses*, touted as ‘the novel to end all novels,’ succeeded in killing off its genre, nor did the anti-novels of the mid-twentieth century or indeed, *Don Quixote*.

In his definition, Lamarque does not account for Jakobson’s ‘poetic function,’ by which the code draws attention to its own functioning. He ignores it for good reasons – not all texts we consider to be literature seem to abide by Pope’s rule of “good expression,” let alone expression that self-reflexively draws attention to itself.¹⁹ Critics since Käte Hamburger have debated the ‘poetic

¹⁷ “A good reader attends not to some content beyond or behind the mode of presentation but to the mode of presentation itself, to the fact that what is being said is being said in this way” (Peter Lamarque, “The Elusiveness of Poetic Meaning,” in *Philosophy of Literature*, ed. Severin Schroeder [Chichester, West Sussex, Malden, MA: Wiley-Blackwell, 2010]: 24–46, 42).

¹⁸ Peter Lamarque, *The Philosophy of Literature* (Malden, Mass.: Blackwell, 2009): 78.

¹⁹ On the problem of aesthetics for the definition of art, see Arthur C. Danto, *What Art Is* (New Haven, London: Yale UP, 2013): esp. 135–156.

function' of certain narrative tenses,²⁰ Jakobson himself famously commented on rhyme in advertisements, and even formidable figures like I. A. Richards and William Empson ultimately failed to establish the centrality of non-propositional expression through metaphor for literary language. It would seem that while the reflexive process induced by the 'poetic function'²¹ is today a necessary constituent of literature, it is not a sufficient one. However, I believe that relatively speaking, the given-ness of Lamarque's two necessary conditions of historical and institutional embeddedness will tend to elicit awareness in the audience, at least at present, of the heightened potential for the poetic function of language. That is to say, we will be relatively more attentive to verbal artifice and mimetic comprehensiveness when reading a novel as compared to a telephone directory. Thus, literature as a cultural practice loops back onto itself and induces reflexivity: to read a text 'as literature' makes us reflect about literariness.²² The same effect can also be observed when the 'literary gaze' is turned on non-literary texts: Terry Eagleton's memorable example of this process is a sign found in the London underground, "Dogs must be carried on the escalator," with the potentially "rich allusiveness of 'carried'" and the "suggestive resonances of helping lame dogs through life." To read this sign 'as literature' renders us aware of the reader's involvement in the production of literariness: Eagleton concludes that "'literature' may be at least as much a question of what people do to writing as of what writing does to them."²³ It is the procedural nature of this reciprocity that I would like to stress here – not only do people *do* things to texts in order to produce literature; texts that are actualized *as* literature also potentially make readers aware of the practices that inform this activity. These practices, again, are both individual and collective – my reading of *Ulysses* is genuinely my own, but only so within the intersubjective conventions that govern my white male Western response to novels, and Joyce, and literature – that is, within what Lamarque calls the institutional aspect of literary production.²⁴

20 Käte Hamburger, *Die Logik der Dichtung* [1957], fourth ed. (Stuttgart: Klett-Cotta, 1994). For an illuminating personal account from the perspective of one protagonist, see Franz K. Stanzel, *Welt als Text* (Würzburg: Königshausen & Neumann, 2011): 45–176.

21 I use this in a broad and 'doubly embedded' sense to include not only strictly linguistic functions, but also paratextual markers indicating genre; the cultural reputation of author and/or work created through educational systems, marketing, or personal communications within a reception community; or the social conventions governing the recognition and treatment of fiction.

22 See Peter Widdowson, *Literature. The New Critical Idiom* (London: Routledge, 1999): 96.

23 Terry Eagleton, *Literary Theory. An Introduction* (Oxford: Blackwell, 1983): 7.

24 There would be little use for me to view (i.e., receive, actualize, define) as 'comedy' what everybody else agrees is 'tragedy' – if I did so, I would quickly realize that all communication through and about literature breaks down. My fate would be that of the sad old man in Peter

As readers develop ‘their’ readings in the interplay between the individual and collective dimensions, they come to reflect not only about literature, but also about the more general hermeneutic activity that informs this process. As I read *Ulysses*, and as I reflect about this text’s ontological relationship to the world, and to truth, and about its mode of verbal signification of these things to me as the reader, I can also abstract from this to think about the similarities between my hermeneutic activity of reading and the ways in which I try to make sense of the world outside the text. That is especially true of the novel, which is often said to differ from other genres in its ambition “not merely to represent *objects* of the world, or even to imitate *the* world, but to actualize *a* world. A world – nothing less – is the theme and postulate of the novel.”²⁵ Hans Blumenberg argues that owing to this outrageous claim for *Welthaftigkeit* and *Welthaltigkeit*, the novel is the genuinely modern literary genre. Michael McKeon concurs, and he believes that the novel emerges at a time when the truth value of verbal representation had become deeply problematic. Troubled by the apparent division between ‘questions of truth’ and ‘questions of virtue,’ the novel self-consciously reflects about its own attempts at reconciling the two. This renders it a meta-genre that “self-consciously incorporate[s], as part of its own form, the problem of its own categorial status.”²⁶ Hence, this genre is particularly bound to two modes of reflexivity: on the one hand, since it undertakes to constitute a textual world of its own, it relates to the institutional framework that makes this project possible in the first place (the novel self-consciously explores its own nature as the ‘world-making genre’); and since it appeals to the intersubjective criterion of world consistency (‘what does it take to make a world seem plausible’), it relates to the specific historical context that produced it. Thus, the novel both evinces and reflects upon Lamarque’s ‘double embeddedness.’

Where the novel foregrounds the generic conventions, forms, and expectations, it raises in the reader, it not only creates awareness of the role of genre

Bichsel’s story, “Ein Tisch ist ein Tisch” (Peter Bichsel, *Kindergeschichten* [Frankfurt am Main: Suhrkamp, 2005]: 21–30).

²⁵ Hans Blumenberg, “The Concept of Reality and the Possibility of the Novel” [1964], in *New Perspectives in German Literary Criticism. A Collection of Essays*, ed. Richard E. Amacher, Victor Lange (Princeton, NJ: Princeton UP, 1979): 29–48, 39.

²⁶ McKeon, “Genre Theory,” 4. Patricia Waugh agrees: self-reflexivity (or in her term, metafiction) “is a tendency or function inherent in *all* novels,” and “[t]his form of fiction is worth studying not only because of its contemporary emergence but also because of the insights it offers into both the representational nature of all fiction and the literary history of the novel as genre. By studying metafiction, one is, in effect, studying that which gives the novel its identity” (Patricia Waugh, *Metafiction. The Theory and Practice of Self-conscious Fiction* [London: Methuen, 1984]: 5).

for the production of meaning,²⁷ but also for its own specific relationship to processes of signification and intelligibility, and for its mode of being. In this way, it prompts reflections not only about its ontological status as art and literature, but also about the verbal mode of relating to things other than art. The novel is a medium for the reflection, *through* language, *about* language, verbal signification, and those symbolic ways of worldmaking that Gadamer is thinking of when he writes that “[b]eing that can be understood is language” or even more poignantly, “that being is language – i. e., self-presentation.”²⁸

The foregoing deliberations have highlighted four categorically different kinds of reflexivity which are stressed in the self-conscious actualization of literary works of art:

1. in the relation of the text to itself;
2. in the relation of the text to the contingent circumstances that procured it and of which it forms, willy-nilly, a symptom;
3. in the relation of the text to the historically instituted framework of ‘literature’;
4. in the relation of the text to the ways in which humans produce (conceptions of) themselves through language and relate hermeneutically to the world.

The first three kinds are subject to a hermeneutics of the text, the fourth might be called meta-hermeneutic. This list is far from exhaustive, but these are the reflexive aspects of the identity of ‘the literary’ that, for the present purpose, I want to compare to the ways in which self-reflexivity appears in the context of the law and of diasporic identity.

3. Reflexivity in Law

Reflexivity and its attendant dilemmas, as Douglas Hofstadter has pointed out, “crop up with astonishing regularity in the down-to-earth discipline of the

²⁷ See Julijana Nadj, “Formen und Funktionen gattungsspezifischer Selbstreflexivität in der fiktionalen Metabiographie am Beispiel von Carol Shields’ *Swann*,” in *Metaisierung in Literatur und anderen Medien. Theoretische Grundlagen, historische Perspektiven, Metagattungen, Funktionen*, ed. Janine Hauthal et al. (Berlin: De Gruyter, 2007): 321–339, 321.

²⁸ Hans-Georg Gadamer, *Truth and Method* [1975/1989], trans. Joel Weinsheimer, Donald G. Marshall, second ed. (London, New York: Continuum, 2004): 470, 481. Cp. Nelson Goodman, *Ways of Worldmaking* (Indianapolis: Hackett, 1978).

law.”²⁹ Recent legal theory has identified a number of the most fundamental dilemmas in “the law’s being put out of force by the right of resistance and by *raison d’état*; the paradoxical creation of law by the violence of revolution [...; the] paradox of the tangled hierarchy of norms; the Münchhausen trilemma of rule-justification: infinite regress, circularity or arbitrary cessation;” as well as “more concrete phenomena of legal self-reference leading to paradox” such as

‘Who watches the watchmen’ as a problem of constitutional law, the change of constitutional norms via constitutional norms and the paradox of self-amendment; ‘*tu quoque*’ or ‘equity must come with clean hands’; *renvoi* in law of conflicts; ‘ignorance is no excuse’; the prohibition on bigamy; alterations of legal rulings that have future effects: ‘prospective overruling’; or the fiction theory of the legal person, according to which the State as legal person has like Münchhausen to pull itself out of the swamp by its own topknot by fictionally fabricating itself.³⁰

These phenomena of reflexivity are prominently discussed by Niklas Luhmann in his theory of the law as a social system. As Thomas Weitin notes, Luhmann would probably have subscribed to the classical dictum that “nothing is just *per se*, justice being a creation of custom and law.”³¹ The system of the law is closed, and its code of ‘legal/illegal’ cannot be applied to itself: it makes no sense to ask whether it is legal or illegal to make that distinction. “Whenever there is a reference to law or injustice, such a communication attributes itself to the legal system.”³² Within the system of the law, it is enough to give reasons from within that system: finding relevant passages for the case at hand takes pragmatic precedence over the question of what legitimates these passages. In this way, the system becomes self-producing and self-perpetuating or, in Luhmann’s terminology, *autopoietic*.³³ Luhmann insists that “[l]aw-related communications have, as operations of the legal system, always a double function as factors for production and as preservers of structure.”³⁴ The law defines and gen-

²⁹ Douglas R. Hofstadter, *Metamagical Themas. Questing for the Essence of Mind and Pattern* (New York: Basic Books, 1985): 71.

³⁰ Gunther Teubner, “‘And God Laughed ...’: Indeterminacy, Self-Reference and Paradox in Law,” *German Law Journal* 12 (2011), 376–406, 380.

³¹ Thomas Weitin, *Recht und Literatur* (Münster: Aschendorff, 2010): 76. See Michel de Montaigne, “On Experience,” in *The Complete Essays* [1572], trans. M. A. Screech (London: Penguin, 2003): 1215.

³² Luhmann, *Law as a Social System*, 101.

³³ Luhmann, *Law as a Social System*, 81.

³⁴ Luhmann, *Law as a Social System*, 84–85.

erates the law, constituting and perpetuating itself. In this respect, it is remarkably similar to the ways in which literary genres are constituted, and to the way in which literature itself is ‘doubly embedded’ in historical and institutional contexts: legal communication is rooted in its immediate material context and in the abstract institutional framework that enables it in the first place. This system relies for its identity and integrity on the fact that it is conventionally recognized as such by all agents – a closed system operating on the code of legal vs. illegal. As one consequence, if the system is to be internally coherent, “[r]eflexivity – law ruling those who rule with law and in its name – is the rule of law’s *sine qua non*.”³⁵

Owing to this predicament, there is no Archimedean point outside the law that would provide a mooring for its identity: “Only the law itself can say what law is,” Luhmann states, and he explains: “This process of the production of structures is designed in a circular fashion because the operations require structures in order to define themselves by referring recursively to other operations.”³⁶ This recursive mode of existence contributes to the law’s resilience, as Marie Theres Fögen points out in her discussion of Cicero’s ‘legal fiction’ of the *carmen necessarium*: “the canon’s self-referential nature does not only render it eternal, but also fully autonomous.”³⁷ As a social system, the law is necessarily self-referential and self-descriptive, but it has historically sought system-external legitimation – for instance, in the will of God or the maximization of welfare.³⁸ Indeed, Luhmann explains this mechanism by reference to Gödel’s proof, emphasizing that “a system of logic is unable to explain its status of being without contradictions (as a symbol of its unity) by reference to itself and must find the conditions for that outside and apart from itself.”³⁹ If the law as a system is commensurable to systems of logic such as those of the *Principia Mathematica*, it cannot provide its own ontological foundation or justification.

35 Gerald J. Postema, “Law’s Rule: Reflexivity, Mutual Accountability, and the Rule of Law,” in *Bentham’s Theory of Law and Public Opinion*, ed. Xiaobo Zhai, Michael Quinn (Cambridge: Cambridge UP, 2014): 7–39, 23.

36 Luhmann, *Law as a Social System*, 85.

37 Marie Theres Fögen, *Das Lied vom Gesetz. Themen 87* (Munich: Carl Friedrich von Siemens Stiftung, 2007): 72 [my transl.].

38 See Michael Stolleis, “The Legitimation of Law through God, Tradition, Will, Nature and Constitution,” in *Natural Law and Laws of Nature in Early Modern Europe. Jurisprudence, Theology, Moral and Natural Philosophy*, ed. Lorraine Daston, Michael Stolleis (Farnham: Ashgate, 2008): 45–55.

39 Luhmann, *Law as a Social System*, 429.

Gunther Teubner has mapped the types of responses that this reflexive predicament of the law has elicited: They range from confidence that self-reference will “lead ultimately to stable solutions, by the emergence, from the continual recursive application of an operation, of ‘eigenvalues,’ stable in themselves”;⁴⁰ via the gambit, “inspired by poets who ‘overcome the anxiety of influence by misreading (or distorting) poetic reality’, [of] interpret[ing] law as a continuous ‘misreading of reality’ ”; to “seeking social solutions to self-reference by concealing paradox, belittling it, reinterpreting it as mere contradiction and by other historically identifiable techniques of ‘deparadoxification’.” Concerning the last response, Teubner concludes: “The construction of the legal system on the basis of the legal code (right/wrong), which minimizes the paradox of self-reference into a (prohibited) contradiction, and at the same time, keeps it latent would then be a major cultural achievement.”⁴¹ In a similar assessment, Christoph Menke has recently praised the self-reflexive integration of law’s opposition to the extra-legal (*Nichtrecht*) into the law. This integration, he argues, can serve to legitimize the law insofar as it explicitly acknowledges the law’s foundational violence, rather than obfuscating it.⁴²

As the ‘law and literature’ movement has emphasized, and as Menke also implies, literature can serve as a site where this remarkable effort of ‘deparadoxification’ and the justification of law is negotiated, since it allows for the contemplation or observation of legal processes and issues ‘from outside.’ Andreas Fischer-Lescano has posited that the aesthetic reflexion of the self-referentiality that constitutes law’s ‘blind spot’ can serve to expose its contingencies and suggest alternatives.⁴³ From that perspective, literature is unconstrained in its evaluation of the law by the legal system’s reflexivity. It is not, however, free from reflexivity at large – in fact, we have encountered a reflexive disposition in literature that parallels the law’s in that literature is autopoietic in terms of its institutional character but also requires an originary element in its historical embeddedness. Art is a system, but works of art have an ontological status that rests on a ground outside that system. Indeed, as Reinold Schmücker speculates, works of literature and legal norms may share an ontological foundation in sim-

⁴⁰ Teubner explains: “A classical example of an eigenvalue from auto-logic is: ‘This sentence has ?? letters’. The number thirty-one is one eigenvalue of this sentence” (Teubner, “And God Laughed,” 388).

⁴¹ Teubner, “And God Laughed,” 388.

⁴² Christoph Menke, *Recht und Gewalt*, second ed. (Berlin: August, 2012).

⁴³ Andreas Fischer-Lescano, *Rechtskraft* (Berlin: August, 2013): 87.

ilar kinds of legitimising inter-subjective recognition that are specific to both.⁴⁴ Just as literature is actualized by individuals who are familiar with conventions on how to ‘do’ literature, legal communication occurs within the framework of the legal system. In order to be recognised and actualized, however, both systems need to exist, and their existence autopoietically ensures their persistence.

The law’s autonomy as a system matches the basal relation of the literary text to itself. As Nigel Simmonds argues, “[l]egal thought and practice exhibit reflexivity in so far as they explicitly or implicitly appeal to the idea of law. For the idea of law is not one that simply describes existing practices; rather, the idea of law plays a vital part *within* the practices that make up the existence of a legal order.”⁴⁵ Further, just as the law is in need of historicization and adaptation, it also parallels the literary text’s reference to the contingent circumstances that produced it. Each act of legislature will thus be situated between “a body of inherited categories and principles” on the one hand, and, in terms of an institutional dimension on the other hand, “an ideal to be debated and constructed from that inheritance, in the light of current problems and values.”⁴⁶ For the fourth characteristic of literary reflexivity identified above, of the literary text’s meta-hermeneutic reference to the ways in which humans articulate their self-conceptions and negotiate their relation to the world, the law offers no immediately evident equivalent.

4. Reflexivity in Diaspora

As indicated at the outset, in order for a diaspora to constitute itself, or be constituted, the diasporic community must become aware of its difference from other collectives in the ‘diaspora space’. Thus, Khachig Tölölyan views diaspora as

a process of collective identification and form of identity, marked by ever-changing differences that chart the shifting boundaries of certain communities hierarchically embedded as enclaves with porous boundaries within other, larger communities. [...] The diasporic community sees itself as linked to but different from those among whom it has settled; even-

⁴⁴ Reinold Schmücker, “Versuch über die Bedeutung des Nachdenkens über das Recht für die Theorie der Literatur,” in *Wert und Wahrheit in der Rechtswissenschaft: Im Gedenken an Gerhard Sprenger*, ed. Annette Brockmöller, Stephan Kirste, and Ulfrid Neumann (Stuttgart: Steiner, 2015): 85–94.

⁴⁵ Nigel E. Simmonds, “Reflexivity and the Idea of Law,” *Jurisprudence* 1.1 (2010): 1–23, 1.

⁴⁶ Simmonds, “Reflexivity and the Idea of the Law,” 2.

tually, it also comes to see itself as powerfully linked to, but in some ways different from, the people in the homeland as well.⁴⁷

This is true of personal identity no less than of collective identity: “I am only a person to the extent that I know myself to be one, and in exactly the same way, a group – whether it be a tribe, race, or nation – can only be itself to the degree in which it understands, visualizes, and represents itself.”⁴⁸ Ernest Renan’s famous description of the nation as “un plébiscite de tous les jours” seems pertinent, as does Hugh Seton Watson’s classic resigned ‘definition’ that a nation exists “when a significant number of people in a community consider themselves to form a nation, or behave as if they formed one.”⁴⁹ Stuart Hall, too, emphasises the self-reflexive element in the ‘procedural’ conception of diasporic identity: “Diaspora identities are those which are constantly producing and reproducing themselves anew, through transformation and difference.”⁵⁰ All these definitions confront the reflexive paradox of the imagined community – they stress that it is a community that imagines *itself* into existence. Jan Assmann has described collective identity as a “reflexive form of social belonging,” and he points out its constitutive relationship to cultural identity, which “correspondingly entails conscious participation in or recognition of a specific culture”: “By making people conscious of a particular, shared situation, belonging can be changed into homogeneity and the mass can be transformed into a collectively acting ‘subject’ whose capacity for action will be tied to its identity.”⁵¹ This applies beyond the tribal, ethnic, and national collectives of antiquity that Assmann discusses to the genesis of diasporic identity. Avtar Brah has stressed this reflexive nature of ‘diaspora’ concerning “the historically variable forms of *relationality* within and between diasporic formations”: “It is about relations of power that similarise and differentiate between and across changing diasporic constellations. In other words, the concept of diaspora centres on the *configurations of power*

47 Tölölyan, “Contemporary Discourse,” 649–650. Cp. Khachig Tölölyan, “Diaspora Studies. Past, Present and Promise,” *International Migration Institute Oxford Working Papers* 55 (2011): 11.

48 Jan Assmann, *Cultural Memory and Early Civilization. Writing, Remembrance, and Political Imagination* (Cambridge, New York: Cambridge UP, 2011): 111.

49 Hugh Seton-Watson, *Nations, States. An Enquiry into the Origins of Nations and the Politics of Nationalism* (London: Methuen, 1977): 5.

50 Stuart Hall, “Cultural Identity and Diaspora,” in *Theorizing Diaspora. A Reader*, ed. Jana Evans Braziel, Anita Mannur (Malden, MA, Oxford et al.: Blackwell, 2003): 233–246, 244. Similarly, Kim Butler considers diaspora “as a framework for the study of a specific process of community formation” (“Defining Diaspora,” 194).

51 Assmann, *Cultural Memory*, 115.

which differentiate diasporas internally as well as situate them in relation to one another.”⁵² Diaspora thus demands the reflexion on self, other, and the ‘diaspora space’ where these categories meet and trouble each other. The role of narratives in connection with such reflexive negotiations of identity is well-known. Wolfgang Müller-Funk explains:

[O]nly narratives are able to create collective identities, which are based on narrating communities, on groups of readers, who become storytellers at the same time. This kind of narrative always tells a story about who we are and who we are not. On an individual level, it creates a narrative unity of life. On a collective level, it suggests – in an act of abstraction and imagination – the ‘life’ of a nation, the history of a movement, a group etc.⁵³

This constitutes a parallel with the law, of course – as Robert Cover and others have argued, the way in which we impose normative force on “a state of affairs [...] is the act of creating narrative.”⁵⁴ Legal narratives project model states that provide orientation, and the same is true of those ideal states projected by the collective imagining itself. But Müller-Funk, like Hall, includes in his definition not only collectives, but also individuals, and I believe it is very important to attend to this dual dimension of ‘diasporic identity,’ which has a collective and a personal aspect, just as ‘a diaspora’ is a collective that is made up of individuals who, depending on contingent circumstances, may be more or less free to perceive themselves as part of that collective. As Avtar Brah has shown, moreover, diasporic identity intersects with other social and personal positionings such as gender, race, caste and class, all of which need to be interrogated and problematized in their relation to the idea of a “stable and essential [diasporic] identity.”⁵⁵ Personal identity, then, might be described with Jürgen Straub as an individual’s paradoxical ambition for a unity or harmony of all of its differences, which can never be realised through synthesis of these differences.⁵⁶ On the in-achievability of this ambition for unity rests the character of “identity

52 Avtar Brah, *Cartographies of Diaspora. Contesting Identities* (London, New York: Routledge, 1996): 183.

53 Wolfgang Müller-Funk, *The Architecture of Modern Culture* (Berlin: De Gruyter, 2012): 10–11.

54 Robert M. Cover, “The Supreme Court, 1982 Term – Foreword: Nomos and Narrative,” *Harvard Law Review* 97 (1983): 4–68, 10.

55 Brah, *Cartographies*, 204.

56 Jürgen Straub, “Identität,” in *Handbuch der Kulturwissenschaften 1*, ed. Friedrich Jaeger, Burkhard Liebsch, Jörn Rüsen, Jürgen Straub (Stuttgart, Weimar: J.B. Metzler, 2011): 277–303, 281.

as a ‘production’ which is never complete, always in process, and always constituted within [...] representation” which Stuart Hall speaks of.⁵⁷

The negotiation of diasporic identities is framed in what has been described as the ‘diasporic imaginary’ and occurs through the reflexive processes that are inherent in those modes of collective representation attached to it, which apart from art include such elements as historical narratives about groups and places, myths, symbols, iconographies, and other social practices and behaviours.⁵⁸ However, diasporics do not only imagine ‘their’ diaspora emically or through self-study. It is also created by observers outside the community. These observers may include other actors in the diaspora space, both in the host and home countries and outside of both, including “those who are constructed and represented as indigenous”⁵⁹ as well as national and international policy-makers, media, and academics, among others. Khachig Tölölyan cautions that the academic observer’s presence will affect the observed system, as it were:

theoretical conceptions, specialized terminologies, acknowledged and unacknowledged disciplinary interests and intentions, a will to knowledge, and a variety of methodologies combine to reformulate diasporas. Living diasporas are objects of knowledge that can, however, react: they talk back, not only to the way they are represented in media and the administrative-judicial languages of administration, but also to disciplinary, scholarly discourses. They become simultaneously objects of knowledge and cosubjects.⁶⁰

In academic diaspora studies, reflexivity is thus central not only through the common demand for methodological reflexion and through the personal trajectories that frequently induce scholars to engage with the topic of diaspora in the first place, but also through the interaction that occurs between scholars and their subjects.

If I assume, then, that diasporic identity is the product of reflexive community formation processes, I mean by this not only the collective’s self-reflexion in the Andersonian sense of its self-imagining, but also the individual’s self-conscious positioning vis-à-vis that collective and all the others that are available as potential sites of identification. Identity is sociogenic in the double sense described by Jan Assmann in that it produces collectives as much as it is produced

⁵⁷ Hall, “Cultural Identity,” 234.

⁵⁸ Vijay Mishra, *The Literature of the Indian Diaspora. Theorizing the Diasporic Imaginary* (London, New York: Routledge, 2007); Nabeel Zuberi, “Diaspora,” in *The Encyclopedia of Literary and Cultural Theory* 3, ed. Michael Ryan (Chichester: Wiley-Blackwell, 2011): 1040–1044, 1042.

⁵⁹ Brah, *Cartographies*, 179.

⁶⁰ Tölölyan, “Contemporary Discourse,” 654.

by them.⁶¹ Such self-conscious positioning through representation takes the shape of narratives, and these narratives are precarious attempts at manifesting that ambition for unity. They feed into the narrator's self-image: as I imagine myself as this person or that, I not only become that person (if my attempt at auto-narration succeeds in convincing myself), but I will then be the person who imagined themselves to be that person and who then moved on and had to confirm or 'live' that identity. The collectives vis-à-vis which I imagined myself are similarly changed in the process as I position myself in relation to them. Again, this is the process of the Hofstadterian, or Gödelian, strange loop that produces identity. This observation, I concede, is perhaps too general to be of great value in 'defining' diasporic identity – it applies to all collective identities, and perhaps the only specifically diasporic aspect to this is the relative importance of difference, since the diasporic subject *and* the diasporic collective will experience an emphasis on difference in the construction of their identity, either voluntarily and actively or passively by imposition from outside.

A diasporic individual's, *and* community's, identity and autonomy *as diasporic* is reflexive in the same sense as literary texts and the law relate to themselves. Like the law and literature, diasporic identity, too, is representative and reflective of the contingent historical circumstances that produce it. A reference to some 'institutional' framework of diasporicity may exist: certainly, it is produced by theorists of diaspora both in academia and among policy-makers. It can also be foregrounded in diasporans', and diasporas', solidarity for each other in the face of a perceived common threat, e. g., by legislation. The fourth category of meta-hermeneutic reflexivity appears more pronounced in the diaspora imaginary than in the law, at least: diasporic identity can be conceived of as reflexive of human 'being in the world' by the metaphorical proposition that *Ulysses* so memorably makes, of man as the eternal wanderer and of life as a journey:

The paradoxical combination of localism and transnationalism, the fierce aspiration to achieve economic and social success and the willingness to sacrifice for the community and the homeland, indeed the oscillation between loyalty and skeptical detachment that characterizes the performance of diasporic lives, is [...] an example of the way everyone, including nationals, will have to live in an increasingly heterogeneous and plural world.⁶²

61 Assmann, *Cultural Memory*, 112.

62 Tölölyan, "Diaspora Studies," 13.

In that sense, perhaps informed by an ambition that, were it not for the negative connotations of the terms, might be called ‘humanist’ or ‘universalist,’ diaspora studies undertakes to be the study of the human predicament at large.

5. Conclusion, in Which Nothing is Concluded

In a final step, I want to consider in how far the role of reflexive phenomena in the three domains might be commensurable. As I indicated at the outset, there is a host of problems with this kind of comparison: First, there are wide differences in the scholarly terminology, and if concepts are to travel from one domain to another, they will require careful translation. This problem connects with the second point, that of the categorial commensurability of the domains: I have suggested that in a certain and, I realize, not uncontroversial sense, literature, law and diasporic identity can be said to share the ontological feature of their self-productiveness and self-perpetuation. What is more, all three are also ‘open’ to external factors: literature, to the contingent historical and institutional circumstances that influence its production and actualization; law, to the historical contexts that produce legislation and the legal system as such, including those external factors that may be fielded in order to justify it (such as God or the economy); and diasporic identity, both to the specific trajectories and positionalities of each individual diasporic and diaspora, as well as to the host of other sites for collective and individual identification with which it intersects. Clearly, the question arises whether this shared characteristic of ‘doubly embedded’ autopoiesis harbours any heuristic value for studying the ways in which the three fields influence each other. I can only speculate here that ‘doubly embedded’ autopoiesis may be a feature of discursive cultural practices at large.⁶³ Literature, law, and diasporic identity are products of culture which are determined by, and interventions in, contingent material circumstances and institutional frameworks.

As Klaus Stierstorfer has suggested, inquiries of this triple kind should ask “how literature, law and the respective further field under discussion can come into productive correspondence, with the best tentative answer available

63 As Foucault suggests in ‘The Discourse on Language’, discourse itself has autopoietic features – it creates its own rules, centres, and sources, and in studying it, we must pay attention both to the external and internal factors that shape it and to the shapes that it takes and through which it in turn shapes experience (Michel Foucault, “The Discourse on Language” [1971], in *The Archaeology of Knowledge and The Discourse on Language* [New York: Vintage, 2010]: 229 – 232).

at present in the form of the thesis that literature serves as a field of mediation between law and its others.” For those attempting to connect the field of law and literature to other domains, then, the agenda lies

in first re-assessing literature’s relation to the respective domain or field of study and then using its well-established links with jurisprudence to define its role as interloper or mediator, with the modes of literary mediation depending on perspectives and preferences.⁶⁴

In this spirit, and on the basis of my brief sketches of phenomena of reflexivity in the preceding pages, I would offer the following hypotheses on the relations between literature and diasporic identity as compared to those between literature and law: Similar phenomena of reflexivity occur between law and literature in that both domains seem to generate their identity autopoietically. This suggests an ontological parallel between law and literature in terms of the processes through which they come into being in their double embeddedness. Autopoiesis is a feature also shared by literature and diasporic identity, likewise from a dual perspective – in this case, from the point of view of the individual and the collective. Both individual and collective enter into the production of meaning as factors with variable importance: readers make sense of literary texts in the hermeneutic negotiation between individual text and genre, and between individual reader and collective audience; diasporic individuals produce their identity in the hermeneutic negotiation of individual experience with intersecting collective models of explanation. Again, reflexivity inheres on both levels of embeddedness, and again it characterises the process by which ‘literature’ and ‘diaspora’ acquire identity.

The law, it emerged, does not readily seem to accommodate the kind of meta-hermeneutic reflexivity that characterizes both literature and diaspora. Concerning the pursuit of jurisprudence to elucidate some essential or transhistorical idea of the law, Simmonds observes that “[i]n seeking a philosophical understanding of the nature of law we simply take seriously, and extend, the justificatory project that begins in the judicial judgment: for we endeavour to explain how law, by its very nature, provides a justification that can be invoked by the judge.”⁶⁵ If this were to suggest an agenda for literary studies and diaspora studies, the theoretical challenge consists in identifying analogous pairs of terms for law/justification: if the reflexive function of law is to ‘justify’ itself, what is the function of literature, and of diaspora? What values and processes

⁶⁴ Klaus Stierstorfer, “Law and (which?) Literature: New Directions in Post-Theory?”, *Law and Humanities* 5.1 (2011): 41–51, 48–49.

⁶⁵ Simmonds, “Reflexivity and the Idea of the Law,” 7.

relate to literature and to diaspora as ‘justice’ and ‘justification’ relate to law? The possible answers are legion, and the virtue of the question may simply be to highlight a fundamental difference between the ways in which some representatives of the three respective academic disciplines conceive of their subjects. On the other hand, perhaps, the recursive effect by which ‘legitimacy’ and ‘legality’ (rather than ‘justice’!) are introduced as eigenvalues into law may be productively matched by the eigenvalues of ‘literariness’ or ‘poeticity’ in literature and of ‘diasporicity’ in diaspora. To acknowledge the recursive constitution of these subjects is to recognize their procedural and contingent nature as objects of study. Thus, Gunther Teubner, in his discussion of reflexivity in the law, points out that given the paradoxes raised by the various kinds of reflexivity that obtain, it is remarkable that the law should achieve any kind of stability at all: “Since indeterminacy of law is the ordinary rule, determinacy, order and system are the exceptions that require explanation.”⁶⁶ This point lends itself to application beyond the domain of law to literature and diaspora, as well, in that it highlights the precarious constitution of literariness and diasporicity. As the above discussion has shown, the processes by which these subjects are produced are highly contingent, and scholars must be aware of this predicament and attend to it in their studies.

The parallels between law and literature and literature and diasporic identity seem to share one function in that they are geared towards making sense of experience through a reduction of complexity that takes the shape of narrative. They are frameworks for relating the particular to the general, for mitigating the difference between them with the aim of producing integration in full awareness of the transitory nature of such integration. Neither law nor diasporic identity nor literature are ever ‘finished’ or complete – they are procedural by nature. To say that this is the case does not, in itself, delineate an agenda for scholarly inquiry. It does, however, highlight a character of cultural practices that the three domains could be said to share: They lack well-defined essences that would unequivocally differentiate them from their ‘outsides’ (the non-legal, non-literary, non-diasporic), but they produce these differentiations reflexively. As we observe these reflexive practices, that which we are studying produces itself, at least partly.⁶⁷ Essentialist pursuits in scholarship, such as the jurisprudential quest

⁶⁶ Teubner, “And God Laughed,” 389.

⁶⁷ Reception theory and narratology have much to say about the ways in which individual texts produce not only their notions of literariness and genres, but also their own readers and reception communities. This dimension has been neglected here for reasons of space, but it seems promising to speculate about the commensurability between this literary mode of reflexivity and the ways in which laws produce legal communities and diasporics produce diasporas.

for the 'idea of law,' are frustrated in translation to the domains of literature and diaspora. Most crucially, perhaps, by engaging meta-hermeneutically with reflexive processes of world-making and sense-making, the novel genre and literature in general reflect the very process through which both law and diasporic identity come into existence. In examining literary representations of both fields, attending to that structural analogy may assist us in understanding not only the mechanics of literary representation of these subjects, but also their nature as products of culture that reflect the strange loops of human cognition and cohabitation.

Like a novel's 'implied readership,' these latter communities become effective in the political and academic realms, but they also share an 'ideal,' imagined character.

Emma Patchett

Overlapping Sovereignties

Legal Diaspora Studies and the Literary Text

1. Legal Diaspora Studies: The Limits, Extent and Scope of Establishing Multiple Sovereignties

This paper attempts to outline three main approaches within legal diaspora studies, before considering how these may be used to theorize the diasporic literary text as a site of decolonial transjurisdictionalism. Legal Diaspora Studies present a non-cohesive assemblage in contemporary legal scholarship, although this was not always the case.¹ Its various forms are present in debates around legal pluralism, multiple nationalities, critical legal studies, comparative international law, and so on, but there is still relatively little written on particular legislative constructions and connotations pertaining specifically to diasporas – notably because international law is territorially bound – although there has recently been research on constructions of transnational citizenship.²

1 Adeno Addis, “Imagining the Homeland from Afar: Community and Peoplehood in the Age of the Diaspora,” *Vanderbilt Journal of Transnational Law* 45 (2012): 963 – 1042, 994: “There was a time when the relationship between homelands and diasporas was a concern of the international community and even of international law-the interwar period (between the two World Wars). During this period, and under the auspices of the League of Nations, the international community sought to ensure stability in Europe by providing for the protection of religious, linguistic, and ethnic minorities through a series of treaties and unilateral declarations.” Addis further traces the historical conditions of a form of diasporic jurisdictionalism when he writes that: “The members of the League viewed minorities as part of a “nation,” part of a “people,” outside the territorial unit in which they found themselves” (997).

2 Except in inter-war minority treaties regime – see Hague Convention. Addis, “Imagine the Homeland”: “although international law has expanded its subjects and the domain of its concern, it essentially continues to adhere to a statist version of we the peoples that graces the UN Charter. International law may have pierced the statist veil to reach the individual under certain circumstances, but only in the context of affirming the traditional narrative of how the people (personified by the state) are constituted. That is, international law imposes certain obligations on the state to treat members of its own people in a particular way, but it does not open to question how the people are constituted. International law seems to leave the question of membership to political communities themselves” (993).

2. Legal Diaspora Studies as an Emergent Approach

2.1 Dualism and the Diasporan Model

The first approach could be defined as dualistic: it is centred on the diasporic model, as proposed by Anupam Chander. It is, perhaps, the most straight-forward means of conceptualizing diaspora in law. This goes beyond dual citizenship, which reflects the dominant statist paradigm, to a more hybrid model which, as Chander writes, “seeks to enfranchise diasporas as recognized legal subjects in the transnational legal process” but still maintains the homeland-hostland dichotomy.³ Dual or “external” citizenship is,⁴ therefore, just one part of this model, which also suggests incorporating a choice of law, so that the diaspora could apply either legislation from their homeland or from their adopted land in the private sphere, and advocates a choice of fora for dispute resolution, for example. This is already practiced in certain minority communities, where the development of hybrid adaptive strategies through, for example, the establishment of religious courts or self-regulating family law councils to account for legal acts or rituals of ethnic minorities, observing spiritual codes and canon law outside the state legal system, so that within a diasporic community, as Prakash Shah notes, “multiple rule systems are complied with.”⁵ In addition, the diasporic model would allow diasporic communities to have the right to political representation in the homeland, as well as maintaining liberal immigration and free movement policies to ensure permeable borders to diasporic citizens. Chander bases this on the idea of Diaspora Bonds, returnable investments into the Indian economy from diasporic citizens, and suggests this concept could be broadened to include additional legislative and political entitlements: such as special visas; dual citizenship; and the right to vote. This can be observed in the case of the Indian diaspora, who have access to dual nationality through a system which recognizes not only NRIs (Non-Resident Indians), but also PIOs (Persons of Indi-

³ Anupam Chander, “Diaspora Bonds,” *N.Y.U. Law Review* 76 (2001): 1005–1098, 1049.

⁴ Kim Barry, “Home and Away: The Construction of Citizenship in an Emigration Context,” *N.Y.U. Law Review* 81 (2006): 11–59, 58: “A broader conception of citizenship that is extraterritorial and non-residential is required. [...] Although it is tempting to describe evolving emigrant citizenship as eliminating geographic borders in some postmodern sense, such a conception is not accurate. The society in which the emigrant participates is still territorially bound.”

⁵ Prakash Shah, “Diasporas as legal actors: Implications for established legal boundaries,” *Non-State Actors and International Law* 5 (2005): 153–165, 161.

an Origin) to consolidate bonds of solidarity with the diaspora, a protection written into the Indian Constitution.⁶ The diasporic link is similarly emphasized in the case of Israel's Law of Return (1950), which entitles those from the diaspora to Israeli citizenship and the right of return and settlement.

This approach reflects the argument that even in the transnational legal field, "the logic of practice still plays itself out primarily on a national plane."⁷ Thus diasporas are still considered "part of the people of the homeland,"⁸ which is the case for many states that have set up foreign ministries precisely to define, strengthen and manage this link,⁹ with diasporic communities as legitimate stakeholders in the community.¹⁰ An example of how jurisdiction is defined extraterritorially – transplanted from homeland to host land – is given by Adeno Addis, who recounts that "Israel's desire to protect the Jewish diaspora goes even further than any country has gone by asserting extraterritorial jurisdiction to criminally sanction anyone who has committed an offense against "the life, body, health, freedom or property of a Jew, as a Jew, or the property of a Jewish institution."¹¹ This form of diasporic jurisdiction establishes a framework of protection for diasporas, yet clearly presents a problem as to the limits of application. Addis suggests it could be "invoked only in relation to attacks on individuals [...] and only in relation to serious crimes [...] construed as those generally regarded as subject to universal jurisdiction under customary international law-genocide, crimes against humanity, torture, war crimes, etc.,"¹² in other words, to avoid jurisdictional conflicts by only operating for cases in which victimization has occurred as a result of discrimination on the basis of group identity. Although there has been considerable overlap between criminal and immigration law, the need to establish

6 Article 8; See also Ministry of Overseas Indian Affairs (MOIA), "Report of the High Level Committee on Indian Diaspora (HLCID)" (19 December, 2001) <<http://moia.gov.in/services.aspx?ID1=63&id=m8&idp=59&mainid=23>> (acc. 20 Dec 2015) 510.

7 David Trubeck et al., "Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas," *Case Western Reserve Law Review* 44 (1995): 407–496, 411.

8 Addis, "Imagine the Homeland," 963.

9 Addis, "Imagine the Homeland," 966, nt 2: "For example, Brazil, Chile, El Salvador, Ethiopia, Romania, and Uruguay have diaspora or expatriate affairs departments within their foreign affairs ministries". See also Tanja Sejersen, "I Vow to Thee My Countries: The Expansion of Dual Citizenship in the 21st Century," *International Migration Review* 42 (2008): 523–541.

10 In this sense, "Diasporas are outside the state but inside the people." Yossi Shain "Kinship and Diasporas," *International Affairs* 124.2 (2007): 383–384 quoted in Addis, "Imagine the Homeland," 968.

11 Addis, "Imagine the Homeland," 1001, quoting Penal Law, 5737–1977, § 13(b)(2) (1977) (Isr.).

12 Addis, "Imagine the Homeland," 1030.

a framework of applicability with precedence to diasporic status could present considerable problems to state jurisprudence.

Thus a sense of dualism is partially reinforced – even if that dualism is dynamic, and interactive, or dialogic and fluid – paying due attention to the homeland-host land dichotomy. There is some agency for the diasporic subject in selecting the choice-of-law, yet they are split into a binary system. It could also be said to privilege a connection with a homeland over that of negotiating an active legal subjectivity that is, itself, diasporic (rather than an extension of the entitlements resulting from an expansive definition of dual nationality). POI recognition and the right of return also do not give indication of how a diasporic subject must negotiate multiple systems of law when in their adopted country, as their focus is instead on strengthening the link to homeland, rather than the effect a diasporic status might have on nation-state legislative structures abroad. Rights within the homeland are protected by virtue of the diasporic link, but diaspora is then conceptualized as a result of ‘dispersal from’ rather than as an analytical condition constructing itself as ‘apart from’: the diaspora is defined in opposition, as the shadowy other of the nation-state. The homeland is still central in this model of how to conceptualize dual loyalty, and thus the law of the state is key: it is an either-or choice (even if this diasporic model attempts to move away from the silence of the international law framework on diasporic space as ambiguous, as it contrasts with the boundaries of the nation-state and the preference for a singular nationality).¹³ Chander suggests that moving away from a statist system, to a more cosmopolitan or universalist alternative, is to emphasize a sense of uprootedness that ignores the links one might have with a nation-state homeland, as opposed to adopting a trans-territorial approach.

2.2 Transjurisdictionalism: De-centring Law from the State

If (territorial) jurisdiction is understood as a “set of social practices,”¹⁴ then transjurisdictionalism negotiates both the organic and synthetic,¹⁵ global and

¹³ Shah, “Diasporas as legal actors,” 157; Addis, “Imagine the Homeland,” 993. The preamble to the *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930) holds: “it is in the interest of the international community to secure that all members should recognize that every person should have a nationality and should have one nationality only.”

¹⁴ Richard Thompson Ford, “Law’s Territory (A History of Jurisdiction),” *Michigan Law Review* 97.4 (1999): 843–930, 855.

local normative conditions of legality: not only that which is enacted on diasporic individuals but constructing a space which is diasporic (and herein lies the potential threat). If, as Richard Ford suggests, “[t]he jurisdictional boundary does more than separate territory; it also separates types of people,”¹⁶ then transjurisdictionalism is a critique of that horizontal relationship, emphasizing its inherent authorship and lack of neutrality. Transjurisdictionalism reflects a socio-legal concern with legal adaptation and complex pluralities across borders. Prakash Shah and Derya Bayir looked at this area when considering the British diaspora in Turkey.¹⁷ Their research focused on the extent to which there was a choice of law,¹⁸ such as the use of non-official fora – in other words, a concern with observing whether “trans-jurisdictional practices occur within a wider habitus of “transnational social fields.”¹⁹ They write:

Indeed, the phenomenon of unofficial law is not confined to minority diaspora communities but can be seen as a general feature occurring under the shadow of strong state systems built up in the modern period. While many states in Africa and Asia continue to officially acknowledge the existence of non-state legal orders (Menski 2006), others, including Turkey, have emulated the modern European system of strong states by officially ‘abolishing’ non-state legal orders.”²⁰ Shah and Bayir note that “British people appear to be developing a distinct legal presence in Turkey in the regions they are settling within, influencing and changing local ways [...] navigat[ing] through Turkey’s legal order, using some rules to their advantage, and also going around those rules which are not necessarily convenient for them.”²¹

One example of this is in relation to family law in diaspora, where, as Lord Justice Thorpe identifies, a complex means of dealing with cross-border disputes is nec-

15 Ford defines the organic as authentic and national developments such as local government and nation-states, where synthetic derivations are those which are more institutional and bureaucratic (Ford, “Law’s Territory,” 858).

16 Ford, “Law’s Territory,” 844.

17 Prakash Shah, and Derya Bayir, “The Legal Adaptation of British Settlers in Turkey,” *Transcultural Studies* 1 (2012): 43–76.

18 “reliance on British laws in some instances where private international law rules might apply, for example, the making of wills, in divorces, marriages, adoptions etc.” Shah and Bayir, “Legal Adaptation of British Settlers,” 57.

19 Shah and Bayir, “Legal Adaptation of British Settlers,” 48 [quoting Nina Glick Schiller, “Transborder Citizenship: An Outcome of Legal Pluralism within Transnational Social Fields,” *Mobile People, Mobile Law: Expanding Legal Relations In A Contracting World*, eds. Franz Benda-Beckmann, Keebet Benda-Beckmann, and Anne Griffiths (Aldershot and Burlington: Ashgate, 2005): 27–49, 32.]

20 Shah and Bayir, “Legal Adaptation of British Settlers,” 47.

21 Shah and Bayir, “Legal Adaptation of British Settlers,” 72.

essary because of “globalization, increasing movement of persons across borders, and the ever rising number of family units which are truly international.”²²

2.3 Legal Pluralism and Historical Place of Origin

Shah and Bayir preface their contemporary study with a reference to the fact that indeed, a pluralistic system existed during the Ottoman era which authorized “European and American nationals to be judged in courts instituted by their countries of origin as part of their assertion of extra-territorial jurisdiction,”²³ a system of legal concessions or capitulations abolished in 1923. Indeed, it has been argued that to conceive of globalization (and thus, diaspora) as a contemporary threat to the nation-state is to emphasize a linear narrative of law based on positivist and natural-rights assumptions which ignores historical evidence of legal pluralism, that, as Paul Berman writes, “legal norms have always migrated across territorial boundaries.”²⁴ Colonialism called for the development of a means of dealing with multiple jurisdictions across multiple spaces, necessitating the recognition of a legally pluralistic system – where a dispute resolution process, for example, could operate locally at a metaphysical distance from a colonial courthouse hierarchy.²⁵ These “layered constructions of sovereignty” recognized the authority of religious and culturally diverse communities as well as the reality that, as the legal historian Laura Benton observes, “conflicts continually shifted jurisdictional boundaries.”²⁶ This complex arrangement also ensured that settlers moving to establish a new world abroad could make and remake legal orders linking them to their place of origin.

In this sense, diaspora laws have a long history of plurality and can be conceived of as a network of jurisdictions and the negotiation of legal subjectivities linked to a point of origin. On the one hand, this can perhaps be read as a reification of the centrist dogma which presents dispersal and diffusion as a concretization of nation-state legal practices, but if regarded from a constructivist

²² BBC, “Rapid rise in global family disputes” (1 May, 2013).

<<http://www.bbc.co.uk/news/uk-22358741>> (acc. 20 Dec, 2015).

²³ Shah and Bayir, “Legal Adapation of British Settlers,” 54–55.

²⁴ Paul Schiff Berman, “Global Legal Pluralism,” *Southern California Law Review* 80 (2007): 1155–1238, 1185.

²⁵ Peter Karsten, *Between Law and Custom: “High” and “Low” Legal Cultures in the Lands of the British Diaspora* (Cambridge: CUP, 2002). ##–##.

²⁶ Lauren A. Benton, “Historical Perspectives on Legal Pluralism,” *Hague Journal on the Rule of Law* 3.1(2011): 57–69, 58; 60.

point of view, it is perhaps more interesting to consider the means in which diasporic communities negotiated (and contested) socio-legal constructions of their legal subjectivities. So, for Shah, diasporas are always “engaged in processes of code-switching and cultural navigation,”²⁷ in other words, undertaking “hybrid adaptive strategies” by complying with “multiple-rule systems” in dispute resolution lay courts or through kinship resolution, for example²⁸. Diasporas are then not outside official/state law, but engage as, in the way Shah describes, “trans-local actors” which do not simply demonstrate a web of trans-legality but also force “a rethink of established legal boundaries.”²⁹ Legal pluralism is then, not a facet of special treatment for diasporic communities but rather recognition of that “the constant making and re-making of [legal] boundaries”³⁰ exists in all societies at all times in a “rich texture of legal systems.”³¹ Societies’ adaptations are the departure point, rather than a nation-state as the central source of legitimacy. This can be seen as a form of globalized localism, or diasporic localism in this case perhaps.

Such interlegality is a reflection of what David Delaney calls the “verticality of legal space,”³² which goes against the linear route of migration reciprocally linked to origins and instead draws attention to “questions of scales and perspective” – domestic, extraterritorial, international, transnational, global, local, customary, tribal, religious.³³ As Santos observes, “the modern state is based on the assumption that law operates on a single scale,”³⁴ when in fact there are different legal orders operating on different scales in different legal spaces,³⁵ “creat[ing] different

27 Shah, “Diasporas as legal actors,” 155.

28 Shah, “Diasporas as legal actors,” 161. Shah notes that most legal systems in the world, with the notable exception of the UK, “make provision for minorities under personal law systems of one kind or another” (“Diasporas as legal actors,” 160).

29 Shah, “Diasporas as legal actors,” 165.

30 Prakash Shah, “Socio-Legal Perspectives on Ethnic Diversity,” in *In Law and Ethnic Plurality – Socio-Legal Perspectives*, ed. P. Shah (Leiden and Boston: Martinus Nijhoff, 2007): 3.

31 Alison Harvey, “Rev. of *Migration, Diasporas and Legal Systems in Europe*, ed. Shah and Menski, and *The Challenge of Asylum to Legal Systems* Cavendish, by Shah,” *European Journal of Migration and Law* 9 (2007): 277–281, 281.

32 David Delaney, “Globalization and Law: Introduction,” in *The Legal Geographies Reader: Law, Power and Space*, ed. N. Blomley et al. (Oxford: OUP, 2001): 251–254, 252.

33 Delaney, “Globalization and Law,” 252.

34 Boaventura de Sousa Santos, “Law: A Map of Misreading. Toward a Postmodern Conception of Law,” *Journal of Law and Society* 14.3 (1987): 279–302, 287.

35 Santos defines local law as a large-scale legality, nation-state law as a medium-scale legality and world law as a small-scale legality (“Law: A Map of Misreading,” 287). He writes: “For the local communities the customary law was the local law, a large-scale legality well adapted to prevent and settle local disputes” (“Law: A Map of Misreading,” 289) In *Toward a New Legal*

legal realities.”³⁶ These “multiple networks of legal orders” can be conceived of, again, as adaptive strategies.³⁷ Santos writes about his experiences looking at the law of the favelas in Brazil, exploring “the creation of an internal legality, parallel to – and sometimes conflicting with – state official legality.”³⁸ He looked at how dispute resolution would involve a community organization with legal responsibility over civil (but not criminal) jurisdiction, state agencies, locally drafted contracts, “selective borrowings from the official legal system,”³⁹ and both formally trained and lay persons acting as legal adjudicators: Santos calls this the operation of forms of law in “constellations of legality.”⁴⁰

Twining suggests legal pluralism forces us to ask how we can conceptualize law.⁴¹ The themes here could be said to be “contradiction and fragmentation”:⁴² we are required to view law differently, not as territorially bound but “emerging from a plethora of often competing normative frameworks.”⁴³

Thus, both legal pluralism and transjurisdictionalism are de-centring law from the state, albeit in different ways.⁴⁴ Interlegality could be said to be a

Common Sense (London and Edinburgh: LexisNexis Butterworths Tolley, 2002) he writes: “laws use different criteria to determine the meaningful details” (426).

36 Santos, “Law: A Map of Misreading,” 287.

37 Santos, “Law: A Map of Misreading,” 298.

38 Santos, *Toward a New Legal Common Sense*, 99.

39 Santos, *Toward a New Legal Common Sense*, 155.

40 Santos, *Toward a New Legal Common Sense*, 384.

41 William Twining, “Normative and Legal Pluralism: A Global Perspective,” *Duke Journal of Comparative & International Law* 20 (2010): 473–517, 478: “it is worth asking: plurality of what exactly? Setting aside concerns about ‘the legal’, one can roughly differentiate three categories that are explicitly mentioned or implied: institutionalized normative orders (e.g., the WTO, the regime of internal governance of a law school or a university or large organization); a system, or code or discrete set of norms (the U.S. Constitution, the rules of football); looser aggregations of norms (public lecture rituals, American spelling); and a few single norms which do not clearly belong to any one system or agglomeration (is the smoking ban part of the rules governing the library, the law school, the university or something more general [...] as we shall see, ‘legal pluralism’ is variously applied to institutionalized legal orders, systems, codes or other bodies of rules, sources of law, and to single rules or principles (e.g., the rule in *Rylands v Fletcher*, the principle that no person should profit from her own wrong).”

42 Harvey, “Rev. of Migration, *Diasporas and Legal Systems in Europe* and *The Challenge of Asylum to Legal Systems*,” 279.

43 Ruth Buchanan, “Reconceptualizing Law and Politics in the Transnational: Constitutional and Legal Pluralist Approaches,” *Socio-Legal Review* 5 (2009): 21–39, 35.

44 Twining, “Normative and Legal Pluralism,” 510: “social fact pluralism studies have focused on relatively small, face-to-face groups. 121 Second, the main emphasis has been on what in our legal tradition has been classified as private law- marriage, family, inheritance, land, and to a

focus on the contact zone, transjurisdictionalism on the operational process of adjudicating across boundaries and legal systems (wrenched free, in other words, from territory);⁴⁵ and legal pluralism as a consideration of the network in which these systems interact.

3. Into the Contact Zone: Postcolonial Legal Theory

The third analytical approach draws on postcolonial legal theory. Legal pluralism has formed a large part of this particular theoretical approach in the acknowledgement of silenced or marginalized legal systems.⁴⁶ This perspective can be considered an attempt to work against hierarchical comparative law which “tended to see the process patronizingly in terms of the exportation of legal concepts, rules and ways of thought from ‘parent’ modern state legal systems to ‘primitive,’ ‘traditional,’ underdeveloped, or adolescent state importers whether by way of imposition, negotiation or voluntary adoption;”⁴⁷ exposing not only the hegemonic Western structures on which these concepts were based, but also the “artificial constructs” of colonial legal systems formed from colonial interactions, which established so-called law which was both falsely asserted as customary and was in fact “far removed from the actual social practices of ordinary people.”⁴⁸ In other words, postcolonial legal theory examines, for example, the gaps in the space in-between imported colonial law, local customary law and postcolonial deviations or appropriations of an adaptive hybrid. Santos’ description of “contact zones” as “social fields in which different

lesser extent wrongs or obligations. Until recently, much less attention has been paid to commercial and economic law, migration, governance structures, criminal law, and human rights.”

⁴⁵ Jonathan Nash identifies transjurisdictionalism in relation to Federal and state law (US), as “the use of procedural devices that allow a court in one system to answer questions of law arising under that system’s law in cases that are pending before courts in another system. Transjurisdictional adjudication and intersystemic adjudication constitute different approaches to ‘intersystemic judicial governance,’ that is, judicial adjudication of issues arising under more than one system of laws.” “The Uneasy Case for Transjurisdictional Adjudication,” *Vanderbilt Law Review* 94 (2008):1869–1930, 1870.

⁴⁶ Twining, “Normative and Legal Pluralism,” 510: “Insofar as Western academic law tended to ignore or marginalize law in non-Western societies, the reverse was true of the literature of legal pluralism which was in large part stimulated by and focused on law in colonial and post-colonial societies.”

⁴⁷ Twining, “Normative and Legal Pluralism,” 509.

⁴⁸ Twining, “Normative and Legal Pluralism,” 509.

normative life worlds meet and clash” is of relevance here for the diasporic context, as he relates that it is these zones which give rise to legal hybrids.⁴⁹ Postcolonial (and then diaspora) legal theory would attribute great importance to his consideration of “who defines who or what belongs to the contact zone and what does not? To whom belongs the line that delimits the contact zone both externally and internally?”⁵⁰ In this approach constructions and articulations of power are key, for as Fitzpatrick asserts, the intent of postcolonial legal theory is to “drastically disrupt legal academic renditions of [the West’s] relation [to its “other”].”⁵¹ This is particularly pertinent to diaspora studies, where the diaspora can be considered at the shadowy ‘other’ of the nation-state, in which colonial/ hierarchical patterns identify not only what counts as law and what does not, but who counts as inside and outside the nation-state, and which legal identity they can be allotted. Diaspora legal theory takes this anti-hegemonic potential even further, presenting a challenge to settled assumptions of how law operates and sources of legal authority, extending beyond the colonial binary but imagines a similar ‘decolonizing’ effect.

3.1 Theorizing Literature Beyond Adaptation

I would argue that literature is already a decolonizing site: diaspora literature is transjurisdictionalism (or transjurisdictionalism in action), in the sense that it is a trans-territorially authored practice, or a set of practices, which crosses borders, builds an environment which both has limits and yet is discursively constructed.⁵² This process of using legal diaspora studies to theorize literature will involve thinking through transjurisdictionalism as constitutive of identity as applied to practices of sovereignty, in the reading of three literary texts as specific case studies: the novel *Carpentaria* by Alexis Wright, an author from the Indigenous Australian diaspora; a biography about the life of the “Gypsy guitarist”

⁴⁹ Santos, *Toward a New Legal Common Sense*, 472.

⁵⁰ Santos, *Toward a New Legal Common Sense*, 473.

⁵¹ Peter Fitzpatrick and Eve Darian-Smith, “Laws of the Postcolonial: An Insistent Introduction,” in *Laws of the Postcolonial*, ed. P. Fitzpatrick and E. Darian-Smith (Michigan: U of Michigan P, 1999): 1–18, 4.

⁵² Jurisdiction generally describes any authority over a certain area or certain persons. Richard Thompson Ford defines territorial jurisdiction as “simultaneously a material technology, a built environment and a discursive intervention,” a “set of social practices [which] exist in the realm of discourse.” “Law’s Territory (A History of Jurisdiction),” in *The Legal Geographies Reader: Law, Power and Space*, ed. N. Blomley et al. (Oxford: OUP, 2001): 200–217, 201–202.

Django; and *The Buddha of Suburbia* by Hanif Kureishi, a text from the queer diaspora. All three of these texts are selected from diasporas which trouble the classical diaspora paradigm, because in that way I think you test the limits of this critical approach. These diasporas also challenge the territorial link which is at the heart of positivist legal identity, so these texts can be read as exploring rootedness in a different way, examining what it means to be trans-territorial. Clearly, this is an important way of looking at literature because not only does this bring out the anti-hegemonic, decolonizing potential of the literary text, but also because, as Kim Barry argues, identity is “anchor[ed] in law. The very foundation of the way people think about themselves and the country to which they are assigned is in large part legally defined.”⁵³

So, in taking transjurisdictionalism as a departure point, one can observe the conditions for diaspora as a recognition of a postmodern legal subjectivity: a subjectivity that is, or has the potential to be, “law-inventing” rather than “law-abiding”⁵⁴ – it is in this way that I mean Legal Diaspora Studies may unleash this decolonizing potential, as well as wrenching subjectivity from territorial definitions of identity.

3.2 Questioning the Spatiality of the Law

The first extract analysed using this approach is *Django – The Life and Times of a Gypsy Musician*, by Michael Dregni. It is a biographical account of a famous guitarist from the Roma diaspora as he plays across Europe and in the US. Dregni begins by recounting the early years of Django as he roamed the outer-limits of Parisian nether-zones:

Paris was still protected by its ring of medieval ramparts, and it was here on the doorsteps of the city that Django’s family lived. Outside the fortifications, the city’s glory came to a dead end. Surrounding Paris was a vast nether region known as la Zone. Here, outside the City of Light, was a city of blight: It was in la Zone that Paris’s cesspool cleaners dumped their waste each night and here as well that the human refuse of the city found refuge. This was not the Paris of broad boulevards, monuments, and cathedrals. Instead, whole cities of shantytowns crowded the fortification ports like beggars holding out their hands for the smallest offering. The ramshackle hovels crafted from cast-off boards and stone rubble were homes to the dispossessed. The inhabitants of la Zone were known derisively by Parisians as les zonards – and many feared the Gypsies as the worst vermin among them.

⁵³ Barry, “Home and Away,” 23.

⁵⁴ Boaventura de Sousa Santos, “Three Metaphors for a New Conception of Law: The Frontier, the Baroque, and the South,” *Law and Society* 29 (1995): 569–584, 573.

The Manouche and Gitans parked their caravans in la Zone where they could find streamwater along the lost river of Paris, la Bièvre, and it was here that Négros brought Django and her other children and settled in among their clan. [...]

Négros and the other Gypsies favoured campsites in la Zone near their livelihoods in the flea markets. They moved between encampments ... Each weekend, Négros led her children to these markets blossoming out of the mud of la Zone and named in honour of the fleas that inhabited the upholstery of the old furniture and rags for sale. She hawked her wares amid the glorious anarchy of the markets.

La Zone became Django's world. He led a gang of Gypsy boys that proudly called themselves les Foulards rouges, or Red Scarves, a symbol of the Parisian working class. Django's gang fearlessly stole pears from the walled orchard of the Saint-Hippolyte priory, sweet juice dripping down their faces as they ate the forbidden fruit.⁵⁵

Through this nomadic excavation, scales of law can be identified – here working against the positivist assumption that “law operates on a single scale, the scale of the state.”⁵⁶ What we can read instead is “a complex and internally diversified legal landscape, consisting of a plurality of legal orders.”⁵⁷ It is not only that Django and his “clan” are living in the boundaries of Paris. The “vast nether regions” of la Zone have their own law; indeed they are their own “world.” It is not merely the shadow of Paris, the other of the city, as the way in which they negotiate this “dispossession” is a complex negotiation of territorialized survival, in which their location by “the lost river” concretizes their arrival and formalizes their connection to the space. Here the city is enclosed within “a ring of medieval ramparts”: the city is one legal space, and this is another that is not quite other. Django has his own, larger-scale legality, in which stealing fruit from inside another set of walls is legitimate yet transgressive. The interaction between these scales reflects both adaptation and a challenge to sources of legal authority: embodying this space at the margins is to embrace a site of “glorious anarchy,” and yet Django's leadership of his gang “les Foulards rouges” a name defiantly symbolizing “the Parisian working class,” is both strongly rooted in place and simultaneously to adapt the codes of legitimacy to suit a rebellious inter-communal identity which, being both diasporic and traditionally nomadic, is outside the national scale.

55 Michael Dregni, *Django – The Life and Music of a Gypsy Legend* (Oxford: OUP, 2004): 11 – 12.

56 Santos, *Toward a New Legal Common Sense*, 426.

57 Santos, *Toward a New Legal Common Sense*, 426.

3.3 The Buddha of Suburbia: At the Boundaries of Heteronormativity

The second extract is from *The Buddha of Suburbia*, by Hanif Kureishi. The novel details the experiences of the central character, Karim, growing up in the suburbs as a gay British-Asian and dreaming of escaping to London. Kureishi writes:

It turned out that on stage I would wear a loin-cloth and brown make-up, so that I resembled a turd in a bikini-bottom. I undressed. "Please don't put this on me," I said, shivering. "Got to," she said. "Be a big boy." As she covered me from toe to head in the brown muck I thought of Julien Sorel in *The Red and the Black*, dissimulating and silent for the sake of ambition, his pride often shattered, but beneath it all solid in his superiority. So I kept my mouth shut even as her hands lathered me in the colour of dirt. A few days later I did question Shadwell about the possibility of not being covered in shit for my début as a professional actor. Shadwell was concise for once.

"That's the fucking costume! When you so eagerly accepted your first-ever part did you think Mowgli would be wearing a kaftan? A Saint-Laurent suit?"

"But Mr Shadwell – Jeremy – I feel wrong in it. I feel that together we're making the world uglier."

"You'll survive."⁵⁸

It is worth analysing this text within the critical context of a recent article by Sonia Katyal, focusing on the intersection between law, diaspora and sexuality in a way which emphasizes the uniquely disconcerting and yet critically contingent emplacement of a necessary intersectionality prominent to any analysis of the queer diaspora.⁵⁹ Katyal explores the intersection between the activities of the South Asian Lesbian Gay Association (SALGA) and the India Day parade in New York, and the landmark judgment that same summer, namely "the overturning of sodomy laws by the Delhi High Court, four days later, in a soaring, comprehensive declaration of equality in a case called *Naz Foundation v. Government of NCT*."⁶⁰ She writes that despite this judicial decision, the "SALGA and its members had, for at least the fifth time in a decade, been formally denied entry to the parade celebrating the origin of the same nation that had given birth to so many of them."⁶¹ She draws a comparison between this case and that of the "Irish LGBT organizations in the United States, which are precluded from marching every Saint Patrick's Day in Boston,"⁶² who lost their civil rights

⁵⁸ Hanif Kureishi, *The Buddha of Suburbia* (London: Faber and Faber, 1990): 146.

⁵⁹ Sonia K. Katyal, "The Dissident Citizen," *UCLA Law Review* 57 (2010): 1415–1476.

⁶⁰ Katyal, "The Dissident Citizen," 1417.

⁶¹ Katyal, "The Dissident Citizen," 1415–1416.

⁶² Katyal, "The Dissident Citizen," 1423.

case in the Supreme Court, thereby drawing links between sexuality, diaspora and dissidence,⁶³ in effect transforming the “[b]orders of national, cultural, and juridical identity”⁶⁴ in which “the very space of a [queer] diaspora is marked by a dynamic hybridity between nations, sexualities, and loyalties that often elides simple classifications”, highlighting a sense of location somewhere “between the global and the local.”⁶⁵ The “constitutional borrowing” she emphasizes in the Naz opinion, gives rise to “multiple doctrinal hybridities” and demands an analysis of jurisdictional boundaries.⁶⁶ The Naz Foundation judgment demonstrated a successful “integration of non-Western comparative constitutionalism,”⁶⁷ as well as turning back to the inclusiveness guaranteed by the founders of the Indian constitution for guidance.⁶⁸ Importantly, Naz “ushered in an important integration of cultural and legal regionalism with Indian originalism, transforming disenfranchised sexual minorities into recognized legal subjects deserving of formal protection and equality,”⁶⁹ recoding citizenship both culturally and legally. She suggests the two should be dialogically related but considered as separate diasporas, and it is with this suggestion and

63 Katyla also draws links between these transnational activities and “the same configuration of themes-crossing over, going back and forth between the domestic and the diasporic-in the spheres of gender, sexuality, and nation was also at work in the national upheaval following Deepa Mehta’s film *Fire* (1996, Trial by Fire Films Inc./Kaleidoscope Entertainment) which depicted two Indian sisters-in-law in a romantic relationship. Yet while the film marked a milestone for being one of the first depictions of a romantic same-sex relationship in Indian cinema, it also marked a milestone in terms of how the diaspora-specifically the queer diaspora embraced both the film and the underlying controversy that ensued” in India and across the diaspora, with protests of embassies in the US, for example (Katyal, “The Dissident Citizen,” 1436).

64 Katyal, “The Dissident Citizen,” 1425.

65 Katyal, “The Dissident Citizen,” 1426.

66 Katyal, “The Dissident Citizen,” 1441.

67 Katyal, “The Dissident Citizen,” 1455. She writes: “the *Naz Foundation* opinion can be read as a uniquely powerful example of cosmopolitan constitutional borrowing, balanced with a deep attention to Indian originalism. Not only did the *Naz Foundation* court rely on U.S. jurisprudence, but it drew on decisions from Canada, Fiji, Hong Kong, Nepal, and South Africa. It paid particular attention to Nepal, which enacted constitutional protections based on sexual orientation and gender identity, and which in 2009 actually set up a government panel to study same-sex marriage laws in order to reform its own laws”(“The Dissident Citizen,” 1457).

68 Katyal, “The Dissident Citizen,” 1466: “The opinion’s penultimate paragraphs quoted an inimitably lofty passage from Nehru, who opined the following on the notion of equality that stemmed from the ‘city of words’: ‘Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation’s passion [...] [The Resolution of Equality] seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future.’”

69 Katyal, “The Dissident Citizen”, 1471.

what she has highlighted about the intersections between diaspora, legality, cultural identity and legal pluralism that I turn back to the text.

The queer diaspora is perhaps the most decoupled from territory, and yet this is not destabilizing – indeed, for Rebecca Romanow Karim is corporeally resistant to binarist discourse, “never really ‘here’ and certainly no longer ‘there,’”⁷⁰ yet refusing a transient subjectivity. Indeed, he maps his own “postcolonial geography.” Karim’s performance of Mowgli, and his arguments over the costume he is expected to wear, can be seen as the threat of difference to a singular identity, which is a hallmark of the positivist legal system in which your identity is separately cultural (where you can slip into various forms of identity) but in terms of a legal identity, you are linked to one nation-state (or your nationality and citizenship may be multiple, but are hierarchically organized at the level of operation). Difference, as Dianne Otto establishes, is thus potentially a threat: “difference in the modern frame is recognizable only if it is commensurate with the European imagination. All other difference is relegated to a clamor.”⁷¹ So Karim must “wear a loin-cloth and brown make-up”, be “lathered [...] in the color of dirt.” Otto writes that to qualify as a legal state within the international legal framework, a postcolonial state had to satisfy the territorial and population requirements by “maintaining [...] colonially determined subdivisions [...] through the legal principle of *uti possidetis juris* (unalterability of colonial frontiers)” just as, as she writes “self-determination was denied to peoples who lived in areas within or straddling colonial borders.”⁷² Drawing on Santos, this theatrical space of hyper-performativity could be read as a “contact zone [...] in which different normative life worlds meet and clash,”⁷³ begging the question: “who defines who or what belongs to the contact zone and what does not?”⁷⁴ Crucially, for Santos, “the inequality of exchanges are traceable”⁷⁵ through these interactions. He highlights the contact zone of cultural citizenship, where different “legal strategies have been fiercely disputing the terms of conflict

70 Rebecca Fine Romanow, “The refusal of Migrant subjectivity: Queer Times and Spaces in Hanif Kureishi’s *The Buddha of Suburbia*,” in *Indiscretions – At the Intersection of Queer and Postcolonial Theory*, ed. Murat Aydemir (Amsterdam and New York: Rodopi, 2011): 143–160, 144–145.

71 Dianne Otto, “Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference,” in *Laws of the Postcolonial*, ed. P. Fitzpatrick and E. Darian-Smith (Michigan: U of Michigan P, 1999): 145–180, 146.

72 Otto, “Subalternity and International Law,” 150.

73 Santos, *Toward a New Legal Common Sense*, 472.

74 Santos, *Toward a New Legal Common Sense*, 473.

75 Santos, *Toward a New Legal Common Sense*, 472.

and negotiation between principles of citizenship and principles of difference.”⁷⁶ This is much more complex for Karim, through the ways in which, as Rabanow asserts, he “utilizes his body, particularly his sexual functions, as a site of resistance to neo-colonization [...] contest[ing] those very positions of normativity to which he has been allocated”:⁷⁷ he is trying on new identities, as in the queer diaspora singular identities do not quite fit. Karim’s body is more than just a continuation of postcolonial, or even diasporic, legacies; he actively embodies a set of dissident practices that are adaptive and transformative, forming a cosmopolitan subaltern identity which demands a new kind of legal recognition. Here, then, Karim moves away from the claustrophobic heteronormativity of the suburbs in a spatialization of displaced identity-making practices, performed and re-performed here in multiple configurations.⁷⁸

3.4 *Carpentaria*: Dispossession, Territory and Legal Identity

The third extract I want to consider is from *Carpentaria*, by Alexis Wright, a novel about life in the town of Desperance in Queensland, by an author from the indigenous diaspora.⁷⁹ It is in this text that dimensions of sovereignty, the foundation of legal authority, are critically interrogated, through Wright’s narrative excavation of an alternative to the order of man:

The longer he looked down in the waters the more he felt like letting go; to fall into its universe. He was sure that at any moment he would see the movement in the racing waters of

⁷⁶ Santos, *Toward a New Legal Common Sense*, 476: This is particularly notable for migrants and their descendants as played out in legal struggles around immigration, language and citizenship. Santos relates this to the case of Latinos and Mexicans in the US, “in their struggle to claim belonging without surrendering cultural identity.”

⁷⁷ Romanow, “The refusal of Migrant subjectivity,” 150 (as heterosexual man, son, and worker, etc.).

⁷⁸ Ford writes: “jurisdiction is a function of its graphical and verbal descriptions; it is a set of practices that are performed by individuals and groups who learn to ‘dance the jurisdiction’ by reading descriptions of jurisdictions and be looking at maps. This does not mean that jurisdiction is ‘mere ideology’, that the lines between various nations, cities and districts ‘aren’t real’. Of course the lines are real because they are constantly being *made* real, by county assessors levying property taxes, by police pounding the beat (and stopping at the city limits), by registrars of voters checking identification for proof of residence. Without these practices the lines would not be real – the lines don’t pre-exist the practices” (Ford, “Law’s Territory”, 856).

⁷⁹ Although some critics have problematized this definition, it can be argued that by focusing on diasporic conditions of identity it is possible to politicise the issue of disenfranchisement to the extent that it becomes a powerful statement of resistance to an ongoing form of colonialism.

some living creature, someone alive, and he almost allowed himself to fall. So convinced he would find his destiny in the floodwaters, as though the waters were beckoning him, urging him to believe he could simply drift along in the direction of where the waters were moving, until he saw Norm's green boat.

And Will Phantom was right to think he was lucky, leaning his skinny body out of the building, barely holding on to the doorway, and not caring if he fell, because any second he knew he could simply let go, with full certainty of falling straight into the destiny he had prescribed for himself. He had not figured fate, when the top floor under his feet suddenly moved. The floorboards had been shaken so violently, he was sent flying into the floodwaters. He hit the water hard, went under into the billowing yellow waters, where he rolled blindly in vacuo with the dead of the deep, before being returned in a frenzy of breathlessness to the surface. Somewhere, in all of that water sweeping him towards the sea, he was able to turn to see what had happened to his little oasis.

He saw not a hotel left far behind but a small castle for the recreation of spirits. This new reality had nothing to do with the order of man. There was no town of Desperance. It was gone. A monster followed him instead.⁸⁰

The constructive narrativity of sovereignty is a key theme running through this text, reflecting, as Honni van Risjwijk writes, “how the law has imagined Australian sovereignties – both the sovereignty of the white state and indigenous sovereignties.”⁸¹ Wright challenges the hierarchical assumptions of these legal frameworks as the novel moves away from the confining of indigenous sovereignties as a past and static origin narrative, a finite narrative that was seen to have ended with Native Title recognition.⁸² In other words, “sovereignty”, Risjwijk argues, “is central to the question of how the law narrates the role of the past in the present”:⁸³ demonstrating the need to rethink overlapping sovereignties as a “radical critique of the nation state”⁸⁴ and necessities a different conceptualization of the link between self-determination and sovereignty.⁸⁵

80 Alexis Wright, *Carpentaria* (Sydney: Giramondo, 2006): 491.

81 Honni van Risjwijk, “Stories of the Nation’s Continuing Past: Responsibility for Historical Injuries in Australian Law and Alexis Wright’s *Carpentaria*,” *University of New South Wales Law Journal* 35. 2 (2012): 1–41, 2.

82 Risjwijk, “Stories of the Nation’s Continuing Past,” 21: “This forgetting [post-Mabo] occurs through the re-narration of the originary moment of settlement, and produces a tacit (unsought-for) bargain between the law and indigenous rights: the law’s recognition of native title comes at a high price, the ‘exculpation’ of the law from responsibility for dispossession, as well as the end to claims for Indigenous sovereignty.”

83 Risjwijk, “Stories of the Nation’s Continuing Past,” 31.

84 Santos, *Toward a New Legal Common Sense*, 255.

85 The “UN Declaration on the Rights of Indigenous Peoples 61/295” (2008) emphasizes the rights to self-determination in Articles 3, 4 and emphasizes the right to distinct legal institutions in Article 5 but does not mention sovereignty. <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf> (acc. 22 July, 2015). Similarly, the “International Covenant on Civil and

It is highly territorialized, and yet a key theme here is dispossession. Collective rights are viewed as a threat to the principle of sovereignty,⁸⁶ and are, for Santos, part of “a critical legal plurality,”⁸⁷ which represent “the most far-reaching challenge to the modern equation among nation, state and law” which are territorially based:⁸⁸ How can, in the international legal system, multiple sovereignties occupy the same space? The foundations Will is standing on collapse into the swirling waters, and when he finally emerges he sees that something new is left behind, a “new reality [which] had nothing to do with the order of man. There was no town of Desperance. It was gone. A monster followed him instead.” This alternative sovereignty, then, deceptively (and somewhat anarchically) territorialized – evidenced by the apocalyptic scene in which the town of Desperance is destroyed – represents the return or the resurfacing of a form of adjudication that is “continuing, universal and richly flourishing” rather than belonging to the past.⁸⁹ For Wright, Indigenous law is a source of authority rather than cultural myth, one that is serpentine, living, breathing, and “holds a different relationship to representation compared to Western law.”⁹⁰ As Will Phantom gazes into the “racing waters” below he imagines “some living creature” swimming beneath him, just as the destructive sea “beckon[s] him [in], urging him to believe he could simply drift along in the direction of where the waters were moving.”

This can be seen as interlegality in action, where “deep-rooted legal traditions and cultures” interact with international, national, regional and local legality operative in formal and informal resources and mechanisms,⁹¹ a dynamic “intersection of different legal orders,”⁹² which require “complex analytical tools”⁹³ in order to allow us to do as Will does, and “fall into its universe.”

Political Rights” (ICCPR) Art. 27 also protects the rights of minorities “to enjoy their own culture.” <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (acc. 22 July, 2015).

86 Santos, *Toward a New Legal Common Sense*, 243.

87 Santos, *Toward a New Legal Common Sense*, 244.

88 Santos, *Toward a New Legal Common Sense*, 245.

89 Risjwijk, “Stories of the Nation’s Continuing Past,” 21.

90 Risjwijk, “Stories of the Nation’s Continuing Past,” 25.

91 Santos, *Toward a New Legal Common Sense*, 254.

92 Santos, *Toward a New Legal Common Sense*, 437.

93 Santos, *Toward a New Legal Common Sense*, 438.

4. Beyond Adaptation: Legal Diaspora Studies and the Literary Imperative

In conclusion, it can be argued that one of the key aims of Legal Diaspora Studies must be to expand a pluralistic approach to law beyond a recognition of adaptation, a perspective which becomes highly relevant in an era of high mobility and transnational politics where identity is subject to transjurisdictional practices operating across multiple networks of power. The broadening of such an approach would not focus on displacement, but rather on the prevalence of overlapping sovereignties as layers of legalities which construct our world(s). In this way, Legal Diaspora Studies provides a means of reading literature as a way of simultaneously refracting and decolonizing narratives of legal identity, which are configured along territorial lines and limited to the boundaries of the modern-nation state. The inherent transjurisdictionalism of literature provides the ideal site in which to witness the emergence of diaspora as an engaging critique of bordered doctrines of sovereignty.

Fabian Wittreck

The Old Armenian Lawcode of Lemberg

The Law of Diaspora Communities as Literature?

1. Introducing the Source: The Armenian Lawcode of Lemberg (1518/1519)

In 1857 the Austrian legal historian *Ferdinand Bischoff* was the first to publish a note on a most intriguing source from the municipal archive of Lemberg/Lwow/Lviv (in modern Ukraine) which may shed light on an interesting intersection of law, literature, and diaspora studies. Bischoff described (and shortly afterwards published) a Latin translation of an older Armenian lawcode done by command of the Polish king *Sigismund/Zygmunt I.* (†1548) and dated by him to the year 1523¹. The text pretends to be an amended translation intended to make the opaque Armenian lawcode accessible as well as to ameliorate it in the face of ongoing conflicts between the Armenian community of Lemberg and the city's officials. Its textual base is an older translation from the Armenian done by the

1 Ferdinand Bischoff, "Das alte Recht der Armenier in Polen. Aus Urkunden des Lemberger Stadtarchivs," *Oesterreichische Blätter für Literatur und Kunst* 28 (11 July 1857): 217–219; 33 (15 August 1857): 257–260; 37 (12 September 1857): 289–291; 39 (26 September 1857): 365–307; Ferdinand Bischoff, "Das alte Recht der Armenier in Lemberg," *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften, philosophisch-historische Klasse* 40 (1862): 255–302 (Latin edition: 258–302). – The literature is rather scarce; see J[oseph] Kohler, "Das Recht der Armenier," *Zeitschrift für vergleichende Rechtswissenschaft* 7 (1888): 389–394; Josef Karst, "Grundriß der Geschichte des armenischen Rechts," *Zeitschrift für vergleichende Rechtswissenschaft* 19 (1906): 348–352; Marian Oleś, *The Armenian Law in the Polish Kingdom (1356–1519). A Juridical and Historical Study* (Rome 1966): 46–119; Marian Oleś, "Casimir the Great and the Armenian Privileges 1333–1370," *Études Slaves et Est-Européennes/Slavic and East-European Studies* 9 (1966/67): 67–90; Greg[or] Petrowicz, "L'Organisation juridique des Arméniens sous le monarques polonais," *Revue des études arméniennes, Nouvelle série* 4 (1967): 321–354; Heidemarie Petersen, *Judengemeinde und Stadtgemeinde in Polen* (Wiesbaden 2008): 108–117; exhaustive list (including Polish, Russian and Armenian sources) by Ludwig Burgmann, Hubert Kaufhold, *Bibliographie zur Rezeption des byzantinischen Rechts im alten Rußland sowie zur Geschichte des armenischen und georgischen Rechts* (Frankfurt/Main 1992): 162–168, n. 302–332.

community itself (arguably 1518 or 1519)²; it comprises ten chapters lacking numbers and 124 chapters with subtitles. According to the number of extant copies and further translations, this lawcode was a very popular one³. At first glance, the source simply seems to be a piece of legislation governing the affairs of a diaspora community. At second sight, it turns out to be a veritable piece of fiction essentially derived from a medieval Armenian lawbook which reveals signs of a fictitious character itself, as Bischoff's *Rechtsbuch* is clearly based on the much better known *Datastanagirk* of *Mxit'ar Goš* from the twelfth century (beside a couple of other sources)⁴. While both claim to reproduce law being in force, they ultimately emerge as products of literary fantasy.

The following paper will unfold the double context of the *Lawbook of Lemberg* by describing the tense situation of the Armenian community and its legal status (2.) as well as the background of older Armenian sources (3.). Building on these two steps, the source can be read from the law and literature-perspective (4.). Finally, the merits of such a form of 'invented law' for a diaspora community may become clear (5.).

2. Historical Context (1): Legal Pluralism in Lemberg?

The early modern city of Lemberg has to be understood as a multi-religious and multi-ethnic municipality with citizens of Polish, Russian, Ukrainian, German, and Armenian ancestry and religious affiliations to Roman Catholic, Protestant and Orthodox creed (as well as sizeable Jewish and Muslim communities). While this hints in the direction of the existence of some kind of legal pluralism

² The exact date is contested, but without relevance for the focus of this study. See for example Oswald Balzer, "Das Lemberger armenische Rechtsbuch, bestätigt von Sigismund I. im Jahre 1519," in: *Bulletin de la Société polonaise pour l'avancement des sciences* 1 (1901/1910): 182–189, who proposes to date the first part of the text to 1434 and the second to 1462–1469; concurring opinion of Oleś, "Casimir the Great," 78.

³ See Bischoff, "Recht der Armenier in Lemberg": 258; Kohler, 392 seq.

⁴ Early identification: S. Kutrzeba, "Datastangirk Mechitara Gosza i statut ormiański z. r. 1519," *Kwartalnik historyczny* 22 (1908): 658–679. The main source is easily accessible in English translation by Robert W. Thomson, *The Lawcode [Datastanagirk'] of Mxit'ar Goš* (Amsterdam/Atlanta 2000); cf. his introduction: 11 seqq. For a first overview concerning other sources utilized see Oleś, *Armenian Law*, 48–68.

(as first described by Eugen Ehrlich in nearby Bucovina⁵ and later summarized by John Griffith et al.,⁶ the self-government of the communities was not uncontested. Indeed, the Armenian community of Lemberg was facing at least two controversies: The first originated from the clash of interests of the Polish monarchy and the City of Lemberg (2.1). The second was mainly local and arose from disputes between the city authorities and influential members of the Armenian community (2.2). It is highly probable that both controversies led to internal Armenian strife in the end, which may have been the trigger for the collection or translation of the document in question⁷.

2.1 Contested Commune: The Municipality and the Polish Kings

Lemberg was only the token remnant of the proud claim of the Polish king to be *dominus ac heres Russiæ*⁸. After the Mongol conquest of the Russian principalities, Hungary, Lithuania, Poland and the Khanate of the Golden Horde struggled for control of the region, the Polish princes being only able to secure a small part of the booty comprising the city of Lemberg (1352). Since then, the municipality became part of the power contest between the Polish monarchy and the centrifugal forces of the kingdom, namely the nobility and the cities⁹.

2.2. Contested Community: The Armenians and the “Law of Magdeburg”

The Armenian people is one of the prototypical diaspora communities. With their ancestral Caucasian homeland harassed by Arab, Persian, Byzantine, Mongol and Turkish conquerors and overlords, sizeable groups migrated to eastern

5 Eugen Ehrlich, “Das lebende Recht der Völker der Bukowina,” *Recht und Wirtschaft* 1 (1912): 273–279, 322–324; see Klaus F. Röhl, Stefan Machura, “100 Jahre Rechtssoziologie: Eugen Ehrlichs Rechtspluralismus heute,” *Juristenzeitung* (2013): 1117–1128; Franz von Benda-Beckmann, Keebet von Benda-Beckmann, “‘Living Law’ as a Political and Analytical Concept,” in Knut Papendorf, Stefan Machura, Anne Hellum, ed., *Eugen Ehrlich’s Sociology of Law* (Berlin 2014): 69–91.

6 See John Griffith, “What is Legal Pluralism?” *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1–55.

7 According to Bischoff, “Recht der Armenier in Polen,” 28: 217.

8 See Oleś, “Casimir the Great,” 72.

9 See once more Oleś, “Casimir the Great,” 71–73.

Anatolia, Cilicia, the Levant, and further on into Southern Russia, Ukraine, and Poland¹⁰. Especially in Lemberg (Leopolis), an Armenian community can be dated back to the high middle ages. The Armenian cathedral (built since the fourteenth century) testifies to its wealth¹¹. It is probable that there were two main Armenian migration movements to Eastern Europe in the eleventh and thirteenth century, triggered by the Turkish conquest of Ani (1064) and the Mongol invasion of the Caucasus respectively¹².

While details are again open to debate, the Polish king *Casimir I.* (†1370) tried to integrate his new-won city into his realm by a two-pronged strategy. As in the Polish mainland, he granted the “Law of Magdeburg” to the city as a whole. To pacify the minority communities, he added an opt-out clause allowing these groups to cling to their own statutes or *iura*¹³:

Et licet toti civitati predictae et omnibus habitantibus et communicantibus in ea tribuimus Ius Madeburgense supradictum tamen ex speciali nostro favore alys gentibus habitantibus in eadem civitate, videlicet Ormenis, Iudeis, Saracenis, Ruthenis et alys gentibus, cuiuscumque condicionis vel status existant, tribuentes gratiam specialem, volumus eos iuxta ritus eorum in ipsorum Iure illibates conservare, dantes tamen facultatem eis, ut pro quibuscumque causis vel criminibus inter ipsos aut inter eos vel alias quibuscumque super causis vel articulis emergentibus, habuerint questionem, licitum sit eis predicto Iure Madeburgense uti coram advocatione et perfrui iuxta eorum petitionem petitam ne oblatam. Sin autem refutaverint predictum Ius Madeburgense, quo debeat civitas antedicta, tunc dicte nationes Ormenorum, Iudeorum, Saracenorum, Thartharorum, Ruthenorum et aliarum quarumcumque nationem, que ibidem congregata et adinvente fuerint, quilibet sue nationis Iure, tamen presidente Advocatione civitatis eidem iudicio, ipsorum quilibet questio debeat terminari et deffiniri.

10 See Manoushag Boyadjian, “The Rise of the Eastern Churches and Their Heritage: The Armenian Church: Cultural Role and Heritage,” Habib Badr, ed., *Christianity. A History in the Middle East* (Beirut 2005): 361–378; Razmik Panossian, *The Armenians. From Kings and Priests to Merchants and Commissars* (London 2006): 57–94.

11 See Christian Weise, “Spuren der armenischen Gemeinde in Lemberg. Von der Ansiedlung der Armenier in der Ukraine im 11. Jahrhundert bis zum Ende der armenischen Gemeinden in den Jahren 1940–1946 und ihrer Wiederbegründung im Jahre 1989,” Günter Prinzing, Andrea Schmidt, ed., *Das Lemberger Evangeliar. Eine armenische Bilderhandschrift* (Wiesbaden 1997): 143–169; George A. Bournontion, *A Concise History of the Armenian People* (Costa Mesa 2012⁶): 249–251.

12 Oleś, “Casimir the Great,” 73–75 (with further references).

13 The charter is reproduced by Oleś, *Armenian Law*, 86–88. Loose German translation by Bischoff, “Recht der Armenier in Polen,” 28: 218. “Rutheni” is an old-fashioned (and politically incorrect) term to denote Ukrainians.

The authenticity of the charter is contested, however¹⁴. Taking it at face value, it grants the above-mentioned communities the opportunity of *forum shopping*: They may plead their cases at the communal court of the *advocatus civitatis* (reeve; germ. *Vogt*, pol. *wójt*) according to the Law of Magdeburg as any other citizen, but they may refrain from this and conclude a judgment following their traditional rules or customs. The *caveat*: The king tries to control this piece of legal pluralism by using a procedural measure; even in these ‘autonomous’ cases the reeve comes into play (*tamen presidente Advocato civitatis*). The exact nature of his involvement was a bone of contention for the contemporaries as well as for legal historians: There is documentary evidence for Lemberg Armenian ecclesiastical functionaries acting as judges in civil matters;¹⁵ furthermore, authors claim the existence of some kind of “traditional” Armenian jury system¹⁶ (both versions would reduce the reeve to a mere president with no power of judgment). On the other hand, the reeve is portrayed as the full-fledged, competent judge for the minority communities, only restricted *ratione materiae* by being bound to their ancestral law¹⁷.

The compromise (if genuine) paved the way for new strife. The document of 1523 amply proves that the city authorities and the Armenian community were still at odds about the scope of the latter’s judicial autonomy¹⁸ (it furthermore hints at the possibility that there were inner-Armenian controversies concerning the option of seeking legal protection by turning to the reeve in his function as the mouthpiece of the Law of Magdeburg¹⁹). This ‘benchmark’ of the contested Armenian community may sound strange at first: The “Law of Magdeburg” was applicable in Lemberg according to the mentioned Royal decree of 1356. Indeed the Saxonian city was extremely successful in her *Rechtsexport* (lit. legal export or export of statutes). At its apex, hundreds of cities in Germany, in Eastern and in Northern Europe applied the “Law of Magdeburg” and partly even

14 Pro: Oleś, “Casimir the Great,” 78–80 (with further references); contra: Bischoff, “Recht der Armenier in Polen,” 28: 218: “bloßes Machwerk” (lit. “mere botch”).

15 See Oswald Balzer, “Armenische Gerichtsbarkeit im mittelalterlichen Lemberg,” *Bulletin de la Société polonaise pour l’avancement des sciences* 1 (1901/1910): 138–147; see also Oleś, “Casimir the Great,” 83–85 alluding to a privilege to the Armenian bishop Gregory dating from 1367 (also appendix II, 88).

16 See Oleś, “Casimir the Great,” 81–82 (his assumption that “the institution reflects the communal courts of the oldest Armenian law” [82] is speculative at best).

17 See Bischoff, “Recht der Armenier in Polen,” 28: 218.

18 See Bischoff, “Recht der Armenier in Polen,” 28: 217–219.

19 See Bischoff, “Recht der Armenier in Polen,” 28: 217.

used the court of the city as superior judicial instance (*Oberhof*).²⁰ For the Polish kings, this was an instrument of unification of their realm. For the Armenian community (or at least her traditional leaders), however, it appeared as a menace to unity and cohesion²¹. It is this tense situation which saw the appearance of the Lawcode.

3. Historical Context (2): Evolution of ‘Armenian Law’?

3.1 The Significance of Armenian Law

Armenia has a long tradition of a distinct Armenian ‘statehood’ or better – to avoid anachronism – organized authority, dating back to antiquity²². In contrast to other Eastern Christian ‘heterodox’ communities (e. g. Copts, Nestorians, Jacobites), the Armenian ‘Gregorian’ church thus could lean on some kind of secular branch – at least semi-autonomous fiefdoms after the Arab conquest, petty kingdoms in the high middle ages, and the Armenian kingdom of Cilicia during and after the crusades. Nevertheless, the sources of ‘Armenian Law’ are not only (with a few exceptions, as we will see later on) written by religious functionaries, but also mainly consist of ecclesiastical sources (augmented with Roman or Byzantine materials²³). A distinct ‘Armenian Law’ with clear and discernable traces back to antiquity does not exist or may at least not be reconstructed from the sources *bona fide*²⁴.

²⁰ See Friedrich Ebel, Renate Schelling, “Die Bedeutung deutschen Stadtrechts im Norden und Osten des mittelalterlichen Europa. Lübisches und Magdeburgisches Recht als Gegenstand von Kulturtransfer und Träger der Moderne (2001),” Andreas Fijal, Hans-Jörg Leuchte, Hans-Jochen Schiewer, ed., *Unseren fruntlichen grus zuvor. Deutsches Recht des Mittelalters im mittel- und osteuropäischen Raum* (Cologne et al. 2004): 389–401, 394–398; Olga Keller, “Einführung und Adaption des deutschen Rechts im östlichen Europa während Mittelalter und früher Neuzeit,” *Zeitschrift für Neuere Rechtsgeschichte* 34 (2012): 273–285.

²¹ Bischoff, “Recht der Armenier in Polen,” 28: 217.

²² See once again Panossian, *The Armenians*, 58–60, 63–66; for a short summary of the history of Armenian law see Kohler, “Das Recht der Armenier,” *passim* (but largely outdated); Karst, *Grundriß*; Oleś, *Armenian Law*, 23–25; Fabian Wittreck, *Interaktion religiöser Rechtsordnungen* (Berlin 2009): 145–149.

²³ See Burgmann, Kaufhold, *Bibliographie*, 158–162 with further references.

²⁴ But see Karst, *Grundriß*.

3.2 Mxit'ar Goš's "Datastanagirk" (Twelfth Century)

Mxit'ar Goš (†1213) was a cleric of the learned rank of *vardapet*; he was born and spent most of his life in Eastern (i.e. nowadays) Armenia, but also travelled around Armenian communities in Syria in Cilicia. In 1184 he started to compose his Lawbook; the exact time of its completion is unknown. The code comprises an introduction with twelve headings and 251 chapters. They deal – like a typical *nomokanon* of the Eastern tradition²⁵ – with secular as well as ecclesiastical matters;²⁶ the rules are primarily drawn from the Old Testament and Armenian canonical collections. There may be traces of Roman Law as well as local custom, but to claim the code as a codification of an autochthonous 'Armenian law' would be difficult²⁷.

The code gives a seemingly clear motivation for its composition. Mxit'ar points out in his introductory remarks²⁸:

As we are about to write down the lawcode, first let us set out a refutation of those who criticize the Law of the Lord [on the grounds] that [it] is not a code; because they are more than a few whose task and argument it has been to honour foreigners and hold their statutes lawful.

Besides opposing this "slander," Mxit'ar castigates his countrymen for taking resort to Muslim courts in the absence of an organized Armenian judiciary²⁹:

That believers in Christ must not go to the tribunal of non-believers in Christ, having a great [distance] between them, as this shows.

The impression left by these remarks is clear: The code is composed with the intention of giving the Armenian people a veritable codification of genuine Christian law serving at least to functions: Symbolically, it should adorn Armenian culture as one of those disposing of a full-fledged learned law. Practically, it should act as a guide for those Armenian dignitaries (mainly of ecclesiastical breed) who could act as *de facto* judges in the absence of a centralized judiciary;

²⁵ Derived from Greek *nomos* (secular law) and *kanon* (church rule or law); see Clarence Gallagher, *Church Law and Church Order in Rome and Byzantium* (Aldershot, Burlington 2002): 38.

²⁶ In detail Robert W. Thomson, "Canon-Law and Secular Law in Mxit'ar Gosh," *Astanak* 3 (2000): 84 ff.

²⁷ Detailed account by Karst, *Grundriß*, 396–405.

²⁸ Datastanagirk, *Introduction* I (Thomson, *Lawcode*, 69). – The term 'foreigner' points to Muslims (n2).

²⁹ Datastanagirk, *Introduction* IX (Thomson, *Lawcode*, 99).

by improving their judgments, it would in the end prevent Armenians from suing in the qadi's court. While the lawcode of Mxit'ar was copied widely,³⁰ it is open to debate whether the second function was ever fulfilled at all; as far as can be seen, there is no documentary evidence for the Medieval use of the code as a source of individual judgments explicitly based on its content or single rules laid down in it. Indeed, the very same can be said of several prominent Eastern Christian *nomokanones* of the high middle ages. Most striking is the example of the Coptic *nomokanon* of Ibn al-^cAssal (1238)³¹ which has found later reception in Ethiopia as the famous *Fetha Nagast*³². It comprises a chapter covering the office of the ecclesiastical judge – which should be most telling if there was any practice of Coptic Christian courts in thirteenth-century Egypt³³. Taking a closer look, it is a mere copy of the relevant chapter of a Muslim scholar of *fiqh* or Islamic religious law – al – ^cAssal just replaces “mosque” by “church”³⁴.

3.3 *Smbat's* Cilician Code (Thirteenth Century)

The same may hold true for the second medieval source to be presented in this paper. The Armenian kingdom of Cilicia flourished – not without interruptions – from 1080 until 1375, forging alliances and fighting wars with Byzantium, the crusader states and local as well as regional Muslim rulers. The kingdom functioned as a centre of Armenian culture and learning, being especially important due to the Muslim occupation of the ancestral Caucasian and eastern Anatolian homelands. The Lawcode of the *sparapet* (constable) *Smbat* (1208 – 1276; brother of King *Hethoum* I) was composed on the basis of the *Datastanagirk* and blended

30 See Thomson, *Lawcode*, 36–39 as well as Hubert Kaufhold, *Die armenischen Übersetzungen byzantinischer Rechtsbücher* (Frankfurt 1997): 21–53.

31 Edition: Marqus Ğirĝis, ed., *Kitāb al-qawānīn* (Cairo 1927); no translation. See Wilhelm Riedel, *Die Kirchenrechtsquellen des Patriarchats Alexandrien* (Leipzig 1900): 115–119; René-Georges Coquin, “Canon Law,” Aziz S. Atiya, ed., *The Coptic Encyclopedia* (New York et al. 1991), vol. 2: 449, 451.

32 Translation: Peter L. Strauss, ed., *The Fetha Nagast. The Law of the Kings*, trans. A. Paulos Tzadua (Addis Ababa 1968). See Paulos Tzadua, “The Ancient Law of the Kings – The Fetha Nagast – in the Actual Practice of the Established Ethiopian Orthodox Church,” *Kanon* I (1973): 112–146; Paulos Tzadua, “Fetha nägäšt,” Siegbert Uhlig, ed., *Encyclopaedia Aethiopiaca* (Wiesbaden 2005), vol. 2: 534–535.

33 See Strauss, *Fetha Nagast*, 249–270.

34 See Hubert Kaufhold, “Der Richter in den syrischen Rechtsquellen. Zum Einfluß islamischen Rechts auf die christlich-orientalische Rechtsliteratur,” *Oriens Christianus* 68 (1984): 91–113 (104, 109); Wittreck, *Interaktion*, 234.

its content with Western (crusader) sources of law³⁵. There are at least allegation of its use in courts³⁶, but the documentary evidence is scarce.

3.4 The Armenian Version of the Syro-Roman Lawbook

The last Armenian source to be considered is still an enigma. The so-called Syro-Roman Lawbook is a document circulating widely among the legal literature of the oriental churches³⁷. It was typically included as “Laws of the Roman Emperors” – even by those communities who had split from the empire because of its alleged heterodoxy (like the Armenian church). The origin and purpose of the Lawbook were heavily disputed. According to the prevailing modern interpretation, it was written in Antioch or Beirut after 474 AD in Latin for the use in a law school (probably by the renowned teacher Amblichus)³⁸. It consists of high-level interpretations of *constitutiones* of later Roman emperors. Subsequently, it was translated (via Greek) into Syrian, Arabic, and finally Armenian versions (not without severe misreadings and misunderstandings). The Armenian version seems to have been translated in the thirteenth century in Cilicia; it is based on a Western Syrian (or “Jacobite”) version of the collection³⁹. The distance of a scholarly interpretation of late Roman law to the social realities of medieval and early modern Christian communities in the East should be obvious.

4. Reading the Lawcode from the Perspective of Law and Literature

Even a short scrutiny of the Lawcode of Lemberg will produce ample evidence that the text – as the Syro-Roman Lawbook – is not well (or at all) suited as a

³⁵ Edition and German translation: Josef Karst, ed., *Sempadscher Kodex aus dem 13. Jahrhundert oder mittelarmenisches Rechtsbuch*, 2 vols (Strassbourg 1905). See Josef Karst, “Introduction,” in *Sempadscher Kodex*, vol. 1: i–xxxii.

³⁶ See Oleš, “Casimir the Great,” 77.

³⁷ Classical edition: Karl Georg Bruns, Eduard Sachau, ed., *Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert* (Leipzig 1880) (Armenian version: part I: 95–141; German translation: part II: 115–150; commentary: part III: 161–164). Authoritative modern edition (only of the Syrian texts) by Walter Selb, Hubert Kaufhold, ed., 3 vols (introduction – text and translation – commentary) (Vienna 2002).

³⁸ See Selb, Kaufhold, *Einleitung*, 43–50.

³⁹ Selb, Kaufhold, *Einleitung*, 64–65.

foundation for judgments in sixteenth century Lemberg (4.1). In fact, it is much more fruitful to read the source as a piece of literature; this paves the way to a better understanding of its function for the identity of a diaspora community (4.2).

4.1 The Law Code as Law

The previous interpreters of the Lawbook of Lemberg have always interpreted it as “law in action”, as a code actually used in the courts of the Armenian community (or at least by the city reeve presiding these courts)⁴⁰. One even runs across the assumption that the book was composed by an active Armenian judge⁴¹ or mirrors actual court practice⁴². A closer look at the source and its context(s) will reveal that this interpretation is faulty. The Lawbook of Lemberg is wholly unsuited to function as a basis for (sound) judgments; furthermore, the hitherto prevalent view has the serious drawback of an anachronistic rear projection of the modern notion of a judge bound to the letter of the law (which does not even reflect the everyday work experience of our current judiciary⁴³).

A closer look at the Lawbook and its comparison with the *Datastanagirk* will show that the document is practically totally alien to the situation in early modern Lemberg⁴⁴. Let’s turn to the index and a few telling examples.

The Lawcode is essentially based on chapters 20 – 216 of the *Datastanagirk*, omitting the first 19 chapters *en bloc* as well as numerous others⁴⁵. Its further sources – the Syro-Roman Lawbook, documents of German and Polish law – are left aside at this point⁴⁶.

40 See Bischoff, “Recht der Armenier in Polen,” 33: 259: “möglichst ausgedehnten Gebrauch”; Kohler, “Das Recht der Armenier,” 392; Oleś, *Armenian Law*, 46 and *passim*. – Distinguishing Oleś, “Casimir the Great,” 85: “Perhaps the law was promulgated but never applied in its whole scope.”

41 See – highly speculative – Oleś, *Armenian Law*, 64.

42 This assumption is shared by Karst, *Grundriß*, 349, and Oleś, *Armenian Law*, 52 – 54.

43 See Fabian Wittreck, *Die Verwaltung der Dritten Gewalt* (Tübingen 2006): 137 – 140.

44 But see Oleś, “Casimir the Great,” 7 – 8: “Undoubtedly the old native practices of the Armenians were significantly affected by the local necessities and conditions in the city of Lwów.”; Similar Balzer, “Das Lemberger Armenische Rechtsbuch,” 185.

45 Comparable schedules: Karst, *Grundriß*, 350 – 351; Oleś, *Armenian Law*, 114 – 118.

46 See in Detail Oleś, *Armenian Law*, 52 – 60 (with further references).

Lawcode	Datastanagirk	Short summary ⁴⁷
1	20	Concerning the statutes for princes guilty towards kings, and of others towards them
2	21	Statutes for peasants
3	22	Concerning the statutes for murder by children
4	23	Concerning the statutes for children if at play they maim each other or break [bones] or deprive [each other] of faculties
5	24	Concerning the statutes if children harm each other in water
6	25	Concerning the statutes for children, if for a wager they instigate each other to run down from a high place seqq.
7	26	Concerning the statutes for youths who harm each other for reasons of frivolous wagers
8	27	Concerning the statutes for drunkards and the harm caused by them
9	32	Concerning the statutes for treasure-trove
10	33	Concerning the statutes for those who fight and pluck out beards
11	34	Concerning the statutes for stores of seeds
12	35	Concerning the statutes for peasants hurt by their lords more than is customarily allowed
13	37	Concerning the statutes for those who dishonour priests
14	50	Concerning the statutes for those who dishonour king or prince
15	49	Concerning the statutes for designating servants into clergy
16	54	Concerning the statutes for taking servants according to the Law
17	55	Concerning the statutes for maid-servants
18	56	Concerning the statutes for foreign servants, and likewise maid-servants
19	57	Concerning the statutes for those who strike their father or mother
20	127	Concerning the statutes that fathers and sons are not to die for each other
21	58	Concerning the statutes for kidnappers
22	59	Concerning the statutes for those who slander their father or mother
23	60	Concerning the statutes for those who quarrel
24	61	Concerning the statutes for servants and maid-servants who are killed by their masters
25	62	Concerning the statutes for striking a pregnant woman when men are fighting
26	65	Concerning the statutes if a bull hurts a man or a woman
27	64	Concerning the statutes for servants and maid-servants who are struck by their masters
28	66	Concerning the statutes if a bull hurts a bull and kills it
29	67	Concerning the statutes for cisterns and wells, and if any animal falls in
30	68	Concerning the statutes if a man or a woman or a child falls into a cistern or well

⁴⁷ The summaries generally follow the translation of Thomson, *The Lawcode*, 140–263.

Continued

Lawcode	Datastanagirk	Short summary ⁴⁷
31	69	Concerning the statutes if a bull hurts a clean or unclean animal and kills it
32	70	Concerning the statutes, if beasts of burden kill each other or cause harm by strangling or trampling
33	71	Concerning the statutes if one of these animals mentioned above either by biting or by trampling kills a man or woman, son or daughter, servant or maid-servant
34	74	Concerning the statutes for thieves caught in the act
35	76	Concerning the statutes for [animals] which eat up fields
36	77	Concerning the statutes for conflagrations
37	78	Concerning the statutes for deposits
38	79	Concerning the statutes for safe-keeping
39	80	Concerning the statutes for those who borrow
40	82	Concerning the statutes for loans
41	83	Concerning the statutes for pledges
42	84	Concerning the statutes for fire-setters
43	85	Concerning the statutes for those who cut down plants
44	89	Concerning the statutes for those who kill animals
45	90	Concerning the statutes for those who will sell and buy land
46	91	Concerning the statutes for those who will sell and buy a house
47	93	Concerning the statutes for water-mills
48	94	Concerning the statutes for the sale of animals
49	95	Concerning the statutes for the sale of oxen
50	96	Concerning the statutes for the sale of a cow
51	97	Concerning the statutes for the sale of bees
52	98	Concerning the statutes for the sale of vessels
53	99	Concerning the statutes for the sellers and buyers of fruit of vines and of other stocks
54	100	Concerning the statutes for the leasing of water-mills and of other such things
55	105	Concerning the statutes for those who despise priests and judges
56	107	Concerning the statutes for everyone's boundaries
57	108	Concerning the statutes for the witnesses and false witnesses
58	109	Concerning the statutes if someone is found killed in the confines of territories
59	112	Concerning the statutes for perverse sons
60	113	Concerning the statutes for those who have died after being condemned to death
61	130	Concerning the statutes for those worthy of a beating
62	–	
63	114	Concerning the statutes for lost [animals]
64		
65	116	Concerning the statutes for women's clothing

Continued

Lawcode	Datastanagirk	Short summary ⁴⁷
66	118	Concerning the statutes for newly-built houses
67	120	Concerning the statutes for those who enter harvests
68	121	Concerning the statutes for those who enter their neighbour's vineyard
69	123	Concerning the statutes for those who take new wives not going to war
70	124	Concerning the statutes for those who pledge millstones
71	125	Concerning the statutes for debts and their pledges
72	126	Concerning the statutes for hired servants in general
73	129	Concerning the statutes for the pledge of a widow
74	131	Concerning the statutes for those who fight and the wife who rescues [her husband]
75	132	Concerning the statutes for corpse-stealers
76	133	Concerning the statutes for involuntary murders
77	–	
78	–	
79	174	Concerning the statutes for those who kill in war
80	179	Concerning the statutes for artisans who embezzle
81	182	Concerning the statutes for crippled children
82	185	Concerning the statutes for deceit in commerce
83	186	Concerning the statutes for false witnesses
84	–	
85	209	Concerning the statutes for monasteries
86	214	Concerning the statutes for ships wrecked at sea
87	216	Concerning the statutes for those rebuilding villages
88	–	
89	–	
90	220	Concerning the statutes for thieves hung on gallows
91	–	
92	222	Concerning the statutes for a man sent on a journey or other business who suffers death
93	226	Concerning the statutes if anyone sends out on business someone who is not his own [servant]
94	227	Concerning the statutes for hired servants
95	–	
96	232	Concerning the statutes if with evil intent or in jest someone scares a horse, and someone falls from it and dies or is hurt, or if from some other animal; or if it is scared without cause on merely seeing someone
97	233	Concerning the statutes for involuntary and voluntary murders
98	234	Concerning the statutes for those who cause harm through water
99	235	Concerning the statutes for doctors
100	–	

Continued

Lawcode	Datastanagirk	Short summary ⁴⁷
101	–	
102	238	Concerning the statutes for shepherds and herdsmen
103	239	Concerning the statutes for gifts to a church – land, or water, or a vineyard, or some other such thing
104	240	Concerning the statutes for markets
105	241	Concerning the statutes for all artisans who cheat
106	242	Concerning the statutes for hired workers who damage their tools
107	251	Concerning the statutes for those who sell from booty

To start with, the text is basically an amended translation of a shortened version of the *Datastanagirk*. Now one may pose the question if either the (positive) choice of chapters translated or the (negative) choice of those to be omitted bears the imprint of some attempt of *aggiornamento* or adaptation to late medieval and early modern conditions in eastern Poland. As we have no access to the Armenian version acting as a basis for the translation, we have to take into account the possibility of no rational choice at all, meaning that the downsizing of the chapters had already taken place before.

What is left out (or had already been left out when the unknown translator laid hand on the text)? Marked lacunae are the chapters 1–19 (comprising statutes on judges, princes, the clergy, and husband and wife), chapters 38–48 (statutes on judges and ecclesiastical matters), chapters 51–53 (penal law), 86–88 (statutes on deposits and ecclesiastical matters), chapters 134–173 (once more ecclesiastical law), chapters 175, 176, 180–181, 183 (family and inheritance law), 184 (funeral rites), 187–208 (family law, ecclesiastical law), 242–250 (agricultural law, boundaries et al.).

Having in mind the above-mentioned controversies pitting the Armenian community against the majority of the city society, neither the chapters chosen nor the chapters omitted form a discernible rational pattern: There is a clear tendency to sort out ecclesiastical matters, but even this is not done thoroughly (see chapters 15, 85, 103). Furthermore, family and inheritance law are nearly totally combed out (which comes as a surprise considering that both fields of law are extremely important for the demarcation of a minority group and its continued existence). Against that, a high number of penal provisions is “upheld” (they belong to those chapters marked with a not to be applied-addendum by the Polish king – another indication of the aloofness of the Lawbook). Generally, the picture is a rural one – the Lawbook comprises chapters on merchants and loans, craftsmen and buildings, but most provisions deal with agriculture or with circumstances clearly located in villages. Single chapters obviously do not make

sense in the Lemberg environment: This applies to chapter 86 (shipwreck), as well as to chapter 79 (penance of those who kill in war). The list could be continued.

What is most surprising (and telling) is the purging of most of the chapters on judges. As in the tradition of the older Eastern Christian *nomokanones*, especially the omitting of the chapter on judges (38 of the *Datastanagirk*) is highly significant. A diaspora community trying to defend its own legal turf against the encroachment of the majority is not well advised to cripple itself by deliberately erasing the rules governing its autochthonous judges.

4.2 The Lawcode as Literature

After all, the Lawcode of Lemberg bears only small signs of court practice or the peculiar situation of an ethno-religious diaspora community which is known to have engaged in handicraft and commerce (especially long-distance trading). Bearing in mind that its main source already exhibits clear signs of a learned work undertaken for its own sake, one has to draw the conclusion that the Armenian Lawcode of Lemberg was also composed with an intention exceeding mere court practice. The basic assumption of this paper is that the source is better understood if read as a piece of (legal) literature which was never (or at least not primarily) intended for use in the courtroom. Firstly, the foundation of judgments in written law is generally a genuinely modern notion that must not be applied to medieval and early modern societies. Secondly, as we have seen, the Lawcode does neither fit with the situation nor the interests of a city-dwelling minority group primarily engaged in handicraft and trade, and which is intent on defending its distinct jurisdiction. It would be simplistic just to point to the order of the Polish king (as mentioned, it is possible that the Armenian version is considerably older than its Latin translation). As in the case of *Mxit'ar Goš*, it seems to be the case that the Lawbook was composed just to produce a distinct legal compendium for the Armenian community – regardless of its content. This renders the text basically a work of fiction clad in the language of the law – a fine example of law as literature.

5. Common Ground: Functions and Benefits of Distinct Legal Texts for Diasporic Communities

To conclude: Of course, diasporic communities may benefit from a distinct living law that strengthens cohesion, marks the boundaries vis-à-vis the majority of society or other minorities, and upholds or helps to uphold the identity of the group (e. g. by banning inter-group marriages). The law of the Christian oriental churches in general and the Armenian Lawbook of Lemberg (as well as its medieval source, the *Datastanagirk* of Mxit'ar Goš) in particular furnish evidence for the insight that mere ownership of such a distinct (and not necessarily living) law may have positive effects for a diaspora group (or at least its leading dignitaries). Such a collection – even a learned work fairly detached from the everyday life of the community or the customary law actually used by its members – acts as a genuine link to the common ancestral home (imagined or remembered), and constitutes the members of the community as a unity distinguished from other groups. Furthermore, in a situation where the existence of law has to be 'proved' by presenting a written version to authorities alien to the diaspora group, the mere existence of a recorded version may be more important than its content – the fact that the code contains sections from a classroom textbook of late antiquity is telling. Finally, one has to take into account that the Armenian diaspora – in this respect perhaps being alike to the Jewish – had a strong tradition of staging itself as a community of literacy, learning, and scholarship. And in this regard, a book of learned law made sense to the Armenians of Lemberg – irrespective of its practical effectiveness and use.

Melanie Williams

The Diaspora of the Imaginary in Politics and Poetics

“Let the God not abandon us” – The Poetry of Derek Mahon

Let the god not abandon us
Who have come so far in darkness and in pain.
We too had our lives to live.
You with your light meter and relaxed itinerary,
Let not our naive labours have been in vain!¹

The word ‘diaspora’ evokes an idea of persons not only dispossessed and marginal but also in some sense having lost some of their intrinsic humanity, and this notion extends to the more particularly defined categories of ‘refugee’ and of ‘asylum seeker.’ Contrast the horror of such exigency with the embracing arms of national identity and community especially as created, bestowed and inherited by the sovereign statehood of the West. Yet both ‘diasporic’ identities and those arising from national certainties flow principally from imaginative and symbolic streams which become hardened into ‘realities’ only by policy, by practice, by pragmatism. This chapter seeks to explore some links in the imaginative realm as exemplified in particular by the Irish-American nexus. Through the prism not only of policies but also with an additional glance at the poetry of Derek Mahon, a poet with a reputation for dealing with the concerns of the diaspora, it is hoped that further insight may be forged in apprehending the delicate interplay between the worlds of politics and the imagination.

Both the United States of America and the Republic of Ireland have powerful visions of their discrete national identities, identities disseminated around the world through literature, art, film and the media. Moreover, these identities are frequently tied together, not just by historical fact but by romanticized attachment. Many earlier Hollywood films, from *National Velvet* to *The Quiet Man* in various ways cement and promote this vision of a special attachment and a number of scholars have explored the implications of such idealization to the politics of identity.² Moran (1999) discusses the utilization of sentimental

¹ Derek Mahon, “A Disused Shed in Co. Wexford” [1978], in *Derek Mahon: Selected Poems* (London: Penguin, 2006): 37.

² *National Velvet*, a 1944 film starring Elizabeth Taylor and Mickey Rooney was released by Metro-Goldwyn Mayer. In 2003; *National Velvet* was selected for preservation in the United States National Film Registry by the Library of Congress as being “culturally, historically, or aes-

and romanticized visions and images of Irish national identity in the interests of the political lobby for support for Home Rule both at home and abroad,³ whilst McCarthy and Hague (2004) explore the

[...] oblique references (via discourses of Englishness) that can only be understood within a racialized problematic [...]. While we recognize that Celticism is an ambiguous and malleable identity available to a wide range of political projects, we conclude that in the contemporary United States it is being used primarily for reactionary purposes in ways that make a mockery of the legacy of dispossession and injustice its adherents claim as their own.⁴

Arguably, one field of political engagement in particular runs the risk of exemplifying such a distorted use of the idealized relationship – that of immigration policy. Indeed, current proposed American immigration policy change has been somewhat dominated by news of an Irish lobby. Bette Browne describes a “last-ditch effort as St Patrick’s Day approaches to win Republican support for immigration reform that would benefit thousands of Irish illegals across the United States,”⁵ while Ted Hesson (2013) referring to the same movement, notes that “Listening to the immigration debate in the Senate, discussing visas for the Irish is a rare moment when the conversation shifts from questions of the economy and ‘rule of law’ to sentimentality.”⁶

Lee (2009) traces a less than romantic early hostility towards Irish immigrants to America,⁷ where Irish workers lived in slums and were only marginally freer than the slave population, tied to oppressive contracts and often paid in vouchers redeemable in company shops. Nevertheless, the imaginative force of the idealized relationship continues to exert power, whilst the discrete identities

thetically significant.” *National Velvet*, dir. Clarence Brown, tx. 1944 (United States: Metro-Goldwyn-Mayer, 1944); *The Quiet Man*, dir. John Ford, tx. 1952 (United States: Republic Pictures, 1952).

3 Sean Farrell Moran, “Images, Icons and the Practice of Irish History,” in *Images Icons and the Irish Nationalist Imagination*, ed. Lawrence McBride (Dublin: Four Courts Press, 1999): 166–176.

4 James McCarthy with Euan Hague, “Race, Nation, and Nature: The Cultural Politics of ‘Celtic’ Identification in the American West,” *Annals of the Association of American Geographers* 94. 2 (2004): 387–408, 402.

5 Bette Browne, “The long fight for US immigration reform” (March 15, 2014), *The Irish Examiner* <http://www.irishexaminer.com/analysis/the-long-fight-for-us-immigration-reform-262075.htm> (acc. March 15, 2015).

6 Ted Hesson, “Why the Irish Want a Special Immigration Deal” (May 17, 2013), *abc NEWS* <http://abcnews.go.com/ABC_Univision/Politics/irish-special-immigration-deal/story?id=19200644> (acc. Dec 28, 2015).

7 Gregory Lee, “The Making and Maintaining of the Irish Diaspora,” *DCIDOB: the Journal of The Barcelona Centre for International Studies* (2009): 1–7.

of each, America and Ireland, are themselves built upon the notion of a liberating ideal towards victims of global injustice. Yet America works to tighten the US-Mexico border, with an all-time high migrant death rate,⁸ whilst Ireland, itself the historic victim and site of injustice, displacement and religious persecution has tightened immigration policies in line with a reactionary vision of national identity – as Lentin (2007) indicates:

[T]he discursive political reformulation of Ireland as ‘diaspora nation’, while explaining the narrowing of citizenship entitlement of non-citizen migrants resident in Ireland in the wake of the 2004 Citizenship Referendum, paradoxically also makes sense of the juxtaposition of ‘entitled’ Irish illegals in the US with ‘unentitled’ illegal immigrants in Ireland.⁹

When in 1992 the Irish poet Derek Mahon was asked by *The New Yorker* to write a poem commemorating the hundredth anniversary of the first immigrant to be processed through Ellis Island on New Year’s Day 1892, it was no doubt a commission flowing from a rush of patriotic fervour about the origins of the American Dream, of the generosity of the American States reflected in the Statue of Liberty cry:

Give me your tired, your poor / Your huddled masses yearning to breathe free / The wretched refuse of your teeming shore / Send these, the homeless, tempest-tost to me / I lift my lamp beside the golden door!¹⁰

Such verse reflected the symbolic and semiotic power drawing upon the deeply held sentimental vision of America as a saviour of embattled and threatened

8 Celeste Monforton, “All-time high migrant death rate along US-Mexico border: prevention in immigration reform?” (March 28, 2013), *ScienceBlogs* <<http://scienceblogs.com/theumphandle/2013/03/28/all-time-high-migrant-death-rate-along-us-mexico-border-prevention-in-immigration-reform/>> (acc. 25 July 2015). According to data from U.S. Customs and Border Protection (CBP), 477 individuals died along the U.S.-Mexico border in 2012 during their attempt to enter the U.S. That’s an all-time high rate of 13.3 deaths per 10,000 CBP apprehensions. It compares to a rate of 8 deaths per 10,000 in 2010, and four per 10,000 in 2005. The data was assembled by the National Foundation for American Policy (NFAP) in the policy brief “How many more deaths? The moral case for a temporary worker program.” At a time when fewer migrants are attempting to enter the U.S. illegally, the author attributes the escalating death rate to two related factors: (1) the lack of legal temporary visas for low-skilled workers; and (2) the build-up of enforcement along the U.S.-Mexico border.

9 Ronit Lentin, “Illegal in Ireland, Irish Illegals: Diaspora Nation as Racial State,” *Irish Political Studies* 22. 4 (2007): 433–453,453.

10 Emma Lazarus, “The New Colossus” [1883], in *The Oxford Book of American Poetry*, ed. David Lehman (Oxford: Oxford UP, 2006):184. In 1903, the poem was engraved on a bronze plaque and mounted inside the pedestal of the Statue of Liberty.

peoples. *The New Yorker's* choice of Derek Mahon reflected in part his probable fealty with the first Ellis Island immigrant – an Irish girl, Annie Moore, who on passing through the “golden door” was given a \$10 gold coin, coincidentally timely on the fifteenth anniversary of her birth. Mahon was also an apposite choice given his personal association with describing the experience of emigration, of displacement and alienation in a range of poems. His resultant offering commemorating Annie Moore, was the poem “To Mrs. Moore at Inishannon,”¹¹ a letter-poem, representative of the missives home from the newly arrived Irish emigrants who formed such a significant element of the immigrant populations passing through the “golden door.” The poem is placed in the centre of a collection named *The Hudson Letter* – described by McKendrick (1996) in the *Times Literary Supplement* as

[...] perhaps [Mahon's] least even achievement so far, but then evenness is not, it seems, what Mahon is after [...]. “The Hudson Letter”, in 18 longish sections, his longest poem to date, shows the poet once more coming into his own [...] what is most courageous and moving about the poem is the way the images of urban dereliction are tied explicitly to a personal crisis, a hard-earned fraternal feeling for the down-and-out [...]. Out of this absence he writes from lower Manhattan, addressing, in ramble or vigil, his absent lover, his children in London, Auden, Yeat's father, and other cosmic vagrants, “clutching our bits and pieces, arrogant in dereliction.” In the eighteen sections of “The Hudson Letter,” the gabble of a dockside bar, voices of a recycled Sappho and of an Irish immigrant girl reassuring her mother in Inishannon, and the midwinter, all night sounds of the City interperse with the voice of the poet – lively, witty, poignant, elegiac, humane, and thoroughly human.¹²

Mahon therefore elects to ‘place’ the commissioned icon within a larger context of predominantly more modern alienation and self-examination and, perhaps paradoxically for some, links the contextual materials and thereby himself, to the larger literary and predominantly masculine, canon of Ovid, Yeats, Auden and Ginsberg. This context may be regarded as somewhat problematic to the realization of Annie Moore, whose “letter” is oddly placed amongst such canonical reverberations.

The poem begins with a quotation which references the nascent odour of racism tainting the romanticized context of the Emma Lazarus poem – “Give me your tired, your poor / your huddled masses yearning to breathe free” inscribed at the foot of the Statue of Liberty. Mary Gordon, Irish-Italian-Jewish New

¹¹ Derek Mahon, “To Mrs. Moore at Inishannon,” in *The Hudson Letter* (Wake Forest, NC: Wake Forest UP, 1996): 17 – 18. Further references in the text, abbreviated with “MI”.

¹² Jamie McKendrick, “Earth-residence,” (London) *The Times Literary Supplement* (12 April, 1996): 25.

Yorker, academic and author of a host of books and essays reflects upon the conflicts thrown up by Irish Catholicism in its engagement with art and life in her book *Good Boys and Dead Girls* and it begins with a quotation from this text that Mahon selects as a position statement for his poem:

The statue's sculptor, Frederic-Auguste Bartholdi, reacted with horror to the prospect of immigrants landing near his masterpiece; he called it 'a monstrous plan'. So much for Emma Lazarus [...]. I wanted to do homage to the ghosts¹³

In the tradition of the epistolary or letter-poem, the communication from Bridget Moore to her mother, Mrs. Moore is prefaced by the business-like record of address and date and initial reassurance of survival: "No. 1, Fifth Avenue, New York City, Sept. 14th, 1895 / And Mother, dear, I'm glad to be alive / After a whole week on the crowded Oceanic / -Tho' I got here all right without being sick" (*MI*, 1–4). The sea voyage is oddly accompanied by a seagull hitching a lift all the way from Ireland to Long Island, a creature seemingly used to this commute since, on arrival it "vanish'd with the breeze / in the mass'd rigging by the Hudson quays" (*MI*, 11–12). Mahon captures the workaday practicality of the young woman who finds herself "install'd amid the kitchenware" thanks to "Mrs. O'Brien" (*MI*, 19–20). She is a servant in a "fine house in Washington Square" owned by "Protestants, mind you, and a bit serious / Much like the Bandon sort, not fun like us /" (*MI*, 21–23). Here Mahon references the religious divisions still evident in the history of the Irish Republic, where the town of Bandon still has traces of a Protestant incursion in the 1600s and with a nod to a cultural sense of phlegmatic Protestants compared to a mischievous Catholic mind set.¹⁴ The poem goes on to demonstrate the comic irony and assumption of superior insight, even in the inexperienced young Bridget, who notes the American obsession with "eagles and bugles" and "simple faith" in the stars and stripes to the point of "life and death," ending with the arch humour, or is it irony? of her own simple faith – "As if Earth's centre lay in Central Park / When we both know it runs thro' Co. Cork" (*MI*, 35–36). Towards the end of her letter, Bridget reveals a moment of spiritual yearning – "Sometimes at night, in my imagination / I hear you calling me across the ocean;" (*MI*, 37–38) but then she quickly composes herself reverting to her workaday, practical self, appreciating that "the money's good" and sending "ten dollars" home to her mother with a promise of more to come given the evident wealth of the

¹³ Mary Gordon, "Good Boys and Dead Girls," qtd. in *MI*, 18.

¹⁴ For a more recent reference to the Protestants in Bandon see Peter Cottrell, *The Anglo-Irish War: The Troubles of 1913–1922* (Westminster, MD: Osprey Publishing, 2009): 75.

New World since – “here, for God’s sake / They fling the stuff around like snuff at a wake”. Signing herself off as “Yr. loving daughter – Bridget Moore” (*MI*, 41–46), the imagined sender of the letter fades back into the mass of immigrants whose individual idiosyncrasies are buried in the greater social obscurity.

Critiques and researchers of the poem have acknowledged Mahon’s own particularity in researching for himself some of the details of what the experience might have entailed – he checked on the authenticity of the “mass’d rigging by the Hudson quays” for example, yet there are differences of opinion as to the poem’s merit. Adam Hanna argues that the poem, “far from ‘ridiculing the girl’s naïve and sentimental attachment to her native place’ (Elmer Kennedy-Andrews, 2008), enables Mahon to explore and comment on the values of his new environment,” and to compare them with those he had left in Ireland.¹⁵ Yet I would argue that, though this poem may have answered the requirements of the commission in the sense of including critical signifiers – the statue, the sculptors artistic xenophobia (a signal as to the more correct feelings of generosity to be fostered), the rough passage, the teeming downtown population, the impact of the great icons of the New World, it does clearly ‘place’ the girl as essentially parochial, howsoever humorous (“as if Earth’s centre lay in Central Park when we both know it runs thro’ Co. Cork”) and ultimately domestic and trivial in her concerns. This may perhaps have met, entirely, the iconic vision of the ‘wanted’ immigrant, the domesticated female, pragmatic, adaptable and unsophisticated, the ‘tabula rasa’ upon which the New World would write and who would lend her washerwoman arms to the continued building of the great global economy.

Yet perhaps the poem does not quite meet the potential magnitude of the commission, for it is an opportunity to reflect on much greater themes, signalled only rarely in lines such as “Sometimes at night, in my imagination, I hear you calling me across the ocean.” No doubt a good number of such emigrants were similarly unambitious in the scope of their thinking but the true violence of the experience, though not always reflected in correspondence, is retrievable.

A letter from Mary Garvey, written in an earlier decade back to Ireland makes constant reference to sickness and death, not only in America itself but particularly an almost obsessive anxiety as to the health and continued life of all those

15 Adam Hanna, “Through an Emigrant’s Eyes: Annie Moore and Derek Mahon’s Perspectives on America” (24 March 2012), *New Perspectives on Women and the Irish Diaspora* <<http://womenandtheirdiaspora.files.wordpress.com/2011/11/speakers-abstracts.pdf>> (acc. July 25, 2015); the source referred to in the quotation is Elmer Kennedy-Andrews, *Writing Home: Poetry and Place in Northern Ireland 1968–2008* (Woodbridge: Brewer, 2008).

back home. It also reflects a lack of sentiment about the ‘home country’ – indicating the extreme privation:

I feel very uneasy about you all for fear that you may be sick or dead or that you may be suffering for the want of the comforts of life [...]. Dear Mother I should like to have you come over here very much if you think that you would be strong enough to stand the voyage. I hope you will leave that starved country and come over here in the spring.¹⁶

Now although the worst of the “famine” conditions were over by the end of the nineteenth century, the recent historical experience of dispossession, the repressive social and economic culture and sheer privation was certainly what drove the majority of people to leave their homes. In addition, the ‘large’ themes of the diaspora as they arise in the law are not effectively addressed – not only the central one of wholesale identity displacement or negation, but also those specific to gender and to faith. The happenstance of the iconic immigrant being female, even and perhaps particularly, at such a young age, meant that she was representative of a whole range of threats, apparent then as now – of sexual exploitation, of passing from subjection under one patriarchal force to but another, the dangers of childbirth, of unwanted pregnancy, of the particularly limited opportunities of work and movement available to women.

For Annie Moore, the first Ellis Island migrant on whom the poem is based, though the recent statue and museum dedication to her celebrates her newfound symbolic significance to the American dream,¹⁷ she actually died in her forties, having borne eleven children and was buried in an unmarked grave.¹⁸ Nevertheless, leaving the aboriginal form of oppression of the village and its ‘biological’ patriarchy may have offered the best chance of some level of liberty for such women, especially in their flight from a Catholic country. Insofar as *The Hudson Letter* is also a discourse upon the threats and displacements of modern contemporary life, the continuing debate upon the influence of this conservative religious culture upon the lives of women might therefore have been signalled –

16 Letter from Mary Garvey, Irish immigrant, to her mother, (24 October 1850), *RUCore : Rutgers University Community Repository*. <<http://rucore.libraries.rutgers.edu/rutgers-lib/3434/>> (acc. July 28, 2015).

17 For an official recognition of the status accorded to Annie Moore see The Statue of Liberty – Ellis Island Foundation Inc., “Annie Moore: first Immigrant through Ellis Island” (2015), *The Statue of Liberty – Ellis Island Foundation Inc.* <<http://www.libertyellisfoundation.org/annie-moore>> (acc. July 28, 2015).

18 Ray O’Hanlon, “Putting Things Right” (17 February 2011), *The Irish Echo* <<http://irishecho.com/2011/02/putting-things-right/>> (acc. July 28, 2015).

the mere mention that Protestants are ‘a bit serious’ compared to her countrymen hardly addressing the magnitude of the issue.

When one considers how the issue of any ‘diaspora’ manifests in legal terms, as asylum seekers and refugees as well as the more orthodox immigration applicant, these darker issues of gender and of faith as well as the ethical failings of sovereign power are in constant attendance. Displaced women are and always have been, the most likely victims of human trafficking, whilst religious persecution too has been a critical feature of human movement throughout history.

If the American self-imagination is constructed in part – as no doubt are all national self-identities – upon a vision of fealty with the nationals of certain sentimentally significant states, with Ireland foremost as a historical victim of English colonialism and as a near-relative in terms of high church Christianity, the baton of such openness, albeit selective, does not seem to be happily handed on. Though the Irish people historically have experienced such a favourable reception at the door of America in particular, the immigration policy of Ireland herself is characterized by conservatism, a phenomenon which Lentin has described as the “racialization of immigration policy in twenty-first century Ireland,” concluding that

reconceptualizing Ireland as a diaspora nation whose off-shore (emigrant) children are granted citizenship access in preference to its on-shore (immigrant) children, pushes Ireland closer to Agamben’s “state of exception”, where the line between democracy and absolutism is getting thinner. In a state of exception, legal/illegal instruments such as the US Patriot Act and the proposed Irish Immigration, Residence and Protection Bill allow the state to erase the individual’s legal status at will.¹⁹

The self- and outward-facing identity of Ireland has always been tied, strongly to her religious passions, much inflamed in the popular imagination around the world by the combination of high-church ritualism, iconography and agonistics with a radical and poetic literary capability. Little wonder perhaps that refugees of a religious inclination might consider Ireland as a promising place of empathic pilgrimage, more so than the predominantly secular England.

Yet despite this particular form of ideological and ideational projection, the fundamentally religious history and culture of the Irish Republic does not make her necessarily more open to those asylum seekers presenting with faith arguments for their applications. For example in the case of *H. M. v Minister for Justice, Equality, Law Reform*, [2011] IEHC 16, the applicant was an Afghan national who left Afghanistan in 1999 and travelled to Iran. While in Iran he was intro-

¹⁹ Lentin, “Illegal in Ireland, Irish Illegals,” 434.

duced to Christianity. Fearing he would be returned to Afghanistan the applicant fled. On his journey to Ireland he claimed asylum in Greece and then the United Kingdom. He arrived in Ireland in 2005. In Ireland he was involved with the Jehovah Witnesses and another Christian Church. The applicant based his initial application for asylum on his Hazara ethnicity. His claim was refused by the Office of the Refugee Applications Commissioner (ORAC). The ORAC decision was affirmed by the RAT (Refugee Appeals Tribunal). Both the ORAC and the RAT found the applicant not to be a truthful witness. The RAT found that his conversion to Christianity was not done in “good faith” and that his conversion was “opportunistic.” The applicant applied for subsidiary protection. The Minister for Justice, Equality and Law Reform, placing significant reliance on the decision of the RAT, found that the applicant was not truthful, refused the subsidiary protection application and issued the applicant a deportation order. The applicant applied for leave to apply for judicial review and an interlocutory injunction preventing deportation. Hogan J, in the High Court, granted leave to apply for judicial review. The judge stated that the RAT member had made an error by finding that, while the applicant had converted, he had only done so opportunistically. The Judge stated that this approach was incorrect and that the correct approach is to consider the applicant’s conversion to Christianity from the perspective of an Afghan religious judge.

Although this case eventually turned, in the High Court, to a recommendation that the asylum application be considered in light of possible discrimination in the originating country, the initial jurisprudential examination of religious conscience and integrity was arguably a profoundly disturbing shift, even in light of a subsequent judicial correction. Imagine the journey of the applicant, from Afghanistan, to Iran, to Greece and from thence to the United Kingdom and eventually Ireland, perhaps in the belief that a country of such highlighted religiosity would be most sympathetic to his case. It seems that the initial plea of his ethnicity as a reason for asylum might have undermined the subsequent faith-based plea, yet no doubt he received legal guidance as to selecting the most feasible aspect to plead. His subsequent faith-based plea was perhaps further undermined in the minds of some by the evidence that he had associated himself first with the Jehovah Witnesses and later with a different Christian group. Yet imagine the situation, as complete outsider, assisted by charitable and religious groups perhaps keen to claim this new entrant as their own. As Shuman and Bohmer (2004) comment:

Asylum claims involve multiple discourse systems, from the local community and bureaucratic systems of the homeland to the discourses of groups that aid refugees, such as temp camps and church based groups.²⁰

The implication of literal “bad faith” under such circumstances is hardly clear and is a redolent of the crucible of faith interrogation so reflexively illustrated by Arthur Miller in his play *The Crucible*, reflecting upon the Salem Witch Trials simultaneously satirizing McCarthyite politics. Miller recognized the ethical failure that law trials pursuing questions of belief unto suspicion and superstition, shared with partisan politics:

The Salem court had moved to admit “spectral evidence” as proof of guilt; as in 1952, the question was not the acts of an accused by his thoughts and intentions. Miller understood the universal experience of being unable to believe that the state has lost its mind [...]. [T]he thing at issue was the secret allegiances of the alienated heart, always the main threat to the theocratic mind, as well as its quarry.²¹

The favouring of particular ethnic groups and interrogation of potential immigrants as to their ‘good faith’ on a range of ideological fronts at Ellis Island, as now, is central to any state dissection of an incoming diaspora. Within the public mythologies cultivated by nations – embracing the values of Good Samaritan, of sympathy for the “huddled masses,” the supplicant homeless, may lie a hardened inversion of such values, a mere show of feeling masking a wholesale normative failure, the ‘mystery’ hollow to its core. Mahon is actually equipped to provide a stinging critique of such religious and political vacuity – his poem “Ecclesiastes” seems at once a blast against the failure of divisive and barren religious politics as well as religious or political cant.²² The terse irritation at innate moral contradictions is clear from the poem’s beginning: “God, you could grow to love it, God-fearing, God- / Chosen purist little puritan that, for all your wiles and smiles, you are (the / Dank churches, the empty streets / The shipyard silence, the tied-up swings) and / Shelter your cold heart from the heat /” (*EC*, 1–5). The poem challenges the male leader, religious and political, whose “cold heart” can take shelter in this forlorn place, not only from the “bright

20 Amy Shuman, Carol Bohmer, “Representing Trauma: Political Asylum Narrative,” *The Journal of American Folklore* 117.466 (2004): 404.

21 Arthur Miller, “Why I wrote ‘The Crucible,’” (New York) *The New Yorker* (October, 21, 1996): 1.

22 Derek Mahon “Ecclesiastes,” *Scanning the Century: The Penguin Book of the Twentieth Century in Poetry*, ed. Peter Forbes (London: Penguin, 2000): 236. Further references in the text, abbreviated with “EC”.

eyes of children” – presumably he is beyond such honest truth-seeking –, from “woman-inquisition” – for his creed puts him beyond the questions of mere women – but also from “the world” at large, for he rules over his own petty fiefdom. Though he makes play of the emblems of religious purity – the “locusts and wild honey” of John the Baptist, the sombre black clothing, the austere diet, he does not “Feel called upon to understand and forgive / But only to speak with a bleak / afflatus”(EC, 10–12), referencing not the inspired breath of spiritual purity but rather the crude failure of “hot” or even fetid air. The image references, perfectly, the doublespeak of any politics claiming benign policy whilst delivering intolerance, at the same time embracing and sentimentalizing the harsh womb of the “old country” – “love the January rains when they / Darken the dark doors and sink hard / Into the Antrim hills, the bog-meadows, the heaped / Graves of your fathers /” (EC, 12–15). The final stanza underscores the blindness of such claims, even as they persist in claiming power over the “credulous” indigenous population – “God / help you, stand on a corner stiff / with rhetoric, promising nothing under the sun” (EC, 20–22).

Here we have the promises failing whole generations, whole peoples, defeated into a fatalistic acceptance of their conditions by the empty rhetoric of a self-serving dogma. Although so powerful a commentator upon this abstracted notion of the empty ideologue, Mahon does not in this particular poem translocate or implicate such visions to the wider historical and geographical picture, risking thralldom to an American Dream as myopic as America’s own. Though *The Hudson Letter* is in part a self-flagellating hymn to his own failings, his outsiderdom and a meditation on the existential nature of life, it remains predominantly an homage to the stark “real” of downtown America in the style of Auden as well as Ginsberg. Yet Mahon carried within himself a great and perhaps unique potential to make the more challenging connections signalled by the commission to write the poem. The example of Ireland was particularly powerful to the semiotics of American national identity as saviour because of the contrast such hospitality drew with the ravages of English colonialism which had reduced Irish peasants literally to starving and landless vagrants and this, along with the strong community of Catholicism, ensured that the Irish immigrant could be endowed with a kind of mythical martyrdom. No doubt Mahon did not wish to become too tied to this particular trope, yet the opportunity to reflect upon the timeless struggle of the supplicant emigrant for the basic conditions of existence was missed. For surely this symbolic entrant to the golden door was significant to the stories of humanity itself, to the ebb and flow of dispossessed persons in history and in the future.

Mahon’s avoidance of the deeper themes and connections may be referable to a psychological phenomenon linking him to less celebrated politically dis-

placed persons. In an interview in 2000 he explains his inability to write directly about the intimately political events of Ireland contemporary to his writing:

It's possible for me to write about the dead of Treblinka and Pompeii – included in that are the dead of Dungiven and Magherafelt. But I've never been able to write directly about it. In Crane Bag they'd call it "colonial aphasia." Perhaps, in fact, that's what it is. I was not prepared for what happened. What happened was that myself and all of our generation (particularly in the North) were presented with a horror, something that demanded our serious, grown-up attention. But, as I say, I was not able to deal with it directly.²³

Such "colonial aphasia" reflects an internal split not unlike that suffered by trauma victims, resulting in an effacement or inability to articulate their own experience. In Lacanian terms

there is some hard kernel in me that always resists symbolization. This hard kernel is the small object of a. The Lacanian subject is precisely the very split between one's symbolic identification and the fantasmic object-remainder [...] the Lacanian subject is a gap between the symbolic and a fantasmic object. Žižek further warns us that the object-remainder is not to be understood as a positive Thing; it is an effect of our being involved in a symbolic order.²⁴

Moreover, this model of the split within individual subjects interacts with the "split" symbolized at the level of State policies

The price to be paid for a thoroughly relational ontological status of the actor-network is the determination of the network as such. What act, then, determines the actor-network as such, namely, its symbolic (over)determination, its double? The formation of an existing actor-network entails a determination of the network as a gesture of exclusion through positing a beyond that is nonrelational.

[...] the (US) segregation system never simply constrained and enabled people; it enabled one group but constrained another. Therefore, structure is not a neutral force that constrains and enables an abstract actor or actors.²⁵

At the individual level the split, between the 'self' who must engage with 'the system' and the bare self who has undergone the trauma of displacement and worse, may be wholly disabling. Shuman and Bohmer note that persons who

²³ Eamonn Grennan, "Derek Mahon, The Art of Poetry No. 82" (2000), *The Paris Review* <<http://www.theparisreview.org/interviews/732/the-art-of-poetry-no-82-derek-mahon>> (acc. July 28, 2015).

²⁴ Yong Wang, "Agency: The Internal Split of Structure," *Sociological Forum*, 23.3 (2008): 481 – 502, 489.

²⁵ Wang, "Agency," 483.

have experienced severe trauma may not be able to articulate any detail at all;²⁶ add to this the requirement that their experience ‘fits’ the discourse – they must report a persecution narrative credible to the BCIS. They explain:

refugees have been categorized as criminals in a system that refuses to see individuals as victims of persecution who seek to cross political borders [...] .Nancy Campbell [...] argues that public policy narratives can be understood in terms of Michel Foucault’s concept of ‘governing mentalities’ that determine how individuals experiences are categorized ... to prove that the persecution against them was politically motivated, applicants for political asylum need to be able to describe the motivations of their oppressors as well as their group affiliations as part of the public suppression of dissent [...]²⁷

The immigration enquiry and jurisprudence will thereby inevitably lack authenticity, as narratives are imposed and the actual experience remains unsought. Yet it is surely the ‘genuine’ person who should be the object of attention. As Wang (2008) discusses

[t]he real task for the social theorist is to distinguish humans from social automaton. This distinction lies precisely in the very gesture of asserting herself/himself as human in addition to all the roles, identities and relations [...]. The very act of recognizing one’s social identities and roles and at the same time asserting that one is more than the social is the very proof of one’s humanness. This is the Lacanian split subject (S) that, on the one hand, is displaced/decentered onto the symbolic Other, and on the other, occupies the very gap/split as its “being”.²⁸

As we have seen, asylum seekers/refugees recognize the need to sublimate/negate their ‘uniqueness’ and favour their relation to an ideological position – unless they can claim the identity of ‘artist’ which tends to attract suspicion under repressive regimes but become a strong symbol of the receiving country’s recognition of freedom and liberalism elsewhere.

Actually, Mahon proved himself perfectly capable of producing a potent invocation of these grander themes – even as they reside in the parochial and everyday – and of speaking to the “local” indigenous moral failing alongside the “universal” one. His poem with the unprepossessing title “A Disused Shed in Co. Wexford” makes the point very powerfully,²⁹ this time referencing the canon with

²⁶ Shuman and Bohmer, “Representing Trauma.”

²⁷ Shuman and Bohmer, “Representing Trauma,” 397.

²⁸ Wang, “Agency,” 493.

²⁹ Derek Mahon, “A Disused Shed in Co. Wexford,” in *The Norton Anthology of Poetry* fifth ed., ed. Margaret Ferguson, Mary Jo Salter, Jon Stallworthy (New York: Norton, 2005): 1921–1923. Further references in the text, abbreviated with “DS”.

more care. When contrasted with the letter-poem to Mrs. Moore it utterly outstrips in resurrecting the full horror of dispossession, of the outcast and forgotten. “A Disused Shed in Co. Wexford” begins with a dedication to the author J.G. Farrell and to “the weak souls among the asphodels.”³⁰ Mahon’s poem takes us to haunting places of such strange displacement that they may presage the possibility of new creative beginnings, where “a thought might grow” but nevertheless overwhelmingly places of abandonment and loss, “Peruvian mines, worked out and abandoned / To a slow clock of condensation, / An echo trapped for ever, and a flutter / Of wildflowers in the lift-shaft /” (*DS*, 2–5). From the other-world locations of “Peruvian mines” and “Indian compounds,” the poem shifts to a concentration upon the local, parochial and forgotten place that is Ireland – to a disused shed in Co. Wexford, a cipher for the whole country of the forgotten, the insignificant and invisible. In that shed, which is “deep in the grounds of a burnt-out hotel” (a reference to J.G. Farrell’s novel *Troubles*, so emblematic of the places of colonial decay trapping individual lives in the aspic of political failure) lives half-starved in darkness linger on, their myopia imposed by the constrained conditions – “A thousand mushrooms crowd to a keyhole / This is the one star in their firmament / Or frames a star within a star. / What should they do there but desire?” (*DS*, 13–16). Reduced to both “patience” and “silence” such human mycelia await liberation by “us” – the politically informed, the conscientious poet, the reader, the politician, for “[t]hey have been waiting for us in a foetor / Of vegetable sweat since civil war days / Since the gravel-crunching, interminable departure / Of the expropriated mycologist/” (*DS*, 13–16). The poem carries a direct rebuke, for this official who might classify, authorize and legitimate those lost souls has not returned: “He never came back, and light since then / Is a keyhole rusting gently after rain / Spiders have spun, flies dusted to mildew /” (*DS*, 21–24). Meanwhile they must bear the sounds of decay around them alongside the tantalizing hints of lives lived in the light: “And once a day, perhaps, they have heard something – / A trickle of masonry, a shout from the blue / Or a lorry changing gear at the end of the lane /” (*DS*, 28–30). Their own lives waste away, not only in terms of physical death but also the spiritual and psychological distortions borne of the “grim / dominion of stale air and rank moisture /” (*DS*, 33–34). Though yet surviving, these forgotten people are horribly damaged by the experience, they are the “Powdery prisoners of the old regime / Web-throated, stalked like triflids, racked by drought / And

³⁰ In Greek mythology, the flowers of Hades and the dead, referencing too the poem *Mithistórima* (1935, *Mythical Narrative*) by Giorgos Seferis, narrated by travellers who are at once present-day exiles whilst flagging ancient Homeric figures.

insomnia, only the ghost of a scream / At the flash-bulb firing squad we wake them with / Shows there is life yet in their feverish forms / Grown beyond nature now, soft food for worms / They lift frail heads in gravity and good faith” (DS, 44–50). The ‘local,’ indigenous forgotten and the diaspora of the world are brought together in a searing rebuke where for some the end is near and the loss incalculable:

They are begging us, you see, in their wordless way,
To do something, to speak on their behalf
Or at least not to close the door again.
Lost people of Treblinka and Pompeii!
“Save us, save us”, they seem to say (DS, 51–55)

Powerfully uniting the historic, the contingent and the universal, the poem sequence is potent not only for its evocation of all lost and displaced peoples but also its reminder of the invisibility and loss imposed by such displacement – “groaning for their deliverance, so long expectant that there is left only the posture.” The image of “a thousand mushrooms crowding to the keyhole” evokes the hopelessness, the darkness and impotence of the supplicant. With global conflict so clearly relevant not only to local struggles and ideologies but also revealing fractures common to the universal, distorting effect of colonization and displacement, the final cry,

Let the god not abandon us
Who have come so far in darkness and in pain.
We too had our lives to live.
You with your light meter and relaxed itinerary,
Let not our naive labours have been in vain! (DS, 56–60)

... indicts those in power – those with “light meters” and “itineraries” for a failure of common humanity. As Papastergiadis explains, the failure springs not from a defensible, developed apprehension but from an imaginary realm, a patchwork of prejudicial fears which result in a totalizing denial of the person, a denial best evoked by Agamben’s now much vaunted evocation of the *homo sacer*:

There is a struggle to preserve an idealized self by means of either expelling or suspending the other in a state of unplacement [...]. A boundary is established to separate those who do, and do not, belong to the nation. Across this boundary values are projected that define the characteristics of the self and the Other [...] psychoanalytic concepts have been useful in explaining the formation of a national imaginary at a time when the nation was considered to have a discrete historical origin [...] it is unclear how we can apply these concepts to explain the contradictory dynamic of a global system that seemingly lacks any primal his-

torical trauma [...]. The invasion complex does not draw from a fixed national pool of cultural references, or depend on any singular moment of trauma to constitute the 'anvil' upon which national identity was forged. On the contrary, the invasion complex may be envisaged as an ongoing, incomplete and shifting collage of fears and desires.

[...] Agamben explains the paradoxical status of the camp and its detainees by drawing an analogy between the refugee and the "homo sacer" – a subject in Roman law who has committed a particular crime that renders him or her outside of the rule of law that has been defined for citizens. Being situated outside this system the homo sacer loses all value: he or she is not even worthy of sacrifice.³¹

The romantic ideals of nations in their visions of themselves are bound always to involve an ethical question. Where the split between the imaginary and the symbolic may prove to be beyond individual control, facilitating or disabling the agency of the individual subject, the corresponding gap as it arises in the public institutional domain may be apprehended, managed and shaped according to consistent principles of ethics and rights. It is within the gift of the poet to reveal and give expression to the split between the symbolic identification and the phantasmic object-remainder. The constraint of Mahon's symbolic poem and its dis/location within the inward-looking *Hudson Letter* series, is a mirror to the split within idealised vision and true empathy. Formalized and institutionalized, the split becomes referable to an ultimate, global imaginative and normative failure – a failure to fuse the ethical with the symbolic order that is nationalistic immigration policy which does not seek consistency but rather feeds its own, very partisan, sentimental journey.

31 Nikos Papastergiadis, "The Invasion Complex: the Abject Other and Spaces of Violence," *Geografista Annaler: Series B, Human Geography* 88.4(2006): 429–442, 432–435.

Daniela Carpi

Cultural Mobility and Diaspora: The Case of Philip Roth's *Operation Shylock*

Since 1970 s, 'diaspora' was increasingly used to denote almost every people living far away from their ancestral or former home-land.¹

[Diaspora is] any ethnic collectivity which lacks a territorial base within a given polity.²

Traditionally the concept of diaspora has been seen mainly as connected to the Jewish people: displacement, dispersion, and loss of home haunt the works of Jewish writers from the Hebrew Bible to Kafka. Studies of the Jewish diaspora reached a universal and metaphysical dimension after the Shoah; they came to epitomize, metaphorically, also the modern condition of man's alienation and homelessness.

Whereas in the history of religions and more vigorously in its neighbouring disciplines 'diaspora' was primarily employed as a geographic-sociological category to denote dispersed groups and trans-national relationships, since the 1990s a further, different approach has stepped forth. Post-modernist and culture critical authors such as Stuart Hall, Homi Bhabha, Paul Gilroy and James Clifford have adopted the diaspora term to denote a specific type of experience and thinking, i. e., that of 'diaspora consciousness.' Aspiring to move beyond essentialising notions such as 'ethnicity' and 'race,' in often jargon-laden papers, the idea of 'diaspora' has been celebrated as expressing notions of hybridity, heterogeneity, identity fragmentation and (re)construction, double consciousness, fractures of memory, ambivalence, roots and routes, discrepant cosmopolitanism, multi-locality and so forth.³

Robin Cohen identifies four phases in diaspora studies: the first is concerned with the Jewish experience of victimhood; the second involves a metaphoric designation, a way to describe different categories of people, and it deals with the concept of racial minority. The third phase refers to the uprooting of people and therefore of their identities in the postmodern world, and considers their rapid displacement into other nations. Finally, the fourth phase is one of consolidation

¹ Martin Baumann, "Diaspora: Genealogies of Semantics and Transcultural Comparison," *Numen* 47.3 (2000): 313–337, 313.

² John Armstrong, "Mobilized and Proletarian Diasporas," *American Political Science Review* 70.2 (1976): 393–408, 394.

³ Baumann, "Diaspora," 324.

at the turn of the twentieth century and implies the study of how people settled within a new nation.⁴

In the first case the scarring historical tragedy of the Holocaust lends a particular colouring to the diaspora:

[T]he wrench from home must survive so powerfully in the folk memories of these groups that restoring the homeland or even returning there becomes an important focus for social mobilization, and the mould in which their popular cultures and political attitudes are formed.⁵

The concept of Diaspora is used when members of an expatriate community share several of the following features: dispersal of their ancestors, while retaining a collective memory of the past, and the belief that they are not accepted where they now are. The ancestral home is idealized. They believe that all the members of the diaspora should be committed to the preservation or restoration of the original homeland; the link to the native homeland must remain uninterrupted. Thus the diaspora often nurtures a collective identity, as well as a solidarity with co-ethnic members in other countries.

However, though diasporas have *par excellence* been connected to displaced victims, they may also include cultural or political élites.⁶ This will be the focus of my paper. The analysis of Philip Roth's novel *Operation Shylock* will in fact entail a debate on the relation of Jews to their homeland in Palestine, with a drastic reorientation of their diasporic self-image. In the Jewish case "their immediate nostalgia [is] focused on the country in which they had been born and raised, rather than on a mythic homeland in Palestine."⁷ For most Jews in Palestine Israel is in fact not their homeland, but a fictitious state born out of the necessity to give a homeland to the persecuted Jews of the Shoah. The problem is: which country is exile?

⁴ See Robin Cohen, *Global Diasporas: An Introduction* (London: Routledge, 2008).

⁵ See Cohen, *Global Diasporas*, 4.

⁶ Monika Fludernik, ed., "Introduction. The Diasporic Imaginary: Postcolonial Reconfigurations in the Context of Multiculturalism," in *Diaspora and Multiculturalism: Common Traditions and New Developments* (Amsterdam, New York: Overseas Press, 2009): xi–xxxviii, xiii.

⁷ Fludernik, *Introduction*, xxvi.

1. Diaspora as Cultural Mobility

My view of diaspora involves its cultural consequences and focuses on the problem of cultural mobility.

Nicolas Rose asserts that society is the sum total of the bonds and relations between individuals and events – economic, moral, and political – within a more or less defined territory governed by its own laws.⁸ In fact social phenomena cohere in a significant way: social life forms a fabric of some kind and has continuity and scale. The social is always assumed to be, in a sense, intelligible as a unity.⁹

In consideration of the concept of “field” derived from the sociological studies of Pierre Bourdieu,¹⁰ we will consider a global approach to pluri-national cultural fields within the perspective of their definition (through an analysis of the internal mechanisms of auto-definition and the external ones of recognition) and reciprocal interaction, with resolution of tensions and conflicts and their inclusions. This approach will involve investigations relating to the forms of trans-cultural migration and hybridization. Particularly useful are rewriting, trans-codification, translation and inter-textuality in literary, artistic, legal and economic products.

A by-now superseded concept of pan-European culture regarded it as fixed, predetermined and invariable through the centuries, with the only acceptable differences being those of the various national cultures, which formed legitimate and natural subdivisions of it. The fact remains that the major resistance to a thorough cultural study of humanistic topics has been felt most strongly where literature has been deeply connected with the essence of national identities.

According to Stephen Greenblatt, in order to be able to speak of cultural mobility there must be conditions of actual displacement (material, spatial, institutional) which have to be carefully investigated to understand correctly the metaphorical displacement that these conditions have brought about, between centre and periphery, or between order and its opposite, between external and internal.

8 See Nikolas Rose, “The Death of the Social? Re-figuring the Territory of Government,” *Economy and Society* 58.3 (1996): 327–356, 328.

9 Roger Cotterell, *Law, Culture and Society* (Hampshire: Ashgate, 1988): 16.

10 Pierre Bourdieu, *The Field of Cultural Production* (Cambridge: Polity P, 1993). “The notion of field provides a means of going beyond internal analysis (whether formal or hermeneutic) and external explication, both of which Bourdieu sees as inadequate and reductive.” “Literature art and their respective producers do not exist independently of a complex institutional framework which authorizes, enables, empowers and legitimizes them.” Randal Johnson, “Introduction,” in *The Field of Cultural Production*, ed. Randal Johnson (Cambridge: Polity P, 1993): 1–28, 10.

If culture functions as a structure of limits, it also functions as the regulator and guarantor of movement. Indeed the limits are virtually meaningless without movement; it is only through improvisation, experiment, and exchange that cultural boundaries can be established.¹¹

Among the most important phenomena, special relevance can be ascribed to movements of people, objects, images, texts, and ideas; the cultural mechanisms that involve the functioning of society can be migrations, phenomena of the market and of market change, the crossing of borders, or even cultural or non-cultural tourism, and periods of training abroad.

These migratory movements cause a transformation in the concept of national identity:

We need to situate the debates about identity within all those specific developments and practices which have disturbed the relatively 'settled' character of many populations and cultures, above all in relation to the processes of globalization [...] and the processes of forced and 'free' migration which have become a global phenomenon of the so-called 'post-colonial' world.¹²

The new social identities that are formed by today's migrations are constructed within the play of power and exclusion. This new concept of identity caused by cultural mobility is constructed through *différance* and is constantly destabilized by what it leaves out.

Studies on diaspora and cultural mobility must be able to account for the tension between individual agency and social limitation in a new way. One can speak of creative tensions in religious, sexual, and specific cultural contexts in which the static quality is only an unstable moment because it is inscribed in a dynamic process which may experience moments of destruction of the existing and moments of creation of the new. The operators of the transformation may have a varying degree of control over the process that is underway. In fact, every transformation finds fertile ground in a state of tension, of debate that does not have a determining function but rather a maieutic one, a potentiality that involves it also aesthetically. The mobility has its counterpart in the sense of binary opposition rooted in a sense of threat which is necessarily connected, at least partially, with change, with the separation from tradition and from individually and collectively reassuring rituals (as social psychology teaches).

¹¹ Stephen Greenblatt, *Cultural Mobility* (Cambridge: Cambridge UP, 2009).

¹² Stuart Hall, "Introduction: Who needs Identity?," in *Questions of Cultural Identity* [1996], ed. Stuart Hall, Paul du Gay (Los Angeles, London: Sage, 2012): 1–17, 4.

The concept of trans-cultural migration brought into focus means the process through which a European field of knowledge is created, and where external, foreign, and subordinate elements are included within certain procedures: they may deal with translation, loan, rewriting, and modification both of the elements and of the whole field from within itself, to the point of determining an innovation in the network of the free exchange of ideas, texts, and themes among European cultures. Sometimes migration may regard specific works or authors that rise to pan-European canonical values; at other times there are genuine migrations of individuals or of whole communities that determine drastic epistemological changes in the European cultural field.

The most advanced research has dwelt on the elements of mobility within the diaspora through which each culture creates itself and temporarily establishes itself in a non-linear way, by dint of loans and adaptations of elements of other cultures, both near and far in time as in space. Cultural values are not in fact rigid and pre-arranged, but the result of a constant process, at times chaotic and unpredictable, of fluctuation and evolution; it is the product of a negotiation, founded upon the dialectic between conservation and innovation.

What is at issue today is not the essentialized or idealized Arnoldian notion of 'culture' as an architectonic assemblage of the Hebraic and the Hellenic. In the midst of the multicultural wars we are surprisingly closer to an insight from T.S. Eliot's *Notes towards the Definition of Culture*, where Eliot demonstrates a certain incommensurability, a necessary impossibility in thinking culture. Faced with the fatal notion of a self-contained European culture and the absurd notion of an uncontaminated culture in a single country, he writes: "We are therefore pressed to maintain the ideal of a world culture, while admitting that it is something we cannot imagine. We can only conceive it as the logical term of the relations between cultures."¹³

If culture now has become a migratory concept, it also has to do with the elimination of border lines. If we want to stand for and defend the unhomey, migratory and partial nature of culture we must go back to the archaic meaning of 'boundary.' The translation of cultures is a complex act that generates borderline effects and identifications (culture sympathy and culture clash).¹⁴

What emerges is the notion of a polycentric Europe, where the boundaries of national literatures have come to terms with other kinds of diversified, discontinuous and dis-homogeneous European cultural boundaries. This conception of

¹³ Homi K. Bhabha, "Culture's In-Between," in *Questions of Cultural Identity*, ed. Stuart Hall, Paul du Gay (Los Angeles, London: Sage, 2012): 53–60, 54.

¹⁴ Bhabha, "Culture's In-Between," 54.

European culture comprises national entities and identities that are distinct and often in competition with one another. In this respect, as Umberto Eco reminds us in *La ricerca della lingua perfetta*,¹⁵ the tower of Babel comes to represent no longer a curse, but the emblem of the cultural vitality of Europe.

We must consider that law is an intrinsic part of the cultural panorama of every historical period: “We speak of a cultural analysis of law, of law as culture and culture as law, of the use of cultural studies methodology to interpret the law, of law as a cultural artifact.”¹⁶ Therefore in a post-diaspora world we must invent new juridical languages that may be fit for human coexistence. The richness of European cultural identity comes to be located precisely in the cultural diversification of its micro-spaces.

The challenge then is to rethink Europe in terms of cultural identity that is rooted in difference. Multiplicity, plurality, difference, otherness, unity in diversity: these seem to be the keywords around which the notion of European identity can be constructed. Integration is not a flattening process of uniformity, instead it means cultural diversity coupled with equality of opportunity. Integration within multiculturalism has involved the creation of structures in which the incorporation of immigrants and ethnic minorities (the result of diaspora) goes side by side with the recognition of their cultural diversity.¹⁷

Law gives form to our way of life, which brings us inside an anthropological perspective where law is a discourse among the discourses of society. [...] Law exists in culture: if it shapes the relations of a certain community, law also shapes culture and is in its turn shaped by it. Law creates the conditions of culture to some degree. However the creation of a transnational community is now being formed in a European society, which promotes new shared values. On one hand law defends tradition, but on the other hand it helps reshape it so as to make it progress thus avoiding inertia.¹⁸

We should investigate how choices and backgrounds of members of the same multicultural society affect their values, attitudes and opinions towards the law and the legal system.

¹⁵ Umberto Eco, *La ricerca della lingua perfetta* (Bari: Laterza, 1993); *The Search for the Perfect Language* (London: Blackwell, 1997).

¹⁶ Daniela Carpi, “Law and culture,” in *Dialogues on Justice: European Perspectives on Law and Humanities*, ed. Helle Porsdam (Berlin, Boston: De Gruyter, 2012): 3–11, 5.

¹⁷ See Ali Rattansi, *Multiculturalism* (Oxford: Oxford UP, 2011).

¹⁸ Carpi, “Law and Culture,” 8.

Legal culture, like general culture, is a body of ideas, values and attitudes. We can talk about the legal culture of a community; this does not mean, of course, that everybody shares the same ideas – what we refer to are patterns, tendencies, trends.¹⁹

What has been the impact of migration on the attitudes towards law? Multiculturalism may pose a threat to the viability of democratic institutions. Tyler asserts that “as nature of American society changes toward a mosaic model, the question whether and how democratic processes can be maintained becomes natural to discussions of public policy.”²⁰

It is hard to find a solution to the problems caused by diaspora and cultural mobility for what concerns the legal system: what sort of legal code should be applied if a norm satisfies one group but impinges on the freedom of another?

Liberalism does allow for an interpretation of equal rights that requires the state to grant the equal coexistence of majority and minority cultures; and that it should do so in terms of individual rights to cultural memberships of various sorts. This conception is liberal in so far as it follows Dworkin in assuming the priority of individual rights over collective goals or goods, including goods which depend on the maintenance of collective identities. Collective rights, hedging collective identities, may become dangerous or even illegitimate as they violate basic individual rights.²¹

The only possible solution to this legal impasse is attempting to keep human rights in mind. The Human Rights Declaration is a supra-national code that considers the basic rights of each individual independently of his/her national origin. The development of a cultural rights agenda goes parallel with the recognition that minorities have the right to retain the recognition of their distinctive cultures. It is possible to see the rise of multiculturalism as part of a wider struggle for human equality that followed the end of Second World War.

The Universal Declaration of Human Rights of 1948 ushered in a new era which in principle distanced itself from pre-1945 ideas of racial, national, and ethnic superiority and inferiority, typified by the Nazis.²²

¹⁹ Lawrence M. Friedman, “Is there a Modern Legal Culture?,” *Ratio Juris*, 7 (1994): 117–131, 120.

²⁰ Tom R. Tyler, “Multiculturalisms and the Willingness of Citizens to Defer to Law and to Legal Authorities,” *Law and Social Inquiry* 25.4 (2000): 983–1019, 1015.

²¹ Jürgen Habermas, “Multiculturalism and the Liberal State,” *Stanford Law Review* 47.5 (1995): 849–853, 849.

²² Rattansi, *Multiculturalism*, 14.

2. Operation Shylock

Philip Roth's *Operation Shylock* (1993)²³ is a very good example of how literature deals with the concept of Diaspora, cultural mobility, and law, though from a subverted perspective.

Operation Shylock is a case of the psychological examination of stolen identities. "Roth was wearing the mask of his mythic self in a character haunted by his double and namesake."²⁴ Roth's challenge in this novel is that of merging personal and tribal obsessions,

to expose as inherently absurd the presumption that this successful writer or the Jewish State or Jewish people were secure. Israel was a sovereign state yet much of the world still questioned the legitimacy of Jewish existence, however defined.²⁵

In this novel Roth discusses a fundamental historical problem in a paradoxical and ironic way, using a recurring figure in his novels, that of the doppelgänger: Philip Roth meets Philip Roth, whom he considers an impostor. The line between fact and fiction is blurred because it is the fake Philip Roth who proposes the theory of diasporism and also because real historical characters and events, such as Appelfeld, the Demjanjuk trial, and Lec Walesa, merge with invented ones, such as Roth's double and Ziad. Things are made even more complex by the fact that the real and the fake Roth (in the course of the novel called Moishe Pipik ["pipik" in Yiddish means "belly button"] to distinguish him) exchange personality and ideas, so that for most of the novel it is the real Philip Roth who sustains the principles of Diasporism. As for the character of Ziad, he represents the opposite of the American Zionist: he is the Arab who has returned from the diaspora against all personal advantage because he is obsessed by his patrimony: the Palestinian cause. Ziad sustains that "the American Diaspora has opened Jews to their best potential while Israel has shrunk them into narrow bigots."²⁶

The reactions to this novel were obviously conflictual and Roth was confirmed as the *enfant terrible* of literature. However I am not concerned with the novel's geopolitical themes or with the perspectives on the Holocaust, the State of Israel, or even the future of Jewish life in America, but with the concept

²³ Philip Roth, *Operation Shylock* [1993] (London: Vintage, 1994). Further references in the text, abbreviated as "OS".

²⁴ Alan Cooper, *Philip Roth and the Jews* (New York: SUNY Press, 1996): 254.

²⁵ Cooper, *Roth and the Jews*, 252–53.

²⁶ Cooper, *Roth and the Jews*, 264.

of Diaspora and Diasporism discussed in the novel. The novel extensively debates the concept of Diaspora but if, as far as we have theorized in the first part of the essay, Diaspora is separation and dispersal, for Roth Diaspora means reunification and merging. Zionism and Diaspora are put at variance: if Zionism meant the foundation of the State of Israel and the creation of a Jewish fatherland for the dispersed Jews, Roth's perspective is that of sending the Jews back to the nation they had fled from, so as to recover their lost European roots.

'Diasporism: The Only Solution to the Jewish Problem.' A lecture by Philip Roth; discussion to follow: 6.00 p.m. Suite 511. King David Hotel. Refreshments. (*OS*, 18)

This announcement is the starting point of the novel; the title of the lecture has itself many ironical innuendos. First of all, it plays with the Nazi idea of the Final Solution and with what they defined as the Jewish problem. Second, it introduces the figure of the double, thus also playing with the idea of the individual in the Diaspora as a split personality in search of himself. Third, it sets the debate at the very core of Judaism, given the name of the hotel: we understand that the solution will be a possible way out of the problem of Jewish survival in Eastern Europe. Fourth, it mischievously plunges the whole into ordinary surroundings, "refreshments," as if to deflate the terrible burden of the problem.

The 'real' Philip Roth is experiencing the "disaster of self-abandonment" (*OS*, 22), a sense of deracination also due to a medical pill, Halcion, he had been swallowing that causes a sense of alienness and hallucinatory states. The situation that originates everything is a metaphor for the psychological condition of the diasporic individual that is not at ease with his own self, has lost contact with the external world and has lost his self-assurance, which prevents him from doing what his occupation had always been: being a writer. Halcion becomes the cause for the inner deracination experienced by the character who feels separated from himself: it is an image of the effects of diaspora on a person who does not consider himself any longer at home in the world. The effects of the pill are similar to those caused by a diaspora consciousness: a loss of contact with the external world and the loss of the qualities that characterized Roth as an individual, the separation from his own cultural world, and his loss of a sense of identity and belonging.

Roth's double is politically very active and is concerned with bringing the resettlement of Jews in Poland to a positive solution. He is the one concerned with diasporism. "The reason for my visit to Walesa was to discuss the resettlement of Jews in Poland once Solidarity comes to power there, as it will" (*OS*, 31), he asserts during an interview. The journalist heads the article: "Philip Roth

meets Solidarity Leader. [...] Poland needs Jews –Walesa tells Author in Gdansk” (OS, 31).

“Everyone speaks about Jews,” Walesa told Roth. “Spain was ruined by the expulsion of the Jews,” the Solidarity Leader said during their two-hour meeting at the Gdansk shipyards, where Solidarity was born in 1980. “When people say to me: What Jew would be crazy enough to come here? I explain to them that the long experience, over many hundreds of years, of Jews and Poles together cannot be summed up with the word ‘anti-Semitism.’ Let’s talk about a thousand years of glory rather than four years of war.” (OS, 31)

The fact that Poland is unthinkable without Jews stresses the idea that a new positive diaspora should arise which would once more reconstitute the old population that was composed also by Jews.

The so-called normalization of the Jew was a tragic illusion from the very start. [...] The time has come to return to the Europe that was for centuries, and remains to this day, the most authentic Jewish homeland there has ever been, the birthplace of rabbinic Judaism, Hasidic Judaism, Jewish secularism, socialism – on and on. The birthplace, of course, of Zionism too. But Zionism has outlived its historical function. The time has come to renew in the European Diaspora our pre-eminent spiritual and cultural role. Roth, who is fearful of a second Jewish Holocaust in the Middle East, sees Jewish resettlement [...] as a historical as well as a spiritual victory over Hitler and Auschwitz. (OS, 32)

What the second Philip Roth proposes is the re-institution of Jewish culture in Europe, a culture which would involve the Jews as an integral part of Western civilization. Instead of arguing along national or religious lines, Pipik posits cultural space as a major site of Jewish identity.²⁷

The question of Jewish survival is also a cultural problem. Paradoxically, in this case the diasporic feeling of deracination is not solved by the creation of a new independent Jewish State, founded on Jewish religious laws and customs, but instead on a kind of reverse diaspora, where Jews go back to the mixed kind of civilization they had helped create. This new diaspora would be a creative one, a positive one because “Israel is no longer in the Jewish interest. Israel has become the gravest threat to Jewish survival since the end of World War Two” (OS, 41):

[F]or the European Jews Israel has been an exile and no more, a sojourn, a temporary interlude in the European saga that it is time to resume. (OS, 42)

²⁷ Ursula Zeller, “Between *goldene medine* and Promised Land. Legitimizing the American Jewish Diaspora,” in *Diaspora and Multiculturalism: Common Traditions and New Developments*, ed. Fludernik (Amsterdam, New York: Overseas Press, 2009): 1–43, 38.

In other words from this perspective Zionism has failed because it has not been able to create a state that compensates for the sense of alienness that Jews had always experienced as a separate ethnic group within the different nations they had inhabited.

If Diaspora means a situation of non-assimilation, if it involves a perceived identity difference of the diaspora group when contrasted with society's dominant cultural and religious norms and orientations, we certainly cannot speak of a diasporic consciousness in the case of the Israeli Jews. As a nation Israel is grounded in Jewish rules and laws: it is the materialization of all Jewish creeds, a socio-legal construction of a common space, the wilful creation of an 'ideal' Jewish environment through religious identity. The Jews cannot help but identify with the nation they themselves have helped create. Still Israeli identity is artificial because the spread of the Jews throughout Europe developed parallel to the evolution of Europe itself to which they contributed. Even though anti-Semitism is unfortunately still very much present, the Jews have been part of the European cultural panorama for centuries and they probably identify more with their European nations of origin than with the artificial sort of community that has been created in Israel. At least, this is the theory advanced by Moishe Pipik in Roth's novel. Israel now has become the exile land for the Jews, while their resettling in their European homeland would be a cultural reintegration. As Emmanuel Levinas writes: "The creation of the State of Israel revealed to Jews themselves, to the great surprise of some of them, the depth of their enrootedness in Western countries."²⁸

In *Operation Shylock* two opposing views of diaspora are discussed: on the one hand we have, as it has been by now sufficiently discussed, the idea that a positive diaspora should be created in Europe, where each Jewish ethnic group forming the State of Israel would recover its place of origin; on the other hand there is the widely scattered group of "diaspora Jews" who

constitute a pool of foreign nationals such as no other intelligence agency in the world can call on for loyal service. This is an immeasurable asset. The security demands of this tiny state are so great that, without these Jews to help, it would be in a very bad way. (*OP*, 384)

In other words, for the survival of Israel, the Jews of the Diaspora living all over the world, but especially in the United States, are necessary because of their loyalty and financial support. According to Diaspora studies we have thus both a literal concept of Diaspora (involving also the connection of the Diaspora groups

²⁸ Emmanuel Levinas, *Difficult Freedom: Essays on Judaism* [1963] (Baltimore: Johns Hopkins UP, 1990): 255.

with each other across the world) and an unusual, subversive concept, according to which a positive perspective is the one promoting a re-unification of each single group to its state of origin.

Diasporism seeks to promote the dispersion of the Jews in the West, particularly the resettlement of Israeli Jews of European background in the European countries where there were sizable Jewish populations before World War Two. Diasporism plans to rebuild *everything*, not in an alien and menacing Middle East but in those very lands where everything once flourished, while, at the same time, it seeks to avert the catastrophe of a second Holocaust brought about by the exhaustion of Zionism as a political and ideological force. Zionism undertook to restore Jewish life and the Hebrew language to a place where neither had existed with any real vitality for nearly two millennia. (OS, 44)

In any case both the diasporic and anti-diasporic perspectives would help create a supra-national territory rooted in ethnic and religious affinity, with the exclusion of bordered, segmented spaces. This would involve the actualization of a continuous cultural mobility within a sort of striated space represented by the different cultural groups. In this way the Jewish community would form a “heterotopian space generated through enlargement practices (ideological supra-territory) and sovereign place (national territory).”²⁹

Diasporism is presented as a repetition of Zionism, in that it echoes the underlying idea of returning to a previous homeland. However, it is also a reversal of Zionism, a “retroversion, a turning back, the very thing that Zionism itself once was.” (OS, 158)

Just as Zionism implicitly negated the history of the Diaspora, diasporism negates that of Zionism.³⁰

What is objected to is that this would create a second flight of the Jews, in this case a flight toward life and not from life. Such a Diaspora would mean reparation for their past sufferings, would also represent justice restored, because it would not be re-entry as refugees but as “an orderly population transfer with an international legal basis, with restoration of property, of citizenship and of all national rights” (OS, 46). This is a fundamental perspective, because the law would be involved and would ‘sanctify’ such an operation. The violation of the rights of the Jews was made possible by the principles of the nation state since it did not respect human rights as such, but only those rights belonging to

²⁹ Emma Patchett, “The Right to Free Movement as Temporal Deterritorialization in the Landscaped Garden,” *Polemos* 8.2 (2014): 253–274.

³⁰ Sophia Lehman, “Exodus and Homeland: The Representation of Israel in Saul Bellow’s *To Jerusalem and Back* and Philip Roth’s *Operation Shylock*,” *Religion & Literature* 30.3 (1998): 77–96, 86.

citizens recognized by the state. In the event of this kind of diaspora, their human personhood and their rights as citizens would emerge and they would be legally reintegrated into the state. This new Jewish reality would be based on principles of historical justice. Moreover, the close connection between the idea of the free movement of persons and citizenship is one of the fundamental principles of the European Union.

I know that people call Diasporism a revolutionary idea, but it's not a revolution that I'm proposing, it's a *retroversion*, a turning back, the very thing Zionism itself once was. You go back to the crossing point and cross back *the other way*. Zionism went back too far, that's what went wrong with Zionism. Zionism went back to the crossing point of the dispersion – Diasporism goes back to the crossing point of *Zionism*. (OS, 158)

For Moishe Pipik, Diasporism would take the place of by-now-superseded Zionism: Zionism no longer has the political and moral function it used to have. In the past it had the function of gathering together a scattered and persecuted people, thus giving them a legal and geopolitical space in which to recover their religious identity; now there is the necessity to reintegrate their cultural heritage within their European roots.

Diaspora [in this case is seen] at its parasitic worst, as it projects its own image onto a mythic incarnation of Israel without making an account of its own specificities. [...] A state of perpetual estrangement, dispersion is only barely remedied by way of a densely woven web of rules legislating social life.³¹

However Diaspora has always been the normal condition for Jews, who have been accustomed to it for millennia. In fact the novel offers also a third definition of a Diaspora Jew:

it is a Jew for whom authenticity as a Jew means living in the Diaspora, for whom the Diaspora is the normal condition and Zionism is the abnormality – a Diasporist is a Jew who believes that the only Jews who matter are the Jews of the Diaspora, that the only Jews who will survive are the Jews of the Diaspora, that the only Jews who *are* Jews are the Jews of the Diaspora. (OS, 171)

In other words, Jews must always be involved in a Diaspora of some sort, as if they were doomed to it.

31 Maera Y. Shreiber, "The End of Exile: Jewish Identity and Its Diasporic Poetics," *MLA* 113.2 (1998): 273–287, 276.

3. Law and Diaspora

The problem of what kind of law should be applied pervades the novel. In fact the 'real' Philip Roth would like to sue his double for being an impostor and he is meditating on what charge he can bring against him: invasion of privacy? Defamation? Impersonation? Reckless conduct? But what law could be applied? At the moment when Roth is writing he is in New York while his double is in Israel -so what law to apply? What legal safeguards? Such a problem is also created by cultural mobility, as I asserted above.

In fact, in this novel we must also face a problem of cultural mobility, because of the cultural bases which the idea of resettlement entails. If the cultural roots of each single Jewish group forming the State of Israel are called into question by the idea of resettlement, then the legal roots are part of the problem. Israel represents the place of settlement, a local, national or even transnational place, the realization of an imagined virtual community linked by the creation of a common language and a common religion, by secured borders and emphasis on the homeland. It is a nation: the enemies of the Jews have caused the Jews to create a nation as a means of ethnic survival, as the solution to the sense of non-belonging they have always experienced throughout history, as a way to establish a national identity.

The Land and the Law are seen as mutually dependent, in that the Land needs the Law for the right government of the Land, for the establishment of an ideal society, while the Law needs a space in order to develop its full force. From this interrelation derives the Israelites' legitimation for their territorial claims.³²

For most Israelis, Israel has become a model state based on equity and fraternity: it was all too easy for Zionist ideologues to promote the idea of creating a national homeland as an alternative to a doomed attempt at assimilation. The positive side of the state of Israel as Diaspora is that of mobilizing a collective identity,

not only a place of settlement or in respect to an imagined, putative or real homeland, but also in solidarity with co-ethnic members in other countries. Bonds of language, religion, culture and a sense of a common fate impregnate such a transnational relationship, and give to it an affective, intimate quality that formal citizenship or long settlement frequently lack.³³

³² Zeller, "Between *goldene medine* and Promised Land," 4.

³³ Cohen, *Global Diasporas*, 7.

If a new diaspora is to exist, it must be on different grounds than formerly. The concept of law would in this case respect the concept of the heterotopian space³⁴ in its juxtaposition of ethnicities and diverse environments. This diaspora in reverse would re-create a national identity in contrast to a supra-national identity represented by Diaspora Jews supporting the state of Israel from all over the world, and thus keeping connected with each other. We are torn between “a utopian sense of home [Zionism] and the cleaving segmentarity of a heterotopian site [Diasporism].”³⁵ Such deterritorialization of the Jewish population would create an inter-legal space which is the consequence of diasporic migrations.

In this way the idea of Diasporism merges with the idea of flexible citizenship that has been debated over the past few decades, especially after the Cold War. A person can retain double citizenship: the one of the nation he has been forced to go to (also for work reasons) and the one of the nation of origin. This is particularly the case in *Operation Shylock*, where Philip Roth lives between two nations, America and Israel, living in between also two legal systems. He does not know at what jurisdiction he must apply to have justice against Pipik: his split personality is reflected both in the production of his double and in this double legal perspective. In fact Rawls contrasts a shared concept of justice to various conflicting conceptions of justice.

The concept of justice, applied to an institution, means, say, that the institution makes no arbitrary distinctions between persons in assigning basic rights and duties [...] and that its rules establish a proper balance between competing claims [...] People can agree on the meaning of justice and still be at odds, since they affirm different principles and standards for deciding these matters.³⁶

This is particularly true because

within the dominant American culture, Israel has been perceived historically as a repetition of the ideology which spawned the creation of the United States, thus establishing a particularly complex connection for American Jews.³⁷

³⁴ *Heterotopia* is a concept elaborated by Foucault to describe those spaces that are connected to all other spaces, while in some way neutralizing and inverting all the connections they themselves define, reflect or replicate. They are spaces of *otherness*, simultaneously physical and mental. See Michel Foucault, “Of Other Spaces: Heterotopias,” *Architecture, Movement, Continuité* 5 (1984): 46–49.

³⁵ Patchett, “The Right to Free Movement,” forthcoming.

³⁶ John Rawls, *Political Liberalism* (New York: Columbia UP, 1993): 14 n. 15.

³⁷ Lehman, “Exodus and Homeland,” 77.

Early immigrants from Europe considered America in Messianic terms as the Promised Land. America's own Biblical tradition envisions a Jewish correlative to Christian America.

Jewish immigration to the U.S.A, like the Zionist immigration to Palestine, was nurtured also by idealistic motives, by the belief in the Jewish – *and* the liberal American – values of freedom and equality.³⁸

This double sense of belonging characterizes also Philip Roth in the novel as he feels a strong umbilical connection to Israel while living in America and having American nationality. This situation mirrors a common aspect of the contemporary world where the possibility of a double nationality and a double passport widens the concept of citizenship and can be set in the ideological debate between Diaspora and centre.

The multiple passport-holder is an apt contemporary figure; he or she embodies the split between state-imposed identity and personal identity caused by political upheavals, migration and changing global markets.³⁹

Given the spreading of modern communication and nomadism, passports have become not so much attestations of citizenship as claims of participation in global markets. But this is taking the idea of diaspora too far from the intent of this essay.

However, we cannot resolve conflicting loyalties except by recourse to universal moral obligations to act justly. A society of peoples should be created, in Rawls' terms, whose

system of law must be guided by a common good conception of justice [...] that takes impartially into account what it sees not unreasonably as the fundamental interests of all members of society.⁴⁰

The fulfilment of this condition would be rooted in the application of human rights, which include a right to subsistence and security, freedom from slavery, as well as formal equality expressed by a respect for natural rights. Even in diasporic cases such rights should be the basis of a common existence.

38 Zeller, "Between *goldene medine* and Promised Land," 9.

39 Ahiwa Ong, *Flexible Citizenship: the Cultural Logic of Transnationality* (Durham: Duke UP, 1999): 2.

40 John Rawls, "The Law of Peoples" in *On Human Rights, The Oxford Amnesty Lectures*, ed. Stephen Shute, Susan Hurley (New York: Basic Books, 1993): 42–82, 81.

4. Conclusions

What is dealt with in this novel is on the one hand a possible solution to Eastern European political problems, but on the other hand the situation of Roth as a loyal and sincere Jew, here evidently ironic. “Let your Jewish conscience be your guide” are Smilesburger’s closing words to the real Philip Roth. This statement emphasizes a common Jewish element which transcends both national allegiances and differences.

We are constantly inside and outside fiction, as the note to the reader at the end of the book demonstrates. Once more Roth makes fun of our quest for a final explanation, because he declares that what he has described is a product of his imagination, but the closing words “This confession is false” refute his assertions at the very end, leaving the reader forever in suspense.

My idea of cultural mobility as a consequence of Diaspora is connected to the concept of embodiment in space through territorial conceptions of belonging. The different Jewish groups must coalesce with the European cultures they came from, thus superseding the negative image of Diaspora and transforming the term into a constructive and vivifying one.

To the very end of the novel we are split between an appreciation of a diasporic hybrid (the artificial creation of the state of Israel formed by different Jewish groups united only by their common religion, a state conceived as a refuge from European persecution; the double consciousness of being Jewish and American, for instance, within a nation increasingly known for the multiple hyphenated identities it contains) and a nostalgic revivalism for a coherent homeland. It is a split between the assimilationist drive (Diasporism) and the nationalist drive (Zionism). In the course of the novel we are thrust within the ongoing tension between Zionism and Diasporism and with an uneasy awareness of the contradictions embodied in the security offered by ‘home,’ whether in one’s land of origin or in the traditional religious idea of a haven.

As Pipik argues, Zionism, after fulfilling its historical role of “recover[ing] Jewish hope and morale” in the immediate post-war years, has exhausted itself and in turn become “the foremost Jewish problem.”⁴¹

The novel brings to the fore the Jewish contradiction, pointed out by some writers, of longing for a homeland and then feeling dislocated in it: “I am a Jew-

⁴¹ Zeller, “Between *goldene medine* and Promised Land,” 37.

ish writer in the sense of writing forever about the ache to have a home, and then having one, aching to go away thinking that this is not the real one.”⁴²

Jewish history and identity are inextricably bound up with the diasporic condition. The outcome of the novel is also a re-reading of the very term ‘diaspora,’ which comes from the Greek *dia*, meaning ‘apart,’ and *speirein*, meaning ‘to sow.’⁴³ While in both ancient and modern thought the former meaning has tended to dominate, the latter meaning, with its promise of replanting, re-rooting, and subsequent growth⁴⁴ gains momentum in *Operation Shylock*.

⁴² Amos Oz, “After the Sound and the Fury: An Interview,” *Proof Texts* 2 (1982): 305–312, 312.

⁴³ “Diaspora, n.” (2014), *OED Online* <<http://www.oed.com/view/Entry/52085>> (acc. 19 September, 2015).

⁴⁴ Shreiber, “The End of Exile,” 275.

Franziska Quabeck

Cultural Rights and the Politics of Recognition in Kazuo Ishiguro's *Never Let Me Go*

1.

'Homogeneous society' is an oxymoron. While it is to be doubted that there has ever been a homogeneous society in the history of the world, since even before the age of colonialism class has divided any society into different groups of the powerful and the oppressed, in this day and age homogeneity can only be considered a myth. As Avtar Brah has shown in her influential study *Cartographies of the Diaspora*, people who are settled 'in' a place in the twenty-first century, are "not necessarily 'of' it."¹ She has argued that what she defines as "diaspora space" has changed the profile of the world in the sense that it "addresses the global condition of culture, economics and politics as a site of 'migrancy' and 'travel' which seriously problematizes the subject position of the 'native'."² The idea of the native, as a person rooted in a specific country and culture, who belongs to the locality they find themselves in, has become obsolete for the majority of the population of the world. And it is this general uprootedness of human beings that has changed in a very general way the human condition *per se*, as Robin Cohen argues: "[T]he sense of uprootedness, disconnection, loss and estrangement, which the traditionally-recognized diasporas hitherto morally appropriated, may now signify something more general about the human condition."³

Human beings that populate the earth in the present more often than not are dispersed from a homeland, have migrated voluntarily or are born in places they have no ancestral roots to, which contests the idea of belonging anywhere for the *gros* of human kind, according to Cohen:

One of the most important features of modernity was that the leaders of powerful, hegemonic nation-states sought to make exclusive citizenship a *sine qua non*. The world is simply

1 Avtar Brah, *Cartographies of Diaspora: Contesting Identities* (London, New York: Routledge, 1996): 3.

2 Brah, *Cartographies*, 181.

3 Robin Cohen, *Global Diasporas: An Introduction*, second ed. (London, New York: Routledge, 2010): 174.

not like that anymore; the scope for multiple affiliations and associations that has been opened up outside and beyond the nation-state has also allowed a diasporic allegiance to become both more open and more acceptable. There is no longer any stability in the points of origin, no finality in the points of destination and no necessary coincidence between social and national identities.⁴

The fact that the world is “not like that anymore,” however, leads to very serious questions as to how people live in the world, how they can develop a sense of belonging that is independent from a local rootedness and in how far they are integrated in the society they live in forcefully or voluntarily.⁵ How does a place become a home and what social, cultural, political conditions must prevail for the individual to maintain or develop a sense of identity in a foreign place? As Brah has pointed out, this question of home “is intrinsically linked with the [...] way in which processes of inclusion or exclusion operate and are subjectively experienced under given circumstances. It is centrally about our political and personal struggles over the social regulations of ‘belonging’.”⁶

These conditions, which Brah terms “social regulations,” will be in the focus of this article; I will argue that these social regulations, which may or may not allow a human being to feel at home in a certain society and locality, must include the recognition of the individual’s cultural rights, which might be at odds with their host society. Yet they must receive due recognition, since cultural rights are constitutive elements of a person’s identity and therefore integral to their personhood. In the second part of my article I will attempt to show how vital recognition in this context is by applying these concepts to Kazuo Ishiguro’s novel *Never Let Me Go*, which portrays the oppressive power of a lack of recognition.

Cultural rights are human rights, in the sense that they must be protected in order to allow the individual to develop their very own person in freedom and respect, as the International Covenant on Civil and Political Rights clearly states: “[T] he ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby

4 Cohen, *Global Diasporas*, 174.

5 One must, of course, distinguish between the migrant and the diasporic, if only for the crucial difference of being placed out of one’s own free will or not. Betty Joseph argues that in “the scene of displacement, the immigrant and the diasporic may share a common new home and a country of origin, but they are distinguishable by their distance from the communities to which their belonging is predicated.” Betty Joseph, “Cultural Forms and World Systems: The Ethnic Epic in the New Diaspora,” in *New Routes for Diaspora Studies*, ed. Sukanya Banerjee, Aims McGuinness, Steven C. McKay (Bloomington, Indianapolis: Indiana U P, 2012): 208–228, 210.

6 Brah, *Cartographies*, 192.

everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”⁷ Moreover, this statute becomes infinitesimally more important in the case of our pluralist societies, which are majorly constituted by human beings who try to define themselves by a cultural heritage which is at odds with the location they are placed in. The loss of a homeland is part of people’s existence in the world and this can cause severe ramifications for a person’s identity, as Vijay Mishra argues:

Traumatic moments heighten the sense of mourning occasioned by a prior ‘death’ of the homeland which in a sense is part of the entity, the *dasein*, of the subject. There is no immediate cure for the condition because the loss remains abstract; it is not compensated for by happiness in the new nation-state and is therefore internalized as the emptiness of the ego itself. It leads to retreat into essentialist diasporic instrumentalities such as places of worship (church, temple, mosque) or into social collectivities from which both the nation state’s dominant racial group as well as other diasporas are excluded.⁸

This emptiness of the ego is to be avoided at all costs and a central means to this end is the due recognition of the individual’s cultural rights. As Vijay Mishra points out, the motive of compensation that arises due to the loss of the homeland is naturally directed at the person’s cultural belonging in the widest sense and this must entail that human beings have the right to exercise their cultural performance as being of a certain culture independent from their locale. And this required recognition entails not only social recognition between individuals on a minor scale, but ideally also legal recognition on the major scale, as increasingly more legal theorists argue in the present day.

2.

As all societies become more pluralist all over the world, according to Charles Taylor, they simultaneously become more “porous,”⁹ which has severe ramifica-

⁷ United Nations, “Preamble: International Covenant on Civil and Political Rights” (1976), *United Nations Human Rights: Office of the High Commissioner for Human Rights* <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (acc. March 19, 2014).

⁸ Vijay Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (Oxon: Routledge, 2007): 10.

⁹ Charles Taylor, “The Politics of Recognition,” in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton U P, 1994): 63. Taylor’s term *multiculturalism* has been heavily criticized for a long time now and I will not use it for my own theory, but the politics of recognition is a highly relevant concept in post-colonial theory to my mind.

tions on any society's culture. People of the most numerous and diverse backgrounds constitute the demographic landscape of any of the modern states, which causes an equivalent diversity in any society's cultural landscape and the question arises to what extent people can freely exercise their various cultural habits. This is what Taylor means when he speaks of the "porousness" of modern societies:

Their porousness means that they are more open to multinational migration; more of their members live the life of diaspora, whose center is elsewhere. In these circumstances, there is something awkward about replying simply, "This is how we do things here." [...] The awkwardness arises from the fact that there are substantial numbers of people who are citizens and also belong to the culture that calls into question our philosophical boundaries. [...] This brings us to the issue of multiculturalism as it is often debated today, which has a lot to do with the imposition of some cultures on others, and with the assumed superiority that powers this imposition.¹⁰

Crucially, the awkwardness arises first and foremost through the fact that in modern societies there is no 'we' anymore that could impose on the stranger how to behave. This fact, however, is not acknowledged as thoroughly as it should be on different planes: discourses of nationalism, social interaction and, most importantly, the law. As Werner Menski self-critically proclaims, as lawyers, "we are still far too entrenched in modernist, positivist, colonial frameworks of mind [...]. We stubbornly refuse to recognize that this is entirely out of tune with new demographic and socio-legal realities and trends."¹¹ Thus, a discrepancy has arisen between European legal systems and the variety of citizens they ought to govern and this discrepancy is first and foremost felt by legal theorists and lawyers themselves. The legal code in existence is simply inadequate to account for a just treatment of all of its state's members, so that it needs to adjust to the reality of a completely different demography. As anthropologist Roger Ballard argues:

Plurality is a phenomenon and as such has been an integral part of the social order. Whether or not lawyers, the law and the courts feel comfortable with the prospect of responding

¹⁰ Taylor, "Politics of Recognition," 63.

¹¹ Werner F. Menski, "Rethinking Legal Theory in the Light of South-North Migration," in *Migration, Diaporas and Legal Systems in Europe*, ed. Prakash Shah, Werner Menski (London, New York: Routledge Cavendish, 2006): 13–28, 17.

positively to growing plurality, it seems quite clear that it is law which ultimately has to bend to the realities of the extant social activity, rather than vice-versa.¹²

Thus, in 2004 legal theorists gathered in order to address this discrepancy between existing laws and the outdated cultural and sociological basis they were formed on. The frequency of migration, the number of immigrants and the formation of diasporas in states all over Europe require a different perspective on societies and the necessity arises to formulate legal codes that can account for this plurality and subvert the common notion of “this is how we do things here.” As Menski points out, much of contemporary legal practice is still built on the idea that “*they* have to assimilate to *us* and our values. After all, they have come here, into *our* territory and therefore jurisdiction.”¹³ Similarly, Roger Ballard draws attention to the fact that this misguided principle is still prevalent in much contemporary legal thinking: “[I]f members of minority groups fail to follow the injunction ‘when in Rome, do as the Romans do’, preferring instead doggedly to follow their own alternative conventions, they have only themselves to blame if this leads them into trouble with the law.”¹⁴ However, ancient Romans and Roman territory have disappeared and this fact must be acknowledged by the law, if it is to distribute justice in the sense that legal representatives aspire to. Distinctions of *we* and *they* are impossible to make in the modern nation state and this fact should guide modern jurisdiction, for otherwise “there is a very real prospect that a miscarriage of justice will occur.”¹⁵

This call for the law’s acknowledgement of its subjects’ conditions thus necessarily evokes the question of culture: in a time when subjects and citizens come from all kinds of different cultural backgrounds, which include values and norms they believe in, a human being’s cultural rights gain crucial importance when confronted with the law. This imposes a general awareness on those involved in the distribution of justice, which Roger Ballard summarizes in four principles:

[I]f justice is to be delivered on an equitable basis, all those involved in the delivery process should at the very least be aware that:

12 Roger Ballard, “Ethnic Diversity and the Delivery of Justice: The Challenge of Plurality,” in *Migration, Diaporas and Legal Systems in Europe*, ed. Prakash Shah, Werner Menski (London, New York: Routledge Cavendish, 2006): 29–56, 55.

13 Menski, “Rethinking Legal Theory,” 24.

14 Ballard, “Ethnic Diversity,” 42.

15 Ballard, “Ethnic Diversity,” 42.

- everyone without exception order their thought and behaviour within a cultural and ideological framework of some kind;
- those frameworks are contextual, and hence that individuals who have acquired the necessary cultural competence may order their behaviour according to differing premises as they move from context to context;
- the framework within which one routinely operates is far from being universally applicable; other frameworks, grounded in alternative conceptual orders, appear just as reasonable, rational, sensible and comfortable to their users as one's own taken-for-granted assumptions [...].¹⁶

Thus, not only must the cultural contexts of the human being under jurisdiction be acknowledged, but in a very general sense distribution of true justice has to account for an individual's culture in the sense of their beliefs, their customs, their literature and anything else that might fall under this category, because an oppression of these elements of a person's identity has in the history of the world too often been equated with the oppression and/or destruction of entire peoples. As Elsa Stamatopoulou points out, the "neglect of cultural rights has hidden one of the most disgraceful and violent parts of human history: that of states knowingly and deliberately oppressing and even annihilating communities."¹⁷ This is why Werner Menski concludes that "[w]e have to rethink how we handle ethnic diversity and socio-cultural difference in law within our jurisdiction in Europe and North America. [...] Global legal realism demands recognition of the intrinsic plurality of all law."¹⁸

3.

The precept of legal recognition that is due to any human being thus gains increasing significance in an age of globalization and migration, where the individual is in constant commotion and therefore constantly confronted with different contexts and the urge to belong. As Iain Chambers emphasizes:

To come from elsewhere, from 'there' and not 'here', and hence to be simultaneously 'inside' and 'outside' the situation at hand, is to live at the intersections of histories and mem-

¹⁶ Ballard, "Ethnic Diversity," 47.

¹⁷ Elsa Stamatopoulou, "Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights," *Human Rights Quarterly* 34.4 (2012): 1170–1192, 1171.

¹⁸ Menski, "Rethinking Legal Theory," 27.

ories, experiencing both their preliminary dispersal and their subsequent translation into new, more extensive, arrangements along emerging routes.¹⁹

The opposition between here and there, inside and outside, necessarily raises the question of belonging and of home. Home, as mentioned before, becomes a difficult concept, since it cannot be defined along the lines of location anymore, but inevitably turns into a concept that depends on people, rather than places. As Avtar Brah has argued, in this sense home “connotes our networks of family, kin, friends, colleagues and various other ‘significant others’.”²⁰ “Significant others,” I will argue however, are not necessarily persons in close personal connection to the individual, but basically everyone they are surrounded by in country, town, or general community. The individual as being different is constantly confronted with others who are different and thus oddities are confronted with oddity. As Chambers has it, the migrant or diasporic inevitably “experience[s] the violence of alterity, of other worlds, languages and identities, and there finally discover[s] [their] dwelling to be sustained across encounters, dialogues and clashes with other histories, other places, other people.”²¹ Since this is universal, however, same and other are embodied in every single person, and everyone is other all over the world in all kinds of contexts, which gives the principle of recognition its vital importance.

Human beings are “dialogically constituted,” to borrow Charles Taylor’s phrase.²² They are given the chance to understand who they are, or rather develop an individual identity only in interaction with others, whose understanding of them constitutes their understanding of their own selves: “[I]t is in dialogue with other people’s understandings of who I am that I develop a conception of my own identity. We come into the world [...] capable of human individuality but only if we have the chance to develop it in interaction with others.”²³ Thus, the formation of identity depends on the recognition received from those around us and alterity becomes the necessary condition for finding the self. Due to this causal connection between self and other, the principle of recognition entails a moral imperative: on the one hand, difference and diversity must not only be recognized, but must be understood and accepted: “People are different [...] and there is much to learn from our differences. Because there are so many human possibilities worth exploring, we neither expect nor desire that every person or

19 Iain Chambers, *Migrancy, Culture, Identity* (London, New York: Routledge, 1994): 6.

20 Brah, *Cartographies*, 4.

21 Chambers, *Migrancy*, 4.

22 Taylor, “Politics of Recognition,” 34.

23 Kwame Anthony Appiah, *The Ethics of Identity* (Princeton: Princeton U P, 2005): 20.

every society should converge on a single mode of life.”²⁴ Anyone’s difference must receive due recognition and be considered a value, so that they understand their own identity and feel no need to hide who they are or where they are from in the widest sense. This is why recognition becomes “a vital human need”:

The demand for recognition [...] is given urgency by the supposed links between recognition and identity, where this latter term designates something like a person’s understanding of who they are, of their fundamental defining characteristics as a human being. The thesis is that our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves.²⁵

Making use of Lacan’s concept of the mirror stage as a formative element in the development of an identity, Taylor here emphasizes the element of responsibility of not mirroring back something degradable, due to the grave consequences this can have for a person’s understanding of who they are. Furthermore, the significance of recognition increases even more in the context of the diasporic or the migrant. This is a group of people whose identity formation is considerably more difficult due to the “rift of separation” and rootlessness, as Stuart Hall has pointed out: “Diaspora identities are those which are constantly producing and reproducing themselves anew, through transformation and difference,”²⁶ or, as Iain Chambers has it, “identity is formed on the move.”²⁷ Moving from context to context, culture to culture, the sense of rootlessness and the missing feeling of belonging thus make it much more difficult for people to establish their sense of identity and develop a comfortable understanding of who they are and feeling accepted as what they are:

In the case of the exile – whether national refugee, cultural outsider, social outcast, linguistic foreigner or rejected convert – the production of a self-definition is considerably more difficult than that facing the citizen or the one who belongs, who can find his ready-made.²⁸

24 Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York, London: W. W. Norton & Company, 2007): xv.

25 Taylor, “Politics of Recognition,” 25–26.

26 Stuart Hall, “Cultural Identity and Diaspora,” in *Community, Culture, Difference*, ed. John Rutherford (London: Lawrence & Wishart, 1990): 222–237, 235.

27 Chambers, *Migrancy*, 25.

28 Elizabeth Grosz, “Judaism and Exile: The Ethics of Otherness,” in *Space & Place. Theories of Identity and Location*, ed. Erica Carter, James Donald, Judith Squires (London: Lawrence & Wishart, 1993): 57–71, 69.

While Grosz is correct in pointing to the difficulties of understanding the self that occurs in people who have been dispersed or rejected, her attestation that the citizen who belongs finds their identity “ready-made” constitutes blatant question-begging. No matter their personal life stories, it is hardly conceivable that any human being could find their own sense of identity ready-made for them, especially since rootedness is one element of identity, but questions of gender, sexuality, ethnicity, education, and class play their own role in the formation too.

However, the urgency of recognition cannot be undervalued in this context and everyone has the responsibility of not mirroring back a demeaning picture. As Taylor emphasizes, “the withholding of recognition can be a form of oppression,”²⁹ since the perception of the self as someone less valuable than others causes not only the feeling of rejection, but is accepted as part of the image of the self. An individual that does not receive recognition is likely to believe that they do not deserve recognition, which furthers their segregation and oppression by the rest of the society. Stuart Hall has called attention to this process of mirroring back, which has the power of making the individual see themselves as *Other*:

It is one thing to position a subject or set of peoples as the Other of a dominant discourse. It is quite another thing to subject them to the ‘knowledge’, not only as a matter of imposed will and domination, by the power of inner compulsion and subjective con-formation to the norm. [...] This inner expropriation of cultural identity cripples and deforms.³⁰

The demeaning picture that is mirrored by lack of recognition is thus accepted by the self, which thereby accepts its own oppression and does not attempt to receive the justice it would be due. Thus, misrecognition is not just a means of withholding respect from others, but “[i]t can inflict a grievous wound, saddling its victims with a crippling self-hatred.”³¹ Therefore, recognition must be considered to be a key concept in identity formation and this entails recognizing others for what and who they truly are, which entails recognition and acceptance of their cultural rights. Otherwise people might feel inclined to hide who they are and pretend to belong by means of discarding their own cultural identity. As Anupam Chander describes, people can easily feel inclined to “take steps to hide [their] minority status, to assimilate, to pass. While it may be impossible to rid oneself completely of one’s racial markers, that does not stop one from try-

²⁹ Taylor, “Politics of Recognition,” 36.

³⁰ Hall, “Cultural Identity,” 226.

³¹ Taylor, “Politics of Recognition,” 26.

ing, at least, to minimize difference.”³² This process of assimilation thus leads back to the principle of *When in Rome* and the actual diversity of contemporary society is not truly acknowledged. Thus, recognition must be due anyone and their cultural rights must be respected, for any other treatment bereaves people of their own sense of identity.

4.

The tragic consequences that befall human beings who are deprived of their rights and denied due recognition can be graphically seen in a novel that can justly be considered to be an allegory on the lives of minorities in the present day. Kazuo Ishiguro’s *Never Let Me Go* seems to be, *prima facie*, about the ethical ramifications of human cloning, but a closer look at the narrative suggests a reading that reveals the difficulties of identity formation in people who are segregated and oppressed. This dystopian novel demonstrates the emotional and psychological impact on the marginalized individual, the individual that is denied recognition. In order to emphasize this condition and the dehumanizing effect this denial can have, Ishiguro has chosen to create a dystopia that deprives a group of people of their right to live. Set in contemporary yet imaginary England, the novel deals with human clones, who have been raised in a school called Hailsham in total isolation and exclusion from society and thus represent the marginalized, unrecognized minorities of modern society. Moreover, the hyperbole of the dystopian scenario of clones, who are kept as living resources for organ harvesting, brings to the fore the unendurable situation of being denied the most basic rights. The clones are denied the right to live, which serves as an allegory for the individual who suffers from the deprivation of their cultural rights.

Never Let Me Go was first published in 2005 and depicts a seemingly futuristic scenario of a society that functions on a system of organ harvesting. Clones are kept and raised in isolation from society in different institutions until their human counterparts in the outside world are in need of an organ donation. The clones are then physically exploited over the time of several months in their early twenties, until they have literally nothing left to give and die, or, in the novel’s rather euphemistic terms, they ‘complete.’ This plot has invited critics to concentrate on the question of bioethics and to foreground the fact that the

³² Anupam Chander, “Diaspora Bonds,” *New York University Law Review* 76.1015 (2001): 1005–1099, 1024.

novel calls into question the ramifications of human cloning. Thus, according to Wai-chew Sim, *Never Let Me Go* “explore[s] [...] a hotly contested and controversial issue, namely the ethical implications of ongoing advances in biomedicine and genetic technology” and “taps into our moral disquietude over prodigious advances in the biomedical sciences.”³³ On the surface, this reading is perfectly valid and the epigraph *England, late 1990s* suggests critical scrutiny of developments in biotechnology, which dominated public discourse at that time. At the same time, while the novel is not set in a futuristic science fictional scenario, it still seems to borrow from the form of the classic dystopia. According to the general definition dystopias are usually “works of fiction, including science fiction, that represent a very unpleasant imaginary world in which ominous tendencies of our present social, political, and technological order are projected into a disastrous future culmination.”³⁴ As such an “ominous tendency,” human cloning plays a part in this novel and the fact that the characters we identify with are sentenced to death from the beginning of their lives certainly suggests an “unpleasant imaginary world.” However, as several critics have noticed, unlike the classic dystopian or science fiction novel, *Never Let Me Go* displays a remarkable lack of scientific detail or technological methods. We learn that donors are physically capable of undergoing four donations at most, but that others ‘complete’ as early as their second or even first. How they are kept alive between donations is entirely glossed over and left for speculation, as well as the methods of creating and raising the clones from the infant stage on. As Mark Jerng points out:

Ishiguro upsets the opposition between science fiction as ‘genre fiction’ and the non-mechanistic value of the human by creating science-fiction without the technological. Indeed, the novel seems almost to be technology-phobic in its lack of reference to technology, especially bio-technology.³⁵

In a similar vein, Gabriele Griffin points to “the use of ordinary language to convey the biotechnological state” and the “absence of signifiers of ‘acute science’” in the novel, which defies the generic categorization as an actual novel of science fiction.³⁶ Thus, while science fiction novels usually represent “an imagined real-

³³ Wai-chew Sim, *Kazuo Ishiguro* (London, New York: Routledge, 2010): 79, 86.

³⁴ M. H. Abrams, *A Glossary of Literary Terms*, eighth ed. (Boston: Thomson, 2005): 337.

³⁵ Mark Jerng, “Giving Form to Life: Cloning and Narrative Expectations of the Human,” *Partial Answers: Journal of Literature and the History of Ideas* 6.2 (2008): 369–393, 381/382.

³⁶ Gabriele Griffin, “Science and the Cultural Imaginary: The Case of Kazuo Ishiguro’s *Never Let Me Go*,” *Textual Practice* 23.4 (2009): 645–663, 657.

ity that is radically different in its nature and functioning from the world of our ordinary experience,”³⁷ *Never Let Me Go* subverts such an alienation by creating the feeling that, overall, this world is not so entirely different from ours.

Moreover, there is a vital generic cue of the dystopia missing in the novel too: the clones never try to break out of the system. While the classic climax of the dystopian novel would lead to an attempt of the oppressed to undermine the oppression and change this fictional world, *Never Let Me Go* is curiously devoid of such rebellions and even parodies the idea, as will be seen later on. These clones seem fully accepting of their fate and await their completion, i.e. their death in sombre quietude, which seems unnatural or even inhuman. A key question therefore is in how far the novel allows a reading of the clones as human, and there have been several critics to claim that the text subverts a view of the protagonists as human beings. While they are anthropomorphized and the reader is implicated in their world through the narrative focus, most critics claim that the clones seem to remain distinctly different, due to the apparent indifference to their confined life span. Critics have been disturbed by Kathy’s “chipper tone” and “casual blandness,” which are claimed to create “an ever increasing divide between her disaffected tone and one’s own growing horror and outrage.”³⁸ As Martin Puchner puts it: “This lack of outrage more than anything else makes one wonder whether she is not somehow deficient, perhaps in a way one might expect from a manufactured creature.”³⁹ Thus the suspicion arises that the reader is not supposed to consider these clones to be human, since it seems unnatural that they suffer their fate in full awareness without the attempt at rebellion or opposition to the powers that oppress them. This is why Shameem Black argues:

The lives of these genetically-engineered students seem fundamentally automatic and mechanized: they move through the stages of their lives with the regularity of students promoted from grade to grade, seemingly blind to the horrors that shadow their march toward suffering and death [and] [...] without the capacity to resist their own exploitation.⁴⁰

In the following I will argue, however, that the author’s creation of the seeming passivity of the clones is not motivated by the attempt to call into question their

³⁷ Abrams, *Glossary*, 288.

³⁸ Martin Puchner, “When We Were Clones,” *Raritan: A Quarterly Review* 27.4 (2008): 34–49, 36.

³⁹ Puchner, “When We Were Clones,” 36.

⁴⁰ Shameem Black, “Ishiguro’s Inhuman Aesthetics,” *Modern Fiction Studies* 55.4 (2009): 785–807, 788.

humanity, but rather the opposite: their passivity more than anything else proves them to be human, for it is the oppression and misrecognition that they receive from the society around them, which cripples them and makes it impossible for them to resist. They accept their marginalization as Other due to the perception of others that is mirrored back to them and thus they consider themselves rightfully deprived of their right to live and do not call into question their categorization as second-class beings.

The lifelong deprivation of recognition is addressed from the beginning of the novel, when it becomes clear that these characters are completely distorted in their sense of themselves and have had no opportunity of develop a sense of identity. As the protagonist Kathy H. begins her narrative, her introduction of herself as narrator makes it clear that she has no sense of identity outside of the system she is placed in:

My name is Kathy H. I'm thirty-one years old, and I've been a carer now for eleven years. That sounds long enough, I know, but actually they want me to go on for another eight months, until the end of this year. [...] Now I know my being a carer so long isn't necessarily because they think I'm fantastic at what I do. [...] So I'm not trying to boast. But then I do know for a fact they've been pleased with my work, and by and large, I have too. My donors have always tended to do much better than expected.⁴¹

Kathy H. here tries to introduce herself, but the only terms she has to tell the reader who she really is, belong to the system that oppresses her. Apart from her age, there is no information given as to who she actually is and the references to being a carer, her unusually calm donors and the fact that “they,” i.e. the oppressors, are pleased with her work are the elements that she feels necessary to mention to describe herself, so that it becomes clear that she has no identity outside of this. This tone, the acceptance of oppression and the internalized image of themselves as Other characterize Kathy's whole story, so that it is gradually revealed under which horrible circumstances the clones grow up; and yet they are incapable of questioning them. Kathy recalls memories of her childhood and upbringing, so that the entire narrative is structured through flashbacks from the narrative frame into the past and through this structure, the whole truth of the system is only gradually revealed and the horrific conditions of the clones' lives are only fully uncovered at the end of the novel. The readers' understanding thus depends on the revelation of Kathy's memories, which limits their insight in proportion to the realization of the character. In addition, her

⁴¹ Kazuo Ishiguro, *Never Let Me Go* (London: Faber and Faber Limited, 2005): 3, further references in the text abbreviated as “*NLMG*”.

memories tend towards the unreliable, because the clones are kept in the dark about their destiny for as long as possible. The truth is always implied, but never expressed, as one of the boarding school's teachers tells them in the attempt to enlighten them:

The problem, as I see it, is that you've been told and not told. You've been told, but none of you really understand, and I dare say, some people are quite happy to leave it that way. But I'm not. If you're going to have decent lives, then you've got to know and know properly. [...] If you're to have decent lives, you have to know who you are and what lies ahead of you, every one of you. (*NLMG*, 73–74)

Ironically, Miss Lucy speaks of “decent lives,” which are obviously denied anyway, but truthfully, she considers knowing who one is as a vital necessity for one's life. As it turns out, however, these clones have no such identities.

The fact that they have been “told and not told” leads to the impression created in the clones that their function in life is quite normal and that there is nothing wrong with being deprived of one's right to live. As one of them puts it when she faces her final donation: “I was pretty much ready when I became a donor. It felt right. After all, it's what we're *supposed* to be doing, isn't it?” (*NLMG*, 207). They have internalized oppression and misrecognition to an extent that they do not feel the necessity to question them, which creates the normality that colours the atmosphere of the novel. Through Kathy's memories, however, it becomes clear that they were not born with the idea of being second-class beings: they have had to experience rejection to an extent that has made them believe themselves to be unworthy. Confronting one of the managers of the school silently with their existence, they experience that they are rejected by society and how this makes them feel:

[S]he was afraid of us in the same way someone might be afraid of spiders. We hadn't been ready for that. It had never occurred to us to wonder how *we* would feel, being seen like that, being the spiders. [...] The first time you glimpse yourself through the eyes of a person like that, it's a cold moment. It's like walking past a mirror you've walked past every day of your life, and suddenly it shows you something else, something troubling and strange. (*NLMG*, 32–33)

In a graphic narrative rendition of Taylor's politics of recognition, Ishiguro here implements the same image of the mirror as formative for identity. The self-image the clones gradually develop of themselves is thus shown to be as distorted and damaged as Taylor proclaims in his attestation that “a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of

themselves.”⁴² Just like human beings, these clones are “dialogically constituted”⁴³ and depend on interaction with their surroundings for the formation of their identity. But, as is the case when such interaction is shaped by misrecognition, the image that results from this is one of being different, the proverbial Other, who is rejected by society. Robbie Goh argues in his reading of the novel:

[T]he mirror scene is ‘troubling and strange’ because of the double-vision in which she sees herself, not just with her own eyes and consciousness, but also with the consciousness of the ‘people out there,’ the ‘normal people outside’ who inexplicably see her as different, even when her origins as a clone would not be immediately evident [...]. This incessant and internalized lack then manifests itself as a constant sensitivity to rejection by the majority, even (or especially) when this rejection is only inferred.⁴⁴

However, the fact that this rejection is not only inferred is emphasized by Ishiguro in an episode towards the end of the novel, which constitutes almost a parody of the dystopian element of confrontation with the oppressor. Far from being an act of rebellion, Kathy’s and her lover Tommy’s modest attempt to defer his final donation late in the novel lets them confront the authorities finally, but unsuccessfully. At the same time it becomes unmistakably clear that society has regarded the clones as second-class beings, as Other and as inferior, which has formed the very basis for the functionality of the system, as Miss Emily, the former headmistress reveals: “[F]or a long time you were kept in the shadows, and people did their best not to think about you. And if they did, they tried to convince themselves that you weren’t really like us. That you were less than human, so it didn’t matter” (*NLMG*, 240). A more explicit confirmation of the method of de-humanizing the segregated in order to justify their oppression could hardly be expressed. At this moment the clones fully understand what they have surmised all along: they are denied their right to live, because they are denied their existence in the first place, as people attempt to de-humanize them and relieve themselves of guilt. When the headmistress reveals why they educated the clones as thoroughly as they did and encouraged them to produce artworks themselves, it becomes clear that both Kathy and Tommy have not understood how strongly they are despised by society:

⁴² Taylor, “Politics of Recognition,” 25.

⁴³ Taylor, “Politics of Recognition,” 32.

⁴⁴ Robbie B. H. Goh, “The Postclone-ial in Kazuo Ishiguro’s *Never Let Me Go* and Amitav Ghosh’s *The Calcutta Chromosome*: Science and the Body in the Asian Diaspora,” *ARIEL: A Review of International English Literature* 41.3–4 (2011): 45–71, 63.

“We took away your art because we thought it would reveal your souls. Or to put it more finely, we did it to *prove that you had souls at all.*”

She paused, and Tommy and I exchanged glances for the first time in ages. Then I asked:

“Why did you have to prove a thing like that, Miss Emily? Did someone think we didn’t have souls?” (*NLMG*, 238)

The childlike tone of Kathy’s inquiry, which seems to portray her as entirely naïve, creates a sympathy with the clones at this moment that fully aligns the reader with them, not the humans. Her innocent questions make this heart-breaking moment which exposes the dreadful deprivation of beings who are denied to be freely what they are. To the clones, the idea that they could not have souls is inconceivable, as they live, love and feel, but due to the fact that this has even been called into question, they experience how severely they have been excluded not only from society, but from the realm of humanity, so that they have become “crippled” from the denial to belong. As Chu-Chueh Cheng emphasizes, the “clone-students are indoctrinated to believe in their innate inferiority and hence acquiesce to the fate of self-sacrifice.”⁴⁵

5.

The distorted image of themselves that has been installed in the clones by the mirror of society has made it impossible for them to belong to anyone other than themselves. They are orphans who “have neither past (parents) nor future (children)” and the only ones they can “keep substantial and continuous relationships with are fellow clones.”⁴⁶ However, in another attempt to show that they are not different, Ishiguro brings to the fore that they, too, search for their own sense of identity, search for a home and search for belonging, which takes its shape in the novel not only through their attempt to maintain relationships with each other, but more importantly in their search for their “possibles.” In coherence with the novel’s euphemistic terminology, “possibles” are considered to be the actual human beings these characters have been cloned from and at one time or another, they all wonder where and who these humans

⁴⁵ Chu-Chueh Cheng, *The Margin Without Centre: Kazuo Ishiguro* (Oxford: Peter Lang, 2010): 189.

⁴⁶ Cheng, *Margin Without Centre*, 49.

might be, which underlines their own human affinity, as Gabrielle Griffin argues: “[T]hey manifest a desire for knowledge of their origin and for belonging that humanizes them, rendering them a companion species [...] rather than an other on a different hierarchized scale.”⁴⁷ Ironically though, the very human search for their origin only emphasizes the distorted image they have of themselves: on the trip they take to find a woman working in an office who might be the character Ruth’s “possible,” a rare emotional outbreak gives voice to the deeply internalized demeaning picture of themselves that society has imprinted on their souls:

We all know it. We’re modelled from *trash*. Junkies, prostitutes, winos, tramps. Convicts, maybe, so long as they aren’t psychos. That’s what we come from. [...] We know it, so we might as well just say it. If you want to look for possibles, if you want to do it properly, then you look in the gutter. You look in rubbish bins. Look down the toilet, that’s where you’ll find where we all came from. (*NLMG*, 152–153)

Through the rather extreme analogy with trash as useless, defective, dirty and worthless, Ishiguro here clearly emphasizes how the marginalized, who are denied recognition and through this suffer a life-long oppression internalize the image that is imposed upon them and thereby are denied the chance of ever feeling equal. As Cheng argues, “it is this sacred divide between God-willed genesis and human-wielded mimesis that affirms the humans’ superiority and justifies their exploitation of the clones,”⁴⁸ so much so that the clones themselves are made to believe that their oppression and exploitation is justified, which necessarily recalls once again Stuart Hall’s attestation that the oppressive forces “had the power to make us see and experience *ourselves* as ‘Other’. [...] This expropriation of cultural identity cripples and deforms.”⁴⁹ How crippled and deformed the clones’ image of themselves is shows in Ruth’s diagnosis that they are trash and completely worthless and it is the discrimination of a society that has made them, which has destroyed their very sense of being. This explains why this scenario is not a dystopian but a very real one and at the same time, the lack of rebellion is shown not to be just a variation on the genre: these oppressed beings never rebel, because they do not believe that they are entitled to. They have been given such a profound understanding of themselves as different in the worst sense of the word that they have not been able to establish a belief in their own right to live. They are narrative examples of Mishra’s “emptiness of

⁴⁷ Griffin, “Science and the Cultural Imaginary,” 657.

⁴⁸ Cheng, *Margin Without Centre*, 189.

⁴⁹ Hall, “Cultural Identity,” 226.

the ego,” which is the result of a missing sense of belonging, for as these clones try to find their home, they can only come to the conclusion that they do not belong anywhere. Thus, the purpose they have been created for becomes in a self-fulfilling prophecy their only *raison d'être*. Since they have never had the chance to develop a normal sense of who they are, since they have received nothing but misrecognition, they can only define themselves almost masochistically through that which cripples them. They all then await their ends in patience and entire submission, because they can only act within the confinement of their oppression. Characteristically, the novel ends after the deaths of all those she has loved with Kathy's controlled tone, as she tells us that in her role as carer she drives off “to wherever it was I was supposed to be” (*NLMG*, 263).

Never Let Me Go can therefore justly be understood as a tragic allegory on the lives of people, who have never learnt that they have the right to receive recognition from others, that they have the right to be and act according to how they want to be and according to what makes them who they are. The distortion that is caused in people's sense of who they are by lack of recognition thus makes it a necessity to protect minorities, diasporics, migrants, any of the segregated the possibility of living their lives as they choose to and this requires legal protection. All people deserve their share of justice and if the legal systems of the world are not yet adapted to the pluralism of the population of the earth, it is high time they were.

Sidia Fiorato

Diasporic Fragments Coalescing: Michael Ondaatje's *Anil's Ghost*

Contemporary diaspora studies purport to overcome the traditionally assumed correspondence between a particular culture and a particular geographical space (or a nation-state) which grounds the inseparability of identity from place.¹ The concept of diaspora, as theorized by Khachig Tölölyan in the first issue of the journal *Diaspora*,² emerges from its inception as a critical term, meta-fictionally oriented towards putting into discussion its own definitions, in particular underlying the shift from rooted forms of identification to multiple identities and cross-border networks.³ As many critics observe, the concept of diaspora seems to resist precise definition; there is no accepted normative model of what a diaspora should be like and although it is continuously subject to codification, at the same time it continuously eludes it.⁴ One explanation is that it continuously evolves and mirrors new migration trends and situations: "Diasporic identities are historical phenomena which need to be addressed within their specific cultural contexts,"⁵ and they emerge from multiple perspectives as being linked to a temporal rather than a spatial dimension. In the contemporary critical discourse, diaspora studies use many terms and conceptualizations of

1 See Smadar Lavie Ted Swedenburg, "Introduction," in *Displacement, Diaspora and Geographies of Identity*, ed. Swedenburg (Durham, North Carolina: Duke UP, 1996): 1–26, 2. See also Sudesh Mishra, *Diaspora Criticism* (Edinburgh: Edinburgh UP, 2006): 132: the concept of nation refers to "an imagined polity (usually an ethno-cultural and linguistic commune) forged within a bounded territory and sustained by a notion of sovereignty. [...] The coupling of nation to a geopolitical realm, and hence to a bounded imagined community begets the hyphenated creature known as the modern nation-state."

2 See Khachig Tölölyan, "The Nation-State and its Others; In Lieu of a Preface," *Diaspora. A Journal of Transnational Studies* 1.1 (1991): 3–7.

3 Carolin Alfonso, Waltraud Kokot, Khachig Tölölyan, "Introduction," in *Diaspora, Identity and Religion: New Directions in Theory and Research*, ed. Alfonso, Kokot, Tölölyan (London: Routledge, 2009): 1–8, 3.

4 See Monika Fludernik, "The Diasporic Imaginary. Postcolonial Reconfigurations in the Context of Multiculturalism," in *Diaspora and Multiculturalism: Common Traditions and New Developments*, ed. Fludernik (Amsterdam: Rodopi, 2003): xi–xxxviii, xi; Alfonso, Kokot, Tölölyan, "Introduction," 3.

5 Roy Sommer, "'Simple Survival' in 'Happy Multicultural Land?': Diasporic Identities and Cultural Hybridity in the Contemporary British Novel," in *Diaspora and Multiculturalism: Common Traditions and New Developments*, ed. Fludernik: 149–181, 164.

postcolonial critical discourse and open them up to new negotiations and fruitful syntheses in a dynamic process mirroring the intrinsic dynamics of the term itself. The critical focus of analysis on processes of migration and cultural hybridity opens up to a theorization of cultural difference which intersects with and renovates itself through the concept of transnationalism.⁶

1. Diasporic Dynamics

The term ‘diaspora’ has a double meaning; literally, and in a negative historical sense, it refers to communities of people dislocated from their native homelands for multiple reasons (migration, immigration, exile), but etymologically it also suggests the positive fertility of dispersion and dissemination of seeds. In this sense, James Clifford underlines diaspora’s constructive potential in mediating cultures, and Edward Said emphasizes its profound creative empowerment.⁷ Actually, the relocated diasporic subject is conceived of as tending on the one hand towards his/her historical cultural identity, while on the other, as projecting him/herself towards the host society. He/she thus experiences a cultural hybridity, a concept which is diasporically reinterpreted on the basis of Bhabha’s vision of the third space.

The concept of hybridity usually connotes the effects on individual identities of the contact between different cultures. Bhabha’s concept of the “third space” overcomes the idea of cultural identities as absolutes, and underlines instead

⁶ The diasporic condition is not synonymous with transnationalism; “diaspora refers specifically to the movements – forced or voluntary – of people from one or more nation-states to another. Transnationalism speaks to larger, more impersonal forces – specifically those of globalization and global capitalism. [...] diaspora addresses the migrations and displacement of subjects [...] concomitant with transnationalism [...] but] may not be reduced to such macroeconomic and technological flows. It remains, above all, a human phenomenon – lived and experienced. [...] it offers an alternative paradigm for national (or multinational, transnational, and even post-national) identification.” (See Jana Evans Braziel, Anita Mannur, “Nation, Migration, Globalization: Points of Contention in Diaspora Studies,” in *Theorizing Diaspora. A Reader*, eds. Evans Braziel, Mannur [Oxford: Blackwell, 2003]: 8). Actually, the diasporic condition is not synonymous with multiculturalism, as this concept implies stable and unchangeable ethnic identities as something given rather than a process of development, nor with cosmopolitanism as this concept implies living simultaneously into two worlds, nor strictly with third spaces between cultures, due to diaspora’s daily interaction and communication across borders.

⁷ See James Clifford, “Diasporas,” *Cultural Anthropology* 9.3 (1994): 302–338, and Edward Said, “The Mind of Winter: Reflections on Life in Exile,” *Harper’s Magazine* 269 (1984): 49–55.

how cultures interpenetrate one another and become inextricably intertwined.⁸ This metaphorical space becomes “a new area of negotiation of [cultural] meaning and representation,”⁹ an “in-between” space, which is at the same time liminal and dialogic, and where personal and/or communal identity are elaborated and enacted. Diasporas were originally characterized by a feeling of displacement on the part of the relocated subject which led him/her to create imaginary homelands which grounded a communal identity in the dimension of myth and fictional memories; the diasporic imaginary testifies to how “identity operates through narrative[s], and narrative[s] nee[d] to start in the past and pace [their] way to a future that embraces and resolves the discrepancies between past and present.”¹⁰ As Stuart Hall underlines, cultural identity can be seen as deriving from common historical experiences and shared cultural codes which represent stable sources and references for identity, or as reflecting social, historical and cultural development and its transformations. According to this perspective, identities result from the individual’s attitudes towards the inherited narratives of the past and are a matter of becoming as well as of being. For Hall, the diaspora experience is characterized by hybridity in the sense of “the recognition of a necessary heterogeneity and diversity; by a conception of identity which lives in and through, not despite, difference.”¹¹ In a process of diasporic “critical dialogism,” the defining elements of the dominant culture are critically appropriated and “creolized,” their symbolic meanings disarticulated and rearticulated in a “powerfully syncretic dynamic.”¹² Within this context, the focus of the diasporic condition lies on the mutual cultural exchange between the host and the original country.

8 See Julika Griem, “Hybridität,” in *Metzler Lexicon Literatur-und Kulturtheorie*, ed. Ansgar Nünning, third ed. (Stuttgart: Metzler, 2004): 269–270, 269.

9 Homi Bhabha, “‘The Third Space’.” Interview with Jonathan Rutherford,” in *Identity: Community, Culture, Difference*, ed. Jonathan Rutherford (London: Lawrence, Wishart, 1990): 207–221, 211.

10 Monika Fludernik, “The Diasporic Imaginary,” xxviii–xxix. From this description there emerges how our individual and collective identities derive from our own fashioning of ourselves, but at the same time they are fashioned upon us by others. The individual sense of identity, as theorized by Brubaker and Cooper, comprises “the sense of self, the relationship one has to the place one inhabits, and the sense of belonging to a bigger group one is a part of such as a specific culture or nation.” (See Sonja Lehmann, “Transnational Identities in Michael Ondaatje’s Fiction,” in *Strangers, Migrants, Exiles. Negotiating Identity in Literature*, ed. Frauke Reitemeier [Göttingen: Universitätsdrucke Göttingen, 2012]: 281–344, 291).

11 Evans Brazier, Mannur, “Nation, Migration, Globalization,” 5.

12 See Kobena Mercer, “Diaspora Culture and the Dialogic Imagination,” in *Theorizing Diaspora. A Reader*, ed. Evans Brazier, Mannur: 247–260, 255.

The concept of diaspora is still connected to a dislocation from a country of origin and a relocation in a new one, but the notion of identity has acquired dynamic features; precisely in virtue of its hybridity, it constantly (re)produces itself through transformation and difference and the focus shifts on the aftermath of relocation. The diasporic subject actively inscribes his or her own identity in the context of his or her everyday life. This does not mean that the blending between cultures is effortless but new perspectives are needed in order to analyse such kinds of narratives.

Within the context of wide migrations in the twenty-first century, identity emerges as a process, not as a stable attribute of the person, a blending of self-understanding and social location.¹³ The transnational character of contemporary migration calls for a renegotiation of the connection between identity and territory, as transmigrants' identities are developed within social networks that connect two or more societies simultaneously. Therefore, integration into a new country and transnational connections with the old one no longer appear as mutually exclusive practices. New social and cultural spaces emerge which are defined as social fields, that is, "interlocking networks of social relationships through which ideas, practices, and resources are [...] exchanged, organized, and transformed."¹⁴ In contrast to the container model of societies, the permeable borders of social fields transcend national borders and allow transnational migrants to take part in several worlds simultaneously and in a critical way; "what we find in diaspora is an uncovering of the very fluid and constructed nature of identity and also the operation of individual subjective agency in that process of identification."¹⁵

Tölölyan argues that diasporas are recognized and experienced as the "Others of the nation state,"¹⁶ of its bounded stability and homogeneity; therefore the diasporic cannot be restrictively defined through geographical displacements and re-settlements,¹⁷ but implies a negotiation of territorial barriers, of other-

13 See Rogers Brubaker, Frederick Cooper, "Beyond Identity," *Theory and Society* 29.1 (2000): 1–47, 17.

14 Peggy Levitt, Nina Glick Schiller, "Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society," in *Rethinking Migration: New Theoretical and Empirical Perspectives*, eds. Alejandro Portes, Josh DeWind (New York: Berghahn Books, 2007): 181–218, 188.

15 Bill Ashcroft, Gareth Griffiths, Helen Tiffin, "Diaspora," in *The Post-Colonial Studies Reader*, eds. Ashcroft, Griffiths, Tiffin, second ed., (London, New York: Routledge, 2006): 425–427, 427.

16 Tölölyan, "The Nation-State and its Others," 6.

17 Esha Niyogi De, "Re-Domesticating Hindu Femininity: Legible Pasts in the Bengali American Diaspora," in *Tracing an Indian Diaspora: Contexts, Memories, Representations*, ed. Parvati Raghuram, Ajaya Kumar Sahoo, Brij Maharaj, Dave Sangha (New Delhi, London: Sage, 2008): 329–345, 329.

ness, of a sense of belonging and alienation, by means of the articulation of the experience of border-crossing. The “cross-cultural or cross-civilizational passage results in [and defines] the unique consciousness of the diasporic.”¹⁸ Diaspora ultimately transcends borders but space remains an important point of reference,¹⁹ albeit subject to constant negotiations in its relationship between identity and territory.

The experience of dislocation connected to diaspora is coupled with “the creative, productive and syncretic energies inherent in a situation of multiple identification and movement.”²⁰ The previous traditional focus on the homeland relocates itself on the trajectory of migration itself, and “the shifting contexts within which people [...] live.” Diasporic people are *en route* and they combine in themselves both concepts of roots and routes, as Paul Gilroy observes.²¹ Consequently, diasporic identities acquire a performative dimension, and rather than an accomplished fact, they emerge as “a ‘production’ which is never complete, always in process,”²² as projects rather than congealed totalities.²³

The identities of Michael Ondaatje's characters are influenced by “multiple affiliations and affinities that cut across national and cultural boundaries”;²⁴ they are characterized by a sense of reconciliation which fosters the possibility of taking part in several cultures and nations. In this way, the author elaborates both facets of the term; the sense of loss and displacement determined by the condition of migration and subsequently the empowering condition given by the sense of belonging to several places. By focusing on transnational identities, Ondaatje overcomes the sense of displacement and in-betweenness typical of postcolonial migrant writing. As Rushdie asserts, literature allows the diasporic subject to enter reality from new angles, which mirror his/her plural and partial

18 Makarand Paranjape, “Writing across boundaries. South Asian Diasporas and Homelands,” in *Diaspora and Multiculturalism: Common Traditions and New Developments*, ed. Fludernik: 231–260, 239.

19 See Alfonso, Kokot, Tölölyan, “Introduction,” 5.

20 Ulfried Reichardt, “Diaspora Studies and the Culture of the African Diaspora. The Poetry of Derek Walcott, Kamau Brathwaite and Linton Kwesi Johnson,” in *Diaspora and Multiculturalism: Common Traditions and New Developments*, ed. Fludernik: 287–328, 291.

21 Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge, MA: Harvard UP, 1993): 190.

22 Stuart Hall, “Cultural Identity and Diaspora,” in *Contemporary Postcolonial Theory. A Reader*, ed. Padmini Mongia (London: Arnold, 1996): 110–121, 110.

23 Valentin Y. Mudimbe, Sabine Engel, “Introduction,” *South Atlantic Quarterly* 98.1–2 (1999): 1–8; 5–6.

24 Lehmann, “Transnational Identities in Michael Ondaatje's Fiction,” 282.

identity, straddled between the two cultures included in the perspective.²⁵ “In Ondaatje’s fiction complex questions of post-, trans-, or simply national belonging, self-understanding, and connectedness are negotiated in subtle, yet precise ways that are never uncritical.”²⁶

2. Anil’s Western Identity: Detachment and Closure

The protagonist of Ondaatje’s novel, Anil Tissera, represents a peculiar articulation of the diasporic subject from within the tenets of detective and forensic fiction in a postcolonial context; in a process of *Bildung*, her investigation leads her to a new articulation of her identity. Her implied hybridity, which relies on a “both-and” definition, and renders her a hyphenated subject, is rearticulated and negotiated in the light of a deep relationship with her country of origin which transcends the concept of hybridity itself.

Anil is a forensic anthropologist who left Sri Lanka at 15 in order to study first in England (in the colonial capital) and then in the United States. While in England, at first she seems to manifest the typical characteristics of the diasporic subject as theorized by Mishra, that is, a strong sense of alienation and displacement, and a nostalgia for the country of origin.²⁷ Actually, Anil confesses that “[s]he had expected to feel alien in England only for a few weeks,” but she continuously “felt lost and emotional.”²⁸ On the other hand, according to Mishra, the diasporic subject is grounded in a communal rather than individual dimension; this usually leads him/her to present his/her own culture “as the desirable norm”²⁹ in a form of resistance to the pressures of assimilation to the

25 Salman Rushdie, “Imaginary Homelands,” in *The Post-Colonial Studies Reader*, ed. Ashcroft, Griffiths, Tiffin, second ed., 428–434, 431: “Our identity is at once plural and partial. Sometimes we feel that we straddle two cultures [...] If literature is in part the business of finding new angles at which to enter reality, then once again our distance, our long geographical perspective may provide us with such angles.”

26 Lehmann, “Transnational Identities in Michael Ondaatje’s Fiction,” 308.

27 See Vijay Mishra, “The Diasporic Imaginary: Theorizing the Indian Diaspora,” *Textual Practice* 10.3 (1996): 421–47.

28 Michael Ondaatje, *Anil’s Ghost* (London: Vintage, 2011), 138. Further references in the text, abbreviated as “AG”. When Anil calls her *ayah*, Lalitha, from England in order to receive some comfort, she ends up weeping realizing the distance that divided them “it felt, at the far ends of the world” (AG, 138).

29 Roy Sommer, “‘Simple Survival’ in ‘Happy Multicultural Land?’,” 159.

dominant culture. Actually, in her early twenties, Anil marries a Sri Lankan man and she seems to consider the marriage to somebody from her own country as a source for a stability of identity; “she had begun loving him because of her loneliness” (AG, 137). This loneliness is to be interpreted as a cultural isolation, as one of the reasons of this love is that “[s]he could cook a curry with him. She could refer to a specific barber in Bambalapitiya, could whisper her desire for jiggery or jackfruit and be understood. That made a difference in the new, too brittle country” (AG, 137).³⁰ After the divorce, she breaks all her connections both with him and her home country. When she learns that he has gone back to Colombo, her reaction is that “with his departure there was no longer any need to remember favourite barbers and restaurants along the Galle Road. [...] She no longer spoke Sinhala to anyone” (AG, 141), that is, she rejects the diasporic idea of an imaginary homeland. The only connection she maintains to her parents and her original culture is through the sarong they always send her at Christmas and “which she dutifully wore” (AG, 6), where the adverb “dutifully” expresses a form of moral obligation more than a conscious choice, as Lehmann observes.³¹ She also keeps “news clippings of swim meets” in Colombo, as in her teens she had become a renowned swimmer, therefore they represent her history and her image in her home country, the status she had achieved thanks to her skills. In this way, she puts her past Sri-Lankan history in a sort of data archive, but leaves these data without an interpretation or a linking narrative. The elements of her past remain catalogued but are not taken into consideration; she will reconnect to them only through her nuanced journey through Sri-Lanka.

Before analysing Anil's journey, it is useful to attain a deeper insight in her own construction of her personality in her countries of adoption. After her divorce, “she turned fully to the place she *found herself in*” (AG, 141 [my emphasis, where the verb “found herself” signals an indifferent absence of choice]); we are told that “In her years abroad, during her European and North American education, Anil had courted foreignness, was at ease whether on the Bakerloo line or the highway around Santa Fe. She felt completed abroad” (AG, 50). Actually, Anil turns completely to her job: “she fell in love with working at night, and sometimes she couldn't bear to leave the lab, just rested her happily tired dark head on the table. There was no curfew or compromise with a lover any more. She got home at midnight, was up at eight, every casebook and experiment and investigation alive in her head and reachable” (AG, 141); the buildings

³⁰ See Mishra, *Diaspora Criticism*, 133: “Cut off from the dominant forms of their host country, transmigrants find solace in self-familiarising practices. They cling to mother tongues and [...] form suburban enclaves [...]”

³¹ See Lehmann, “Transnational Identities in Michael Ondaatje's Fiction,” 310.

where she carries out her job “were her home” (AG, 63). This described condition gives the impression of a lack of will for an active engagement; she sort of abandons herself to the situation she finds herself in and proceeds in an adrift way. About her career, we are told that “she won a scholarship to study in the United States, and in Oklahoma she became *caught up* in the application of the forensic sciences to human rights” (AG, 141 [my emphasis]); once again the chosen verb to explain her career choice suggests instead its casualness and determination by impersonal external agents. She becomes deeply immersed in the community of scientists she works with and who represents “the only larger group which she connects to,”³² but I would not say, like Lehmann, that she connects with them on an emotional level; she transfigures the group into a cultural community of belonging, thus transcending and evading the concept of national belonging and the emotional attachment it implies. Anil mostly describes her routine life in this community, and expresses her affiliation on ambiguous and vague terms, such as, “I live here, in the West” (AG, 32). In fact, she has a British passport, but lacks any emotional attachment to a specific country. She appears to inhabit a liminal dimension, in which she loves “the clatter and verbal fling of pathologists” (AG, 144), that is, their language, “loved their rituals” (AG, 143) and participated in their “old tradition”, that is their “cultural” dimension. The scientists come “from all over the world” (AG, 32) and are bound together by a shared scientific interest; their community is not defined by national boundaries, but exists independently from them. Actually, the world of science is not limited to a specific place but is recreated at any mission, be it in Congo or Guatemala; it is both transnational and postnational, inasmuch as the geographic space seems completely interchangeable, as Anil’s vague responses to where she lives show. It is as if she rejects a specific personhood and chooses to remain in the abstract dimension granted her by the peripatetic existence connected to her job. She ascribes the characteristics of culture and nation to a community that is not such, in a sort of negation of the process of identification and the possible consequent feeling of diasporic displacement.

Considering all this, I would put into question her own above quoted assertion that she felt completed abroad. In my opinion, she seems rather to actualize the split between *bios* and *psyche*: she confines herself into life as an empirical phenomenon (*bios*), while neglecting its grounding in the *psyche* which should actualize its individuality and lead it to self-fulfilment. *Bios* and *psyche* are ontologically linked and the latter determines the individual’s juridical dimension,

32 Lehmann, “Transnational Identities in Michael Ondaatje’s Fiction,” 310.

its personhood, as well as its identity and sense.³³ In an exaggeration of her past condition in Sri Lanka, where her swimming abilities would have granted her a social status – had she remained there – Anil is identified only by her professional skills: “Having been a mild celebrity in Colombo because of her swimming, Anil was shy without the presence of her talent, and found it difficult to enter conversations. Later, when she developed her gift for forensic work, she knew one of the advantages was that her skill signaled her existence – like a neutral herald” (AG, 137). While she sleeps at night, her hand moves constantly “as if brushing earth away” (AG, 30), in a mechanical repetition of her professional gestures. At the same time, she maintains an emotional detachment from her job: “At night, returning from work, Anil would stand in the shallow water [of her small home pool], her toes among the white petals, her arms folded as she undressed the day, removing layers of events and incidents so they would no longer be with her” (AG, 63). Instead of foreignness, she seems to court anonymity; when asked what she likes about the West she answers “Most of all I think I like that I can do things on my own terms. Nothing is anonymous here [in Sri Lanka] [...]. I miss my privacy” (AG, 68). This anonymity and emotional restraint are the same qualities she applies in her job: she defines her colleagues as “a mixed bag of characters” (AG, 30) and the only one she calls by his name³⁴ is the one who feels for the victims in a strong emphatic way.³⁵ She explains his attitude by underlying that he belongs to the community where they are carrying out their forensic work; because of this connection, she oxymoronically isolates him from the group. In her job, Anil is defined by scientific objectivity and impersonality; she is defined by her markers of occupation, in the same way in which these elements identify her victims (see AG, 173). David Farrier describes her life as a “somnambulant existence,”³⁶ due to its lack of any kind of connectedness and its being located in scientific sterile labs, which symbolize also a sterility of life.

Her journey to Sri Lanka represents a turning point in her conception of both her own self and her profession. Anil posits her identification with the West as soon as she arrives in Colombo, when she asserts that “[t]he island no longer held her by her past” (AG, 7). Her first impressions of the country are “dis-

33 See Francesco d’Agostino, *Parole di Bioetica* (Torino: Giappichelli, 2004): 28–34.

34 On the contrary, she revels in uttering the names of the bones both in English and in Spanish (see AG, 30).

35 “When I’ve been digging and I’m tired and I don’t want to do any more, I think how it could be me in the grave I’m working on. I wouldn’t want someone to stop digging for me.” (AG, 30)

36 David Farrier, “Gesturing towards the Local. Intimate Histories in *Anil’s Ghost*,” *Journal of Postcolonial Writing* 41.1 (2005): 83–93, 84.

locatedly” filtrated by a willed predominance of Western perspective suffused by memories of Eastern rootedness which correct and adjust the former in a silent acknowledgement of the country:

By the time she was out of the terminal the sun had risen. In the West she’d read, *The dawn comes up like thunder*, and she knew she was the only one in the classroom to recognize the phrase physically. Though it was never abrupt thunder to her. It was first of all the noise of chickens and carts and modest morning rain or a man squeakily cleaning the windows with newspaper in another part of the house. (AG, 5)

The memories that are evoked by her return to Sri Lanka are sensory ones and she physically enters into connection with the country. However, she negates these sensations and retreats into silence; she “seems to have decided to go to her motherland as a foreigner.”³⁷ She refuses to be defined as “a prodigal” (AG, 6) thereby implying a lack of will in her return and refutes her country’s codification of herself as a famous swimmer in order to sever any link with the past. In this way, she rejects the diasporic nostalgia for both her past and her homeland, and seems to relate to Sri Lanka in the same way as she relates to the West, therefore by posing both countries on the same level and keeping herself in isolation from any kind of national connectedness.³⁸ On the other hand, her insisted detachment is belied by the fact that after the first days in Colombo “Suddenly Anil was glad to be back, the buried senses from childhood alive in her” (AG, 11). Actually, she had also enquired with the taxi driver about a saloon for head massages she remembered, asking if it was still there, and said she would like to have a toddy, that is a typical palm wine of the area; by these elements we can observe how, despite her detached attitude, dislocated connections with her country emerge and open up the dimension of the uncanny, that is, Anil’s first boundary crossing experience. The protagonist appears therefore in her multifarious aspects already from the first pages of the novel and this preludes to subsequent developments in her attitude both towards the country and her own identity.

37 Danuta Woznialis, “Identity as an Open-Ended Process: Michael Ondaatje’s Works,” *Dabai ir Dienos* 32 (2002): 267–290, 280. We read how “She was glad to be alone” (AG, 6) and had informed no friend nor relative about her return.

38 See Lehmann, “Transnational Identities in Michael Ondaatje’s Fiction,” 312. In the novel, Anil is first addressed by Sarath in the following way: “So – you are the swimmer?” (AG, 12), to which she responds “The swimming was a long time ago.” Another character who is a forensic professional addresses her instead as “You are the woman from Geneva” (AG, 67) and even though the woman’s face looks disbelieving, Anil confirms and clings to this definition, thereby taking once again refuge in the anonymity of her scientific community.

3. Evolution of Anil's Self-Identity

Ondaatje introduces his protagonists as

simple entities characterized according to the features they reveal in their narrative present. [He] tells us what they are, but he does not say anything about who they are. [...] the different narrative voices (as much homodiegetic as heterodiegetic) introduce the reader into the past of each character paying attention to the keys of their dynamic development in life.³⁹

Therefore, we experience together with Anil the flux of her thoughts and memories and witness the changes in her attitude and her considerations, as she approaches the country from multiple viewpoints.

When she arrives in Colombo, we learn that she has remained detached from the civil war devastating the country and she has read about it in documents and news reports; she feels that “she had now lived abroad long enough to interpret Sri Lanka with a long-distance gaze” (AG, 7), meaning with objectivity and clarity. However, immediately after this profession of her stance she acknowledges that “here it was a more complicated world morally” (AG, 7). The codification of the violence by analogy with Greek tragedies, that is, through a Western cultural mediation, proves untenable as the latter “were innocent compared with what was happening here” (AG, 7).

Anil's mission in Colombo implies the collaboration with a local archaeologist, Sarath Diyasena, in order to analyze some skeletons discovered in an ancient burial site in a government-controlled area. Anil realizes that one of the skeletons is actually victim of a more recent violent death; therefore her quest becomes the determination of its identity and its consequent transformation into evidence for the incrimination of the Sri Lankan government for human rights violations.⁴⁰ Anil believes that the truth is simple and forward, she believes in “clearly marked roads to the source of most mysteries [and that] information could always be clarified and acted upon” (AG, 54). She therefore approaches Sri Lanka from a twice biased perspective; on the one hand, she relies and obstinately clings on “the grand narratives of western civilization,

³⁹ Paula Garcia Ramirez, “Wanderers and Exiles in Michael Ondaatje's *The English Patient*,” in *Diaspora and Exile*, ed. Lucía Mora González, Bernhard Dietz, Asunción Sánchez Villalón (Cuenca: Ediciones de la Universidad de Castilla-la Mancha, 2001): 79–88, 81.

⁴⁰ See Milena Marinkova, “Haptic Aesthetics and Witness Writing,” in *Michael Ondaatje. Haptic Aesthetics and Micropolitical Writing*, ed. Marinkova (New York: Continuum, 2011): 63–92.

[...] the empirical Truth and Reason,”⁴¹ on the other hand she applies her impersonal attitude to the investigation, and pretends to rely on universally and atemporally valid tenets, “the permanent truths, same of Colombo as for Troy” (AG, 60). The victims’ bodies are turned into scientific specimen, “representatives of race and age and place” (AG, 51) which distances any emotional involvement. Anil applies contemporary forensic methods (which grant only a “five-percent margin of error,” AG, 91), and considers a victim’s skeleton as a “representative of all those who lost voices. To give him a name would name the rest” (AG, 52). By ascribing a common shared identity to the victim she avoids the grief of human particularity but at the same time denies the victim his/her individual reality with its social, cultural and political implications. She avoids becoming entangled into the victims’ life narratives through her belief that “[o]ne village can speak for many villages. One victim can speak for many victims” (AG, 272).

In Sri Lanka truth seems more elusive: “Information was made public with diversions and subtexts” (AG, 51), and Sarath constantly reminds her that “It’s different here, dangerous. Sometimes law is on the side of power not truth” (AG, 44). Moreover, he calls Anil’s attention on the fact that Western investigative attitude with its desire for a single truth with which to distinguish between the guilty and the innocent, is untenable; every side – the government, Sinhalese insurgents, and Tamil separatists – have been guilty of human rights violations, therefore Western objective universality proves inadequate to grasp the commitment to local histories.⁴² During her stay in Sri Lanka and during her investigation Anil is confronted with “the extent of her estrangement from the culture she was born into,”⁴³ as well as with her estrangement from the tenets of her Western self-understanding. A subversion of the condition of the diasporic subject takes place; Anil is displaced in her home country but as a Western subject and in her Western allegiance.

In Ondaatje’s novel, the figure of the “international health professional as heroic moral agent” is paired with “local health practitioner[s] as [...] silent, heal-

41 Heike Härting, “Diasporic Cross-Currents in Michael Ondaatje’s *Anil’s Ghost* and Anita Rau Badami’s *The Hero’s Walk*,” *Studies in Canadian Literature/ Études en Littérature Canadienne* 28.1 (2003): 43–70, 53.

42 Davis, “Investigating Truth, History and Human Rights in Michael Ondaatje’s *Anil’s Ghost*,” in *Detective Fiction in a Postcolonial and Transnational World*, ed. Nels Pearson, Marc Singer (Farnham, Burlington: Ashgate, 2009): 15–30, 23.

43 Lehmann, “Transnational Identities in Michael Ondaatje’s Fiction,” 315.

ing agent[s].”⁴⁴ Anil is led through her concrete and metaphorical journey by the archaeologist Sarath and his brother Gamini, who is a doctor. Gamini’s insights into the Sri Lankan situation derive from his uninterrupted work in emergency rooms during the conflict, and his concrete witnessing of human rights abuses epitomized by the wounded bodies he tries to heal. For this reason, he condemns Western professionals and journalists, who presume to offer criticism from a safe distance, from their dislocated position of outsiders. As Burton observes, Gamini is devastated by the cumulative effect of his witnessing while Sarath has taken refuge into his professional identity and the political disinterestedness it allows;⁴⁵ actually, the archaeological secrets he uncovers are not bestowed with contemporary – and dangerous – meaning.⁴⁶ Sarath is strongly and lucidly convinced that “Every side was killing and hiding the evidence. [...] There’s no hope of affixing blame. And no one can tell who the victims are” (AG, 13). In order to understand the civil war, reports are not enough; witnessing and involvement are also necessary and impossible to attain for somebody who has been absent in the crucial years of the conflict: for this reason Sarath tells Anil: “I’d believe your arguments more if you lived here [...] You can’t just slip in, make a discovery and leave” (AG, 40). He wishes Anil to understand and share “the archaeological surround of a fact” (AG, 43); in order to become able to do this, she has to relocate to Sri Lanka through a journey into its deepest recesses which becomes symbolic of her own inner path. At the beginning of her journey she is described as waiting for Sarath in the Archaeological museum where her image is symbolically vaguely reflected upon the glass framing multiple maps of Sri Lanka. The maps provided information about every aspect of the country, apart from its population: “Traits of the country like those of a complex friend” (AG, 142). Anil’s journey will teach her how to enter the frame.

As Halloran⁴⁷ underlines, Anil conceives her function to speak for the silent or silenced victims as her official reports’ codification. The act of witnessing instead goes beyond this medical and official dimension and “requires a communicative act which re-cites and re-sites what one has learned – not only about what happened to others at/in a different space/time but also (and this is the

44 Vivian Nun Halloran, “Health Professionals, Truth, and Testimony: Witnessing in Human Rights-Themed Entertainment,” *The Journal of the Midwest Modern Language Association* 40.2 (2007): 97–114, 100.

45 See Antoinette Burton, “Archive of Bones: *Anil’s Ghost* and the Ends of History,” *Journal of Commonwealth Literature* 38.1 (2003): 39–56, 42.

46 Paul Briens, *Modern South Asian Literature in English* (Westport, Conn.: Greenwood, 2003): 182.

47 Halloran, “Health Professionals, Truth, and Testimony,” 103.

key) what one has learned of and within the disturbance and disruptions inherent in comprehending the substance and significance of these events.”⁴⁸ Palipana, the blind archaeologist whom Sarath leads her to encounter in a forest monastery where he has retreated, juxtaposes to Anil’s scientific methods of investigation the value of an imaginative leap and the possibility to see “as truth things that could only be guessed at,” a belief that “truth is just opinion” in “our world.”⁴⁹ He perceives history as “ever-present around him” (AG, 76), and he devotes his study in particular to the concreteness of stones and runes as pragmatic proofs of man’s presence. His approach is sensory and holistic (“He spread his finger over every discovered rune,” AG, 79; “Every historical pillar he came to in a field he stood beside and embraced as if it were a person he had known in the past” AG, 101). Actually, when Sarath illustrates Anil’s ability and her skills in contemporary forensic techniques: “She can cut a cross-section of bone with a fine saw and determine the skeleton’s exact age at death that way”, he ironically comments: “What a wonder you are” (AG, 91; 92). The real wonder is her encounter with Palipana’s method of entering into a relationship with the surrounding landscape: “Anil kept thinking of Palipana’s sightlessness in this landscape of dark green and deep grey. The stone steps and the rock nestled into the inclines of earth just as the fragments of brick and wood nestled against rock. These bones of an old settlement. [...] [Anil] was picking up the intricacies of what was around them. Palipana’s mind was probably crowded with such things, in his potent sightlessness. I will not want to leave this place, she thought [...]” (AG, 93). Palipana’s attitude charms Anil into another dimension and she perceives the surrounding landscape as a living organism. Anil enters into communion with Palipana and becomes capable of feeling his mental activity; at first we are told that “she imagined” the sounds he can hear in the forest but then she becomes sure, “she was sure he could hear all that” (AG, 83). It is always in Palipana’s forest that Anil discovers the sacredness of wells and incorporates its water by repeated ritual gestures of aspersion.⁵⁰ She thus allows herself for

48 Roger I. Simon, Claudia Eppert, Mark Clamen, Laura Beres, “Witness as Study: The Difficult Inheritance of Testimony,” *The Review of Education/Pedagogy/Cultural Studies* 22.4 (2001): 285–322, 294.

49 Maryse Jayasuriya, *Terror and Reconciliation in Sri Lankan Anglophone Literature, 1983–2009* (Plymouth: Lexington Books, 2012): 142. He also considers history as an interpretive event rather than a sociological science.

50 See AG, 86: “She undressed by the well, [...] and got into the *diya reddha* cloth, and dropped the bucket into the depths. There was a hollow smash far below her. The bucket sank and filled. She jerked the rope so the bucket flew up, and caught the rope near the handle. Now she poured the cold water over herself and its glow entered her in a rush, refreshing her. Once more, she dropped the bucket into the well and jerked it up and poured it over her hair and shoulders

the first time to be possessed by the Sri Lankan landscape through one of its constitutive elements and abandons herself to the free responses of her body to the reality of her surroundings. This marks a difference with the bath she used to take in the States after a day's work and which crystallized her fatigue, instead of investing her of new energy; the reason for this is that at the time she did not live through her experiences but used to let them happen around herself and passively adapts to them.⁵¹

Palipana's haptic or sensory approach is shared by Sarath, who engages in a "dark trade with the earth" (AG, 25). As he tells Anil, "I love history, the intimacy of entering all those landscapes. Like entering a dream. Someone nudges a stone away and there's a story [...] another world with its own value system [...] comes] to the surface" (AG, 255; 257). We are told how

He would hold statues two thousand years old in his arms. Or place his hand against old, warm rock that had been cut into a human shape. He found comfort in seeing his dark flesh against it. This was his pleasure. [...] simply to place his hand against a *gal vihara*, a living stone whose temperature was dependent on rain or a quick twilight (AG, 276).

It is Palipana who advises them to collaborate with Ananda in order to reconstruct Sailor's facial traits, and thus opens up the intersection of science with the artistic dimension and the artistic approach to the world. Anil's initial dismissive attitude towards the enterprise "Never done reconstruction. I have to say we sort of scorn it" (AG, 157, where it can be noticed she still uses the plural in order to identify with and derive her authority from her Western scientific community) evolves into a more personal relationship as she manages to enter into communication and communion with the artist. Ananda starts his research

so the water billowed within the thin cloth onto her belly and legs. She understood how wells become sacred. [...] She repeated the mantra of gestures again and again. When she had finished, she unwrapped the wet cloth and stood naked in the wind and the last of the sunlight, then put on the dry sarong."

51 The second time Anil abandons herself to her surroundings takes place after some days of rain, which affect the general atmosphere of the place: At first she exerts some restraint "Anil moves in silence, the energy held back," then she abandons herself to the music: "She needs music to push her into extremities and grace. She wants grace, and it happens here only on these mornings or after a late-afternoon downpour – when the air is light and cool, when there is also the danger of skidding on the wet leaves. It feels as if she could eject herself out of her body like an arrow" (AG, 177). Sarath observes her from a window and comments that "This is not the Anil he knows. Just as she, in this state, is invisible to herself, though it is the state she longs for" (AG, 178). She gives free expression to all her previous emotional restraint: "She lies under the sound and witnesses her brain coming back, lighting its candle in the dark. And breathes in and breathes out and breathes in and breathes out" (AG, 178).

for the reconstruction of Sailor's facial outlines by going to the village in which the victim resided and immersing himself into its everyday life and its inhabitants.⁵² In this way, he juxtaposes his responsive method to an area's culture to Anil's forensic methods (as Palipana had already done). Anil's experiences and encounters are always mediated by Sarath as she cannot speak the language of her own country any longer;⁵³ she laments the impossibility of communicating with Ananda, but for the false reasons. She wishes in fact she could tell him forensic details about Sailor's body: "she had long forgotten the subtleties of the language they once shared. She would have told him what Sailor's bone measurements meant in terms of posture and size. And he – God knows what insights he had" (AG, 167). Ananda, by proceeding through a recovery of cultural context clues, can build a bridge between Anil's forensic positivism and Sarath's nuanced acts of interpretation.⁵⁴ It is after working many days in contact with Ananda and becoming affected by his rhythm and attitude to his work that Anil approaches Sailor for the first time as a human being.

One night she frees him from the plastic sheets which envelop him and render him a scientific body of evidence, and leaves him to be "washed by the moon" (AG, 165), in an image which recalls her own ritual bath by the well. In that same night, while being observed by Anil, Ananda feels the urge to take Sailor in his arms; this signals their first act of communion and communication: as she confesses that "There had been hours when [...] she too would need to reach forward and lift Sailor in her arms, to remind herself he was like her. Not just evidence, but [...] part of a family, a member of a village" (AG, 166); she – still unconsciously – acknowledges Ananda's perspective. In this moment, Anil overcomes the separation between *bios* and *psyché* both on a personal and professional level and denies the flattening of the bios into a mere soma with the consequent deprivation of its identity. As it has been already observed the *psyché* manifests itself in the world through the body; as the *psyché* cannot be reached

52 Ananda "established himself by the public well. He chatted with anyone who sat near him, [...] and watched the village move around him, with its distinct behavior, its local body postures and facial characteristics" (AG, 162).

53 Anil realizes her inability to use her native language and cannot recover it, nor the part of her identity connected to it; she realizes that she has become a stranger in her own country when she meets Lalitha (who symbolizes her strongest emotional attachment, as she is the woman that brought her up) and cannot communicate with her in their old common language. Her linguistic displacement will accompany her throughout her journey, until she will become able to overcome it by means of corporeal empathy and communication.

54 See David Babcock, "Professional Intimacies. Human Rights and Specialized Bodies in Michael Ondaatje's *Anil's Ghost*," *Cultural Critique* 87 (2014): 60–83, 71.

by the law, the *bios* enters the ethical and juridical dimension.⁵⁵ Any manipulation of the *bios* affects its meaningful connection with the *psyché*, and conversely recognition of the *psyché* affects the consideration of the *bios*.

Ananda's reconstruction of Sailor's face becomes an artistic reinvention, thus transcending its scientific dimension and attaining a cathartic function: the face he recreates is based upon the victim's individual facial features, but at the same time it transcends them by incorporating also those of his own missing wife Sirissa, as well as the traits of his grief for her. Sailor's face gives an identity not only to an individual victim, but also to the pain of other tortured civilians, and the grief of their relatives; the corporeal is thus empowered as a means for the communication and expression of a communal identity based on the participation in a communal condition. The body emerges as "an agentic, interactive presence, capable of generating memories [... and narratives]; [T]hrough the permeation of 'the visible' with 'the felt' and 'the sentient,' the inexpressible can be shared [and attained] by others."⁵⁶ By concretely witnessing Ananda's grief, learning of his painful life narrative, and his wish for peacefulness for every victim, Anil abandons all her restraints in a cathartic weeping. Ananda, approaching her in this moment when she has managed to establish a communion with the place and the victim, works upon and transforms her body through his artistic touch which "crease[s] away the pain around her eye" (AG, 183). His touch ties up the loose ends of Anil's journey and unites the attitudes of all characters towards the Sri Lankan situation. Anil finally develops into a sympathetic and compassionate witness, and this also signals the acceptance of her first reaction when asked to meet forensic students in a hospital upon her arrival in Colombo and her reverting to that condition which she had previously negated. The body of the victim she had been called to analyse had strongly affected her and led her to translate the time of a death into personal time: "When she realized it must have happened during her early-evening in the Pettah market, she had to stop her hands from trembling. [...] It was the freshness of the body. It was still someone" (AG, 9).⁵⁷ Her new attitude tunes in with the nameless woman introduced in the first pages of the novel, when Anil is working on a forensic site to identify the corpses of civil war victims. This woman was "sitting within the grave. [...] looking down at the remains of the two bodies. She had lost her husband and a brother during an abduction in this region a year earlier. [...] There are no words Anil knows that can describe,

⁵⁵ See D'Agostino, *Parole di bioetica*, 34.

⁵⁶ Marinkova, "Haptic Aesthetics," 69.

⁵⁷ At the beginning of her mission, Anil establishes a personal relationship to the victim, which anticipates the one with Sailor.

even for just herself, the woman's face. But the grief of love in that shoulder she will not forget" (AG, 2). Moreover, Anil's receptiveness aligns her with the other main characters. Sarath recalls the discovery of some rock carving from another century of a woman bending over her child and remaining in contemplation before it, "Palipana's arm following the line of the mother's back bowed in affection or grief. An unseen child. All the gestures of motherhood harnessed. A muffled scream in her posture" (AG, 153). Gamini, in his daily experience of sorrow and physical mutilations of bodies professes to believe only in the mothers sleeping against their children, who come to epitomize the embodiment of care. At this point of the novel, Anil is transfigured in all these symbolic women and enters the symbolic dimension of her home country.

Anil's action of witnessing the victim's bodies transforms itself into witnessing the victims' stories. According to Ondaatje, "The responsibility of a diasporic [...] is to avoid generalizations and take into consideration the historical, political, social, and cultural contexts in which events happen."⁵⁸ This is also Sarath's request to Anil, that is, not just to study Sailor's murder and the government's possible indictment from a forensic viewpoint, but to attempt to comprehend all the factors and the particularities that contributed to such a phenomenon. Actually, in her reaction to Ananda's reconstructed face, she participates in Palipana's and Sarath's own attitude who immerse themselves in the context (and concretely in the sites) of the ancient cultures they study. In this way Anil transcends and goes beyond Rushdie's imaginary homeland, which she had however already subverted by articulating it in her memory in a negative way, and substitutes it for a real one, with which she actively engages. Through the discovery of Sailor's identity, she discovers her own; actually, the establishment of Sailor's identity does not represent the turning point of the novel but serves to interrogate other identities. His skeleton becomes a framework which includes and helps enquiring into alternative truths and identities.⁵⁹

4. Diasporic Forensics

At the end of the novel, Anil presents the results of her investigation before the Sri Lankan government board and the scene develops on two different levels. Firstly, Anil shows that she has reached a communion with the country and

⁵⁸ Jayasuriya, *Terror and Reconciliation*, 144.

⁵⁹ Christine Matzke, *Postcolonial Postmortems: Crime Fiction from a Transcultural Perspective* (Amsterdam, New York: Rodopi, 2006).

openly professes her affiliation to it: “a western-influenced hybrid character [finally] subsumes localized voices.”⁶⁰ As Sarath observes, her speech “I think you murdered hundreds of us” (AG, 269) is “a citizen’s evidence; she was no longer just a foreign authority [...] Fifteen years away and she is finally us” (AG, 269). Secondly, she reverts to and relies on her Western attitude in her presentation of the facts and claims for the government’s indictment for abuse of human rights and the achievement of justice. This pattern of action, however, is well known by the government as well, who manages to turn it to its own advantage by stealing Sailor’s skeleton (her body of evidence) and discrediting both her status and her research; what should have been a public indictment scene becomes a trial scene against her, which includes also hints of physical abuse. Notwithstanding her internal and external Sri Lankan journey, Anil fails to understand the context she finds herself in, and seems defeated. However, as Halloran points out, the Sri Lankan government’s obstructionism cannot alter her personal evolution. By working with local health workers, she has witnessed how they try to take care of the civil war victims on a daily and individual basis. She witnessed how Gamini tries to “restore the patients’ dignity through direct medical treatment,” as well as the rights to life, security of person, dignity and health that lie at the root of all other human rights.⁶¹ Witnessing their act of witnessing as the Same, not as the Other, she becomes able to perceive how their action is a defence of human rights no less powerful than the one fostered and backed up by the Western institutions, and based on “a shared identity between the health professional and the patients as compatriots and fellow human beings.”⁶²

In this official forensic context, Sarath abandons his detached attitude and performs his conviction that “he would have given his life for the truth if the truth were of any use” (AG, 153).⁶³ First he orchestrates a public display of her destitution from the case by displacing the forensic in favour of the archaeological attitude, and thus seemingly siding with the government substitution of Sailor’s body (the body of evidence) with an archaeological one (a body for scholarly study). His speech leads to her ejection from the building and from the country, but in this way he saves her from plunging deeper in the condition of all the other Sri Lankan civil war victims. Her personifying efforts clash against

60 Ryan Mowat, “An Aesthetics of War: The Postcolonial Ethics of Anil’s Ghost,” *Journal of Postcolonial Writing* 49.1 (2013): 28–39, 30.

61 Halloran, “Health Professionals, Truth, and Testimony,” 107.

62 Halloran, “Health Professionals, Truth, and Testimony,” 111.

63 In the novel we are told how Sarath sacrifices his life to allieviate the grief of others; “Sarath believed in truth as a principle. [...] And privately [...] he would, he knew, also give his life for the rock carving from another century of the woman bending over her child” (AG, 153).

institutional resistance and endanger her own life. Then Sarath bypasses the government and manages to bring Sailor's body on Anil's plane, so that she may carry on her investigation in the West and eventually affect the Sri Lankan situation.

Sarath faces what he had theorized all along his investigative work with Anil: "what would the truth bring them into? [...] A flippant gesture towards Asia might lead, as a result of this information, to new vengeance and slaughter. There were dangers in handing truth to an unsafe city around you" (*AG*, 156–157). With his decision of action "he had returned to the intricacies of the public world, with its various truths. [...] He knew he would not be forgiven that" (*AG*, 276). By overcoming his own detached attitude, he transforms archaeology into a means of unearthing the structures of injustice. He will pay for his actions with his life and become transfigured into a body, as well as a voice of evidence for Anil's action, both for her professional task, and the performance of her "diasporic" identity, once she is back in the United States. She brings back with her his disembodied voice on a tape recording, while his body will be recognized by his brother in the hospital morgue; both elements represent his testimony and active witnessing of events and affect the addressee within their different work attitudes. Gamini performs the last human(e) rights upon his brother's body, in a subversion of a forensic bodily analysis; he in fact reads on his brother's body the signs of the violence that brought him to his death (like Anil does), but he also reads the signs of his past life and of their brotherly relationship, such as a scar Sarath had got while playing (and in this way repeats his brother's nuanced attitude). Anil carries with her what she experienced in Sri Lanka and the relationship with both Sarath and Gamini, who have citizenized her by their friendship (see *AG*, 196); like the woman looking at the corpses of her husband and his brother, Anil embodies the feminine string between them, the one who brought them together (*AG*, 2), in the context of their work approach. "Anil would never get over her time here" (*AG*, 202) and therefore transcends the condition of all the other Western professionals, "the hero[es] of Western novels," who after their job is done do not care any longer about what happens in the country, as Gamini had denounced: "So the war, to all purposes, is over. That's enough reality for the West" (*AG*, 286).⁶⁴ She reflects upon a continuous influence of the two brothers on her life. "Wherever she might be, would she think of them?" (*AG*, 285) therefore she seems to have understood and interiorized Sarath's contention that "you cannot survive as a monk as if society does not exist. You renounce society, but to do so you must first be a part of it,

⁶⁴ Lehmann, "Transnational Identities in Michael Ondaatje's Fiction," 319.

learn your decision from it. This is the paradox of retreat" (AG, 99). The novel ends on ambiguous tones; we do not know how Anil will finally carry out her investigation, nor if she manages to leave the country, but we are led to assume that, as she herself had stated in the novel, "Some people let their ghosts die, some don't" (AG, 49). If when she pronounced these words she was trying to convince Sarath about her conception of their work ("Your're an archaeologist. Truth comes finally into the light. It's in the bones and sediment." / "It's in character and nuance and mood." / "That is what governs us in our lives, that's not the truth." / "For the living it is the truth" [AG, 255]), now she is called to actuate what Sarath has led her to acknowledge: "You should live here. Not be here for just another job." / "This isn't just 'another job'! I decided to come back. I wanted to come back" (AG, 196).

Anil represents an alternative model of diasporic subject, a clear instance that the diaspora writes back.⁶⁵ Diasporic authors thus emerge not only as native informants, but foremost as subjects involved with and representing their diasporic community in the same way in which Anil simultaneously occupies a space of belonging and unbelonging. Ondaatje's novel shows that cultural memory becomes inscribed in the present; Anil is "as much a product of the conflictual narratives that constitute Sri Lanka's history as of Western tradition."⁶⁶ The past is shaped also through the ideological forces that shape the present, and the diasporic subject emerges as belonging "not only to the place of origins, but to a complexly networked world"⁶⁷ which allows them to belong to several places or nations (and cultures) at once.⁶⁸ In a rewriting of the detective fiction genre, Ondaatje keeps the figure of the detective (Anil) at the centre of the narrative; on the one hand, this figure serves to question the genre's fundamental tenets, that is, its metanarratives of universal truth and justice as he is defined as "wanting and able to discover the truth even if [s]he is unable to dispense justice."⁶⁹ On the other hand, in her role also as an ethnic investigator, she acts "primarily as a cultural arbitrator, [...] expresses the contact between cultural spheres and mediates its inherent tensions."⁷⁰ Diasporic characters find them-

65 See Smaro Kamboureli, "The Diaspora Writes Back: Cultural Memory and Michael Ondaatje's *Anil's Ghost*," in *Diasporic Subjectivity and Cultural Brokering in Contemporary Postcolonial Literatures*, ed. Igor Maver (Lanham, MD: Lexington Books, 2009): 27–38, 30.

66 Kamboureli, "The Diaspora Writes Back," 36.

67 Kamboureli, "The Diaspora Writes Back," 36.

68 See Lehmann, "Transnational Identities in Michael Ondaatje's Fiction," 304.

69 Davis, "Investigating Truth, History and Human Rights in Michael Ondaatje's *Anil's Ghost*," 17.

70 Matzke, *Postcolonial Postmortems*, 6.

selves in the liminal space created by the meeting of two borders; they are thus characterized as sites of hybridity in a double sense, but above all, they are “in process, they are learning, adjusting, changing, compromising, rejecting, resisting.”⁷¹ Anil underlines the culturally empowering aspects of hybridity, the capability to inhabit multiple cultural and historical spaces at once; such condition opens up a space of negotiation and becomes both a conceptual tool through which to interrogate the constitution of diasporic belongings and a discursive reading practice through which to examine the structure of diasporic imaginaries.⁷²

Sarath urges Anil to recreate the papers which might prove her evidence in order to recreate the role of the Western professional and by large of the Western witness; he wishes that Anil would not just leave looking at the country with a distant gaze. As Gamini had denounced, “That’s enough reality for the West. [...] Go home. Write a book. Hit the circuit” (AG, 283). Anil’s text will concern a diasporic subject’s perspective and, in a shifting of planes, the focus passes thus on Ondaatje’s book itself, which strives to reach outside its literary dimension. “One of the major connections between life and art is the performing narrator, whose act of searching and ordering forms part of the narrative itself.”⁷³ the novel’s narrative presents a fragmented and decentered story which weaves through the personal memories and experiences of the four main characters.⁷⁴ Little by little, Anil subsumes the fragments of the other characters, and will eventually bring them into completion once she is back in the States. Therefore, from this moment, Ondaatje’s perspective takes on: “The specific task of the literary testimony is [...] to open up in that belated witness, which the reader now historically becomes, the imaginative capability of perceiving history – what is happening to others – in one’s own body, with the power of sight (insight) usually afforded only by one’s own immediate physical involvement.”⁷⁵ The literary novel be-

71 Ed Christian, “Introducing the Postcolonial Detective,” in *The Postcolonial Detective*, ed. Ed (Houndmills: Palgrave, 2001): 1–16, 13.

72 Härting, “Diasporic Cross-Currents,” 48.

73 Linda Hutcheon, *The Canadian Postmodern* (Toronto: Oxford UP, 1988): 83.

74 Actually, Ondaatje’s stylistic “strategy of using many voices within the narrative means that the diasporic perspective is not given more prominence than the perspective of those living in Sri Lanka. So, though we start with Anil’s story, we go on to hear those of Sarath, Gamini, Palipana, and Ananda, and learn about the suffering caused by violence” (Jayasuriya, *Terror and Reconciliation*, 144).

75 Shoshana Felman, “Camus’ *The Plague*, or A Monument to Witnessing,” in *Testimony. Crises of Witnessing in Literature, Psychoanalysis, and History*, ed. Shoshana Felman, Dori Laub (New York: Routledge, 1992): 93–119, 108.

comes a “witnessing act bearing witness to the witness.”⁷⁶ As Martha Nussbaum observes, literature allows us to attain an ethical stance, inasmuch it offers the possibility to “ente[r] imaginatively into the lives of distant others and to have emotions related to that participation:”⁷⁷ the task for literary imagination is “to create the record [...] to imagine [...] the producible case” and in this way to “testify to the value of humanity as an end in itself.”⁷⁸

The final section of the novel is entrusted to Ananda, who unites all the threads of the personal histories of the novel's protagonists. It is significantly titled “Distance”, which reechoes the distant gaze Anil presumes she can apply to her mission in her country and which she eventually abandons in favour of her personal commitment to it; in the final scene, Ananda is engaged in the restoration of a damaged Buddha statue (its destruction caused by guerrilla fightings) while another one is being built at the same time. Instead of recomposing the cracks of its face, he decides to leave the damage visible: “Up close the face looked quilted. They had planned to homogenize the stone, blend the face into a unit, but when he saw it this way Ananda decided to leave it as it was. He worked instead on the composure and the qualities of the face” (AG, 298). The scars become a metaphor for the scars of the country “all the work he had done in organizing the rebuilding of the statue was for this. The face” (AG, 299). His second task is to perform the ceremony of the Nētra Mangala, that is the ritual painting of the eyes upon the new Buddha statue, which infused divinity and presence into the statue itself. For this reason no man could stare directly into the god's eyes, but used a mirror in order to carry on his work. Ananda focusses precisely on that final moment, “when the eyes, reflected in the mirror, would see him, fall into him” (AG, 302) and therefore enclose him and at the same time, focus upon him in the surrounding landscape (and by metaphor locate him within the country). This situation parallels the one previously described above when Anil sees herself reflected upon the glass framing Sri Lankan maps. Here as well the image of a person is reflected on the background of the Sri Lankan landscape but it does not remain on the surface as it is in some way acknowledged. Ananda approaches his task with a fusion of Sarath's and Anil's stances. While working on the damaged statue, as well as while performing the ceremony on the new one, Ananda is wearing Sarath's cotton shirt and in this way subsumes him into the ceremony, as well as Anil, whom he explicitly mentions “He [Sarath] and the woman Anil would always carry the ghost of Sar-

⁷⁶ Milena Marinkova, “Haptic Aesthetics,” 64.

⁷⁷ Martha Nussbaum, *Poetic Justice. The Literary Imagination and Public Life* (Boston: Beacon Press, 1995): xvi.

⁷⁸ Nussbaum, *Poetic Justice*, xviii.

ath Diyasena” (AG, 301). Sarath is the real protagonist of Ondaatje’s novel for his engagement with Anil and his share in her attitude change and her realization that “citizenship is located both in a legal, territorial entity, which is associated with the privileges of sovereignty and the rights of individuals, and in a cultural community where it is associated with a history of shared ethnic and social characteristics.”⁷⁹ The narratives of the nation-state⁸⁰ are transformed into cultural narratives, but also personal ones which create new myths; an example of this is Sarath, who enters the historical and cultural dimension of his own country and becomes immortal as a result of his convictions. “In his work he felt he was somehow the link between the mortality of the flesh and bone and the immortality of an image on rock, or even, more strangely, its immortality as a result of faith or an idea” (AG, 275–276). The novel therefore overcomes the geopolitical structure that locks the text into a rigid binary opposition between Sri Lanka and the West and “dramatize[s] diaspora as a form of cultural critique that questions the very categories of identity.”⁸¹ The shaping of national identities occurs within many discursive frames – juridical, political, civic, ethical, cultural and literary; the distant gaze that Anil will direct towards Sri Lanka, epitomized by the statue’s distant gaze after the ceremony is over and created by Ananda in cultural and experiential connection both with Sarath and Anil, is informed by this consciousness.

⁷⁹ Michael J. Shapiro, “National Times and Other Times: Re-Thinking Citizenship,” *Cultural Studies* 14.1 (2000): 79–98, 81.

⁸⁰ “The primary understanding of the modern ‘nation’ segment of the nation-state is that a nation embodies a coherent culture [...] the symbolic maintenance of the nation-state requires a management of historical narratives as well as territorial space” (Shapiro, 2000, 81). “It is this activity of symbolic maintenance [...] that renders the nation-state an ‘imagined political community’” (Sudesh Mishra, “The Underbelly of Diaspora Criticism,” in *Sikh Diaspora: Theory, Agency and Experience*, ed. Michael Hawley [Leiden, Boston: Brill, 2013]: 11–50, 18).

⁸¹ Härting, “Diasporic Cross-Currents,” 66. See also Christopher Lee, “Semblance Shame and the Work of Comparison,” in *The Semblance of Identity: Aesthetic Mediation in Asian American Literature*, ed. Lee (Stanford: Stanford UP, 2012): 121–144, 140.

Nilufer E. Bharucha

The Indian Diaspora and Laws

Reflections in Literature and Cinema from the *Jahajis* to the Transnationals

The 26 million strong Indian Diaspora is spread over 100 countries around the world and can be broadly categorized into the Colonial Diaspora and the Postcolonial Diaspora. These two categories can be further sub-divided into the Indentured, Entrepreneurial and Professional for the Colonial Diaspora and Labour, Professional and Entrepreneurial for the Postcolonial Diaspora. The Postcolonial Diaspora from the last decade of the twentieth century also includes the 'Cyber Coolies,' the Illegals, the Transnationals and Global Indians, who flit with their laptops hefted on their shoulders to do outsourced contract software work, or cross oceans and continents in leaky boats or dilapidated vans, or with their financial teams storm into European and American board rooms to take over and make over Western industries, much to the chagrin of the former colonisers and neo-colonisers, who find it difficult to accept that the Global Indians or Transnationals are doing to them, what they used to do to them.

All these Diasporas have been governed by diverse Imperial acts or National Laws that sought to benefit by the labour, the money and the expertise of these Diasporics but balked at letting them have equal rights within their countries. These laws were evolved from the 1830s onwards by Britain and its various colonies to govern and regulate Indian Indentured Labour. Some of these laws were more discriminatory than others, for instance the infamous stand-off in Vancouver Harbour in 1914 with hundreds of Indians in the ship *Komagata Maru*, many of whom were joining their relatives already working as agricultural labour in British Columbia. These laws did not in the tradition of British justice and fair play (!) distinguish between friends and foes of the Empire, so that an upholder of Imperialism such as Cornelia Sorabji was not allowed to cross over from the USA to Canada in 1931, in spite of her British Indian Passport.¹ There are also the laws of citizenship of Canada, U.K. and the USA, which have governed Indians who have sought residence in those countries.

Diasporic Indians from the *Jahajis* – the voyagers, the indentured labourers who crossed the *Kala Pani* (the black waters of the ocean, the crossing of which would lead to loss of caste for Hindus) in ships – to their postmodern urban, postcolonial cousins, have all written on their experiences involving diverse

1 Cornelia Sorabji, *India Calling* (London: Nisbet and Company Limited, 1934): 291–296.

laws which governed entry or denied entry to Indians into those countries. Many of these texts explode the myths about the low ‘mobility’ factor of Indians and the lack of the ‘Return Home’ element in the Indian Diaspora. This literature ranges from the diaries maintained by the *Jahajis*, to the earliest diasporic literature, to texts that deal with these issues in contemporary times. Not all of these texts were written in English or French as the majority of these Indian Diasporics and not just the Transnationals of today – who are today aided by Bollywood in retaining their Indian identities – have held on to their languages, cultures, cuisines and religions. So some references have also been made to texts written in Indian languages.

There are also the laws evolved by the Indian Government in the 1990s and which are still being further developed to deal with Persons of Indian Origins (PIOs), Overseas Citizens of India (OCI) and Non-Resident Indians (Non Resident Indians) and their increasing interest in returning or partly returning to India. With the new Indian regime in place from May 2014, there is a further interest being exhibited by the Indian Prime Minister, whose visit to the USA in September 2014 included a widely publicised and telecast event at Madison Square Garden with Diasporic Indians, at which an announcement was made that henceforth all PIO cards would be valid for the lifetime of the holder, instead of for just 15 years which had been the norm till then. This announcement was ratified by a Government of India Gazette notification issued on 30 September 2014. Also announced was the fact that soon the PIO and OCI cards would be merged. The President of India has since promulgated the Citizenship (Amendment) Ordinance, 2015 with immediate effect so as to amend the Indian Citizen Act of 1955, which declared that all PIO card holders would be notified through the Official Gazette of the particular date from which they would be deemed to be OCI card holders.²

This engagement with the Diaspora has not been restricted to the postcolonial diaspora in the USA but was also extended to the old indentured diaspora, when the Indian Prime Minister had visited Fiji in November 2014. This diaspora does not impinge as centrally on the Indian psyche as do the other Indian diasporas and thus this visit was an acknowledgement of India’s desire to build upon this old diaspora’s goodwill in their new homeland. For the Fijian Indian Diaspora though more than 130 years after the first ships had deposited them in this distant Pacific outpost of the British Empire between 1879 and 1916, the Old

² Bharti Jain, “Government promulgates ordinance merging PIO, OCI schemes” (7 January 2015), *Times of India* <<http://timesofindia.indiatimes.com/india/Government-promulgates-ordinance-merging-PIO-OCI-schemes/articleshow/45789109.cms>> (acc. 6 August 2015).

Homeland still looms large in their poetry and critical writings for instance that of Sudesh Mishra, Brij V. Lal and Vijay Mishra. Although after the ethnic violence against Fiji Indians in the 1980s over 100,000 of them have migrated to Australia, New Zealand, Canada and the USA from the 1990s onwards, over 314,000 Fiji Indians still live there, even if this figure is down from 339,000 in 1996.³

Also included in this tour of the Indian Prime Minister in November 2014 were visits to Myanmar and Australia. In Myanmar the Indian Diaspora was mainly entrepreneurial and labor in nature and originated from the time when the British Raj administered from India the countries of Ceylon (Sri Lanka) and Burma (Myanmar). The Myanmarese Indian diaspora is well represented in recent Diasporic writing such as Amitav Ghosh's *The Glass Palace* (2000) and Tamil films such as *Burma Rani*,⁴ in which an Indian girl in the Burmese Diaspora helps three Indian airmen who crash land in Burma during the Second World War, free the country from Japanese occupation forces with the help of the Indian Resistance. There is also Sivaji Ganeshan's debut film *Parasakhti* in which he plays one of the three brothers of an Indian family that lives in Rangoon and who suffers untold miseries due to the Second World War, is reduced to the status of a pauper.⁵

The Government of India has declared 2015 as the year of the Diaspora as this year marks the centenary of one of the most influential Indian diasporic's return to India. It was on 9 January, 1915 that Mohandas Karamchand Gandhi, better known as the Mahatma, had returned to India after 21 years in the South African diaspora. The Indian Government has since 2003 celebrated 9 January as the *Pravasi Bharati Divas* (the Indian Emigrant's Day) and has on this day honoured many prominent Indian diasporics with the *Pravasi Bharati Samman* (Indian Emigrant's Award). Some of these awardees are Ms. Khorshed Ginwala, the first speaker of the majority government of South Africa's parliament, Mr. Phiroze Nowrojee, Advocate and Human Rights Activist from Kenya, Mr. Fareed Zakaria, journalist and TV host, USA, Lord Bhiku Parikh, Political Theorist, U.K., the late Kalpana Chawala, USA astronaut, Mr. Ujjal Dossanjh, the first Indian origins Premier of British Columbia, Canada.⁶

³ See the data at <<http://www.statsfiji.gov.fj/index.php/2007-census-of-population>> and <http://www.statsfiji.gov.fj/index.php/document-library/doc_download/416-census-of-population> (acc. 10 Dec 2015).

⁴ *Burma Rani*, dir. T.R. Sundaram, 1945 (India: Modern Theatres, 1945).

⁵ *Parasakhti*, dir. R. Krishnan and S. Panju, 1952 (India: National Pictures, 1952).

⁶ "Pravasi Bharatiya Samman Award, List of Recipients (2003 – 2013)," *The Ministry of Overseas Indian Affairs* <http://moia.gov.in/writereaddata/pdf/recipients_2003_2013.pdf> (acc. 6 August 2015).

This engagement with the Diaspora is not a new phenomenon though, as in Colonial and then in Nationalist India too, there was a reaching out to the Diaspora. In the early years of the twentieth century Mahatma Gandhi's struggle for racial equality in South Africa bore fruit for the diasporic Indians in the form of scathing enquiries by C.F. Andrews among others that ultimately led to the abolition of the indenture system. It was Andrews, an Anglican priest, educationist and social activist in India, who had met Gandhi in South Africa and persuaded him to return to India. In 1915 Andrews and W.W. Pearson were sent by the British Indian Government to investigate complaints made by, among others, Totaram Sandhya, a returning indentured labourer, about the ill treatment of indentured labour by plantation owners in Fiji. Andrews had also visited Indian indentured labour in British Guyana and also recommended an end to this system in that colony.⁷ Gandhi had also sent Andrews as his emissary to Mauritius to find out the condition of the indentured labour there. The reports submitted by Andrews led to the beginning of the stoppage of further indentured labour transports within the British Empire.

In the inter-war years, after the official end of indentured labour, Indian nationalist leaders had lobbied with India Office in London to secure better political rights for overseas Indians, both former indentured labourers as well as others. This became politically important with the Nationalist Struggle for India's independence which had gained momentum during this period.⁸

In the years following independence in 1947, Indians in Diaspora were, however, urged to identify themselves with their new homelands.⁹ The growing social, cultural and political distance between India and its Diaspora continued from the 1950s to the 1980s. A changed perspective on its diaspora began in India, in the 1990s with the phenomenal growth of the Indian economy and the increasing political influence and economic strength of the Diaspora in their new homelands. Inspired by the Chinese economic growth fuelled by diasporic remittances, the Indian government also sought to woo its own diaspora. The year 2000 saw the appointment of a high-level committee on the Indian diaspora by the Government of India and the dispensation of the PIO and OCI cards,

7 See C.F. Andrews, *Impressions of British Guiana, 1930: An Emissary's Assessment*, ed. Basdeo Mangru (Chicago: Adams Press, 2007).

8 Details about these meetings, reports and letters are available in "Indians Overseas: A guide to source materials in the India Office Records for the study of Indian emigration 1830–1950," The British Library <<http://www.bl.uk/reshelp/pdfs/indiansoverseas.pdf>> (acc. 11 Dec 2015).

9 K. A. Ray, "Roots of Ambivalence: Indenture, Identity and the Indian Freedom Struggle," in *Ethnicity, Identity, Migration: The South Asian Context*, ed. Milton Israel and N. K. Wagle (Toronto: Centre for South Asian Studies, University of Toronto, 1993): 269–290.

recently revised, which gave Indian diasporics legal rights within India, such as the right to purchase property though they cannot take part in the political process within India, nor do they have the franchise.

1. The Diaspora and Economics

The economic kickback of these new policies has resulted in diasporics being able to invest financially in Indian companies and their FDIs (Foreign Direct Investment) have led to a significant growth of the Indian stock market. The Indian Overseas Ministry website puts this symbiotic relationship between India and her Diaspora rather well on its website:

The emergence of significant Diasporas has in recent years brought into sharp focus two key facts. First, there is a large expatriate population of skilled people from emerging economies in the developed world. Second, overseas communities can constitute a significant resource for the development of the countries of origin. The movement of the high skilled and low skilled workers from less to more developed economies and back opens several new opportunities for development. To view the Diaspora only through the looking glass of remittances and financial flows is to take a myopic view. Not all expatriates need to be investors and their development impact measured only in terms of financial contributions to the home country.¹⁰

As noted by Bharucha,¹¹ the Indian film industry too, especially the Hindi film industry, known as Bollywood now, has been cashing in on the Diaspora audience for a long time. It also had its traditional markets in the Arab World and in the countries that formed the erstwhile Soviet Union. However, the spread of the Indian Diaspora and its changing constitution from Labour, to Entrepreneurial, to Professional, to Academic, to Transnational has also meant an exponential increase in the audience of Hindi Cinema. Bollywood has also garnered new audiences in France and Germany. These new audiences are drawn to these Bollywood films by the transnational nature of these cinematic texts.

10 "India and its Diaspora," *The Ministry of Overseas Indian Affairs* <<http://moia.gov.in/activities.aspx?aid=10>> (acc. 6 August 2015).

11 Nilufer E. Bharucha, "Global and Diaspora Consciousness in Indian Cinema: Imaging and Re-imaging India," in *Indian Diasporic Literature and Cinema* (Bhuj: Centre for Advanced Studies in India, 2014): 43–55.

2. Laws Governing the Indenture Diaspora

What makes the Indian Diaspora interesting from a legal point of view is that it began in the nineteenth century when the European countries were beginning to re-organise themselves into modern nation states, and these states were created and governed under the aegis of a network of laws. The Humanitarian project in most European countries which had got a fillip with the French Revolution which had been spurred on by the ringing slogan of *Liberté, Egalité, Fraternité* meant that the European nation states found themselves under the obligation of treating their overseas colonial subjects with the same democratic concern. In the 1830s, after a long drawn out battle, the Abolition of Slavery Act of 1833 was passed by the Parliament of the United Kingdom which made slavery illegal (the buying and selling of slaves had already ended with the Slave Trade Act of 1807), in all parts of the British Empire with the exception of the territories held by the East India Company and the Islands of Ceylon and St. Helena. Slavery was legally ended in India by the India Slavery Act of 1843.

In an excellent entry in the *Encyclopedia of the Indian Diaspora*,¹² entitled “The Age of Colonial Capital,” Brij V. Lal has argued that the plantation owners who suffered huge monetary losses as a result of the end of slave labour were sought to be compensated to the tune of millions of pounds and this was incorporated into the Act itself. However what also soon became essential was to find a replacement for slave labour in a form that would neither contravene the new laws nor offend the sensibilities of the liberals and associations that had been formed in Britain to free the slaves. For some time the planters especially in the Caribbean islands experimented with freed slave labour (termed apprentices by the Act of 1843) to run their plantations augmented by indentured labour from England, Ireland and Germany, which was not uncommon from the seventeenth century onwards. However, the continuation and docility offered by slave labour could not be replicated in these labourers. The vast reservoir of labour in the Indian possessions of the East India Company soon began to appear very attractive to the former slave owners and began to be seen as a good replacement.

However, after the abolition of slavery these labourers could not be transported as easily as were the slaves across the vast distances of the British Empire. So a set of rules and new laws had to be put into place for this purpose. Indentured labourers were not new to the British Empire and had as noted earlier been taken to the New World and this practice continued in some form or the other

¹² Brij V. Lal, “The Age of Colonial Capital,” *Encyclopedia of the Indian Diaspora*, ed. Brij V. Lal, Peter Reeves, and Rajesh Rai (Singapore: Editions Didier Millet, 2006): 44–65.

well into the twentieth century. However, these indentured labourers were white and to some extent protected under the laws of their country of origins in Europe. For the subjects of British India, still under the rule of the East India Company, there were no such laws in place and they had to be created so that this form of indentured labour should not begin to look like the earlier, now abolished, slave labour. The National Archives of Britain provide important information on the various acts which were passed by the British parliament and legislation enacted by the British Colonies themselves to control and regulate the outflow and inflow of Indian indentured labour.

The first outflow of Indian indentured labour took place between 1834 and 1837 to Mauritius under rudimentary contracts. Mauritius according to the Colonial Office records of the National Archives of Britain was first settled by the Dutch in 1598. The Dutch later abandoned the islands in 1710 and they were occupied by France in 1715. The French East India Company changed the name of the islands to Ile de France. After the British conquered the islands in 1810 the name was once again changed back to Mauritius.¹³

In 1837, through British Indian Government Regulations, the flow of labour from India to the other British colonies was brought under stricter control. As a result of these regulations the agent who sought to ship such labourers had to present to the concerned British official the contracts signed by these labourers. The contracts were for five years and after five years they could be renewed for another five years. At the end of the first or second contract the labourer had to be given the option for returning to India, rather to the port of departure. At first these regulations were restricted to the port of Calcutta but then were extended to Madras. These regulations even sought to control the maintenance of certain standards on board the ships that carried the indentured labourers to their place of work. However, as literature written by diasporic Indians shows, these regulations were more often than not better honoured in their breach than in their observance.¹⁴

By 1839, fourteen ships had transported over 25,000 indentured Indian labourer to Mauritius. At first recruitment was left to European firms based in Calcutta who employed local recruiters to get labour from inland. Public pressure on the regularization and transparency of the recruitment process both in India and in Britain lead to the Government of the Bengal province in 1837 taking

13 “Colonial Office and predecessors: Mauritius, Original Correspondence,” *The National Archives* <<http://discovery.nationalarchives.gov.uk/details/r/C4358>> (acc. 6 August 2015).

14 See, for example Amitav Ghosh, *The Sea of Poppies* (London: John Murray, 2008) and *The River of Smoke* (2011); Sanadhya Totaram, *Bhoot Len Ki Katha – The Story of the Haunted Lines* (1922) and *My Twenty One Years in Fiji* (1919).

an interest to ensure that those recruited understood the terms of contracture. This again as has been pointed out by critics such as Brij Lal in *The Encyclopedia of the Indian Diaspora* (2006) and creative writers such as Amitav Ghosh in *The Sea of Poppies* (2008) was an extremely dubious process as the indentured labourers were more often than not illiterate and were afraid of crossing the *Kala Paani*. So they were usually kept ignorant of their actual destinations and mode of transport. The Government of Bengal however began to take note of reports of abuse and neglect of the labourers and of the unsafe ships in which they were transported to Mauritius. Hence Act V of 1937 of the British Government of India stipulated that emigration of contract labourers was subject to their appearance before an official appointed by the provincial government; the contract should be in English and the Vernacular and must specify the wages and nature of work; it must name the employer, etc.¹⁵ This however did not stop fraudulent recruitment or abuse of the labourers. So in 1838 a committee was appointed and it strongly critiqued the indentured system and most importantly recommended the employment of a stipulated number of women in each batch of indentured labour transported overseas. This was for several reasons, as if the men had their wives with them they were more likely to stay on in their new homelands, after the end of their indenture; the presence of their own women would also prevent the miscegenation that the Empire dreaded so much and reduce the possibilities of alternative sexual practices abhorrent to those times.

In Britain there was an attempt to canvas support among the British public against what was by then called the 'coolie trade.' The planters who were benefitting from the indentured labour however soon started their own campaign for the continuation of the indentured system. This led to the Government of India Act XV of 1842 which sought to further control and supervise the system of indentured labour. This act provided for the appointment of emigration agents at the port of embarkation in India and a protector of emigrants in the port of disembarkation. All ships used for transport had to be licensed by the Government of India and had to ensure the nutrition and medical care of the indentured labour and also specify the length of the voyage and the destination. However there was no provision for actual implementation of this Act and the stipulations of the Act were once again obeyed more in the breach than in observance.

By the 1850s indentured labour was allowed to be transported to the Caribbean colonies on the same conditions as prevailed in Mauritius, and this in spite of the high rates of mortality on the transport ships. Out of the twelve ships

¹⁵ Brij V. Lal, *Chalo Jahaji: On a Journey through Indenture in Fiji* (Canberra: ANU E Press, 2013): 74–75.

which left for the West Indies the average mortality rate was some times as high as 31% and the average was over 17%. In the 1870s the Government of India and the Provinces sought to distance itself from the recruitment of indentured labour as they felt it would cause labour shortage in their own provinces and also they wanted to avoid the whiff of the continuing critique of the system to float into their own backyards. The Nobel Laureate in Literature Sir V.S. Naipaul hails from this background of indentured labour in Trinidad. His early works especially *A House for Mr. Biswas* is in the words of Vijay Mishra, “a novel that begins and ends with death within the confines of a house that encapsulates the diasporic negotiation of space in terms of the history of diaspora and its sites.”¹⁶

The first transport of indentured labour to Fiji took place in 1879. The Fiji islands had been ceded to Britain in 1874 and Sir Arthur Gordon the first Governor of Fiji had earlier been the Governor of Trinidad and then Mauritius. There he had seen the successful induction of Indian indentured labour in the plantation economy of those islands. The indentured labour in Fiji also had to sign an agreement before they were transported there. The word ‘agreement’ was corrupted to ‘*gimit*’ by the labourers who then defined themselves as ‘*gimitiyas*,’ those of the agreement. What was also important with regard to the indentured labour in Fiji was the presence of a substantial number of women, as by 1870 the Indian Government had made it mandatory for each group of indentured labour to have at least 40% of female representation. As observed by C.F. Andrews in his report of 1916 however, these women were very shabbily treated by both the planters and their own men.¹⁷ There was widespread outrage in India against the conditions of the indentured labour in Fiji and the system was brought to an official end in 1916 and the indenture agreements of all existing labourers in Fiji were cancelled from 1 January 1920 onwards. The 1920s saw the growth of the Indo-Fijian population as it was then augmented by not just the freed *gimitiyas* but also by free migrants from Gujarat and Punjab. After the independence of Fiji from British colonial rule in 1970, the ethnic unrest against the Indo-Fijians by the Fijian Samoans, led those who were able to do so, to leave Fiji mainly for Australia and New Zealand.¹⁸ These changing circumstances of the Indo-Fijians are recorded in the literature produced by them in English and Hindi. The earliest example is that of the already mentioned Totaram Sanadhya’s memoir *Bhut Len Ki Katha* (The Tale of the Haunted Lines) which has stood witness to

16 Vijay Mishra, “The Old Plantation Diaspora of Classic Capital,” in *The Encyclopedia of the Indian Diaspora*, ed. Brij V. Lal (Singapore: Editions Didier Millet, 2006): 120–128, 127.

17 C.F. Andrews, *Impressions of British Guiana*.

18 Brij V. Lal, “Fiji,” in *The Encyclopedia of the Indian Diaspora*, 370–382.

the lives of the *girmitiyas* on the sugar plantations and their deprived lives in the Lines or Barracks, where they lived. Sudesh Mishra's poem "The Time is Out of Joint" is written in the North Indian *Bidesia* tradition of longing and nostalgia of the immigrant for his homeland.¹⁹

Yet another island nation where labour was taken to work on plantations, this time of tea rather than sugar, was the island of Ceylon, now known as Sri Lanka. The majority of the labour taken there was from the Madras Presidency of British India and was ethnic Tamilian Hindu. They became known as the Plantation or Upcountry Tamils. There was also a much older group of Tamilians who had lived in Sri Lanka for centuries, as a result of the close cultural and trading ties between the kingdoms of South India and Sri Lanka. They were the Eelam Tamils who lived generally in the coastal North Eastern parts of the island. The Tamil labour migration to Ceylon is considered to be 'free' as opposed to the indentured system which prevailed in other British colonies. However, this 'free' labour was recruited under the *Kangani* or *Maistry* system under which contractors in the Madras Presidency recruited labour, first for the coffee plantations in the 1830s which were set up in the highlands of Ceylon by the British planters, and then from 1880s onwards for the tea plantations. The coffee plantations had to be turned over to tea when in that decade they were hit by a fungus infestation. The British India government did from time to time issue ordinances and set up rules and regulations to ensure safe and just working environments for the Plantation Tamils. An ordinance issued as early as 1865 sought to ensure hygienic living conditions for the Tamil workers, which was, however, not very effective. In 1904 the Ceylon Labour Commission was set up to provide a fairer system of recruitment as compared to the one offered by the *Kanganis*. In 1920 the passing of the British India Government's Education Ordinance meant that the plantation owners had to provide education for the children of the Plantation Tamils. By this time ethnic disharmony among the natives of Ceylon, the Singhalese, who followed the Buddhist religion and the Tamils had broken out. The Singhalese resented the Tamils, whom they saw as outsiders and foreigners and wanted them to be sent back to India. When Ceylon was granted independence from British rule in 1948, these resentments took on a more political colour and ultimately led to the long-drawn-out civil war between the Singhalese and the Tamils, which in turn forced many of the Tamils into yet another diaspora, this time as refugees under legally administered refugee quotas in European countries such as Germany and in the USA and Canada. A million Sri Lankan Tamil refugees had also been given refuge in India during the 1980s at the height

¹⁹ Sudesh Mishra, "The Time is Out of Joint," *Span* 52 (2002): 136–145.

of the ethnic conflict there and the resultant Indian Peace Keeping Force (IPKF) sent to Sri Lanka by the Indian Government and the Tamilian resentment against it as it was seen as favouring the Singhalese, had led to the assassination of the Indian Prime Minister Rajiv Gandhi by a Sri Lankan Tamil militant group in 1991. The travails of the Sri Lankan Tamils are recorded in Literature and cinema. One such writer is Dominic Jeeva, who is also a Dalit (belonging to the lowest Hindu caste). He wrote his collection of short stories in Tamil *Pathukai* (1963) among many other novels and stories. He also edited a journal *Mallikai* which started publication in 1966 and was the bastion of progressive writing. Another Sri Lankan Tamil writer is Thelivathai Joseph, who has written on the lives of plantation Tamils in novels such as *Kudai Nizhal* (2013). By the 1980s the worsening ethnic clashes between the Tamils and the Singhalese led to a large number of them moving to European countries, Canada and Australia. Thus emerged the double diasporic Sri Lankan Tamil discourse. Apart from the usual diasporic tropes of longing and nostalgia this writing began to display new metaphors based on the new homelands. These writers were used to being discriminated against on the basis of their different religion and culture but now they were also subject to colour and racial discrimination and this is to be seen in their diasporic texts. Writers from the Western/double Sri Lankan Tamil diaspora include the poets Jeyapalan, Vijayendran and Aravinthan. The important novelists are Karunakar Moorthy and Partipan. In their Western diaspora the Sri Lankan Tamils were subject to the laws of the countries that gave them refuge and to the refugee quota system, evolved by the United Nations High Commissioner for Refugees (UNHCR) which was established in the aftermath of the Second World War in 1950.

As for the colonial laws governing indentured Indian labour, in 1882 the Government of India passed the Emigration Act (XXII), which with some modifications in 1908, governed indentured emigration until the end of 1916.

3. Free Migration in the Colonial Period

Not all those who went into diaspora from India however were indentured labourers. There was also free migration during this period. Servants, traders, lascars (sailors) and sepoy (soldiers) travelled as free migrants during the colonial period. Indian sepoy and lascars were sent on overseas campaigns by the British in India. The forebears of many Indian diasporics in Canada for instance were the soldiers who on the way back to India through Canada from European wars stayed back there. Indian domestic servants often accompanied their English masters to Britain and then returned with or without them to India, or stayed back.

Traders mainly from the West and South of India went to set up small and large trading companies in South and East Africa, Burma, Singapore and Malaysia. They were often called the *Dokkwallahs*, the shop keepers, *dokka* being a corruption of the Hindi word *Dukan*, meaning shop. M.G. Vassanji in his novel *The In-Between World of Vikram Lall* (2003) provides a striking picture of the lives of such traders in East Africa. During this period the British adventuring in China, the Opium Trade and the resulting Opium Wars also meant that a large number of Indian traders, servants, lascars and sepoys found themselves in the Chinese ports of Nanking and what became the British outpost colony of Hong Kong. Amitav Ghosh has dealt with this history of the Indian diaspora in the second book of his Ibis Trilogy, *The River of Smoke* (2011).

In South Africa, too, the descendants of the indentured labour and the free traders often employed Indian professionals such as lawyers to argue their causes with the colonial government of South Africa. One such Indian lawyer was the young Mohandas Karamchand Gandhi who was employed in 1893 by Dada Abdollah a Gujarati businessman settled in Natal. Gandhi soon became immersed in the political activities of the Indians there and was in 1894 the first secretary of the Natal Indian Congress which was founded to counter the move to disenfranchise the Indians there through the Indian Disenfranchisement Bill. It was in South Africa that Mohandas Gandhi the man, slowly became the Mahatma (i. e., ‘the evolved soul’). It was here that he also developed and honed the tool of passive resistance or soul power – *Satyagraha*. This tool which he took back with him to India in 1915 eventually brought the British Empire to its knees and was instrumental in the gaining of independence by India.

Gandhi had during his time in South Africa briefly returned to India in 1901, but then had been called back to Natal by the Indians there in 1902. Inspired by the Gita, the Bible, Ruskin’s *Unto This Last* (1860, published in book form in 1862) and Tolstoy, he embraced a life of increasing self-abnegation. On Phoenix Farm and then Tolstoy Farm got together a community of like-minded thinkers, who were committed to not just fighting the unjust laws of the colonial regime, but also combating the inner contradictions of the Hindu religion, such as the caste system and untouchability. Some of the campaigns led by Gandhi were against the so-called ‘Black Act’ of 1907 under which all ‘Asiatics’ had to be compulsorily registered, finger printed and at all times had to carry this certificate of registration. This humiliating and shameful act was strongly resisted through *Satyagraha*. Gandhi’s long stand-off on this with General J.C. Smuts, landed him in jail several times. When Smuts reneged on the promise given to Gandhi to repeal the act by August 16 1908, Gandhi and his followers publicly burnt thousands of these certificates. Yet another law against which Gandhi had launched *Satyagraha* was the South African Supreme Court order of 1913

that had declared that henceforth Hindu and Muslim marriages would no longer be recognized. The agitation against this ruling brought thousands of hitherto almost sequestered Indian women out on to the streets against this law which deprived them of the status of wives and reduced them to concubines.

This period was the heyday of the Indian Nationalist movement and Gandhi and his relentless campaign against unjust South African laws brought him and the Indian diasporics there to the notice of the Nationalists in India. Gopal Krishna Gokhale, one of the leaders of the Indian National Congress, visited Gandhi at the Tolstoy Farm in 1912. The Indian National Congress (INC) at its annual sessions in 1911, 1912 and 1913 expressed empathy with the Indians in South Africa. Gokhale in fact had become Gandhi's mentor after his visit to him in South Africa, and like C.F. Andrews who had become a friend of Gandhi's, urged him to return to India. Gandhi returned to India in 1915 and his induction into the Indian national movement is then history that culminated in the end of the British Raj and the beginning of the end of the British Empire too. The INC also played an important role in the ultimate abolition of the indentured labour system, as between 1915 and 1920 it created a strong public opinion against this form of labour export from India. The INC also drew into its folds associations of diasporic Indians across the globe in its fight against the British Empire. In his presidential address of the INC annual session in 1926, Srinivas Iyengar had said:

The status of Indians abroad, whether in South Africa, or Kenya, in Fiji or Guinea [Guyana], in Ceylon or Malaya, in America or Australia, depends inevitably upon the status of Indians in their own land; and the Swaraj [independence] for India depends in its turn upon the brave and unfaltering spirit of our kith and kin across the seas.²⁰

In the 1920s and 1930s Indian leaders such as Sarojini Naidu, Jawaharlal Nehru and Ramaswami Naicker 'Periyar' visited Kenya, Malaya Ceylon, Burma and Singapore to meet with the Indian diasporics there. The INC also championed the South Indian merchants in Burma when the colonial authorities sought to bring in unfair legislation in 1941 that would have adversely impacted the trading interests of these merchants.

This close interaction with the Indian diaspora experienced a long hiatus once India became an independent nation in 1947. Although the first Prime Minister of India did try to keep the diaspora in mind, the fledgling nation could not fulfil its promise of granting Indian citizenship to its far flung diaspora, which by then had been offered the British Commonwealth Citizenship. By accepting this

²⁰ Qtd. in Gyanesh Kudaisya , "Indian Leadership and the Diaspora," *The Encyclopedia of the Indian Diaspora*, 82 – 89, 83.

citizenship the diasporics lost their right to Indian citizenship as the Indian Citizenship Act of 1955 declared that anyone who had “voluntarily acquired the citizenship of another country [should] cease to be the citizen of India.” Nehru then urged the Indians abroad to “identity themselves with and integrate in the mainstream of social and political life of the country of their domicile.”²¹ When the Indian diaspora was expelled from Uganda and put under pressure in Kenya in the 1970s, the Indian government then under the leadership of Prime Minister Indira Gandhi, did not extend political support to them.

3. Post-Imperial Migration

In the post-Imperial period beginning with the late 1940s and well into the 1980s, Indian labourers and professionals who went to work in the old Imperial centre, i.e. Britain, or in the Commonwealth, i.e. Canada, Australia, New Zealand, or in other parts of the world, mainly the USA and the Arab Gulf countries, did so under the immigration laws of those lands and received little or no support from the Indian government in case of exploitation or oppression by their employers or racist attacks by the general populations of their host lands. This trend however was reversed in the 1990s, and in recent years the Indian government is more active in the protection of the rights and lives especially of its migrant labourers, as was demonstrated in the air lifts it had organised to bring home Indian workers during the Gulf War in 1990 – 1991, negotiations to free Indian hostages during other Gulf crises²² and more recently the airlifts organised to bring home the Indian nurses and labourers who were caught in the cross fire between the Syrian government and the rebel forces there in 2013. One of the Indian writers who have written on the experiences of Indian labour in the Gulf is the bi-lingual, English and Marathi, writer Vilas Sarang.

In the post-war period between 1948 and 1961 there was large-scale migration from India of skilled and semi-skilled labour as well as professionals to the U.K. The British Nationality Act of 1948 introduced the Citizenship of the United Kingdom and Colonies and even considered as subjects of the British Empire all subjects of the newly expanded Commonwealth. In reality the immigration of Sub-Continental, Africans and those from the Caribbean was restricted by policy. While some politicians in both the labour and conservative regimes

²¹ Qtd. in Kudaisya, “Indian Leadership and the Diaspora,” 86.

²² See *Government of India, Ministry of External Affairs* <<http://www.mea.gov.in/in-focus-article.htm?23545/Indians+in+Iraq++A+Reverie>> (acc. 11 Dec 2015).

wanted to encourage migration from the commonwealth others wanted to prevent what was called coloured migration. The Immigration Act of 1962 officially restricted coloured immigration but was not very effective.

There is an interesting Bollywood film entitled *Patiala House* which deals with this period of rampant racism in the U.K., when Indian immigrants were beaten up and packets containing faeces were delivered in their letter boxes.²³ *Transmission* (1992), a novel by Atima Srivastava, has also dealt with racist attacks on Indian immigrants.

For the first time in 1965 there was a focus in the policy of the UK government in favour of professionals from India: doctors, dentists and research scientists – this was also the time when there was a parallel angst in India about the ‘brain drain’ to the West.

4. Migration to the UK by Indian Diasporics from Africa

Also in the 1960s and early 1970s highly skilled and qualified Indians migrated to the UK from the former East African colonies due to the ‘Africanisation’ of these countries.

Under the British Nationality Act of 1964 the White settlers in Kenya and other East African colonies with UK-born fathers or grandfathers also had their British passports restored. However, when thousands of persons of Indian origin began migrating to the UK especially in the late 60s, the UK Government in just three days hastily enacted the second Commonwealth Immigration Act in March 1968 to deny entry to these former colonials.

British liberals were horrified by what they saw as one of the most dishonourable of acts in the history of immigration policy, as under this Act, the former colonized were denied entry into Britain which had projected itself as the Mother country and was now treating the former colonials as undesirable step-children only on the basis of their colour. Ironically the hitherto Whites-only policies of the former daughter colonies of Canada, Australia and New Zealand were being eased around this time – Canada in 1967, Australia in 1975, New Zealand in 1974. This led to those Indian diasporics who were denied entry into Britain moving instead to these countries. However the Nationalists in Britain such as Enoch Powell thought that this policy was too generous and would cause racial tensions.

²³ *Patiala House*, dir. Nikhil Advani, 2011 (India: Hari Om Entertainment, 2011).

We have Indian diasporic writers and film makers who have documented these new migrations of Indians who had lived in East Africa. Gurinder Chadha, the British film maker from East Africa, has portrayed the lingering aftertaste of racism and oppression in her film *Bend it Like Beckham*, as experienced in Kenya blending with the racism in the new home in Britain.²⁴

Indians studying at British Universities is a tradition that goes back to the nineteenth century. Gandhi as well as Nehru to mention only two of India's nationalist leaders had studied at British Universities. The Indian writer Mulk Raj Anand, author of the path-breaking *Untouchable* (1935), had been a student at Cambridge in the 1920s. Although the flow of Indian students to Britain has dwindled considerably since the 1990s and channelled itself to countries such as the USA, Canada and even Australia and New Zealand, there are still many Indian students at British Universities today. In large measure this drop in numbers is due to Britain's visa laws.

Sunetra Gupta and Amit Chaudhri represent the Indian student diaspora in Britain and their books portray not just diasporic life in Britain but that of Indian students there. Chaudhri's *Afternoon Raag* (1993) juxtaposes his Oxford student life with India. Gupta, whose Ph.D. was from the University of London, is now a professor of Theoretical Epidemiology at the University of Oxford. In her novels beginning with *Memories of Rain* (1992) she writes mainly of cross-cultural relations.

Salman Rushdie is the most illustrious British writer of Indian origin and after the 1989 fatwa issued against him by the Iranian Ayatollah, the most problematic too. His texts represent not just the diasporic setting of Britain but also the Indian subcontinental locales as seen through the prism of his diasporic location. This is the case with his two early novels *Midnight's Children* (1981) and *Shame* (1983). In the controversial *The Satanic Verses* (1988) there is the British setting, apart from the disputed sections on Mecca. The chapters on London are a damning critique of Britain's immigration laws which demonize and dehumanize immigrants. This is a direct engagement with immigration laws and its dispensers who detain 'illegal' immigrants in several detention centres. Rushdie's collection of short stories *East, West Stories* (1994) also looks at the issues of racism and identity construction in diaspora.

According to the 2011 UK Census, there were approximately 4,214,000 South Asians (Indians, Pakistanis and Bangladeshis) in England and Wales representing around 7.5% of the population. This is up from 2,331,423 South Asians in the 2001 census. Those of Indian origin comprised 2.5% of the population, with

24 *Bend it Like Beckham*, dir. Gurinder Chadha, 2002 (UK: Redbus Film Distribution, 2002).

those people of Pakistani origin comprising 2.0%, around 0.75% were of Bangladeshi origin, with around 1.4% other Asian.²⁵

5. Immigration Legislation in Canada

As one of the daughter colonies of the Empire, there is a long history of Indian immigration to Canada. Sikh troops stationed in Hong Kong travelled via Canada to Britain for the coronation of King Edward VII in 1902. Between 1903 and 1908 over 5000 Sikhs, returned upon de-mobbing to work as labourers on the farms and lumber yards in British Columbia. There were quick repercussions to this influx of 'Hindoos' though most of the immigrants were Sikhs. In 1907 an Asiatic Exclusion League was formed in B.C. to expel the East Indians as they were called there and threatened violence against them. In response to these popular demonstrations against the Indians, the B.C. government disenfranchised the East Indians and also made them ineligible for Government jobs. There was a call to extend the Head Tax levied on Chinese workers to the East Indians. This was shot down by the British India government fearing repercussions in India against them.

On 8 February 1908 the federal government of Canada without naming the East Indians brought in a legislation that eliminated East Indian immigration to Canada. People from India were called East Indians in Canada and the USA, to distinguish them from the other fallaciously named Indians of the North American and South American continents. In India the East Indians are Roman Catholic Christians who live in Mumbai and in Thane District and are thought to have been converted to Christianity by the apostle St. Bartholomew. This Order-in-Council introduced the stipulation of 'continuous journey' for eligibility of migration to Canada. Journeys from India, China and Japan to Canada then required a halt at Hawaii.

This led to the infamous *Komagata Maru* incident in 1914 when a Sikh, Gurdit Singh, hired a Japanese ship named *Komagata Maru* and undertook a non-stop voyage from Hong Kong to Vancouver. The ship reached Vancouver on 23 May 1914. The 376 East Indian passengers on board were legally British subjects with the right to travel freely in the British Empire, including Canada. They were in spite of having fulfilled the 'continuous journey' rule not allowed to disembark in Vancouver. The stand-off lasted till 21 July 1914 and even water

²⁵ See Office for National Statistics, UK at <<http://www.ons.gov.uk/ons/rel/census/2011-census/index.html>> (acc. 17 Dec 2015).

and food supplies were sought to be cut off to the ship to encourage the putative immigrants to give up and return home. Some passengers got sick and one died. Finally on 23 July 3 passengers who could prove that they were returning residents were allowed to disembark and the ship left the harbor under armed naval escort from HMCS Rainbow. The would be immigrants were not allowed to disembark from the ship in Singapore from where many had boarded and were forcibly brought to India where the ship was docked near Calcutta at the Budge Budge port on 29 September of the same year. The police boarded the ship to arrest Baba Gurdit Singh but he escaped. In the resultant firing 19 of the passengers were killed. Gurdit Singh and the passengers were linked to the anti-British Gadar movement and were seen as dangerous insurgents.²⁶ The remaining passengers were then taken to the Budge Budge railway station and sent to Punjab. Gurdit Singh had then remained in hiding until he was convinced by Gandhi to give himself up in 1922. In 1952 the government of India erected a memorial at the Budge Budge station in the form of the Sikh dagger, the *kirpan*, and it was inaugurated by Jawaharlal Nehru India's first Prime Minister. In 2013, the Budge Budge Railway station was re-named the Komagata Maru Budge Budge Station in memory of the men who were killed there on that long ago but not forgotten day of 29 September 1914.

The Indo-Canadian community in Canada marked the 100th anniversary of the *Komagata Maru* incident on 23 May 2014. In Vancouver at the Burrad Inlet, Coal Harbor, from where the immigrants had been turned away, the Canadian politicians, offered apologies and reparations to the Indo-Canadians of today at the Komagata Maru memorial. A stamp was also released in commemoration of this event. Conferences and workshops were held at universities across Canada marking the journey of the Komagata Maru, which debated past and present issue concerning immigration and multicultural laws.

The Indian Government too launched a yearlong celebration of the Komagata Maru related incidents of resisting discriminatory immigration laws with release of stamps and symposiums.²⁷

A film by Ali Kazmi, *Continuous Journey*, was released in 2004 on this event.²⁸ Deepa Mehta, the Indo-Canadian film maker is also making a film on Komagata Maru. The Indo-Canadian poet Sadhu Binning's poem *No More*

26 T.R. Sareen, "The Ghadr Party," in *We Fought Together for Freedom: Chapters from the Indian National Movement*, ed. Ravi Dayal (Delhi: Oxford, 1995): 69.

27 Pratul Sharma, "Komagata Maru: Centenary Celebrations Begin" (1 October 2014), *Indian Express* <<http://www.newindianexpress.com/nation/Komagata-Maru-Centenary-Celebrations-Begin/2014/10/01/article2456884.ece>> (acc. 6 August 2015).

28 *Continuous Journey*, dir. Ali Kazimi, 2004 (Canada: TVO, 2004).

Watno Dur/No More the Distant Homeland (1994) evokes the Komagata Maru incident too in parallel Punjabi/English lines. Another poet Ajmer Rode had written a poem called Apology to mark the 75th anniversary of the Komagata Maru's turning away from Canada, in which he has written: "I bow my head and / profoundly apologise / for what we did to the Komagata Maru / passengers seventy five years ago."²⁹ Here it's the Canadian nation itself and not the diaspora that is remembering the event.

The continuous journey ruling remained on the legal code of Canada till 1947 and the East Indian population in Canada dwindled with many Sikhs leaving for the USA, mainly California. Although in 1918 the Canadian Government had lifted the ban on the East Indians bringing in their wives and children they were still disenfranchised and this ban on voting was lifted only in 1947, in which year there were only 3360 East Indians in Canada.

In the 1960s the Trudeau government liberalized immigration policies and these less discriminatory legislations were drawn from the Immigration Act of 1952. In 1966 there was a White paper on Immigration that brought in the Points system for immigrants. In 1976 the Green Paper on Immigration tightened entry for the 'independent class' of East Indian immigrants but opened up again the 'family reunification' and 'refugee' classes.

Between 1971 and 1991 Canada also received a large number of the Indian Diaspora from Fiji, East Africa and the Caribbean islands. Over 25,000 came only from Fiji, 7000 from Uganda and 80,000 from Guyana. Between 1998 and 2002 migrants from India entered under the 'skilled worker' and 'family reunification' classes. Indo-Canadians constitute 3.08% of the Canadian population according to the 2006 census and number 962,665.³⁰

Some of the high-profile writers and film makers of Indian origins in Canada are Rohinton Mistry, Shauna Singh Baldwin, Ramabai Espinet, M.G. Vassanji, Anita Rau Badami, Deepa Mehta and Ali Kazmi. Mistry's novels *Such A Long Journey* (1991), *A Fine Balance* (1995), *Family Matters* (2002) do not have much of a focus on Canada but his collection of short stories *Tales from Ferozsha Baag* (1987) have three stories set in Canada which are scathing critiques of the much-vaunted Canadian policy of Multiculturalism. Shauna Singh Baldwin's *We are Not in Pakistan* (2007) is about immigrant women and living in diaspora in different settings. Ramabai Espinet's diaspora trajectory to Canada is deflected through the old colonial indentured diaspora of the Caribbean islands. Her

²⁹ Qtd. in Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (Oxford and New York: Routledge, 2007): 143.

³⁰ See Statistics Canada, *2006 Census of Population* <https://www12.statcan.gc.ca/census-resement/2006/index-eng.cfm> (acc. 22 December 2015).

writing is still about the old *Kala Paani* diaspora and evokes images of living in this diaspora, especially in *The Swinging Bridge* (2003). Badami is of the new postcolonial diaspora, who went to live in Canada only in the 1990s. Her novel *Tell it to the Trees* (2011) is about an Indo-Canadian family and has a Canadian setting unlike most of her other books. Vassanji's two books centrally located in Canada are *The Gunny Sack* (1989) and *No New Land* (1991). Racism, oppression and trauma as well as the East African and Canadian locales are the common threads that run through these texts. Deepa Mehta's acclaimed Elements Trilogy³¹ – *Earth, Fire, Water*, is set squarely in colonial and postcolonial India but two of her films do deal with the diasporic Canadian situation – *Sam and Me*,³² and *Bollywood/Hollywood*.³³ The former is a story of connections between different immigrants to Canada divided by race, religion, culture and generations. It's the story of Nikhil the young Indian immigrant and the old Jewish man Sam, for who he is hired as a caretaker. This is in a sense a film about Canadian multiculturalism. The latter film is a celebration of Bollywood and its inspiration Hollywood. It is a hilarious story which yet is serious in the critique it offers on the Indo-Canadian community, its patriarchal orientations and homophobia.

6. Immigration to the United States of America

The USA has in the post-imperial, postcolonial period been the most favoured destination for Indian immigrants. According to the data available on the website of the Migration Policy Institute, 1.9 million persons of Indian origins lived in the USA in 2011.³⁴ They were the largest group of immigrants after the Mexicans and the Chinese. The majority of these immigrants are highly educated and fall within the top most earning brackets. The origins of this migration can be traced to the students at USA universities which is the largest group of foreign students at these universities after the Chinese. These Indians could be those who hold Green Cards giving them permanent residence in the USA or those

31 *Earth*, dir. Deepa Mehta, 1998 (Canada: Cracking the Earth Films Inc., 1998); *Fire*, dir. Deepa Mehta, 1996 (Canada: Zeitgeist Films, 1996); *Water*, dir. Deepa Mehta, 2005 (Canada: Mongrel Media, 2005).

32 *Sam and Me*, dir. Deepa Mehta, 1991 (Canada: Deepa Mehta & Robert Wertheimer, 1991).

33 *Bollywood/Hollywood*, dir. Deepa Mehta, 2002 (Canada: Mongrel Media, 2002).

34 Jie Zong and Jeanne Batalova, "Indian Immigrants in the United States" (6 May 2015), *Migration Policy Institute* <<http://www.migrationpolicy.org/article/indian-immigrants-united-states>> (acc. 6 August 2015).

who have become naturalized citizens. There is also a very large number of Indians who hold on to their Indian passports and are the NRIs – the Non-Resident Indians. The majority of these Indians live either in California or in New Jersey.

In the 1990s a new breed of IT professionals began to flock to the USA. Many of these professionals are contracted for a fixed period and then return home giving rise to the term ‘cyber coolies.’ These Indians work mainly in California and given the present fluctuating global economy may only be transnationals on out-source contracts rather than immigrants who would become diasporics. As the IT industry grows in India and Indian cities such as Hyderabad and Bangalore set up IT hubs to lure back the IT professionals who are in a more settled diaspora in the USA, there are a large number of highly educated IT professionals who are returning home to India. India’s scientific organisations and especially its successful space programme is also bringing back some of its scientists.

The Bollywood film *Swades – We, the People* tells the story of Mohan (played by the Global Bollywood icon Sharukh Khan), a highly qualified Indian scientist, who has studied at the University of Pennsylvania and now works as a Project Manager for NASA and lives in Florida.³⁵ Mohan returns to India for his nanny Kaveramma and goes to her village in search of her. There he comes face to face with the rural realities of a globalizing India. He bonds with an idealistic young woman who has been looking after Kaveramma. At the end of the film Mohan has to decide whether or not he wants to return to the USA as both his nanny and his new love refuse to leave the village. However, Mohan does not have to really make a choice between his old and new homelands as he is in a position to return home to India and work from there for his employers in the USA. This is what makes Mohan and Indians like him transnationals rather than the classic diasporics.

The New Jersey diasporic Indian group is more diverse and is composed of engineers, doctors, scientists and others. The majority of these first generation diasporics would be Non-Resident Indians (NRIs) with Green Cards, who would have retained their Indian passports for personal, emotional or economic reasons, having property, parents and siblings in India. Scattered across the USA are also Indians who are academicians, engineers, doctors, independent entrepreneurs, motel and petrol station owners and workers and small shop keepers.

Meera Nair’s film *Mississippi Masala* has engaged with the last mentioned group of Indian diasporics expelled from Uganda and who had settled in the USA.³⁶ In the south of the USA they are at one and the same time the victims

³⁵ *Swades – We, the People*, dir. Ashutosh Gowariker, 2004 (India: UTV Motion Pictures, 2004).

³⁶ *Mississippi Masala*, dir. Meera Nair, 1991 (USA: The Samuel Goldwyn Company, 1992).

and the perpetrators of racism. The Indian family which had to leave Uganda due to the policy of Africanisation adopted by the dictator Idi Amin find themselves in the deep South of the USA in Greenwood Mississippi. Here while the parents battle racism from the White population, their daughter falls in love with a black man. The parents then found themselves on the other side of racist prejudices as they did not want their daughter to marry a black man.

The Namesake (2003) by Jhumpa Lahiri is focused on the Indian diasporics who belong to the group whose route to the USA was through the academia. In this novel the Indian origins professor Ashok and his wife Ashima live quiet lives in a university town with their children Gogol/Nikhil and Sonia. This book analyses the question of diasporic identity constructions among first and second generation Indian diasporics.

According to statistics provided by the USA Migration Policy Institute, Indian diasporics are the most recent of the immigrants in the USA, with 52% having entered the USA after 2000. So this is really the Global Indian diaspora, with over 29% of these immigrants being IT professionals.

These bland but positive statistics however do not provide the complete picture. The history of Indian immigration to the USA is new, yet not as new as it is made out to be by the Migration Policy Institute's website.³⁷ Indian immigrants did not suddenly appear on the American scene in 1965 once the USA immigration laws liberalized the restriction on the entry of Indians into that country. The Indian aspiration to be part of the land of immigrants, the land of the American Dream, goes back to the end of the nineteenth century. Punjabi peasants first appeared in California and Washington to work on its orchards and in its saw mills. They were though Sikhs, called Hindus like in Canada, from where some of them had come in a bid to escape the racist policies of that country. By the early twentieth century though these Indian immigrants were being subjected to racial attacks in the USA too and there was the formation of the Asiatic Exclusion League which sought to keep out these Hindu immigrants. The immigrants were also not allowed to own property as a disincentive to immigration.

In 1901 the first batch of students from India arrived in the USA. They studied mainly at the University of California, Berkley and at the polytechnic at San Luis Obispo. These were politically aware men who were soon brought within the ambit of the Indian nationalists. Lala Lajpat Rai the Indian nationalist visited the USA and gave lectures to the American public on the platform of the Boston Anti-

³⁷ Monica Whatley, Jeanne Batalova, "Indian Immigrants in the United States" (21 August 2013), *Migration Policy Institute* <<http://www.migrationpolicy.org/article/indian-immigrants-united-states-0>> (acc. 6 August 2015).

Imperialist League. Political exiles from India also made their way to the USA and in 1913 the Gadhar (meaning Revolt in Urdu) party or the Hindu Association of the Pacific Coast was formed. With the breaking out of the First World War in 1914, the British in India were afraid of the Gadhar members fermenting trouble against them in India and in the USA. However with the Americans entering the war in 1917, the Gadharites lost their support base in the USA.

The 1917 Immigration Act passed by the USA blocked the entry of all Asians into the USA. For those who were already there, Naturalised Citizenship was reserved for 'White,' 'Aryan' and 'Caucasian' immigrants only. This led to several cases being filed by Indian immigrants who claimed to be either White or Aryan. This was of course the beginning of the heyday of the pseudo-scientific theories of racial superiority which culminated in the Nazi genocides of Jews, Gypsies and other undesirable races.

The Immigration and Naturalization Service (INS) between 1923 and 1926 even cancelled the American citizenship already granted to Indians earlier and placed them under the Alien Land Law (1913). As a result the Indian population in the USA declined sharply and it was only because of the altered circumstances of the Second World War that Indian immigrants could again gain entry into the USA. Afraid of Indians aligning themselves with the Japanese and thus opening up another front in the Eastern Theatre of the war, the Americans sought to restore the right to Naturalisation and Citizenship for Indians, which finally came through in the Act of 2 July 1946. This was not an unfounded fear as the Indian nationalist Subhash Chandra Bose had left the INC by 1939 and after a brief incarceration by the British had escaped from India in 1941. He had in the fashion approved by Indian and Western political thinkers (Kautilya and Machiavelli) allied himself with his opponent's (the British) enemies, the Germans and the Japanese. Ironically for Hitler, Bose was acceptable as an 'Aryan', though the USA had denied this sobriquet to his fellow countrymen and deprived them of American citizenship. The exploits of the Indian National Army (INA) set up by Bose have been portrayed by Amitav Ghosh in *The Glass Palace* (2000), where the British Indian Army officer, Arjun, has to deal with the terrible conflict between conscience and loyalty, in the jungles of Burma where he comes face to face with not just the Japanese invaders but also the Indian National Army which was collaborating with the enemies of the British Empire. At the end of this war in 1945 which over a million Indian soldiers had died once again, as they had in the First World War, the British were still in control of an India that was on the brink of freedom. However, the laws of British India had held the INA soldiers to be traitors to the Empire and they were court martialed between 1945 and 1946. During the trials a mutiny broke out in Mumbai (then Bombay) among the Naval Ratings and then had spread to Karachi, Madras and other ports. The men charg-

ed with treason by the British were defended by a committee set up by the Indian National Congress. These Congress men who were also lawyers trained in Britain, were Jawaharlal Nehru, Bhulabhai Desai, Tej Bahadur Sapru, K.N. Katju and Asaf Ali. These trials raised questions of not just military law but also civil and constitutional laws as the INA had been commanded by Bose who had in 1943 taken over not just as the leader of this army but also set up a provisional government of free India, under which the INA had fought against the British in the Second World War.³⁸

As for the USA it has legislated on the entry of Indians through several Acts since the one of 1946. The Immigration Act of 1965 set a quota of 20,000 for each country in the 'Eastern Hemisphere.' The Immigration Policy Centre of the American Immigration Council website says that there are several ways in which an Indian could immigrate to the USA, s/he could go under the family re-unification scheme for those who are already American citizens, they could also become LPR (legal permanent residents) or Green Card Holders or seek naturalization as American citizens after five years of living in the USA or being born there (under the 14th Amendment).³⁹ There are also employment based visas keeping in mind the needs of the labour market. A quota for refugees and asylum seekers is also available under the Refugee Act of 1980. However Indians constitute less than 1% of refugees to the USA.

The USA also has to deal with a large number of unauthorized illegal immigrants from Mexico and other Latin American countries. There are instances too of Indians overstaying and illegally doing work in the USA on Tourist Visas.

Writers of Indian origins in the USA have dealt with many of these immigration related issues. Bharati Mukherjee in *Jasmine* (1989) has intertwined the stories of legal and illegal immigrants from India, Vietnam and Latin America. Her stories in *The Middleman and Other Stories* (1988) collection had also touched upon these issues earlier. Kiran Desai's *The Inheritance of Loss* (2006) has a section set in the USA where the illegal immigrant Biju works almost as slave labour in Indian and even some American owned restaurants and cafes. He links up with other illegals from the African continent too in a kind of Brotherhood of the Deprived Diasporics. Godfrey Joseph Pereira too has written about the ill-treatment meted out to illegal diasporics by other Indians in his first novel, *Bloodline Bandra* (2014). Here the illegal is not an assistant cook or kitch-

³⁸ L.C. Green, "The Indian National Army Trials," *The Modern Law Review* 11.1 (1948): 47–69, 47–49.

³⁹ "How the United States Immigration System Works: A Fact Sheet" (1 March 2014), *American Immigration Council* <<http://www.immigrationpolicy.org/just-facts/how-united-states-immigration-system-works-fact-sheet>> (acc. 7 August 2015).

an assistant like Biju, but an educated journalist from India who is employed by an Indian newspaper on the promise of getting him his work permit. In return he is treated like a slave and made to live in almost inhuman conditions, though not as bad as those in which Biju had to exist.

The Indian Diaspora in the USA has also been active in the field of film making. *Cosmopolitan* is a film by Nisha Ganatra, about an Indian immigrant in New Jersey who is suddenly abandoned by his daughter and wife.⁴⁰ Confused about himself, his life, his identity he takes up with his neighbor an American woman, who he had earlier considered 'loose moraled'. They develop a warm and tender relationship but ultimately she too leaves him. Meera Nair's *The Namesake*,⁴¹ based on Lahiri's novel of the same name also delves into the issue of identity construction, hybrid identities and identity confusion. These issues mainly revolve around the character of Nikhil/Gogol and begin with his name itself. Nair's earlier film *Monsoon Wedding* is set in India but with Indo-American and Indian protagonists who get together for a wedding in Delhi.⁴² What follows is the tumbling out of family scandals and the final denouement of a happy ending with the conflicting identities and moral values being at least partially resolved.

The journey of the Indian diaspora across time and space now stretches from the 1830s to the second decade of the twenty-first century and is spread out across more than a 100 countries. From being the derided coolies in their new homelands they have become influential politicians and prosperous businessmen and industrialists. The descendants of the indentured labour have been knighted by the British and awarded *Pravasi Bharati Awards* (Indian Emigrant's Award) by their old Homeland. Many among them have stood witness to their lives and those of their ancestors in literature and cinema. They have written and made films so that those who come after them may never forget them, what they had endured and what they have in spite of everything achieved. Their lives, their past and present were woven together in tightly knit laws that created the skeins across oceans and continents and gave them an identity that included elements of Indianness and elements of their new worlds. These laws may at times have been unfair, blatantly racist and discriminatory but the Indian diasporics kept working within the legal and constitutional systems of their old and new homelands to make for themselves a more fair system of justice.

⁴⁰ *Cosmopolitan*, dir. Nisha Ganatra, 2003 (USA: Gigantic Pictures, 2003).

⁴¹ *The Namesake*, dir. Meera Nair, 2006 (USA: Fox Searchlight Pictures, 2007).

⁴² *Monsoon Wedding*, dir. Meera Nair, 2001 (USA: USA Films, 2001).

Avtar Brah

Articulations Across Diaspora, Law and Literature

Global migrations are a key feature of today's world. They range from the movement of labour migrants to that of elites such as the personnel of multinational corporations, documented and undocumented workers, students, refugees and asylum seekers. Some migrations are 'voluntary,' whereas a significant number of migrants are 'trafficked' from country to country. According to the UN (2013) Trends in International Migrant Stock,¹ some 232 million international migrants are living in the world today. Of these, 72 million are found in Europe. While women comprise about 48 percent of all international migrants, considerable differences exist across regions. At 51.9 percent, the proportion of female migrants is the highest in Europe. In 2013, the total number of refugees in the world was estimated at 15.7 million, a relatively low proportion of the total number of people on the move. During the period 2000–2010, the global migrant population grew twice as fast than during the previous decade. In 2013, the international migrants comprised about 3.2 percent of the world population, and political discourses in some receiving countries about 'being swamped' grossly exaggerate the proportion of the migrants in the popular imagination. In any case, the economic and social impact of global migrations is significant.

I am concerned in this paper not with migration in general, but rather with those groups that form diasporas. Of course, not all migrations result in the formation of diasporas. Only those migrants who 'settle elsewhere' from a common 'place of origin' and create a 'home' away from 'home,' and in whose social imaginary the place of origin holds some significant resonance, may be described as diasporas. There are many different diasporas in the world, and within the academy, the study of diasporas is now a well-established field, with certain features shared with, but retaining a distinctiveness from 'Area Studies.' As is now well acknowledged, diaspora studies is an interdisciplinary field of endeavour. Diaspora can be a descriptive term delineating a historical diaspora such as that of the Jews, African origin Blacks or South Asians. But it can also be deployed as a concept which comprises a set of investigative technologies which theorise and analyse the socio-economic, cultural political and psychic relationality within and across diasporas.² I use the concept of diaspora here in this sense. This

1 See <<http://esa.un.org/unmigration/TIMSO2013/migrantstocks2013.htm>> (acc. 18 Dec 2015)

2 Avtar Brah, *Cartographies of Diaspora: Contesting Identities* (New York: Routledge, 1996).

paper arises from a colloquium which was held to try and attempt to explore interconnections between the field of diaspora studies, literature and law. For decades now, law *and* literature as well law *in* literature has occupied an important place in the academy. Similarly the study of diasporic texts is well established within literary studies. However, the links between these fields of study and diaspora studies is less well developed. How might this triangulation develop further?

One way of doing this might be by identifying common thematics, concepts, and theoretical perspectives across these distinctive fields. This, in my view, may prove fruitful in taking this objective forward. How might these areas be interconnected in and through these common threads? How might this specific type of transdisciplinarity be practiced? What are the linking elements? I list below some of these common elements which may be analysed in hoping to develop the triangulation of the three fields:

- a. citizenship is a concept central to all three areas;
- b. law, governance and governmentality are themes that link law to literature and diaspora studies;
- c. the position of refugees and asylum seekers has a common resonance across all three areas;
- d. the feminist concept of intersectionality underpins all these areas;
- e. questions of identity and difference feature across all three areas.

It is not my intention to address all these aspects sequentially or in the same depth. Rather, I aim to examine a diasporic text and see how issues that link the three areas feature across this text. This is followed by a more substantive discussion of immigration law and citizenship in order to tease out the interconnecting themes. I begin with Mohsin Hamid's novel *The Reluctant Fundamentalist* where many of the above concerns are central.

This is a diasporic novel par excellence, set in Pakistan and the USA. It contains an incisive commentary upon personal and political experience forged within contemporary modalities of transnationalism. It opens with the following words:

Excuse me, Sir, but may I be of assistance? Ah, I see I have alarmed you? Do not be frightened by my beard: I am a lover of America.³

³ Mohsin Hamid, *The Reluctant Fundamentalist* (London: Penguin, 2007): 1; further references in the text abbreviated as *RF*.

And so ensues an intricate narrative of love, anger, and ambivalence. The novel stages a contestation between male facial hair – which came to signify a ‘terrorist’ in the post-9/11 world of the US-led ‘War on Terror’ – and the mighty power of America. The Pakistani male protagonist is a migrant in America during the years preceding and following the 9/11 destruction of the Twin Towers, the symbol of corporate power in New York. In the aftermath of this attack, the sight of a beard grown by Muslim men produced fear because in popular imagination beard came to stand for ‘extremism.’ Yet ironically, beards worn by Muslim men also inscribed a global subaltern positionality, given the inequalities between the countries of the global North and South, and the prevalence of circuits of racialised discourses. The novel is about Changez, a young man of Pakistani origin who goes to America to study. He falls in love with a young woman, Erica, who would seem to inhabit a fantasy world steeped in the memory of her dead boyfriend. From the beginning, the relationship appears to be doomed, as Changez could only be a poor copy of the boyfriend. In the course of the unfolding narrative, Erica falls ill and is taken into a Care Home where she gradually fades away with anorexia and depression, and eventually is presumed to have committed suicide, although this event is not witnessed by anyone. This fading away may be understood as a metaphor for the estrangement of Changez from America which he had grown to love.

Changez is a brilliant student at Princeton University where he beats off stiff competition upon graduation, and manages to secure a prestigious job as management consultant within corporate America. But his world of high life underpinned by transnational capitalism crumbles in post-9/11 New York. He now faces racial discrimination. In this social climate, we witness the emergence of a new politicised identity on the part of Changez, although its precise features remain ‘unknowable.’ The novel describes an imagined conversation between Changez, and an anonymous American man who according to Changez might well be an undercover CIA operative, although this is never confirmed. Changez tells his life story to the American, in response to the latter’s questions. The novel is many things, but at one level it marks an encounter between the power of global corporate capital and the formation of subjectivities or identities in and through asymmetrical power relations. These identities are produced within cultural difference, within ‘dialogicity’ which as Janet Wilson argues:

[...] informs the novel’s narrative structure – a monologue that delineates a dialogue – and accounts for the impact of the enigmatic climax as Changez retains ambiguity of voice, incident, and character right up to the last minute.⁴

4 Janet Wilson, “The Contemporary Terrorist Novel and Religious Fundamentalism: Richard

Initially, Changez is an enthusiastic participant in the intricate workings of American capitalism, but later he becomes disillusioned and dissociates himself from it. He loses his job, because he can no longer be the keen member of staff that he used to be, and his colleagues begin to show suspicion and distrust towards him. He returns to Pakistan where he has to reconstruct his own gaze so that he does not view Pakistan as he believes outsiders do. But he still carries fragments of America within him. He tells his American interlocutor:

I had been telling you earlier, sir, of how I *left* America. The truth of my experience complicates that seemingly simple assertion; I had returned to Pakistan, but my inhabitation of your country had not entirely ceased. I remained emotionally entwined with Erica and I brought something of her with me to Lahore – or perhaps it would be more accurate to say that I lost something of myself to her that I was unable to relocate in the city of my birth. (RF 195)

This quotation narrates the predicament of all diasporic identities. They negotiate multiple spatialities and temporalities. Different and differential landscapes of memory jostle with each other. Varying and variable modalities of ‘homing desire’ are juxtaposed within its realms. These identities are marked by the complexity of subjectivities underpinned by multiplicity and hybridity. The power of this novel, indeed perhaps all novels – resides in the way it can vividly portray the workings of subjectivity and identity alongside social and structural relations. This novel raises a number of issues, thematics and concepts that are pertinent to our discussion. One of these is citizenship in both its legal sense (Changez can only hold a visa so long as he has a job) and citizenship in the broader sense in that his sense of belonging is put into question. Citizenship would seem to be a key connecting theme and concept across law, literature and diaspora studies. In the most general sense citizenship is about membership of a political community. As such it involves a relationship between rights, duties, participation, and identity. Citizenship laws govern who belongs or does not belong to a nation state, or as is the case with the EU, to a supra-national organisation. What rights do migrants have in a society? Of course, rights may be distinguished between civic, political and social rights, and identity can refer to either political or cultural identity. In this broader sense citizenship is about economic, socio-cultural and political issues as they impact upon people. Legal issues are framed by wider concerns in a country. The British Nationality

Flanagan, Mohsin Hamid, Orhan Pamuk,” in *Burning Books: Negotiations between Fundamentalism and Literature*, ed. Catherine Pessoa-Miquel, Klaus Stierstorfer (New York: AMS Press Inc., 2012): 91 – 108.

Act of 1981, for example, was instituted amidst the circulation of massive anti-immigrant racialised discourses. Margaret Thatcher was at the forefront of anti-immigrant rhetoric when during a television interview in 1978, she suggested that the British way of life needed special protection because she feared that the “country might be rather swamped by people with a different culture.”⁵ Several decades later such sentiments still abound. I shall return to this point later. Overall, there has been a close connection between immigration and nationality law in Britain and elsewhere. Thus the circumstances under which migrants acquire citizenship or are refused it, and the ways these events are experienced hold interest for those working in diaspora studies, literary studies as well as the study of law. Hence, below I explore the ways in which the development of British immigration law marks diasporic experiential formations.

1. Rhetorics of Immigration Law

By coincidence, 2014 was the 62nd anniversary of the 1962 Immigration Act – and this would be a good place to start. As is now well known, the post WWII period witnessed an economic boom. There were labour shortages in Britain – especially in areas where the white workforce did not wish to be deployed because the jobs were low-paid and accompanied by poor working conditions. Britain turned to its former colonies to fill these labour shortages. The workers came predominantly from the Caribbean and the South Asian sub-continent and found themselves doing low-skilled and semiskilled jobs. There was a small fraction of professionals such as doctors some of whom would be spread in isolated areas where the British doctors did not want to work.

According to the 1948 Nationality Act, migrants from the former colonies had open entry into Britain and had the legal right to work and settle there. Although this period has been described by some as the ‘liberal hour’ of immigration, in actual fact both the Labour government of 1945–1951 and the Conservative government of the 1950s considered various ways of curtailing immigration from the ‘New Commonwealth.’ This terminology of New Commonwealth was a code for what was then called the ‘coloured’ immigration. It was during this time that a linkage was established between ‘race’ and immigration in policy debates and in popular political and media discourses.⁶ It was against this racialised po-

5 Margaret Thatcher, TV Interview for Granada World in Action, 27 Jan 1978, <<http://www.margaretthatcher.org/document/103485>> (acc. 18 Dec 2015).

6 John Solomos, *Race and Racism in Britain* (London: Palgrave Macmillan, third ed. 2003): esp. 48–56.

litical climate that the riots of 1958 in Notting Hill and Nottingham took place. Although the riots involved attacks on black people by white youth, the political and media commentaries made it seem as if it was the presence of black people that was the problem. The riots served to bring to national prominence issues that had previously been mainly the subject of discussion in local areas or within government departments. The riots were used by the pro-immigration control lobby to support their arguments for the exclusion, even expulsion, of what were termed as 'undesirable immigrants.' The introduction of the 1961 Immigration Act was preceded by anti-immigrant rhetoric both within parliament and in the media, accompanied by a resurgence of right-wing groups. The immigrants were presented as taking jobs away from white workers, a drain on welfare resources, and a threat to the 'English Way of life,' themes which are still familiar to us today. The legislation was introduced by the Conservative Party and was opposed by the Labour Party, but once in power Labour also gave in to what has been described by scholars as 'state racism.' Since the 1962 Immigration Act came into operation due to the political campaign against immigration of People of Colour, it was not surprising that many of its clauses sought to control the entry of these Commonwealth citizens into Britain.

One aspect of the 1962 Immigration Act was that it gave exemption from control to British citizens living in independent Commonwealth countries provided they held British passports. This included a large number of European settlers and a sizeable number of Asians in Kenya and Uganda. Between 1965 and 1967, some of these Asians started to migrate to Britain due to Africanisation policies of those countries. A section of the media and certain Members of Parliament began to clamour for action against this inflow of British citizens and a heated debate ensued. The Labour Party succumbed to this pressure and introduced the Commonwealth Immigration Act of 1968. This Act was specifically designed to control the entry of Asians from East Africa. Under this law any citizen of Britain and its colonies who held a passport issued by the British government would be subject to immigration control unless (and this is the key point) they or at least one parent or grandparent had been born, naturalised or registered in Britain as a citizen of Britain or its colonies. This clause institutionalised a racial underpinning to the legislation as most of the white citizens with a connection by descent were given the right of entry. Despite this, the continuing arrival of the *dependants* of New Commonwealth migrants kept the numbers game high on the political and media agenda and the pressure generated resulted in the introduction of the 1971 Immigration act which qualified the notion of citizenship by differentiating between citizens of Britain and the colonies who were 'patrial' (read White) and therefore had the right of abode, and 'non-patrials' (read People of Colour) without connection via descent who did not. There was now no automatic entry

into Britain for commonwealth people who were not white, yet the political discourses focussed on the curtailing of immigration went unabated during the period of Margret Thatcher and John Major.

Although the proportion of dependants of people of colour settled here and the fiancés from the South Asian subcontinent of British Asian women was small, these groups were seen as a threat to the British way of life. According to Margaret Thatcher, the British population felt “swamped by people with a different culture.” Cultural difference was now became a code for the undesirability of Black and Asian minority ethnic groups. Asian women marrying men from abroad had to prove that their relationship was contracted for the primary purpose of marriage, implying that these were bogus marriages. There were cases of virginity tests that were conducted on Asian women, and Asian children arriving in Britain underwent x-ray examinations to establish their age. All these measures were instituted in order to prove that the applicants were genuine candidates under the Immigration Rules. Whilst the government has now introduced a points-based system for potential applicants for entry into Britain, the Home Office Website still says that if you are a Commonwealth citizen and one of your grandparents was born in the UK, you can apply to come here to work.⁷ Well, white Canadians or Australians or New Zealanders are much more likely to have grandparents born in the UK than people from Asia or the Caribbean. During present day Britain, immigration from the member states of the European Union has again become a subject of major controversy. In the recent European Parliament election in May 2014, the party that got the highest level of popular vote, the UK Independent party, ran specifically on an anti-immigration and anti-EU platform. This is the first time that a party other than the Labour party and the Conservative party has won the popular vote in a national election since the 1906 general election. It is also the first time since 1910 general election that a party other than Labour or Conservative won the largest number of seats in a national election. The anti-immigrant sentiment was crystallised by Nigel Farage, the leader of the UK Independence Party, when he stated in an LBC radio interview in May 2014 that British people would be wary of Romanian families moving into their street. When pressed about the fact that his own wife was German, he said that people would know the difference between living next door to Romanians and Germans. There is thus a hierarchy in his view between Eastern and Western Europeans.

⁷ See “Ancestry Visa” (6 April 2015), GOV.UK <<https://www.gov.uk/ancestry-visa/overview>> (acc. 20 August 2015).

During the 1990s, the treatment of asylum seekers and refugees was a major cause of political conflict across Europe and it remains one of the most controversial items of the political agenda with increasingly stringent controls on the entry of asylum seekers and refugees. The predicaments of being a refugee or asylum-seeker interrogate the very notion of citizen, nation state and nationality. As Giorgio Agamben notes:

If refugees (whose number has continued to grow in our century, to the point of including a significant part of humanity today) represent such a disquieting element in the order of the modern nation-state, this is above all because by breaking the continuity between man and citizen, *nativity* and *nationality*, they put the originary fiction of modern sovereignty in crisis. Bringing to light the difference between birth and nation, the refugee causes the secret presupposition of the political domain – bare life – to appear for an instant within that domain. In this sense, the refugee is truly “the man of rights,” as Arendt suggests, the first and only real appearance of rights outside the fiction of the citizen that always covers them over. Yet this is precisely what makes the figure of the refugee so hard to define politically.⁸

In other words, “the refugee must be considered for what he [sic] is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation state [...]”⁹

The refugee is partially constituted in and through legal protocols. In contemporary Europe sh/e is the “new dispossessed” as Patricia Tuitt puts it.¹⁰ In many countries of Europe, there are racialised discourses which represent refugees and asylum seekers as ‘bogus’ economic migrants, who are intent on circumventing immigration law. These claims have led to the erosion of rights of refugees and asylum seekers, so that the persecuted in the country of origin face another form of persecution as they reach the place where they seek refuge. Interrogating these legal regimes of power is a critical mode of intervention today.

2. Formations of Citizenship Discourses and Practices

I have argued that there is a close link between immigration and citizenship, both in terms of law and the broader conceptions of citizenship. These concep-

⁸ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford UP, 1998): 77.

⁹ Agamben, *Homo Sacer*, 78.

¹⁰ Patricia Tuitt, *Race, Law, Resistance* (London: The Glass House P, 2004).

tions interconnect diasporic concerns with legal and literary treatment of the subject. How do we think of citizenship in the current context of global mobility? If citizenship is about membership of a political community, what does this membership consist of? Who is included and who is excluded and under what circumstances? Where do the boundaries of citizenship lie? These are some of the questions that animate the following discussion of changing conceptions of citizenship.

As membership of a political community, citizenship involves a relationship between rights, duties, participation and identity. In the classical liberal tradition of modern liberal thought there has been greater emphasis placed on rights and duties and much less on participation and identity. One may identify two distinct models of citizenship. Firstly, there is the model which foregrounds market and state-centred conceptions of citizenship that represent a formal and legally coded status. On the other hand, there is a view of citizenship that focusses upon substantive dimension of participation in civic community. The first conception is primarily about nationality whereas the second notion is much more about active citizenship. Whereas the liberal tradition has focussed on the issue of rights, the conservative tradition has tended to favour responsibilities of citizenship. The republican and communitarian forms of citizenship have given centrality to participation. A key debate in the discourse of citizenship is about the tension between citizenship as the pursuit of equality and the recognition of difference. As is well known, from the beginning the term citizenship involved exclusion. Exclusion could take the form of subordination to non-citizen status as was the fate of slaves, children and women. No account of citizenship can avoid this fact that it was originally constructed on the basis of certain categories of persons. In a way, the history of citizenship has been an ongoing contestation for the removal of inequities and inequalities. Although all citizens are conceptualised as equal before law, there are differences in the life chances of different groups in society.

Famously, T. H. Marshall has distinguished between civil rights, political rights and social rights. He suggests that these rights were achieved over three hundred years with social citizenship emerging with the development of the modern welfare state. The latter was not fully realized until the twentieth century. Importantly, Marshall recognised that equality in law and politics could easily co-exist with social inequality. Social rights took the form of social welfare covering housing, health, education, unemployment benefits and pensions. These together with those of civic and political citizenship served to alleviate the impact of structural inequalities of capitalism. But inequality has not been eradicated due in part to deeper antagonisms between capitalism and the welfare

state. As critics have already argued,¹¹ the welfare state has not only not reduced inequality to the degree Marshall expected but in some ways exacerbated it. It might be argued that social citizenship has to a degree bought off dissent.

Delanty in his book titled *Citizenship in a Global Age* offers a fivefold critique of Marshall's theory which is relevant to contemporary understanding of citizenship. First he points to the contemporary challenge of cultural specificities and rights. Following the work of scholars such as I. M. Young and Isin and Wood,¹² he argues how the politicization of the issues of gender and race, for instance, indicate that policies of universal equality will not be adequate to tackle these inequities and inequalities. Hence, some conception of 'difference' is necessary in the recognition of group rights. That is to say that, we need a different model of rights if we are to take full cognizance of the rise of claims to cultural rights and group rights. Second, there is the challenge of globalization which signals major transformations in economy, culture and society. For instance, the nation state is somewhat eroded by global processes and global social movements have pointed to the limits of modern citizenship. Third, there is the challenge of substantive over formal citizenship. Marshall would appear to underplay the salience of participation as a key element of citizenship. Of course, the rights of citizenship did not come from a benevolent state but emerged as a result of centuries-long struggle and contestation through which various rights were achieved. The point is that citizenship is not merely a question of rights but also involves political identification and commitment to the political community. A fourth element of Delanty's critique is that Marshall did not question the link between nation and state. That is to say that, the state as the provider and guarantor of rights, and the nation as the focus of identity. Today this linkage cannot be taken for granted. In the context of globalisation, the state is no longer entirely in command of all the forces that shape it. This means that there is no perfect equivalence between nationality, as membership of the political community of the state, and citizenship as membership of the political community of civil society. This is clearly evident in the case of immigrants who, as we have seen above, can possess formal citizenship in the sense of nationality and yet be excluded from participation in the society in which they live. Fifth, Marshall, according to Delanty, took for granted the strict separation between

11 Claus Offe, *Contradictions of the Welfare State*, trans. John Keane (Cambridge, Mass.: MIT Press, 1984); Gerard Delanty, *Citizenship in a Global Age: Society, Culture, Politics* (Buckingham: Open UP, 2000); *Classes, Power and Conflict: Classical and Contemporary Debates*, ed. Anthony Giddens, David Held (Los Angeles: U of California P, 1982).

12 Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton UP, 1990); Egin F. Isin, Patricia K. Wood, *Citizenship and Identity* (London: Sage, 1990).

the private and the public realm which has been radically contested especially by feminists. These concerns have introduced critical reappraisal of citizenship.

There have been other pressures on citizenship too. The arrival of neoliberalism, for example, has had a major impact on discourses of citizenship. Neoliberalism has been accompanied by government policies such as decentralisation, deregulation, privatisation, and monetarism. The concept of citizenship in neoliberal discourse replaces the citizen with the consumer. Neoliberalism poses a very serious challenge to the liberal concept of citizenship with the return of citizenship to the market.

Other approaches to citizenship that have a bearing on a reappraisal of citizenship are: communitarian, social democratic and feminist approaches. The broad range of positions that can be termed communitarian locate civil society in community. Instead of a focus on rights and duties, it tends to emphasize participation and identity. It critiques moral individualism in favour of a collectivist conception of citizenship which is however distinct from socialist conceptions because the focus here is culture rather than material conditions. Communitarianism construes self as always culturally specific and as such it may be seen as advocating cultural particularism against liberalism's moral universalism. Self is seen as socially constructed and embedded in cultural context. In this it has a shared vision with multiculturalism. Communitarians accept that different cultural groups might have different conceptions of the common good. While the liberal idea of 'difference' stands for individual freedom, communitarian notion of 'difference' stands for the group's power to limit individual freedom.¹³ Of course, Liberals such as Will Kymlicka believe that liberalism can be reconciled with multiculturalism.¹⁴ There is however a tension between multicultural and communitarian versions of citizenship. The concept of community in communitarian discourse is not an open one. In other words, minoritized and incoming groups must adapt to the dominant cultural community in order to participate in its political community. This is an assimilationist view of society. The communitarian perspectives, especially in their conservative forms tends to stress family, religion, tradition, and what in general might be called a culture of consensus. Those social divisions in society which signal conflict, as for instance gender divisions, do not receive significant attention. It is likely to ignore social struggles, in particular in the private domain. Feminist theories of citizenship on the other hand are characterized as paying greater attention to the relationship

13 Zygmunt Bauman, *Postmodern Ethics* (Cambridge, MA: Basil Blackwell 1993).

14 Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford UP, 1989).

between citizenship and democracy. They reconceptualising identity and participation in a way that challenges the private and public divide.

But before considering feminist perspectives on citizenship, I wish to briefly comment upon *radical theories of citizenship and democracy* because these are intimately connected to feminist theories.

The various stances on radical democracy can be seen as carrying out advocacy of democratic citizenship whereby citizenship is re-politicized by democracy. There was a revival of civil society around the emergence of new social movements during the 1970s and 1980s which served to concretise democratic citizenship. These developments, which foreground radical democracy of participatory citizenship, could be seen to be somewhat different from civic republicanism. Here, for instance, the primary goal is the transformation of the relationship between state and society by initiating social change through transforming politics. It is significant that the new social movements made democracy central to their political project and thereby made an impact on citizenship. The rise of the new social movements from the late 1960s broke from the older movements in that they sought to bring politics out of the state into society. Their extra-parliamentary nature and ability to mobilize large segments of population is especially significant. The idea of civil society was recovered as these movements valorised the political within the social. In central and Eastern Europe, for instance, the idea of civil society was an important part of the democratic struggle that sought to address the democratic potential of the social and thereby made possible a new kind of politics beyond the state. One important dimension to this which has been the subject of considerable discussion is the question of collective identity. The politics of radical democracy was based on the formation of collective identity around a common goal and brought a more meaningful dimension to citizenship.

3. Feminist Citizenship

Feminist approaches to citizenship challenge the private-public dichotomy that is typical of liberalism. Feminist approaches interrogate the assumption that there is only one public, arguing that civic republican theories of citizenship from the point of view of women and other disadvantaged groups have not made a major advance over liberal theories. Feminist theories foreground the politicization of the private as well as a pluralist view of the public domain. The point of departure for feminist theories of citizenship thus differs from conventional liberal and communitarian approaches.

The universality of liberal conceptions of equality together with the communitarian notion of a unitary ideal of community have been contested by feminists. Neither rights nor participation offer adequate models when issues of patriarchy are concerned. As we have seen, communitarians seek to accommodate cultural difference from the vantage point of the dominant group. Although it speaks of culture, communitarianism does not in general begin from multiculturalism but from a dominant group which must accommodate cultural diversity. These perspectives privilege the dominant group whose values become universalised and hegemonised and as a result may serve to exclude women and other marginalised groups. Rather, group difference is a starting point for feminism and thus there can be no unitary community but a plurality of cultural forms. Liberal and communitarian as much as civic republican theories assume that citizenship is the expression of already autonomous citizens. These autonomous subjects are construed as working within a homogeneous society which is patently not the case, as no society is homogeneous. And subjects are produced in and through discourse. Feminist theories of citizenship build upon notions of radical democratic citizenship. For theorists such as Iris Marion Young, the homogenous ideal of universality must be rejected for a more differentiated notion of rights. Similarly, Ruth Lister argues for what she calls ‘a differentiated universalism.’¹⁵ She argues for interconnecting politics of solidarity with a politics of difference. The political subject is theorised as made up of multiple, fluid identities that emerge out of the multiple differentiations of groups across axis such as gender, race and class. Feminist conceptions of identity also differ from communitarian theories in that they do not see identity as fixed, whether referencing the private domain or a public notion of the common good. Here, identity is theorised as contested and always open to definition.

Theorists of citizenship also speak of *Cosmopolitan Citizenship*. Overall, as we have seen, the debate on citizenship has been dominated by two quite opposed positions – one predominantly liberal and the second largely communitarian. These have been challenged by radical democracy, feminist theory and those working on multicultural/anti-racist themes. In contrast to the approaches that use the nation state as the territorial reference point cosmopolitan citizenship goes beyond the nation state. These developments are closely connected with processes of globalisation. We cannot however jettison attention to the nation state, since citizenship invested in the state still governs many rights including the right to settle in a country. Migrants, refugees and asylum seekers, for instance, know what it means not to have rights of a citizen when residing in a na-

15 Ruth Lister, *Citizenship: Feminist Perspectives* (New York: NYU P, 1998).

tion state. However the concept of the cosmopolitan citizenship that does not dispense with the nation state requires serious consideration. The European Union is a good example of a concrete kind of cosmopolitan public sphere. Although we know that European Union can serve as Fortress Europe, it can also provide opportunities for solidarity across European countries in favour of work against racism, sexism, homophobia, disability and so on. Cosmopolitan citizenship must however be linked with community, although we must bear in mind that concept of community is sometimes hijacked by nationalist discourses. Cosmopolitan citizenship needs to develop a notion of citizenship which feminists have prioritised: that is, community is never homogeneous and the power dynamics between different social groups within a community must be taken on board.

4. Citizenship and Multiculture

As we noted earlier, the main axis of citizenship defining the boundaries of inclusion versus exclusion have historically been based on intersecting social divisions such as class gender, race, ethnicity, sexuality and disability. The history of citizenship during the past two centuries can be viewed as an ongoing struggle on the part of the disenfranchised, the marginalised and the dependent to be included in the ranks of the “citizen.” Although there have been significant achievements, in some ways these struggles continue today. For example, women did not gain the vote in Switzerland until 1990. While millions of people are on the move globally, questions of citizenship become increasingly complex and questions of cultural diversity assume growing importance. Although multiculturalism has been under attack in more than one country in Europe, it is important to note that as Kivisto and Faist point out,¹⁶ multiculturalism has been a response to the demands on the part of marginalised groups for collective rather than individualistic solution to exclusion, inequality and recognition. There are many reasons for these attacks on multiculturalism, especially in Britain. These include the changed political climate following 9/11 in 2001; the racialised riots in Northern English cities during 2001; 7/7 bombings in London in 2005; the unleashing of Islamophobia since the Satanic Verses Affair of the 1980s; the Denmark Cartoons affair of 2007 and currently, the War on Terror; the global political and economic crisis; and the crisis in Iraq and Afghanistan. All this has made

¹⁶ Peter Kivisto, Thomas Faist, *Citizenship: Discourse, Theory and Transnational Prospects* (Malden, MA: Wiley-Blackwell, 2007).

anti-immigrant politics mainstream from France to Germany, from Holland to Austria, from Sweden to Switzerland. These attacks on multiculturalism have come from both the right and the left of the political spectrum.¹⁷

The arguments of those opposed to multiculturalism may be grouped in three broad categories:

1. First argument is that multiculturalism is divisive and as such threatens national unity. But this argument assumes that there is at base a homogeneous mono-cultural society when in fact all societies are heterogeneous marked by social differentiations of region, language, class, gender, ethnicity, sexuality, and so on. These differentiations make for complex cultural variations within a social formation. Britain, for instance, is not multicultural simply because of the presence of minority ethnic groups but because it is composed of four national cultures, many regional cultures over and above different class cultures and so on. I would argue that national unity is brought about by a commitment to equality, justice and 'difference' in an atmosphere of mutuality rather than to a notion of mono-culture. In some cases discourses of national unity may lead to negative nationalisms, although, of course, some form of national unity is a desirable thing, and different social groups in Britain share enough in common to regard themselves as British albeit sometimes in ways that mobilise a hyphenated identity such as British Asian. In the context of current Islamophobia, it is sometimes assumed that Muslims do not identify with the British national identity, but evidence suggests that this is not the case and a majority of Muslims do indeed regard themselves as British. And, even the minority who do not consider themselves as British, do fully participate in the socio-economic and political life as British citizens. These national identities may co-exist with transnational identities but they have palpable resonance in the national culture.

2. A second argument put forward by the opponents of multiculturalisms is that multiculturalism serves to 'ghettoise' marginalised groups rather than assisting them to enter the mainstream. There are, however, many reasons for the concentration of groups and they are not always negative. People may decide to live where they may share a culture or lifestyle or ethnicity with the residents. On the whole, among majority ethnic groups, middle class and upper class residents live in different areas from working class residents. But that process is rarely described as 'ghettoisation.' Minority ethnic groups may be concentrated in a given area not simply because of cultural reasons but also due to socio-economic ones. These groups are likely to be disadvantaged and as such they may congregate in low income areas on the basis that they cannot afford to live in more prosperous

17 Ali Rattansi, *Multiculturalism: A Very Short Introduction* (Oxford: Oxford UP, 2011).

areas. So, it would seem that cultural proclivity may not be the only reason for 'ghettoisation' but socio-economic conditions and discrimination might equally be responsible. In order to assist these groups to enter the mainstream, it is the structures of inequality and discrimination that need to be dismantled, not multiculturalism.

3. Thirdly, there are criticisms of multiculturalism from the left of the political spectrum. One such criticism has been that cultural diversity may undermine progressive alliances. However this is to assume that cultural diversity invariably leads to cultural division. I would suggest that it is the social hierarchies and power differences that create cultural divisions rather than multiculturalism. It is also argued on the left that politics of recognition may mean that the politics of redistribution are ignored. This would seem to be a weak argument because multiculturalism itself cannot be held responsible for lack of attention to socio-economic inequality. Indeed, ethnic minorities tend to be one of the most disadvantaged groups in society and large sections of these are at the bottom of the scale. They need politics of redistribution as much if not more than the majority group. One of the arguments on the political left in Britain during the 1980s used to be, and I was a proponent of this position, that the discourses of multiculturalism overemphasized cultural diversity and did not pay enough attention to structural questions of class and racism. This was a valid criticism, and people spoke of antiracism as a more appropriate means of tackling inequality as opposed to multiculturalism. Hence multiculturalism and antiracism became oppositional perspectives when in fact they were complementary. The two need to be joined together with equal attention to issues of culture and structural inequality.

It is important to emphasise that multicultural citizenship is not defined only in relation to the state, crucial though this is, but also in relation to civil society. What is needed is a multicultural citizenship which is undergirded by a commitment to equality and democratic citizenship. According to Charles Taylor, equality may refer to equal as in 'equal dignity' and equal as in 'equal respect.' The former appeals to people's common humanity and applies to all members in a uniform way. The latter, that is equal respect, refers to an understanding that difference is also important. As Tariq Modood notes,

There is, then, deep resonance between citizenship and multicultural recognition. Not only do both presuppose complementary notions of unity and plurality, and of equality and difference, but the idea of respect for the group self-identities that citizens value is central to citizenship.¹⁸

18 Tariq Modood, *Still Not Easy Being British: Struggles for a Multicultural Citizenship* (London: Trentham Books, 2010): 108.

Some theorists such as Engin Isin have used the term diasporan citizenship instead of multicultural citizenship. This is attractive to me as I have invested considerably in developing a diasporic framework for social analysis. However, I suppose, if we are to retain the term multiculturalism, partly because it is not just an analytical term but also part of the popular discourse, I am in favour of a critical multiculturalism or critical interculturalism and a citizenship that takes on board racism, cultural pluralism, class, race, ethnicity, gender, homophobia, and disability altogether. Feminists have over the last two decades spoken of intersectionality to focus upon the interrelationship between these different axes of differentiation. I am in agreement with Nira Yuval-Davis that citizenship must be understood in terms of its articulation with different axis of intersectionality.¹⁹

In debates about multicultural citizenship, there are those who assume that multiculturalism is in conflict with gender equality. Here a picture of stereotypic patriarchal treatment of girls and women in minority communities is invoked as a way of discrediting multiculturalism. For instance, the question of arranged marriages is often raised when in fact the problem is not with arranged but forced marriages. I am against forced marriages as are many other members of Asian communities. But great many arranged marriages are not forced marriages. It is ironic that patriarchal practices amongst minority cultural groups are castigated when there are many patriarchal inequalities such as unequal pay for women compared with men which are still prevalent in many western societies. Feminists have long argued against this binary between supposed progressive West and traditional non-West. Many opinion makers who claim to stand up for minority women in these debates are hardly feminists themselves. This is not to suggest that patriarchal practices should not be criticized. Far from it. But this must happen against all patriarchal practices. And they must take the broader context of global power inequalities into account. Questions of cultural difference need to be contextualised against the backdrop of cultural hierarchies that mark the lives of different groups of women. I would use a feminist yardstick to address difficult questions of cultural difference,²⁰ but it must be a feminism that is simultaneously anti-imperialist and one that is alive to the unequal power relations between different parts of the globe.

Unfortunately, these days discourses about cultural difference tend to prioritise assimilation. This is a reversal of the gains previously made through political

¹⁹ Nira Yuval-Davis, *The Politics of Belonging: Intersectional Contestations* (London: Sage, 2011).

²⁰ Anne Phillips, *Gender and Culture* (Cambridge: Polity P, 2010).

activism and campaigns. For instance, as long ago as 1966, the then Home Secretary of Britain argued against the notion of assimilation and in favour of integration. He said that integration should be viewed not “as a flattening process of assimilation but as equal opportunity accompanied by cultural diversity, in an atmosphere of mutual trust”. But today when politicians use the term integration, they mean assimilation. Integration is designed to incorporate incoming groups into the economy, society and political life. But a discourse of integration as a mask for assimilation seeks to flatten cultural difference. The right to cultural difference has become a critical arena of contestation today.

This reappraisal of different conceptions of citizenship can be seen to foreground themes that are simultaneously relevant to diaspora studies, literary studies and law. Finally, a brief comment now on the way in which law diaspora and literary studies may be interconnected through the concept of governance and governmentality.

To think of law in the broader sense foregrounds Michel Foucault’s concept of law as governance and governmentality.²¹ It is linked with his notion of disciplinary power with its focus on techniques of surveillance, and displacing bodies. This concept is intertwined with his view of power as both coercive and productive. Although Foucault may be seen to counter-pose law to regulation, Hunt and Wickham argue that discipline and law supplement each other and form distinctive and pervasive forms of regulation at the very heart of modern government.²² Law, they suggest is never unitary – rather it is a complex of practices, discourses and institutions. The prison, for instance may be constructed within a juridical frame work but it operates with disciplinary techniques. In diaspora studies, both law as juridical framework as well as in terms of disciplinary discourses, practices and institutions are important. Diasporic literary study provides a window upon these working- out of processes. Diaspora stories are the ground on which realities of encounters with law and disciplinary power are played out. Citizenship law, immigration law and statutes of international governance are all relevant to the life chances of migrants. There is thus a clear link between diaspora literary studies and law.

If legal discourses are a dynamic product of the articulation of complex social, historical and personal forces embedded within rationalities and technologies of power, then questions of identity and difference have a critical bearing

²¹ *Re-Reading Foucault: On Law, Power and Rights*, ed. Ben Golder (New York: Routledge, 2013).

²² Alan Hunt, Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto P, 1994).

on legal narratives. How are those who have committed an offense constructed or represented in terms of their identities? How is identity to be theorised? There is an on-going debate about these concerns. Stuart Hall has deployed both Derridean deconstruction, utilising the concept of *différance* and Judith Butler's use of psychoanalysis to think through questions of identity.²³ I believe these insights are incisive and bring together both diaspora, literary legal studies. In conclusion, I believe that the feminist concept of intersectionality is crucial to all three areas. In essence, intersectionality is about the ways in which different axis of differentiation – gender, class, ethnicity, sexuality, disability and so on – intersect and articulate on multiple and simultaneous levels in the emergence of context specific modalities of exclusion, inequality and subject formation.

23 Stuart Hall, Paul du Gay, *Questions of Cultural Identity* (London: Sage, 1996).

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Queer Diasporas? Literary Diaspora Studies and the Law

This essay aims to examine encounters between the discourses of law, queerness and diaspora through reference to literary representation in three novels: Hanif Kureishi's *Buddha of Suburbia* (1990), Shyam Selvadurai's *Funny Boy* (1994), and Lloyd Jones's *Hand Me Down World* (2010). The purpose of bringing the interdisciplinary movement of law and literature into dialogue with the field of diaspora in its critical alignment with gay studies is to identify the part the law plays in fictional representations of the alternative structures of experience that queerness and diaspora point to. These can be traced to movements of scattering and fracturing and a positioning between various binaries such as nation and diaspora, heterosexuality and homosexuality, original and copy. The social and national exclusions due to the geographical movement and migration that identify diaspora, and the sexual difference and non-heteronormativity that define queerness, can be summarized as a shared sense of being 'unhomed.'

Queer theory and diaspora studies are able to be conjoined through the theorization of a 'queer diaspora,'¹ seen as functioning under the terms of contemporary globalization, transnationalism and other kinds of geographical mobility that involve "unwriting the nation."² Such a link can be made because, as Cindy Patton says, "queer theories offer new ways of imagining novel relations among space, nation and politics" and gay civil rights discourses have activated such relations through developing a globalized queer politics.³ The mobile cultures of diaspora offer similar re-imaginings of and alternatives to the category of the nation. Significantly theorisations of diaspora are continually brought into dialogue with those of queerness, most notably around questioning and revising concepts of home, whether these be domestic or the national spaces of the

1 See Meg Wesling, "Why Queer Diaspora?," *Feminist Review* 90 (2008): 30–45; Cindy Patton, Benigno Sanchez-Eppler, ed., *Queer Diasporas* (Durham, London: Duke UP, 2000); Arnoldo Cruz-Malave, Martin F. Manalansam IV, ed., *Queer Globalizations: citizenship and the afterlife of colonialism* (New York, London: New York UP, 2002).

2 Rosemary Marangoly George, *The Politics of Home: Postcolonial relocations and twentieth century fiction* [1996] (Cambridge: Cambridge UP, 1992): 83.

3 Cindy Patton, "Stealth Bombers of Desire: the globalization of alterity in emerging democracies," in *Queer Globalizations: Citizenship and the Afterlife of Colonialism*, ed. Arnoldo Cruz-Malave, Martin F. Manalansam IV (New York, London: New York UP, 2002): 195–218, 198.

homeland.⁴ Andreas Huyssen's comment that today's "hyphenated and migratory cultures develop different structure of experience which may make the traditional understanding of diaspora as linked to roots, soil and kinship indeed highly questionable,"⁵ can be paralleled to the way that queer communities, driven by their alternative experiences of sexual difference, contest notions of purity and authenticity as linked to the heterosexual norm within the nation state. Gayatri Gopinath develops these parallels into a framework to argue that the sites of the national and the diasporic are "interdependent and mutually constitutive," and that their essentialised identity concepts of originality and authenticity based on a privileging of heterosexuality and the nation state can be contested from a "'queer diasporic' positionality."⁶ Both categories highlight alternative constructions of kinship, community and society, are sensitive to issues of exclusion and assimilation, and in a global era move between transnational and translocal filiations as well as between local and community ones.

The parallels between queer and diasporic discourses in being eccentric to normative structures and models of social and national autonomy extend to their often tenuous relationship to the law in its normative function. Subjects who fall into these categories may undertake transgressive acts of doubtful legality that require some legal adjudication over and validation of their legitimacy; that is, they question, transgress or reassert legal boundaries through various enactments and infringements. In novels and other non-fictional and literary genres, representations of the law and legal practices that refer to the interdisciplinary relationship between literature and law can be read in relation to the parallels between queerness and diaspora. Legal discourses, practices and terminology, that is, mark the tensions between the alienated and outsider position of diaspora/gay subjects and their shifting allegiances to family, community, social

4 See for example, Anne-Marie Fortier's link between queer migrations and Avtar Brah's concept of "homing desires" (*Cartographies of Diaspora: Contesting Identities* [London: Routledge, 1996]: 180) in "Making Home: Queer Migrations and Notions of Attachment," in *Uprootings/re-groundings: Question of Home and Migration*, ed. Sara Ahmed (Oxford: Berg, 2003): 115–124, 115.

5 Andreas Huyssen, "Diaspora and Nation; Migration into Other Pasts," *New German Critique* 88 (2003): 147–64, 151; qtd. in Fatima El-Tayeb, *European Others: Queering Ethnicity in Post-national Europe* (Minneapolis: U of Minnesota P, 2011): 52–53; El-Tayeb critiques conventional models of diaspora which posit the homeland as a geographical entity and nostalgia for return as key to the diaspora experience, by contrast to models which see host societies as sites for the making and enactment of citizenship. See also Francois Kral, *Critical Identities in Contemporary Anglophone Diasporic Literature* (London: Palgrave, 2009): 12–14.

6 Gayatri Gopinath, "Local Sites/Global Contexts: The transnational trajectories of Deepa Mehta's *Fire*," in *Queer Globalizations*, 149–161, 150.

milieu to which they can claim to belong. Both groups are subject to discrimination from mainstream positions of ethnicity, gender, and nationality; and both are also conscious of their potentially transgressive nature, because of the confusion over rights of belonging, and the need for legitimation of their position.

The readings that follow focus on narrative constructions of personal identifications with and/or political imaginings of diasporic queerness: those which lead to transgression and exposure of the flaws in normative family and sexual constructions (Hanif Kureishi's *The Buddha of Suburbia*), or which accompany the crisis of belonging caused by the breakdown of law and order in parallel with the individual discovery of homosexuality (Shyam Selvadurai's *Funny Boy*), or which provide a metaphorical dimension to such frameworks by way of approaching the borderline state of the illegitimate, stateless refugee (Lloyd Jones's *Hand Me Down World*).

The queer diaspora model which challenges essentialist non-historical constructions of national belonging through foregrounding a diaspora positionality (or state of being) alongside sexual ambiguity, and which explores tensions and complexities arising from being eccentric to norms of home and belonging, is illustrated and contested in Hanif Kureishi's self-reflexive, satirical novel, *The Buddha of Suburbia*. Heterosexual relationships and marriages are seen to be at odds or in collapse, offering elliptical images of family life and the life of the nation because the novel examines them from the perspectives of marginal gender and ethnic positions, albeit ones that are rooted in the domain of popular culture. The ethnically hybrid and bisexual protagonist, Karim, born of a British mother and Indian father, provides the dominant point of view by which Kureishi satirizes British society of the 1980s. Karim's sexual experimentation through a brief liaison with Charlie, the son of his father's mistress, Eva, and the 'queering' of his family life through the breakup of his parents, is explored further through the sub-plot concerning an arranged marriage between Karim's cousin Jamila and a newly arrived migrant, Changez, a Muslim friend of her father. The fraught relationship between Jamila and Changez evolves into an alternative family group that eventually offers Karim a form of 'belonging.'

Karim's social and ethnic repositioning in the more challenging metropolitan milieu takes the form of a mini-migration from the suburb of Bromley where he was brought up, to London's West Kensington. His newly cosmopolitan life style is overshadowed by the loss of his family, which disintegrates at the same time as his father abandons his mother and moves in to live with Eva. Karim has to come to terms with displacement and uprooting caused by his parents' failed marriage as well as by his decision to pursue an increasingly mobile life which in the course of the novel takes him from London to New York and back again. The reversals and contradictions of Karim's position in living outside

or at odds with his family and temporarily as a transnational subject, extend to his Oriental heritage when, as a fledgling actor, he has to play the part of Mowgli in a stage adaptation of Rudyard Kipling's *The Jungle Book*. The role introduces him to his Indian ethnic and cultural filiations although he has never visited his ancestral 'homeland'; that it has no meaning for him other than through his father's posturing as a font of Oriental wisdom (as the novel's title "the Buddha of Suburbia" confirms) to middle-class, left-wing couples, once more reinforces the skewed identity referencing that takes place for the second generation diaspora subject.

Through Karim and his sometime lover, Jamila (as the daughter of his father's closest friend she is seen as his cousin), Kureishi challenges the bourgeois values, religious nationalism and sexualized discourses that are reproduced in the Asian diaspora as hegemonic structures of belonging. The 'queer' alternative family is effected through Jamila's opting for a same sex relationship after bearing a child (to someone who is not her husband) and, more improbably, Changez' unconditional and unconsummated love for her despite this rejection of his affections and his potential to father a child. Described as a "disabled immigrant"⁷ because he is handicapped in one arm, and caricatured as an ineffectual husband and son-in-law, Changez adjusts to this sexual dismissal and Jamila's overturning of the patriarchal hierarchy. The novel's contesting of the values of purity and authentic origins inherent in the value system of arranged marriages is reinforced by the communal living arrangements with his wife and new partner as he moves in to support Jamila's alternative lifestyle by taking up the role of child carer. It ends on a positive note with the reassurance of a new norm of stability. For Karim these transformations are acceptable, if not welcome, because, paradoxically, it is only with Jamila and Changez that he can feel "part of a family."⁸

Kureishi's queer diaspora constructs a divergent social practice and foregrounds tensions between the traditional customs of South Asian society in particular the practice of arranged marriages and second generation British-Asian diasporans' rejection of them. It reconfigures the stigmatised patriarchal values of Indian society with the experimental sexuality of the protagonist's own generation in its radical answer to Karim's need to come to terms with his "homing instinct."⁹ Although his own search remains outside the boundaries of the novel and his sense of loss and nostalgia involves ambivalence about his current state

⁷ Hanif Kureishi, *The Buddha of Suburbia* (London: Faber and Faber, 1990): 222.

⁸ Kureishi, *Buddha of Suburbia*, 214.

⁹ See Avtar Brah, *Cartographies of Diaspora: Contesting Identities* (London, New York: Routledge, 1996): 180, 193.

of unbelonging, the new family structure representing a reinventing of home, is a provisional solution. More generally the novel is indicative of the era of Thatcher's Britain when the second generation of British Asian migrants was finding a voice to deal with racial discrimination and was gaining cultural ascendancy. Sexual fluidity is one aspect of this mobility while the incompleteness and pluralism of cosmopolitan identity maps onto the diasporic experience of living between cultures: namely that identities, because innately displaced and multiple, can be made and remade while living diasporically, the experiences of which, as Stuart Hall says, are neither essential nor pure, but heterogeneous and diverse.¹⁰ Kureishi's acceptance of difference lies in acknowledging the transformative nature of diasporic identities in terms of gender, ethnicity and culture, and this is extended to disability as Karim looks upon the unfortunate Changez with affection and endorses him in his new role at the end.

Syam Selvadurai's *Funny Boy* (1994) and Lloyd Jones's *Hand Me Down World* (2010) are novels in which representations of exile, migration or living in diaspora raise issues of gender and sexuality, civil rights and citizenship that can be read from a legal perspective: that is, the law counterpoints the activities of sexuality and diaspora and provides a determining context for them. As narratives of exile and migration their 'queer diasporas' bypass the conventional diasporic model based on the pull of return to the homeland and they challenge the constructions of belonging that are associated with the standard model of citizenship. As with *The Buddha of Suburbia*, the compulsions that mobilize their protagonists into exile and unhomeliness lead to a queered sense of home and belonging; this involves implicit critique of assumptions about genealogies of origins and original purity, the destabilising of notions of authentic place, and the introduction of affiliative ties and new or alternative constructions of national belonging.

The texts can be paired in that they both concern expulsion from an ordinary point of belonging: *Funny Boy*, a novel about the protagonist's dawning awareness of his homosexuality, pivots on his "traumatic displacement from the lost heterosexual 'origin'," which is metaphorically a queer migration.¹¹ In *Hand Me Down World* the heroine abandons her home to search for her child,

¹⁰ Stuart Hall, "Negotiating Caribbean Identities," in *New Caribbean Thought: A Reader*, ed. Brian Meeks, Folke Lindahl (Kingston: U of the West Indies P, 2001): 24–39, 27. Daniela Carpi, "Focus: Identity," *Polemos: Journal of Law, Literature and Culture* 6.2 (2012): 145–48, 145.

¹¹ See David Eng, "Out Here and Over There: Queerness and Diaspora in Asian American Studies," *Social Text* 15.3–4 (1997): 31–52, 32.

‘queering’ the heterosexual norm by alienation, loss and illegitimacy: that is, she exists symbolically outside the boundaries of nation, home and family in ways similar to non-heteronormative sexuality where such positioning is often criminalized because seen as deviant.¹² in the novel this is literally realized, for she is imprisoned on allegations of murder. Together they raise questions about the efficacy of the law, when it is suspended in the state of emergency as in *Funny Boy*, and when it demonstrates a lack of understanding of cases of illegal immigration, domestic drama and personal abuse as in *Hand Me Down World*.

In the six interlinked episodes of *Funny Boy* by Shyam Selvadurai, the protagonist, Arjoe’s emerging sense of his homosexuality and potential displacement from the nuclear family is paralleled in the breakdown of national order following the Tamil-Sinhalese riots in the early 1980s, and in the novel the burning of the family home, expulsion from Colombo, and the family’s migration to Canada in 1983. Naturalized models of family, kinship and nation come under question; for the novel unravels local, essentialised discourses on gender to expose their dependence on certain exclusions and marginalizations; the foregrounding of the violence, sabotage and atrocity occurring in the Tamil-Sinhalese struggle for political power suggests that nationality is non-filiative.

In contextualising this personal crisis as a parallel narrative to the political drama of civil war – the collapse of the law, and struggle for complete nationhood – Selvadurai rewrites the narratives of exile and ‘coming out’ which are usually associated with Anglo-American writers like Alan Hollingshurst and Edmund White, as Gayatri Gopinath shows in her reading of this novel.¹³ The bildungsroman-type narrative develops through convergences between Arjun’s discovery of his own psycho-sexual nature and the growing racial and religious tensions between Sinhalese and Tamil in Chapter Five, “The Best School of All.” The rigid colonial ideologies and punitive practices of the teachers at The Queen Victoria Academy coexist with the anarchic but equally brutal behaviour of the boys. Racial standoffs and ethnic clashes between teachers as well as between boys and teachers and between different factions of boys, allow other forms of difference to carry on below the surface. To the innocent Arjun, the exclusions of gender epitomised by homosexual acts are little different from other racial and ethnic exclusions and forms of marginalization apparent in the simmering feuds within the school. The beginnings of his self-discovery – of his emotional core, sexuality, and voice – take the form of a violent outburst after

12 Gayatri Gopinath, “Nostalgia, Desire, Diaspora: South Asian Sexualities in Motion,” *Uprootings/Regroundings: Question of Home and Migration*, ed. Sara Ahmed (Oxford: Berg, 2003): 137 – 154, 138.

13 Gopinath, “Nostalgia, Desire, Diaspora: South Asian Sexualities in Motion,” 137, 142 – 146.

he is caned for being unable to recite by heart the lines of Henry Newbold's poems "The Best School of All" and "Vitae Lampada." He rips the poems into pieces yelling, "I don't care... I hate them. I hate them."¹⁴ His rebellion against his colonial education continues when he mangles the poems at a recital at the school prize-giving, "reducing them to disjointed nonsense" (*FB*, 281), so betraying his school's and his parents' principles and values.

In the scenes of homosexual awakening which follow, Arjoe's confused emotions alternate between horror at being physically invaded, and a growing love for his more sexually experienced school-friend, Soyza. A legal discourse from this point synthesises the different strands of personal and political change: Arjoe's subsequent self-recrimination at breaking the moral code and betraying his family's values – "I had committed a terrible crime against them, against the trust and love they had given me [...]. I wanted to cry out what I had done, beg to be absolved of my crime" (*FB*, 262) – is paralleled to the worsening political crisis in Sri Lanka, as a curfew and ongoing atrocities and acts of criminality become commonplace. Divisions widen as the police and army collude with the destruction they witness and "just stood by, watching and some of them even cheered the mobs and joined in the looting and burning" of Tamil shops (*FB*, 291). Arjun's guilt and fear of domestic disintegration are correlated to the destruction of values of citizenship and social ties at the macro level: "I was no longer a part of my family in the same way. I now inhabited a world in which they did not understand and into which they could not follow me" (*FB*, 285). His distress at his departure from a heterosexual norm becomes metonymic of the national crisis that culminates in the family's exile to Canada.

In the final chapter, "Riot Journal: An Epilogue," multiple discourses, gendered, familial and national – overlap and converge in a new discourse of diaspora that foregrounds unbelonging and alienation: his father's realisation – "it is very clear we no longer belong in this country" – is echoed in Arjoe's diary entry: "I long to be out of this country: I don't feel at home in Sri Lanka any longer, will never feel safe again" (*FB*, 304). The process of becoming 'other' to himself, sexually as well as ethnically, in comprehending marginalization and difference, makes Arjoe acutely alive to the new dangers surrounding them: "every sound makes me realize how frighteningly different this day has been so far" (*FB*, 287). In a parallel scene to his earlier rebellion of ripping up the colonial poems, this recognition of losing the family home forces his own voice to emerge.

14 Shyam Selvadurai, *Funny Boy* (Harmondsworth: Penguin, 1994): 238. Further references in the text, abbreviated as "*FB*".

[H]ot angry tears began to well up in me as I saw this final violation. Then, for the first time, I began to cry for our house. I sat on the veranda steps and wept for the loss of my home, for the loss of everything that I held to be precious. I tried to muffle the sound of my weeping, but my voice cried out loudly as if it were the only weapon I had against those who had destroyed my life. (*FB*, 311)

The protagonist's complexly-gendered sexual identity remains uncertain by the end of the book as he realises that his life has been destroyed as much by large, impersonal forces as by his own psycho-sexuality. Likewise his parents, whose social rank, ethnic belonging and belief system are destabilized in the crisis, as their stake in the nation is threatened, decide to emigrate. The new space of Canada is gestured to in the ending as a point of arrival that opens up a world of difference rather than of habitation: of belonging among strangers, denunciation of the ethnic, religious absolutism of the Civil War, greater toleration of ethnic and sexual difference than in Sri Lanka. Arjoe's final glimpse of the charred ruins of the family house anticipates a type of boundary crossing, as a form of change rather than the legal transgression into the exile of the refugee heroine of *Hand Me Down World*. This displacement in diaspora foregrounds in Selvadurai's narratives, a heightened awareness of the processes of memory, imagination and identity formation, often occluded in national narratives, in his bringing back and coming to terms with the violent past.¹⁵

Both *Funny Boy* and *Hand Me Down World* focus on the violent moment of expulsion, demarcated as equivalent to an irrecoverable break with the past. This conforms to a model of diaspora theorized as a thetic break (in Kristevan terms), a moment of permanent rupture from the homeland which creates "a trauma based on an absence,"¹⁶ and it contrasts to the model of transnational mobility in *The Buddha of Suburbia* and novels about transmigration (such as Kamila Shamsie's *Kartography*), which feature second generation diaspora subjects who can "span and transgress borders and specific localities with new means of transportation and communication" and reinvent themselves in diaspora.¹⁷ Whereas in *Funny Boy*, psychic shock and traumatic dispossession leading to exile are catalysed by Sri Lankan social upheaval prior to the Civil War, in *Hand Me Down World* exile is due to private and domestic causes, and

¹⁵ El-Tayeb, *European Others*, 77.

¹⁶ Vijay Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (London, New York: Routledge, 2007): 16.

¹⁷ Martin F. Manalansan IV, "Diasporic Deviants/Divas: How Filipino Gay Transmigrants 'Play with the World'," in *Queer Diasporas*, ed. Cindy Patton, Benigno Sanchez-Eppler (Durham, London: Duke UP, 2000); 183–203, 184.

is triggered by the abduction of the protagonist's child. Her search for her son begins in the illegal journey across the Mediterranean from Tunisia on a refugee boat to Sicily where she swims to shore, experiencing this as a rebirth: "I was not the same person who boarded the board with its human cargo. When I crawled ashore I had shed that skin, I had changed in all sorts of ways."¹⁸ Despite the hint of transformation, this comment presages the shock of exile with its material and psychic losses, its "loss of the sense of self and of history,"¹⁹ and the problem of reconstructing a new cultural identity. It also recalls Kristeva's concept of the rootless foreigner's state of abjection due to such radical fragmentation.²⁰

Jones's novel can be interpreted through the dual optic of a queer diaspora and a legal study, as a fictional representation of legal processes. The dispossession and homelessness of the protagonist, whose name is eventually given as Ines, due to the illegal abduction of her child by adoptive parents, fits the model of queerness labelled by David Eng as "queer kinship," that is, the realignment of family relations through adoption. In Jones's novel, however, the new alignment of parents and 'adopted' child is undermined by the actions of Ines as the bereft biological mother.²¹ Her physical dislocation as an illegitimate, wandering refugee provides a metaphorical framework of legal transgression due to the 'queering' of personal and social norms. In this story of covert oppression and exploitation, the theft of Ines's child catalyses her actions of dubious legality that are eventually subjected to legal processes and judgments. At the same time it offers a reassessment of the meaning of home as the deception over surrogacy and adoption suggests that the domestic ideal of home as represented by the nuclear family unit, here represented by the wealthy couple who steal her child, is available only for the privileged elite.²² For Ines the structures of home and belonging are undermined after she is unknowingly utilised as an

18 Lloyd Jones, *Hand Me Down World* (London: John Murray, 2011): 193. Further references in the text, abbreviated as "DW".

19 Delys Bird, "The 'Settling' of English," *The Oxford History of Australia*, ed. Bruce Bennett, Jennifer Strauss (Melbourne: Oxford UP, 1998): 21–43, 21.

20 Julia Kristeva, *Strangers to Ourselves* (New York: Colombia UP, 1991): 2 (translation by Leon Roudiez of *Étrangers à nous-mêmes* [Paris: Fayard, 1988]); Anna Smith, *Julia Kristeva: Readings of Exile and Estrangement* (London: MacMillan, 1996): 22. I am indebted to Anna Smith for reading and commenting on a draft of this article.

21 David Eng, "Transnational Adoption and Queer Diasporas," in *The Routledge Queer Studies Reader*, ed. Donald E. Hall, Annamarie Jagose, Andrea Bebell, Susan Potter (London, New York: Routledge, 2013): 301–323, 310.

22 Lucinda Newns, "Homelessness and the Refugee: De-valORIZING displacement in Abdulrazak Gurnah's *By the Sea*," *Journal of Postcolonial Writing* 51.5 (October 2015): 506–518, 506–07.

incubator for a childless couple, and the baby is abducted after birth by the father, Jermayne. The loss of the maternal relationship destabilises other normativities of gender, sexuality and belonging such as citizenship and nationhood.

David Eng defines the “queer kinship” model used of transnational adoption, as a privileged form of contemporary immigration²³ arising from “new social formations and identities” enabled by transnational movements and the aspirations of wealthy upper-class subjects. But the “queer reorganization of familial norms”²⁴ that adoption/abduction entails are challenged by Ines as she intervenes to gain access to her child. Her story is one in which illegal migration allegedly involves murder: the narrative structure consists of the evidence of witnesses – those whom she meets on her way to find the child – in the form of first person narrative voices collected by an inspector, a functionary of the court. Ines’s own account, written from prison, acts as a personal form of testimony. When read from the interdisciplinary angle of ‘law in literature’ (as a fictional version of a case study that mediates legal issues), therefore, her story of wrongful imprisonment suggests the limitations of the law in individual cases where subjects are situated outside their social and national boundaries.

The narrative foregrounds the issue of human rights because Ines, ignorant of her entitlements (she signed the adoption papers without realizing her surrogacy status, she did not go to the police, she lacks ID or passport), decides to search for her child by following the adoptive parents and illegally migrating to Germany. After she arrives in Europe from Tunisia, making her way from Sicily to Berlin where she sleeps rough among other social strays and outcasts, she eventually locates Daniel, her son, and his father. Her nomadic existence, hand to mouth survival, and directionless riding the trains and wandering in parks and other public places make her little different from the Roma with whom she mingles in the Alexanderplatz.

Ines’s destitution and illegitimacy can be compared to the chosen anonymity of many refugees and asylum seekers who abandon all personal possessions, including their official identity so these cannot be used against them.²⁵ In existential terms, she is like Kristeva’s rootless foreigner who acquires different guises and appears as different personas.²⁶ In the first section of the novel Lloyd Jones presents Ines as a psychological study of depersonalization by stressing her anonymity to all those she meets on the road. Her refusal to give

²³ Eng, “Transnational Adoption and Queer Diasporas,” 314.

²⁴ Eng, “Transnational Adoption and Queer Diasporas,” 304.

²⁵ News, “Homelessness and the Refugee,” 512.

²⁶ John Lechte, *Julia Kristeva* (London, New York: Routledge, 1990): 24.

a name at first, her uncertain ethnicity and unknown origin, the aura of mystery, her invisibility and blankness which, it is discovered, come from a shutting down of communication – “she would go silent and it would be as though she were no longer there present” (*DW*, 107) – are all suggestive of the shock of exile. Abjection for Ines takes the form of partial silence, the asocial “polymorphic mutism” of the alien who is unable to reflect on her position;²⁷ silence also suggests passive resistance to power structures and a willing dehumanization in order to recover her child. Information about her is also withheld in the testimonials and first hand reports given to the inspector by the men who assist her in her journey from Sicily to Berlin and those she meets there, because these witnesses do not want to reveal their exploitation of her.

That Ines reaches her human limit in the obsession to recover her child as his ‘real’ mother, appears in her prioritizing of motherhood in a hierarchy of need and economy of desire: she bestows sexual favours for cash in order to pay her fare from North Africa, and then in Berlin steals objects d’art from her employer, trading them for money to pay the hourly fee that Jermayne extorts from her in order to see the boy. She says:

The goal of seeing my boy, of getting my boy back in my arms. A need such as that obscures everything else. Even physical pain will bend to its will. ... That kind of feeling [masculine desire] is nothing compared to the need I felt, and so I could satisfy him. (*DW*, 214–15)

Ines’s alienation from the conventional structures of morality, citizenship and belonging due to her separation from her child gives her a symbolic status as an outsider. Cut off from her space of national origin and unable to consider any return, she negates the woman’s symbolic role as an emblem of ‘home’ in the constitution of the nation; instead she resembles the non-heteronormative subject whose sexuality is “criminalized, disavowed or elided” because it constitutes “a threat to national integrity.”²⁸ Her value system means she locates herself outside national categories: “But what is more important than one’s own child. Countries don’t mean anything. Not to me they don’t” (*DW*, 188). Home instead is an uncanny space of difference, made meaningful only through being with her child, in contrast to places where she was sheltering that provide no sense of ‘homeliness’, and that are what Lucinda Newns calls “non-homes.”²⁹ Significantly, after her first brief contact with her son, Ines condemns those ref-

²⁷ Kristeva, *Strangers to Ourselves*, 16.

²⁸ Gopinath, “Nostalgia, Desire, Diaspora: South Asian Sexualities in Motion,” 138.

²⁹ Newns, “Homelessness and the Refugee,” 513.

ugees and asylum seekers among whom she was earlier living as “stupid people. They don’t have homes” (*DW*, 240).

The social and legal risks that Ines incurs by living outside the normal categories of citizenship lead to a complete overturning of her precarious arrangements to recover her role in her son’s life. In section three, the novel turns to her imprisonment and introduces her first person voice in the form of a “prison narrative”: she is carrying out a sentence for manslaughter for allegedly killing a woman who befriended her in Sicily, because having fled the scene of accidental death, she laid herself open to arrest, trial and imprisonment. This legal dimension concerning her current incarceration, revealed only in this section, offers a retrospective reading of the entire novel which is conceived as the reconstruction of a case of unjust conviction: the first two parts consist of testimony given by those who meet Ines on her journey, including the inspector who collects the evidence, to represent the extenuating circumstances which ‘explain’ how the crime occurred and its lack of reporting. The inspector’s sympathetic presence suggests a human rights angle; for the novel raises questions about the efficacy of the public law and its procedures in cases of illegal immigration, domestic drama and personal abuse which involve diminished subjecthood, loss of official identity and familial ties. It asks not only how far the public law and its regulations are able to meet the individual’s experience related to their personal and domestic life;³⁰ but further, in terms of international law, how effectively cases involving refugees or illegal migrants who lack the protection of the law and live outside their national boundaries are arbitrated. Such issues might be framed by the alternative citizen-based model of diaspora based on an “individual’s universal personhood rather than her passport” that critics Yasemin Soysal and Fatima El-Tayeb propose in their renegotiations of belonging.³¹

Such legalities are brushed aside in Ines’s account and the skewing of justice is implied in the narrative emphasis on the haunting effect she has on those around her, notably on the inspector who had “the impossible task to try and piece everything back together again” (*DW*, 296), who in Ines’s words “sometimes said he’d felt inhabited by me” and who followed “my footsteps between Sicily

30 Maria Donata Panforti, “The Home and the Law. A Comparative Law Contribution,” in *Constructions of Home. Interdisciplinary Studies in Architecture, Law, and Literature*, ed. Klaus Stierstorfer (New York: AMS Press, 2010): 3–12, 12.

31 Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: Chicago UP, 1994), qtd. in El-Tayeb, *European Others*, 53. Kristeva, invoking French universalism, also advocates a universal transnational principle of humanity above the historical realities of nation and citizenship; see *Nations without Nationalism* (New York: Colombia UP, 1993): 26.

and Berlin” (*DW*, 298). His role becomes a personal, humanitarian one as he visits Abebi, Jermayne’s wife and Daniel’s adopted mother, who by then has asked her unscrupulous, grasping husband to leave. As an advocate for Ines, he pleads for her access to the child upon release. The conclusion, therefore, suggests that prison, along with other hardships and deprivations that Ines has suffered from is, from her point of view, only one more obstacle in her way, and that her ability to endure the sentence overcomes questions of injustice and illegality.

In terms of Ines’s desire for essentialised gendered belonging through the mother-child relationship, the novel can be read as simultaneously a reaffirmation of filiative relations, and a critique of patriarchal power. Yet its focus remains on the queering of social norms and values when perceived through one individual’s struggle in exile/diaspora against insurmountable class differences and an indifferent legal system: Ines’s illegality as a refugee and her imprisonment, Jermayne’s exploitation, and the concluding hinted-at reunion with the child, show ‘queerness’ as ongoing. In this sense it illustrates what David Eng describes as “issues of queerness, affiliation and social contingency that define contemporary diasporas.”³² More indirectly the novel can be read as a critique of the law for its failure to acknowledge the circumstances of victimized individuals involved in domestic abuse who have abandoned their homelands, and are driven to take unnecessary risks. The inspector who visits Abibe to talk about Ines might represent the human side of the law that seeks for more tolerance and flexibility in ways argued by legal commentators like Peter Fitzpatrick and Eve Darian-Smith who claim that the law should become less autonomously determined and more “responsive and indeterminate, capable of extending to the infinite variety that constantly confronts it.”³³

Examining these three texts through the dual lens of a queer diaspora and using a law in literature approach suggests new ways of nuancing current reading practices. All three show how national structures are being ‘queered,’ rejected, challenged or reformulated by new global mobilities, transmigratory processes and migratory patterns that lead to the contestation of legal boundaries and exclusions, as diasporas themselves take contradictory and incompatible forms. The constitutive tensions in the relationship between diaspora and the nation state dominate *Funny Boy*, in which the ethnically divisive Sri Lankan civil war for power over the nation-state, a turbulent decolonising process, invokes conservative notions of the diaspora as mobilized by roots, soil and kinship.

³² Eng, “Transnational Adoption and Queer Diasporas,” 318.

³³ Peter Fitzpatrick, Eve Darian-Smith, “Laws of the Postcolonial: An Insistent Introduction,” in *Laws of the Postcolonial*, ed. Peter Fitzpatrick, Eve Darian-Smith (Ann Arbor: U of Michigan P, 1999): 1–15, 3.

The Buddha of Suburbia provides evidence of a cosmopolitan diaspora from the perspective of the second generation diasporan subject for whom all structures are queered – family, community, sexual, national; it overturns traditional laws of custom and heritage such as Muslim or Hindu wedding practices, and introduces performativity and the stage as emblems of the transformative consequences of migration. Finally *Hand me down World* draws on the increased mobility associated with globalization and transmigration, exposing the widening gap between the affluent elites advantaged by new entitlements such as international adoption, and the impoverished and homeless who lack the legality, power and wealth to benefit from the law's protection. The law is instrumental in the surveillance of movements of refugees who might acquire new identities, for living outside the law necessarily raises questions about individual motivation: significantly Ines is arrested not just for alleged murder but for taking her 'victim's' name. Queering and the 'queer kin' argument align her story with other prison narratives spoken by or of women in prison – such as Ines's fellow prisoner who has killed her husband – as their desperation and desire for self agency in domestic situations drives them to commit punishable offences.³⁴

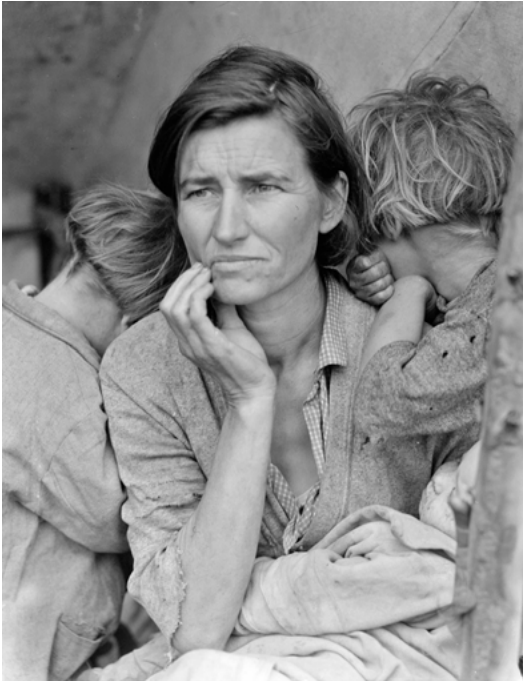
In the end *Hand Me Down World* raises issues that are relevant to all diasporas in asking how rights are guaranteed for those outside the frontiers of their homeland, and suggests that some redefinition is required of the status of subjects who lack full citizenship because living in host countries away from their community and at the mercy of unfamiliar legal and justice systems.³⁵ This study of literary queer diasporas suggests the growing presence of new formations of community and identity which, while critical of the patriarchal and sexual norms endorsed by the law within and beyond the nation state, nevertheless remain exposed and vulnerable to the conformist pressures they exert.

³⁴ See for example, the Arabic novel by Salwa Bakr, *The Golden Chariot*, trans. Dinah Manisty (Cairo: The American U in Cairo P, 2008 [1991]).

³⁵ Kral, *Critical Identities in Contemporary Anglophone Diasporic Literature*, 100.

Chiara Battisti

Unaccustomed Earth: **Diaspora on the Developing Reel**



Dorothea LaWnge, “Migrant Mother. Destitute peapickers in California; a 32 year-old mother of seven children. February 1936”, Library of Congress, Prints and Photographs, see <http://www.loc.gov/pictures/item/fsa1998021539/PP/>.

A mother, her face marked with preoccupation, her gaze carelessly facing away from the photographer’s objective thus making the image even more dramatic, kids hiding their faces hence deepening her sorrow, a baby sleeping in her arms underlining, with his innocence, a life of uncertainty and trauma: their mother’s. The visual details of the human body’s pliable materiality become, in this image, allusive traces framing the conceptual premise and the foundations for our reflection on the specific links between diaspora, diasporic cosmopolitanism and photography.

“Migrant Mother,” the title of this iconic picture of the Great Depression in America, implies issues that are representative of diasporic events. It recalls

the theme of migration, the idea of motherhood/motherland as a source of identity as well as the grounds for self-identification.

As far as the first aspect is concerned, that is to say the concept of migration, it is important to bear in mind that the term diaspora has acquired, in contemporary diasporic discourse, a wider range of meanings. The “ancient word”¹ diaspora was deeply intertwined with Jewish history since, throughout the centuries, it referred to the exile of the Jews from their historic homeland and their dispersion throughout many lands, signifying as well the threat of violence implied by that dispersion. Another early historical reference is the Black African diaspora, beginning in the sixteenth century with the slave trade. These early historical references reveal a conception of diaspora as an experience of displacement which is not voluntarily chosen. Today the new currencies of the term in global discourses fuse and confuse the once clearly demarcated social parameters of national identity, geography and belonging, thus questioning the rigid meaning that the term previously had. Diaspora and, more specifically, “diaspora community” seems to be increasingly applied to expatriate minority communities, being used as metaphoric designations for several categories of people and different patterns of migrations and return migrations. According to Jana Evans Braziel and Anita Mannur, in fact, the term diaspora nowadays is used “to speak of and for all movements, however privileged, and for all dislocations, even symbolic ones.” Nonetheless, Braziel and Mannur caution against an uncritical application of the term “to any and all contexts of global displacement and movement.”² Such adjacency to all the forms of travel – the most obvious example is the category of transnational migrants, that is, “those who shuttle back and forth for short working periods abroad and visiting migrants temporarily in the country”³ – can in fact acquire the connotation of an imperialistic gesture.⁴ In considering the implications of the terms diaspora, diasporic and diaspora-ization (neologism introduced by Stuart Hall⁵ in order to highlight the connotation of diaspora as a process rather than as a state), I would under-

1 Paul Gilroy, “Diaspora,” *Paragraph: A Journal of the Modern Critical Theory* 17.1 (1994): 207–212, 207.

2 Jana Evans Braziel, Anita Mannur, ed., “Nation, Migration, Globalization,” in *Theorizing Diaspora* (Oxford: Blackwell Publishing, 2003): 1–22, 3.

3 Luis Eduardo Guarnizo, “The Emergence of a Transnational Social Formation and the Mirage of Return Migration among Dominican Transmigrants,” *Identities* 4.2 (1997): 281–322, 290.

4 Caren Kaplan, *Questions of Travel: Postmodern Discourses of Displacement (Post-Contemporary Interventions)* (Durham: Duke UP, 1996).

5 Stuart Hall, “New Ethnicities,” in *Stuart Hall: Critical Dialogues in Cultural Studies*, ed. David Morley, Kuan-Hsing Chen (London, New York: Routledge, 1996): 442–451, 448.

line how it is precisely such multiplicity of meanings and their ambiguous semantic migration which make them objects of debate and theorization. Let us consider, for example, the semantic ambivalence inherent to the term diaspora itself which includes a literary and negative connotation to communities of people dislocated from their homelands through migration, immigration, or exile as a consequence of colonial expansion, and an etymological meaning (it derives from the Greek term *diasperein*, from *dia-*, “across” and *sperein*, “to sow or scatter seeds”) evoking the scattering of seeds and thus the fertility of dispersion.

The current consensus on definitional criteria seems to individuate the following features which are considered essential in order to define a diasporic group: dispersion to another location, ongoing orientation towards a ‘homeland’, and group boundary maintenance over time.⁶ This fairly accommodating definition of the term diaspora can be reasonably applied both to archetypical cases such as the Jews or the Black Africans, and also to specific non-traditional migrant groups as part of discussions about globalization and transnationalism.⁷ Therefore the narrative of the new migrations and new exiles identifies the markers of the contemporary world in deterritorialized diasporas, in which neither home, nor nation, nor identity are fixed.

In the post-national world that we see emerging, diaspora runs with, and not against, the grain of identity, movement and reproduction. Everyone has relatives working abroad. Many people find themselves exiles without really having moved very far – Croats in Bosnia, Hindus in Kashmir, Muslims in India. [...] Others find themselves in patterns of repeat migration. [There] are [other] examples of a new sort of world in which diaspora is the order of things and settled ways of life are increasingly hard to find. The United States, always in its self-perception a land of immigrants, finds itself awash in these global diasporas, no longer a closed space for the melting pot to work its magic, but yet another diasporic switching point.⁸

Appadurai’s framework (which describes the United States as just “another diasporic switching point” rather than as the magic place of melting-pot fulfilment) offers a way “to theorize nationhood and belonging as a process always in change and always mediated by issues of class, ethnicity, gender and sexuality.”⁹ The continuous flux of tangible and intangible resources (people,

6 Roger Brubaker, “The ‘Diaspora’ Diaspora,” *Ethnic and Racial Studies* 28.1 (2005): 1–19; Kim Butler, “Defining Diaspora, Refining a Discourse,” *Diaspora* 10.2 (2001): 189–219.

7 Michele Reis, “Theorizing Diaspora: Perspectives on ‘Classical’ and ‘Contemporary’ Diaspora,” *International Migration* 42.2 (2004): 41–60.

8 Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalization* (Minneapolis: U of Minnesota P, 1996): 171.

9 Evans Braziel, Mannur, “Nation, Migration, Globalization,” 14.

capital, information, ideas, cultural symbols) across the borders not only challenges the notion of national community necessarily bounded by its geographic borders, but also the idea of identity, thus suggesting a fragmentation of the identity due to multiple belonging. For this reason

borders and diasporas are phenomena that blow-up – both enlarge and explode – the hyphen: Arab-Jew, African-American, Franco-Maghrebi, Black-British. Avoiding the dual axes of migration between the distinct territorial entities, the hyphen becomes [an interstitial] time-space; [it is] an imaginary homeland where the “fragmentation of identity” is conceived not as a kind of pure anarchic liberalism or voluntarism, but [...] as a recognition of the importance of the alienation of the Self in the construction of forms of solidarity.¹⁰

Among the several reconceptualizations of a concept which dates back to two millennia ago, but which is still connotative, as previously highlighted, of contemporary global realities, I believe that – in a transnational context in which “the infosphere [...] is going to impose itself on the geosphere”¹¹ – the critical perspectives whose aim is to investigate the role and the social implications of the so-called diasporic “mediascapes”¹² acquire fundamental importance. The media are in fact significant agents for diaspora, identity and community

10 Smadar Lavie, Ted Swedenburg, ed., *Displacement, Diaspora and Geographies of Identity* (Durham, London: Duke UP, 1996): 16.

11 Paul Virilio, interviewed by James Der Derian “The Subject: Speed Pollution: Real Space vs. Realtime” (1996), *Wired*

<<http://www.wired.com/wired/archive/4.05/virilio.html>> (acc. 24 March, 2015).

12 Appadurai maintains that the social imaginary is composed of five interconnected dimensions of global cultural flow: ethnoscap (flow of migrants and people traveling the world for study, work, and as political refugees); financescapes (flow of funds and financial transactions and data); mediascapes (flow of symbols and information); technoscapes (flow of technologies); ideoscapes (flow of ideas often directly political). The processes of globalization are thus linked to patterns of cultural and historical imagination and Appadurai describes this articulation of the imaginary as: “The image, the imagined, the imaginary – these are all terms that direct us to something critical and new in global cultural processes: the imagination as a social practice. No longer mere fantasy (opium for the masses whose real work is somewhere else), no longer simple escape (from a world defined principally by more concrete purposes and structures), no longer elite pastime (thus not relevant to the lives of ordinary people), and no longer mere contemplation (irrelevant for new forms of desire and subjectivity), the imagination has become an organized field of social practices, a form of work (in the sense of both labor and culturally organized practice), and a form of negotiation between sites of agency (individuals) and globally defined fields of possibility. This unleashing of the imagination links the play of pastiche (in some settings) to the terror and coercion of states and their competitors. The imagination is now central to all forms of agency, is itself a social fact, and is the key component of the new global order.” Appadurai, *Modernity at Large*, 31.

since the previously mentioned links between networks and flows that surpass geographical borders are central to the process of identity construction, in general, and of shared identities for diasporic populations. As Myria Georgiu maintains:

The transnationalization of spaces of belonging associated with diaspora and diasporic communication does not only invite us to think of the complex and rich space of communication for minorities, but it also challenges understandings of the nation as a bounded and dominant entity that contains identities and communication systems.¹³

In the complex globalized space, not only do the media influence, shape and determine the knowledge, attitudes and behaviour of the Western population with respect to contemporary migration, but they also transform the sense of distance between people, thus favouring the creation and safeguarding of transnational communities. Russel King and Nancy Wood point out that the media “may intervene in the migration process and in the individual and collective experience of migration in a variety of ways.”¹⁴ Let us consider the double role and the importance of mediatic images: on the one hand, there are the images transmitted by the destination countries that provide a source of information for potential migrants and an incentive to migration, as well as tools for learning how to become citizens by highlighting the limitations and boundaries of citizenship and belonging;¹⁵ on the other, there are media images of migrants that often contribute to the construction of the social perception of migrant identity and, in this way, influence the process of social inclusion or exclusion of the migrants themselves.

Furthermore, media images emanated from the country of origin play an important role in the politics and the definition of cultural identity of diasporic communities. Media environment and online communities develop media spaces which support the safeguard of minority languages, of cultural projects which aim at the cohesion of the diasporic community, and of spaces for identity, alternative to the mainstream culture of the hosting country. In fact, according to William Safran,¹⁶ one of the criteria which characterizes diasporic com-

13 Myria Georgiou, “Diaspora in the Digital Era: Minorities and Media Representation,” *Journal on Ethnopolitics and Minority Issues in Europe* 12.4 (2013): 80–99, 85.

14 Russel King, Nancy Wood, ed., “Preface and Acknowledgments,” in *Media and Migration: Constructions of Mobility and Difference* (London, New York: Routledge, 2001): vii–ix, viii.

15 Nick Couldry, *Media, Society, World: Social Theory and Digital Media Practice* (Cambridge: Polity, 2012).

16 William Safran, “Diasporas in Modern Societies: Myths of Homeland and Return,” *Diaspora: A Journal of Transnational Studies* 1.1 (1991): 83–99.

munity is that the group maintains a myth or collective memory of their homeland; and they relate “personally or vicariously” to the homeland to a point where it shapes their identity. Media images allow migrants to “maintain (to some degree) emotional and social ties with a homeland.”¹⁷

In spite of the critical emphasis on empathetic power of visual communication – “seeing comes before words,”¹⁸ affirms John Berger – when considering the issue of diaspora, there seems to be a lack of sustained critical discussion on the role of still photography. In the introduction to their volume *Media and Migration: Constructions of Mobility and Difference*, Russell King and Nancy Wood, for example, acknowledge having omitted a thorough discussion on the role of still photography, and the alleged reason for such omission is subsequently given as such:

[M]igration is essentially a mobile, ‘narrativised’ experience – i.e. it is the story of a journey that begins in the home country, region or locale and, assuming the migrant is successful, ends in the chosen destination (whether a new country, region or city). [...] Thus, it is those modes of media – television, film, the newspaper article – that can tell the unfolding story which are considered best suited to rendering the migrant experience.¹⁹

Similarly, when considering the specific example of Sebastião Salgado, a well-known photographer, but also a migrant settled in a world of migrants, several critics have underlined that his photographic work is often so aesthetically pleasing to be almost cold and sterile. Defenders of his work, by contrast, argue that the main aim of Salgado’s photographic art is to move viewers to action. In order to achieve those aims in the most effective way, Salgado developed an aesthetic strategy that “makes it possible to look at the unlookable rather than close their eyes or turn the page.”²⁰ This strategy allows him “the construction of alternative histories through the interplay of individual and collective subjects, and also through the narrative links running across his projects.”²¹

The first aim of this essay is to demonstrate how photography can be considered diaspora’s dark room: from images and from image sequences, in fact, the viewer can construct “migrant narratives” that often manage to tell him or

17 Brubaker, “The ‘Diaspora’ Diaspora,” 2.

18 John Berger, *Ways of Seeing* (London: Penguin, 1977): 7.

19 Russell King, Nancy Wood, ed., “An Overview,” in *Media and Migration* (London: Routledge, 2005): 1–22, 10.

20 Nicholas Wroe, “Man with the Golden Eye,” (10 June, 2000), *The Guardian* <<http://www.theguardian.com/artanddesign/2000/jun/10/photography.art>> (acc. 19 August, 2015).

21 Nair Parvati, *A Different Light: The Photography of Sebastião Salgado* (Durham, London: Duke UP, 2011): 273.

her more about the lives of photographed subjects than the flows, seemingly more articulate, of other media discourses. Such a trope of photographs and photography as connected to diaspora, will be analysed in Jhumpa Lahiri's collection of short stories *Unaccustomed Earth* (2008). The critical analysis will focus in particular on the short story "Hema and Kaushik," in which Lahiri introduces the character of Kaushik, a second generation Indian immigrant, who has started the profession of photojournalist. To Kaushik, photography is *pharmakon*; that is to say a means and a tool which stresses the sense of loss of origin and offers, at the same time, the possibility to overcome the subject's sense of alienation with respect to the outer world.

However, before entering Lahiri's dark room, I would like to hint at the emotional and critical implications of the second issue evoked by the "Migrant Mother," the iconic picture which opens this essay; that is, the idea of motherhood/motherland as a source of identity and as a point of identification.

Dorothea Lange's photographic close-up on the face of the mother becomes not only an enigmatic surface which persuades the viewer to share the inner thoughts and feelings of the woman portrayed, but it also introduces the idea of "mother" as a metaphor for the community's social role of protection, nurturing and guide. Naomi Rosenblum, while reflecting on Lange's portraits, precisely points out the metaphorical value of Lange's photographic art, underlining its ability to fuse together "concept, emotion and form to invest the modernist idea with a human face and to stand as metaphors for social dislocation."²²

If our culture associates the mother imagery with roots, past and tradition, it is reasonable to assert that the face of the displaced woman portrayed by Lange stands for a culture which is grounded in a fundamental lack of sense of community and underlines the particular legacy of maternal presence or loss in the diasporic world.²³ Emilia Ippolito confirms this idea emphasising the role of "displaced women" in the post-colonial rewriting of boundaries. Women, and in particular, mothers become "bearer [...] of traditional features of [their] culture both inside and outside home" and, at the same time, real and ideal

²² Naomi Rosenblum, "Modernist Eye, Responsive Heart: The Work of Dorothea Lange," in *The Human Face*, ed. Dorothea Lange (Paris: NBC Editions, 1998): 12–17, 17.

²³ Simone James Alexander, *Mother Imagery in the Novels of Afro-Caribbean Women* (Missouri: U of Missouri P, 2001); Nancy Chodorow, *The Reproduction of Mothering* (Berkeley, Los Angeles: U of California P, 1978); Andrea O'Reilly, Marie Porter, Patricia Hort, ed., *Motherhood: Power and Oppression* (Toronto: Women's Press, 2005).

characters who have “to respond to new peculiarities of the changed environment.”²⁴

The issues suggested by the analysis of Lange’s image also introduce the second aim of this essay; that is, to demonstrate how in Lahiri’s writing the trope of photography leads to creating a sense of rootedness in the immigrant characters of her novel and how this sense of rootedness/unrootedness is often connected to the figure of the mother who embodies the sense of negotiating the space between the real (m)otherland and an ideal motherland.

The ways in which, in Jhumpa Lahiri’s *Unaccustomed Earth* (2008) and in particular in the trilogy of short stories “Hema and Kaushik,”²⁵ photography and diaspora interact are many, and they are apparent at different levels of reading. A first, more immediate level is the ‘direct’ presence of photographic images. These images are not actually present in the text, but instead are present in their absence thanks to the author’s ekphrastic ability and to the readers’ imagination. This presence in absence, exemplified by Lahiri’s writing, is a direct reference to the realization of presence and loss linked to the art of photography and introduces another deeper and less immediate level of interpretation. The photographs, which are always a manifestation of both presence and absence simultaneously, illustrate a rhetoric of absence which ambiguously implies the presence of the past and the pastness of the present. Such rhetoric allows the reader to experience these vast opposites, as incompatible as the life and death they symbolize. At this interpretive level, photographs as diasporic narration introduce reflections which transcend the confines of literary discourse:

²⁴ Emilia Ippolito, “Room as a Catalyst of Differences” in *Borderlands: Negotiating Boundaries in Post-Colonial Writing*, ed. Monika Reif-Huelser (Amsterdam: Rodopi, 1999): 145–156, 147.

²⁵ Before analysing the three connected but distinct stories grouped under the heading “Hema and Kaushik,” it might be helpful to give a short summary of the story for those unfamiliar with it. The story revolves around two characters, Hema and Kaushik. In the first section of the trilogy, “Once in a Lifetime,” Lahiri narrates, through the first person address of Hema to Kaushik, their adolescent meeting when Kaushik’s family stayed with Hema’s as their houseguests. Their families share the experience of immigration and they are linked thanks to their shared culture and common experience of adapting to a new culture. The second part, “Year’s End,” is narrated from Kaushik’s point of view and tells about his life after his mother’s death as he deals with unwanted change and faces complex relationships with his recently remarried father, stepmother, and two young stepsisters. The last part “Going Ashore” narrates, through the perspective of an omniscient narrator, the casual meeting between Hema and Kaushik. They meet, in fact, in Italy where Hema, now a college professor, has gone to seek refuge after her tormented affair with a married man and subsequent decision to accept an arranged marriage. Kaushik, a successful photojournalist, is, at the same time, preparing to accept a desk job in Hong Kong.

photographs in fact “don’t help us much to understand. [...] Photographs do something else: they haunt us.”²⁶

The ekphrastic photographic repertory that “haunts” the novel’s narration, giving it significance and meaning, can be ascribed to three categories: family snapshots, Kaushik’s family travel photos, and his professional documentary photos of the destruction and horror caused by war and civil unrest.

In the first category is the detailed description of the photograph that the thirteen-year-old Hema looks at as she tries to revive her childhood memories of the now sixteen-year-old Kaushik. The picture that Hema examines was taken seven years before at the farewell party organized by her parents for Kaushik’s family when they returned to India, a return considered by Hema’s family as “a wavering, a weakness” because “they should [know] it’s impossible to go back.”²⁷ Her desire to remember is inspired by the sudden, unexpected return of Kaushik’s family to Cambridge. Hema studies the pictures, pasted into an album, of the two couples:

There was my father [...] He was dressed in a sweater vest, his shirt cuffs rolled back, pointing urgently at something beyond the frame. Your father was in the suit and tie he always wore, his handsome, bespectacled face leaning toward someone in conversation, his greenish eyes unlike anyone else’s. The middle part in your mother’s hair accentuated the narrow length of her face; the end of her raw silk sari was wrapped around her shoulders like a shawl. My mother stood beside her, a head shorter and more disheveled, stray hairs hanging by her ears. [...] There was no evidence of you. (*UE*, 230)

The words of the first “migrant narrative” recounted by this photograph are interwoven with the “threads” of vestimentary fashion. The emphasis on masculine elegance (referring to the “sweater vest,” the “shirt,” “suit,” and “tie”) and then feminine refinement (“the raw silk sari”) alludes to the concept of “material culture of success” introduced by Michael Rowlands.²⁸ He defines the measure of an individual’s success as based on the possession and control of the material symbols that indicate social status. Considering that the migrant community and its families in the homeland are continually in contact with one another and the images circulating in the transnational spheres enable migrants to present their families and relatives back home with visual testimony of their lives in

²⁶ Susan Sontag, *Regarding the Pain of Others* (New York: Picador, 2003): 89.

²⁷ Jhumpa Lahiri, *Unaccustomed Earth* (New York: Knopf, 2008): 227. Further references in the text, abbreviated as “*UE*”.

²⁸ Michael Rowlands, *The Material Culture of Success: Households and Consumption in Bamenda* (Leiden: African Studies Centre, 1988).

their host countries, we can affirm that migrants, by showing this “material culture” to their relatives left behind, can renegotiate their status in their community of origin. Moussa Konaté asserts that usually “photos of migrants forwarded to their families in the homeland, or those kept as mementos, portray individuals who have profited from their period abroad or those well integrated into the receiving culture.”²⁹

Unlike those photographs conveying the material culture of success, and in strong contrast to the message that they transmit, the images commonly elicited by the word ‘immigrants’ paint a different facet of the immigrant life experience, testifying to their trials and tribulations, their precarious existence throughout their experience of migration.

What the analysis of the photograph depicted by Lahiri tells the readers about the processes of self, community, and homemaking in which migrants are engaged, is that photography offers individuals in diasporic communities a medium with which to create a vision of themselves that does not always correspond to popular perception. Tina Campt places special emphasis on this issue, asserting that “images matter” to immigrants not only for their capacity to at once reduce distances and bring the migrants and their community closer together, but also and foremost to articulate immigrant people’s multifaceted relationships to their cultural identities and national and cultural belonging. Photography, therefore, has a great impact on both reader and viewer understanding of the differences within diaspora, since it assumes the double role of “document[ing] and simultaneously pathologiz[ing] the history, culture, and struggles of these communities.”³⁰

The above highlights yet another aspect of fundamental importance in the analysis of the relationship between diasporic events and photography. The diasporic and migration studies literature in general and Lahiri’s novel in particular testify to the energies devoted to faraway relatives in the homeland in order to underline the emotional value connected to the many images circulating in the transnational spheres. In the novel, in fact, Lahiri describes the kind habit Hema’s parents have of “buying stacks of aerograms at the post office and sending them off faithfully every week, asking me to write the same three sentences to each set of grandparents at the bottom” (*UE*, 226).

²⁹ Moussa Konaté, “Pictures from here for the People over Yonder. Photography in Migratory Circuits” in *Shoe Shop*, ed Marie-Hélène Gutberlet, Cara Gnyman (Sunnyside: Jacana, 2012): 75–85, 79.

³⁰ Tina Campt, *Image Matters: Archive, Photography, and the African Diaspora in Europe* (Durham, London: Duke UP, 2012), 5.

Diasporic and migration studies have also stressed the importance and the role of media images in the potential migrants' decision-making processes. Media images contribute, in fact, to the construction of knowledge or impressions about countries to which potential migrants might consider moving. However Wood and King point out how media can also distort the picture of destination countries:

Images of wealth and of a free and relaxed lifestyle in the “West” or the “North” are commonplace in the developing and transforming countries of the world, and the constant presence of these images in global media – in films, television, magazines and advertisements – tends to reinforce their truth in the eyes of the beholders.³¹

The emphasis on the “material culture of success,” revealed in the analysis of Lahiri’s “migrant narrative,” and the awareness of the constant flux of images, in this case photographs, between immigrants and their relatives back home, leads us to think that the migrants themselves collude in reinforcing the authenticity of the distorted images proposed by global media, partly to impress, and partly to deny any elements of failure first to themselves and then to their family and friends.

The two elegantly posed family groups captured by Lahiri’s photographic writing highlight, with their iconic presence, the value of absence, “pointing urgently at something beyond the frame.” Lahiri, by using this narration of the “un-seen,” focuses the reader’s attention and curiosity onto what lies “beyond the frame:” it was Kaushik, of whom “there was no evidence.” This absence introduces a fracture between the trope of diaspora and return as connected with a nostalgic, backward looking feeling – embodied by both couples trying to communicate an air of success to potential observers back home – and then the attitude of a second generation that, in the author’s own words, must come to terms with an “intense pressure to be the two things: loyal to the one world and fluent in the new.”³²

History, according to Roland Barthes, “is hysterical: it is constituted only if we consider it, only if we look at it – and in order to look at it, we must be excluded from it.”³³ Barthes’ words, together with our previous assertions, underline how history, like photography, becomes a simultaneous illustration of both

³¹ King, Wood, “An Overview,” 1.

³² Delphine Munos, “Diasporic Hereafter in Jhumpa Lahiri’s ‘Once in a Lifetime,’” in *A Fluid Sense of Self: The Politics of Transnational Identity*, ed. Silvia Schultersmandl, Sebnem Toplu (Wien, Berlin: Lit Verlag GmbH & Co, 2010): 139–158 140.

³³ Roland Barthes, *Camera Lucida: Reflections of Photography* (London: Flamingo, 1984): 65.

presence and absence: specifically, history freezes a moment of the diasporic experience and bequeaths it to posterity; a posterity, however, that sees the moment “beyond the frame” and is only able to perceive a sense of absence, loss and distance from that collective memory which has instead considered that specific moment worthy of becoming historical fact. And it is precisely to this sense of absence and loss which Bidisha Banerjee refers when she asserts that since Hema and Kaushik “have no first-hand experience of migration, for them it involves a phantom loss of homeland.”³⁴ The element which, according to Banerjee, defines Hema and Kaushik’s loss as phantasmatic is the very fact that “they cannot access the originary moment of their departure in their memories.”³⁵ I would, however, underline the ambivalent nature of this phantasmatic loss, which includes belonging and diaspora. Both Hema and Kaushik embody, in every moment of their existence, the role of “authentically migrant subjects,”³⁶ subjects always in transit and for whom the process itself of home-coming is impossible.

It is that feeling of never really being “at home,” that inspires the adolescent Hema to equate her temporary move into her parent’s room in order to leave her room to the guest Kaushik, with a migratory event:

I took my pajamas, some outfits to wear to school, and the sneakers I needed for gym. I took the library book I was reading, along with the others stacked on my bedside table. [...] I removed the locked diary from my desk drawer, though I’d written only two entries since receiving it for Christmas. I removed the seventh-grade yearbook in which my photograph appeared, the endpapers filled with silly messages from my classmates. It was like deciding which of my possessions I wanted to take on a long trip to India, only this time I was going nowhere. (*UE*, 230)

This passage underlines how, within the second generation, the notion of ‘home’ becomes complex. To Hema, being at home is a culturally available narrative refracted by family remembrance and thus marked by a contradictory balance between belonging (that denotes stasis and security, highlighted in the passage by the frequent use of the possessive adjective “my”) and migration (that mobility well represented by the idea of the “long trip to India.”) Hema is always and

34 Bidisha Banerjee, “Diaspora’s ‘Dark Room’: Photography and the Vision of Loss in Jhumpa Lahiri’s ‘Hema and Kaushik,’” *The Journal of Commonwealth Literature*, 45.3 (2010): 443–456, 445.

35 Banerjee, “Diaspora’s ‘Dark Room,’” 443.

36 Sara Ahmed, *Strange Encounters* (New York: Routledge, 2000): 82.

never at home in two different cultures, and she must face the challenges of this double belonging. As Alireza Farahbakhsh and Mostafa Taghavi Zad explain

Lahiri's second generation characters [...] occupy a middle ground which could easily turn into a battle ground between the Indian and the American parts of their identities, but they strive to maintain ties to both cultures, identifying themselves as Indian Americans.³⁷

While usually for the first generation “home is the return”; that is, being in and returning to their homeland provides first generation migrants some temporary relief of belongingness, the reality of returning to India and then to the States acts as a form of displacement for the other young protagonist of the trilogy, Kaushik, further underlining the complexity of a theoretical conceptualisation of the concept of home and belonging to second generation immigrants. It is precisely upon his return to the States (after the circular migration that caused Kaushik to live his first nine years in the States, then “move all the way back to India” and then return once again to the States) that the entire concept of home is challenged for him. Home is experienced in movement and must be conceptualised in fluid terms, being “neither here nor there...rather, itself a hybrid, it is both here and there—an amalgam, a pastiche, a performance.”³⁸ Kaushik's experience of the present is characterized by a persistent sense of dislocation infused with a desire for return to India when he lives in the States, and to the States when he lives in India. “He was furious that we left, and now he's furious that we're here again,” observes Kaushik's father, calling him “a typical American teenager” (*UE*, 238), raised in Bombay.

Kaushik's memory of belonging is fractured, marked by deep fissures which bear the traces of both cultures. This double presence makes Kaushik's worldview into an “authentically migrant perspective” based on “an intuition that the opposition between here and there is itself a cultural construction, a consequence of thinking in terms of fixed entities and defining them oppositionally.”³⁹

It is important to observe how Kaushik's fractured memories of his American “here and there” are connected to two specific memory traces: the cold and the snow. “I missed the cold,’ [... Kaushik] said. ‘This cold’. The remark remind-

³⁷ Alireza Farahbakhsh, Mostafa Taghavi Zad, “‘Subject’: Subjectivity in Jhumpa Lahiri's ‘Going Ahore’,” *BEST: International Journal of Humanities, Arts, Medicine and Sciences*, 2 (2014): 81–88, 82.

³⁸ Angelika Bammer, ed., “Introduction,” in *Displacements. Cultural Identities in Question* (Bloomington: Indiana UP, 1994), xi–xx, xi.

³⁹ Paul Douglas Carter, *Living in a New Country: History, Travelling and Language* (London: Faber & Faber, 1992): 101.

ed me [Hema] that none of this was new to you. ‘And the snow. When will it snow again?’” (UE, 235). The emotions brought about by the second memory trace add an important component to this analysis. Snow, in fact, in Western literature and culture, can be a symbolic tool alluding to either purity, light and innocence, or sadness, bleakness and death. In particular if we consider that snow is actually frozen water, we can reasonably underline how the symbolic message communicated by the image of snow evokes “frozen emotions.” Beyond the evident connection between that message and Kaushik’s “frozen” soul, stuck within an unreachable “here and there,” the issue of “frozen emotions” strongly evokes the photographic medium, capable of “captur[ing] a time slice of emotion, a frozen moment of feeling.”⁴⁰ If “home is the return,” to Kaushik being at home implies inhabiting a cognitive environment⁴¹ where his identity is best mediated. He creates a cognitive space which does not need time and space coordinates, but instead assures that he metaphorically stages his (psychological) return to the past; that is, to his deepest identity, through the use of images. Eventually Kaushik’s job and lifestyle themselves will be what distances him from both his origin and host cultures; being a photojournalist implies not belonging to any permanent place and distancing oneself from surrounding facts and emotions through the use of the camera. What is more, it is Kaushik’s identity itself that finds refuge behind the lens of his camera: the places and situations he photographs resonate with his emotions and make the civil war-torn Guatemala – “He’d never been in a place so obviously at war with itself” (UE, 303) – an obvious metaphor for the displaced “Kaushik.” The painful emotions that arise in Kaushik are immediately sublimated in raw, cold images of places that contain the internal tensions and violence typical of much of the postcolonial world.

Such considerations highlight, in a more general take on diasporic and migratory photography, the danger that the lens becomes a screen shielding both the photographer and the viewer from the explosive, dramatic charge of the witnessed events. Through the reassuring framing of the camera, even horror and tragedy can become a kind of performance, causing the photographer and the viewer to remain indifferent to the migrant’s plight.

Although such indifference can actually be found in Kaushik’s work – he in fact confirms feeling “untouched by the situation [he is photographing a dying man], unmoved once he was behind the camera, shooting to the end of the roll”

⁴⁰ Colin McGinn, *The Power of Movies: How Screen and Mind Interact* (New York: Vintage Books, 2005): 106.

⁴¹ Reshmi Dutt-Ballerstadt, *The Postcolonial Citizen: The Intellectual Migrant* (New York: Peter Lang, 2010): 79.

(*UE*, 304) – it does not appear when his work makes him face a diasporic event. In this case, the chaotic upheavals Kaushik experiences in his adolescence are metaphorically immortalized by his camera-wielding adult self. “The private detritus of his life” (*UE*, 308) – his circular migration from States to India and back – becomes public images of the infinite chain-like fences crossed by the photojournalist: “He was reminded of his family’s moves every time he visited another refugee camp, every time he watched a family combining through rubble for their possession” (*UE*, 308). With a list of the small, important things that make up a life (“a few plates, a favorite comb, a pair of slippers, a child’s string of beads” [*UE*, 308]) and that evoke the hastily gathered objects from Hema’s first diasporic “migration” back to her parents’ bedroom, Kaushik “photographs” the awareness of a second-generation immigrant of the disempowerment resulting from the inevitability of trying to take root in unaccustomed earth. Seeing the refugee camps forces him to recognize his inability to avoid “wherever he landed, [...] form[ing] attachments” (*UE*, 308).

Photography therefore becomes a metaphor for diasporic fragmentation, and it also becomes a metonymy of the diasporic subject. Kaushik indeed turns himself into a picture. Conscious of photography’s contradictory characteristics of both capturing a presence and, at the same time, highlighting absence, Kaushik, in his attempt to distance and absent himself from his family, remains present however “to wash up on his father’s doorstep, in the form of his photo credit in one of the newsmagazines his father read, announcing that he was alive, indicating where he’d been and what he’d seen” (*UE*, 306). If, according to Don Slater, “we construct ourselves for the image and through the image,”⁴² Kaushik’s attempt to make himself a trace of both absence and presence transforms the static material form of photographs into a subjective extension of the construction of self and identity. Photographs, while not representing him directly, embody the inner laceration of his soul and offer tangible validation of his diasporic migration. In addition, by passing from one ontological realm to another (from the tangible world to the printed page of a newsmagazine), Kaushik asserts his right to determine an interstitial space for himself – the exact space of the ontological leap – that has no physical or cultural boundaries. Significantly, he then connects this space to the idea of death: “No one in the world knew where I was, no one had the ability to reach me. It was like being dead, my escape allowing me to taste that tremendous power my mother possessed forever” (*UE*, 290 – 291).

⁴² Don Slater, “Domestic photography and Digital Culture,” in *The Photographic Image in Digital Culture*, ed. Martin Lister (New York: Routledge, 1995): 129 – 146, 134.

This passage connects Kaushik's search for an interstitial space to the cause of that search: his sense of maternal (motherland) loss. His mother, Parul, is physically present in the first section of the trilogy, "Once in a Lifetime," in which her breast cancer is the hidden reason for Kaushik's return migration; she becomes, instead, memory trace of an absent figure in the other two sections, "Year's End" and "Going Ashore," in which she assumes the status of an icon who embodies the sense of negotiating the space between the real (m)otherland and an ideal motherland.

Many critics have illustrated the link between death and the diasporic element – a link present also in the previous quotation, in which the idea of "being dead" is immediately compared to the word "escape." They underline diaspora's psychic dimensions of social death, its loss of the former self, and its border between life/past and death/present. Vijay Mishra,⁴³ in particular, has compared "writing diaspora" to "writing mourning," highlighting the sense of loss and absence present in both forms of writing.

If this aspect, connected to photography's double edge, is certainly present in the short story here analysed, I think that the part devoted to Parul assumes different and further connotations.

First of all, I would clarify how the diaspora/death link does not seem to necessarily assume negative connotations since, as is well portrayed in the following passage, death seems comforting for Parul. Kaushik's memories, in fact, link the maternal figure to his darkroom at home, and then link both his mother and his darkroom to death:

There were times my mother came down and kept me company, sitting quietly in the blackness as I struggled to load film onto the developing reel. Together we would breathe in the chemical smells, their corrosiveness, from which my hands were protected by rubber gloves, nothing compared to what was taking place inside her body. [...] "It must be something like this," she said once in that perfectly dark, silent, sealed up space, and I understood without her saying so that she was imagining what it might be like to be dead. (UE, 278)

In this passage, as Bidisha Banerjee rightly points out, "the chemicals coursing through her body and destroying both healthy and diseased cells are compared with the chemicals necessary in the creation of the photograph; the former struggle to delay her inevitable death, while the latter are necessary elements in the

⁴³ Vijay Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (London, New York: Routledge, 2007).

creation of art.”⁴⁴ The suggested interaction between death and creation gives a positive connotation to the idea of death, rendering it almost a necessary moment or passage in the creation of something new and different.

In order to understand the new value the diasporic element takes on in this part of the novel, in which it is associated with a positive perception of death, it is important to restate a previously highlighted aspect. At the beginning of this essay, I observed how the term diaspora has acquired a broader semantic domain with respect to its original, traditional definition and how it has been expanded to include “wider categories which reflect processes of politically motivated uprooting and moving of population, voluntary migration, global communications and transport.”⁴⁵ However, as many critics have rightly pointed out, ‘diaspora’ still contains essential features, such as an ongoing orientation towards a ‘homeland.’ This orientation is characterized by a collective memory, and a real or mythic vision of the immigrant original homeland. What is more,

“they regard their ancestral homeland as their true, ideal home and as the place to which they or their descendants would (or should) eventually return. [...] They continue to relate, personally or vicariously, to that homeland in one way or another, and their ethno-communal consciousness and solidarity [...] are importantly defined in terms of the existence of such a relationship.”⁴⁶

The above highlights and validates as fundamental features of the concept of diaspora both the connection with homeland/motherland and the importance of its diasporic construction.

In “Hema and Kaushik,” there are numerous details that lead us to define Parul as “mother-diaspora”; that is, a metaphorical embodiment of a new diasporic construction of motherland.

Her status as symbolic character is made explicit from the first pages of the trilogy, in which she is in the interstitial space between reality and the ideal. The first meeting between Hema and Parul marks the distance between the subject and the object photographed, between ideal construction and real presence: “There was your mother, her slippery dark hair cut to her shoulders [...] looking only vaguely like the woman I’d seen in the picture” (*UE*, 231).

⁴⁴ Banerjee, “Diaspora’s ‘Dark Room,’” 452.

⁴⁵ Judith Shival, “Diaspora Migration: Definitional Ambiguities and Theoretical Paradigm,” *International Migration* 38.5 (2000): 41–56, 41.

⁴⁶ William Safran, Ajaya Sahoo, Brij V. Lal, ed., “Indian Diaspora in Transnational Contexts – Introduction,” in *Transnational Migrations: The Indian Diaspora* (New Delhi: Routledge, 2009): vii–xxxv, x.

Hema's memories of this meeting draw attention to a juxtaposition, in the protagonist's inner soul, between a real mother (Shibani, Hema's mother) and an ideal mother (Parul, Kaushik's mother). The latter, besides being a "photograph," and, as such, a potential space of mediation between tangible and imaginary, is also described in positive terms and connotations which counterpose her to the ordinariness of Shibani: "with her [Parul's] bright lipstick and frosted eyelids, she looked *less exhausted than my mother did*. She had remained thin, her collarbone glamorously protruding, *unburdened* by the weight of middle age that now *padded my mother's features*" (UE, 231 [my emphasis]). The physical juxtaposition here described introduces a deeper and more problematic opposition between patterns of femininity-motherhood: a "traditional" pattern embodied by Shibani, which aims at preserving and perpetuating a rigid diasporic Indianness, and an emancipated pattern, embodied by Parul, characterized by a more glamorous form of westernized Indianness. This dichotomy opens up, in Hema's mind, a space of re-imagination of both personal identity and female identity based on multiple affiliations and identifications, a space which stresses the symbolic fluctuation between a real (m)other(land) and an ideal mother(land).

The traditional pattern connected with her (m)other adheres to the idea of a migrant mother as "expected to reproduce, biologically, and symbolically, the boundaries of [her] ethno-national community at a time when such boundaries are under threat and most fragile."⁴⁷ Such ideas of mother/motherhood/motherland are in fact "other" to Hema, since they imply a fixity and continuity distant from the more fluid notion of identity that she, as second-generation immigrant, is experiencing.

Instead, Parul creates a space in which to negotiate her emancipation, thus offering Hema new modes of gender identification and a new idea of mother/motherhood/motherland as an identity that negotiates the demands of both cultures. It is, in fact, the woman Hema is looking to as the ideal motherland, who gives her her first bras – "Despite my mother's protests, your mother bought me my first three bras, insisting that they were a gift" (UE, 239) – which become symbolic of a new female hybridized cultural identity.

However the very fact that Kaushik's mother is undermined by breast cancer, and that she is already ill (terminally ill) in the moment of deep female empathy experienced with Hema in the fitting room, exemplifies the difficulty, for second-

⁴⁷ Carla De Tona, "Mothering Contradictory Diasporas. Negotiation of Traditional Motherhood Roles among Italian Migrant Women in Ireland," in *Intimacy and Italian Migration: Gender and Domestic Lives in a Mobile World*, ed. Loretta Baldassar, Donna R. Gabaccia (New York: Fordham UP, 2011): 101–111, 103.

generation immigrants, in identifying a “nurturing motherland.” If the gift received is first presented, and as such received by Hema, “as a means to initiate the young girl into her budding womanhood and as a token of affection symbolizing the passing-down of a version of westernized Indianness that the protagonist can easily emulate,”⁴⁸ the subsequent revelation of Parul’s mortal illness – breast cancer; that is, an illness which defies her not only in her feminine aspect, but also in her motherly one – leads Hema also to consider this pattern of motherhood/motherland as not feasible, because indissolubly connected with death, and therefore with a frozen present.

Parul, mother-diaspora, becomes a presence across time and beyond physical boundaries, frozen in “a photograph [...] larger than life and draped with a tuberose garland” (*UE*, 252), hung on the living-room in the house of Kaushik’s grandparents. This haunting, phantom figure opens up another perspective in our considerations on the connection between motherland and diaspora.

Kaushik’s grandparents, in fact, even as they have this visual memorial on their wall, consider that their dead daughter could return, not from the afterworld, but from the other shore of Boston:

My grandparents had already lived in a state of mild mourning since 1962, when my parents were married. Occasionally my mother would return to them, first from Boston and then Bombay, like Persephone in the myth. [...] After we called my grandparents from Massachusetts to tell them my mother was dead, they had held on to the hope that it was only a matter of time, and that she would board a plane and walk through the door once again. (*UE*, 253)

This passage significantly hints at the way in which the diasporic event “contributes to unsettling the representation of the boundary between life and death,”⁴⁹ here reconceptualized in the play of presence and absence, turned into metaphor by photography. If within immigrants, the physical and psychological distance of motherland is so vast that the motherland remains frozen in the diasporic imagination as a sort of sacred site or symbol, in the case of Kaushik’s grandparents, the distance from their daughter, caused by the diasporic separation, made Parul a frozen incorporeal image, divorced from any sense of her singularity and historicity, even before her death.

“Hema and Kaushik” ends, as it begins, with Hema’s narrative voice, with a photograph and an intense juxtaposition of life and death. In this circularity,

⁴⁸ Delphine Munos, *After Melancholia: A Reappraisal of Second-Generation Diasporic Subjectivity in the Works of Jhumpa Lahiri* (Amsterdam, New York: Rodopi, 2013): 20.

⁴⁹ Munos, *After Melancholia*, 26.

which seems to suggest, without solving them, all the issues so far analysed, a final phrase offers a promise and opens a possibility. Hema describes her mood swings with an almost musical passage: “burning with new life and mourning your death” (*UE*, 333). With a new awareness announced by those words, Hema, now an expectant mother, succeeds in creating her own third-cultural space, between her mother(land)’s traditional space and the Westernized space of Kaushik’s mother(land). This cultural space entails a unique articulation of belonging, an alternative to the previous positions embodied by Parul and Shibani which proposed and offered only binary oppositions. In these “third-cultural spaces of belonging [created] through shared experiences, knowledge, interests and values,”⁵⁰ Hema experiences the possibility of mourning and thus softening the burdens of broken filiation and transgenerational memories of loss. In this sense, the concluding lines of the story – “It might have been your child, but this was not the case. We had been careful, and you have left nothing behind” (*UE*, 333) – far from being negative,⁵¹ indicate, instead, that Kaushik has not left haunting presences, has not made himself a “photograph” over which and because of which it is impossible to mourn. He has instead given Hema the feeling of having “India within” and of feeling free from memory traces of the past and from the compulsion to return.

50 Janine Teerling, “The Development of New ‘Third-Cultural Spaces of Belonging’: British-Born ‘Return’ Migrants in Cyprus,” *Journal of Ethnic and Migration Studies* 37.7 (2011): 1079–1099, 1095.

51 “always already suggested the failure inherent in attempting to provide a sense of belonging or a possibility of return for her itinerant protagonist(s). [...] Hence, the void and absence alluded to in the concluding lines of the story.” Banerjee, “Diaspora’s ‘Dark Room,’ 455.

Leif Dahlberg

Melancholic Face-Off: Caryl Phillips' Elegy over David Oluwale

'Remember Oluwale.' Graffiti on the wall by the Hayfield pub on the corner of Reginald Terrace and Harehills Avenue.¹

1. Introduction

To the extent that diaspora is defined on the one hand by the loss of and the longing for an idealised homeland, and on the other by the inability to adapt and emotionally connect to the new environment, diaspora bears striking resemblance to Sigmund Freud's description and analysis of melancholia in his 1917 article "Mourning and Melancholia."² The ability to connect to and integrate with a new social and cultural environment is of course not only a function of successful work of mourning, but also largely dependent on the hospitality and openness of the host society.³ At the same time, mourning and melancholia are also found among people who feel that their country has lost its former greatness, such as territorial dominions or cultural and political importance. In this way one can identify a psychological condition – both individual and collective – that cultural theorist Paul Gilroy has called "postcolonial melancholia."⁴ What

1 Caryl Phillips, "Northern Lights," in *Foreigners. Three English Lives* (London: Harvill Secker, 2007): 167–260, 257. Further references in the text, abbreviated with "NL".

2 Sigmund Freud, "Trauer und Melancholie" [1917], in *Gesammelte Werke X* (London: Imago Publishing, 1946): 428–446. English translation in *The Standard Edition of the Complete Psychological Works of Sigmund Freud XIV* (London: The Hogarth Press, 1957): 243–258. Further references in the text, abbreviated with "M&M" refer to the English translation. I am certainly not the first to point out this connexion between diaspora and melancholia, see e.g., Vijay Mishra, *The Literature of the Indian Diaspora: Theorizing the Diasporic Imaginary* (London: Routledge, 2007): 7–10; Delphine Munos, *After Melancholia. A Reappraisal of Second-Generation Diasporic Subjectivity in the Work of Jhumpa Lahiri* (Amsterdam: Rodopi, 2013): *passim*.

3 Leif Dahlberg, "Unwelcome Welcome – Being 'at Home' in an Age of Global Migration," *Law Text Culture* 17 (2013): 44–84.

4 Paul Gilroy, *Postcolonial Melancholia. The Wellek Library Lectures in Critical Theory 2002* (New York: Columbia UP, 2004): 98–106 *et passim*. Further references in the text, abbreviated with "PM". Gilroy has repeated and developed this argument in *After Empire. Melancholia or convivial culture?* (London: Routledge, 2004): 95–132; and in "The Closed Circle of Britain's Postcolonial Melancholia," in *The Literature of Melancholia. Early Modern to Postmodern*, ed. Martin Middeke, Christina Wald (New York: Macmillan, 2010): 187–204.

is more, in the meeting or confrontation of these two different kinds of melancholic subjects, there can occur a melancholic face-off, in which the other in a negative or even threatening way comes to incarnate what has been lost.

In the present essay, I first read Caryl Phillips' story "Northern Lights," one of three stories making up the volume *Foreigners. Three English Lives* (2007). I situate the story in relation to Phillips' earlier work and analyse its narrative construction, identifying its adherence and participation in elegiac conventions. In the second part of the essay I read Freud's article, noting parallels not only to homesickness and diaspora but also to the postcolonial condition in Western Europe, analysing in some detail the psychological mechanisms of mourning and melancholia – in particular conscious and unconscious loss, narcissism and ambivalence. In the conclusion I bring together the thematic connexions between diaspora, postcolonial melancholia and elegy as a form of working through.

2. The Story of David Oluwale

Phillips published his first literary works in the mid-1980s and has since written a series of novels, plays and essays, typically portraying the life of an individual – more often male than female, more often black than white – where the major themes are exile, marginalisation, oppression and exploitation.⁵ Although the individuals are marked by race and gender, the stories in various ways undo stable racial and gender categories. But rather than denoting emancipation and empowerment, the dismantling of cultural and social categories in Phillips' stories implies alienation and loss, which is intimately connected to the condition of diaspora. The presence of a diaspora community signifies an attempt to set up a secondary homeland away from the home country, but Phillips' protagonists have difficulty to find a sense of home both in the new country and when – as sometimes happens in his stories – they return to their alleged 'home country.' In fact, most of Phillips' stories depict diaspora as the condition of permanent homelessness, rather than a second home, there being no possibility of return. Indeed, most of Phillips' characters have great difficulties establishing

⁵ Here is a bibliography Phillips' works. Novels: *The Final Passage* (1985); *A State of Independence* (1986); *Higher Ground* (1989); *Cambridge* (1991); *Crossing the River* (1993); *The Nature of Blood* (1997); *A Distant Shore* (2003); *Dancing in the Dark* (2005); *In the Falling Snow* (2009). Non-fiction: *Foreigners: Three English Lives* (2007). Essay collections: *The European Tribe* (1987); *The Atlantic Sound* (2000); *A New World Order* (2001); *Colour Me English* (2011). For introductions to Phillips' work, see Bénédicte Ledent, *Caryl Phillips* (Manchester: Manchester UP, 2002); Helen Thomas, *Caryl Phillips* (Horndon: Northcote House Publishers, 2007).

strong and affective ties to the new place of living – both host society and diaspora. But whereas some of them clearly suffer from symptoms of melancholia – such as diminished self-regard and self-accusations – others are characterised by remarkable moral integrity and personal will power.

In some respects Phillips' representation and analysis of the diaspora condition has strong affinities with the notion of cultural hybridity developed by writers and theorists such as Salman Rushdie, Homi Bhabha and Paul Gilroy.⁶ But the genealogy of contemporary homelessness may also be extended in other directions, e.g. to James Joyce's portrait of modern man in *Ulysses* (1922), where Leopold Bloom figures as the wandering Jew, overburdened by the past and unable to live in the present.⁷ However, Phillips' stories not only involve dislocation and dispersed belonging; the main characters also typically encounter hostility, oppression and exploitation. The ways they cope with the situation vary, but none of them submit to it without resistance. Many of Phillips' stories end either with the mental collapse or physical death of the principal character – either by the hands of others or self-inflicted. Although the fates of the characters are tragic and indicate the psychological and social difficulties of the diaspora situation, the stories are not devoid of hope. On the contrary, in the various encounters between dislocated individuals – all victims of oppression, although in different ways – Phillips emphasises human capacity for empathy and care. Hence the characters do not appear permanently locked up in mourning or melancholia, but are able both to connect to and develop affections for others, even in adverse circumstances.

Whereas Phillips' fictional stories typically are characterised by internal focalisation – we see the world through the eyes of the principal characters and also learn their thoughts – in the three “creative biographies” in *Foreigners* we only see the main characters from the outside, and we rarely hear them speak.⁸ This may be the reason for another difference: the various individuals

6 Salman Rushdie, “Imaginary Homelands” [1982], in *Imaginary Homelands* (London: Penguin Books, 1991): 9–21; Homi Bhabha, *The Location of Culture* (London: Routledge, 1994); and Paul Gilroy, *The Black Atlantic: Modernity and Double-Consciousness* (Cambridge: Harvard UP, 1995).

7 Cf. Jean-François Lyotard, “Going Back to the Return,” in *The Languages of Joyce: Selected Papers from the 11th International James Joyce Symposium held in Venice, June 12–18 1988*, ed. Rose Maria Bollettieri Bosinelli, Carlo Marengo Vaglio, Christine van Boheemen-Saaf (Philadelphia: John Benjamins, 1992): 193–210.

8 See Bénédicte Ledent, “Only Connect: An Interview with Caryl Phillips on *Foreigners*,” in *Conversations with Caryl Phillips*, ed. Renée Schatteman (Jackson: U of Mississippi, 2009): 188: “CP [Caryl Phillips]: I try not to worry about labels. I would describe it [*Foreigners*] as non-fiction, but in an attempt to resolve this problem I've dispensed with the division between fiction

portrayed in Phillips' fictional stories are both marked by their histories and unable to forget, but in the stories in *Foreigners* we do not penetrate into their personal memories and only learn about their past indirectly, through the accounts of other people.

Phillips' story "Northern Lights" has the form of a biography and sketches the life of David Oluwale, from Lagos, Nigeria, beginning in 1949 with his passage as a stowaway on a ship bound for Hull in England. On arrival to the English port, Oluwale is sentenced to 28 days in prison for not having paid his way. After having served his sentence, Oluwale settles in Leeds, where he finds a job in a foundry. He is repeatedly harassed by the local police for no other reason than being black; in 1953 he is arrested and given a short prison sentence. However, instead of being released he is transferred to a mental institution. Here Oluwale is locked up for 8 years. On his release he is unable to find a job and an apartment. Even social institutions in Leeds do not seem to have a place for a black man. Oluwale now lives on the margins of society, as a vagrant and "doser." Over the years the harassment by the Leeds police becomes increasingly systematic and the arrests more frequent. In 1969 Oluwale finally meets a tragic and wrongful death at the hands of two police officers.

As in many other works by Phillips, both fictional and non-fictional, there is in "Northern Lights" a certain intermixing of fact and fiction.⁹ In this case the story is based on real events, and the two Leeds police officers responsible for the murder of Oluwale were eventually brought to trial in 1971. Phillips has used various sources – historical works and documentary material, including trial reports and transcripts – and also made interviews with people who knew or had contact with Oluwale.¹⁰ The fictional or creative part consists mainly in the form of narration: "Northern Lights" brings together different voices, historical and fictional, as well as historical documents, producing what I would call a polyvocal and elegiac narrative – blending lament and accusations, anger and love – with the explicit objective to make us remember Oluwale.¹¹

and non-fiction on the header pages of my books. Of course, this won't solve anything because people will still feel the urge to label, be they academics, bookstore owners, or publishers. This being the case, 'creative biography' might be a suitable label for *Foreigners*."

9 Kathie Birat, "'Creative Biography': Fiction and Non-fiction in Caryl Phillips's *Foreigners: Three English Lives*," *Commonwealth Essays and Studies* 36.1 (2013): 57–67.

10 Phillips is not the first to write on the tragic fate of David Oluwale. See e.g., Jeremy Sandford, *Smiling David: The Story of David Oluwale* (London: Calder and Boyars, 1974) and Kester Aspden, *Nationality: Wog. The Hounding of David Oluwale* (London: Jonathan Cape, 2007).

11 Caryl Phillips, John McLeod, "'Who Are You Calling A Foreigner?'" Caryl Phillips in Conversation with John McLeod," in *New Perspectives on The Black Atlantic*, ed. Bénédicte Ledent, Pilar Cuder-Domínguez (Bern: Peter Lang, 2012): 291.

Phillips' biographical account of Oluwale's life and death confronts the silence and even denial of the city of Leeds – which appears keener on preserving an untarnished self-image than facing up to its criminal acts – yet at the same time the strong moral *envoi* of the story is tempered by the artfulness of the telling. On a more general level the story is also describing the diaspora condition of having lost one's country and being unable to adapt to and integrate in the host society. In this case the inhospitality and racism of the 'mother country' make it even more difficult to overcome the feelings of loss and displacement. The story about David Oluwale has very little to say about his life prior to coming to England; we only learn that he arrived full of expectations to create a new life for himself. At the same time, "Northern Lights" is remarkably silent about Oluwale's mental and emotional life, although it is evident that he suffered a great deal. In the following I explore the ways in which the story is told.

Through the text of "Northern Lights" a story unfolds, told by named and unnamed characters, from a variety of perspectives, around the life of Oluwale. The first voice we encounter is of a West Indian woman from Leeds, who retells her memories from when she was 14 years old and used to run into Oluwale around a place called Button Hill. The second voice is an anonymous narrator who addresses Oluwale as "you" and who on a few occasions appears to enter the mind of Oluwale; on one occasion the narrator suddenly becomes visible, when he is addressed by a woman in the street with "Hey you, black man" (*NL*, 217). A third voice is that of a historian who narrates the history of England and Leeds from ancient times until today. A fourth voice is that of white woman, representing Chapeltown Commonwealth Citizens Committee. A fifth voice is that of a personnel officer at West Yorkshire Foundries, where Oluwale used to work during his first years in Leeds. A sixth voice is of a fellow stowaway from Nigeria, who later turns out to be a childhood friend of Oluwale's. A seventh voice belongs to a white person who had been an inmate in the same mental institution where Oluwale was locked up for eight years. This person claims to never have met Oluwale or any other black person while in the mental asylum, but he describes the horrific treatment of the patients. An eighth voice is that of a police officer critical of the blind loyalty within the police force. A ninth voice is of a West Indian community leader. A tenth voice is that of the trial report, which in turn gives voice to a large number of named individuals giving testimony.¹² Apart from these different voices, which together furnish different parts of and

¹² Richard Corty, Eric Dent, Geoffrey Ellerker, Leonard Barker, John Cobb, Cyril Batty, Keith Seager, Phillip Radcliff, Hazel Dalby, Kenneth Higgins, Frank Atkinson, Marjorie Whitaker, Edward Snapp, Phillip Davies, W. H. Halla, Ian Haste, Francis Sedman, Leonard Bradley, Reginal Fricker, David John Gee, and Justice Hinchcliffe.

perspectives on the tragic story of Oluwale, there are a number of cited authors providing facts and information about Leeds, prison conditions, and mental health institutions as well as official records supplying information on Oluwale (such as hospital and prison records).¹³ The many different voices – which are clearly differentiated in terms of language and style – are interwoven without other transitions than an empty space separating paragraphs. This discrete and unobtrusive spacing of the voices has the double effect of creating a loose fragmentary structure and of establishing proximity between disparate textual elements. The narrative text is also held together by verbal repetitions, in particular different ways of naming and addressing Oluwale.

The voices appearing in the first part of the story provide an account of Oluwale's journey to England and his early years in Leeds, inter-foliated with historical accounts of ancient England, describing the wars between tribal clans and the invasion by the Romans, who founded Leeds on the point where they built a bridge across the river Aire. The historian describes the consecutive waves of migration coming after the Romans, first the Anglo-Saxons and then the Normans, who established themselves as masters. Centuries later, other groups would come, Jews and the Irish, taking jobs in the developing manufacturing industry in the growing city. The last arriving migrants in “Northern Lights” are people from Africa and the Caribbean. The picture emerges of a country and city made up of immigrants, from the times of the Celts until modern times. The historian repeatedly makes the point that all these peoples have come to stay, that they made the city their home and that they refused to leave. Even if they came from far away countries and cultures, they seem to have left nothing behind, intent on making Leeds their home. Yet the city appears unconscious of being made up of peoples coming from other places. In tracing the demographic genealogy of Leeds, the story serves as a reminder and corrective of this false identity.¹⁴

13 Colin MacInnes 1960; J. Enoch Powell, Minister of Health, 1961; National Health Doctor, 2002; Richard Oastler, 1830; Max Farrar, 2006; Denis Power, no date; and Raymond Bradbury, no date.

14 Michel Foucault, “Nietzsche, la généalogie, l’histoire,” in *Hommage à Jean Hyppolite* (Paris: Presses universitaires de France, 1971): 152–153: “La généalogie ne prétend pas remonter le temps pour rétablir une grande continuité par-delà la dispersion de l’oubli; sa tâche n’est pas de montrer que le passé est encore là, bien vivant dans le présent, l’animent encore en secret, après avoir imposé à toutes les traverses du parcours une forme dessinée dès le départ. Rien qui ressemblerait à l’évolution d’une espèce, au destin d’un peuple. Suivre la filière complexe de la provenance, c’est au contraire maintenir ce qui s’est passé dans la dispersion qui lui est propre: c’est de repérer les accidents, les infimes déviations – ou au contraire les retournements complets – les erreurs, les fautes d’appréciations, les mauvais calculs qui ont donné naissance à

The different voices have both a limited perspective and fragmentary knowledge about Oluwale and his life in England. The 14 year-old Caribbean girl only knows him as this African person she used to meet around Button Hill, with whom she would exchange a few words. She does not even know how she knew his name, or he hers. The white woman has met Oluwale in pubs and on social occasions – such as dances – and later on in the streets, when he was homeless. After Oluwale had been to prison she started “to look out for him,” i.e., ask the police and other authorities about him in order to find out about his whereabouts and circumstances. The voice I call the narrator, we gradually understand, is close to the author – perhaps even identical to the author himself. He lives in the present and is investigating the past. He addresses Oluwale with the poetic license of a writer of fiction, invoking his physical situation, his personal ambitions and his suffering. The narrator allows himself to imagine what it must have been to be Oluwale, yet even his license is limited, and only on a few occasions does he allow himself to enter his mind. Although the author grew up in Leeds, Phillips was only 11 years old when Oluwale was murdered. In this respect he is also close to the Caribbean girl who has recollections of Oluwale from her childhood. We understand that the narrator does not personally know Oluwale – in fact none of the voices seem to have been really close to him.

The view we get of Oluwale is diffracted through the different perspectives the voices provide. Through the narrator we learn that he came to England as stowaway on a boat from Lagos, Nigeria, and when arriving in Hull he was sentenced to 28 days in prison; and that on his release he found his way to Leeds, where he started working in a foundry, his dream to become an engineer. Through the two female voices we learn that although Oluwale often participated in social occasions, went to bars and dances (and that he was a great dancer), he was somewhat of a loner. He lived by himself and apart from the West Indian community. What also appears from the different voices is the hostility towards foreigners in Leeds, both in the past and in the present. Although a city of immigrants, it is not a city that welcomes strangers. Since Oluwale lived by himself, he became an easy target for people who did not think that he belonged.

We learn from other voices that Oluwale is arrested and then transferred to a mental institution – West Riding Pauper Lunatic Asylum – where he was held for

ce qui existe et vaut pour nous; c'est découvrir qu'à la racine de ce que nous connaissons et de ce que nous sommes – il n'y a point la vérité et l'être, mais l'extériorité de l'accident. [...] La recherche de la provenance ne fonde pas, tout au contraire: elle inquiète ce qu'on percevait immobile, elle fragmente ce qu'on pensait uni; elle montre l'hétérogénéité de ce qu'on imaginait conforme à soi-même.”

8 years, from 1953 to 1961. We do not learn how he was treated, but we hear from another inmate that the treatment at the time typically consisted of confinement, sedatives and electro-shocks. For patients who did not resist this “treatment” there was Occupational Treatment, i.e., different kinds of manual labour. We also learn that after being released from the mental institution, Oluwale found it difficult to readjust to society. He found neither work nor an apartment, and instead he began to live on the street, where he became an easy target for the police, in particular Sergeant Kenneth Mark Kitching and inspector Geoffrey Ellerker, who for unknown reasons found pleasure in harassing and insulting Oluwale, not only verbally but also physically. From the trial report we learn that they habitually would abuse him physically and on occasion even urinated on him. Perhaps because Oluwale did not accept the insults quietly but always answered back, yet at the same time suffered the violence and humiliations stoically, this fed their desire to pursue their victim. It turned it into a game.

It is important to stress that we hardly ever hear either the voice of Oluwale or of the two Leeds police officers pursuing him. Only on one occasion do we hear from the latter, when during the trial one of them (inspector Ellerker) describes Oluwale as a “small, chunky man, filthy in his personal habits. [...] His language was dirty, and [...] when Oluwale became excited he would set up a high pitched screaming noise – although nothing was happening to him” (NL, 235). Corroborating Ellerker’s depiction and inadvertently legitimising the hunting game, a male staff nurse from the mental institution, testifying for the defence, described Oluwale as a “savage animal” (NL, 234). Although Oluwale never speaks himself, his character brings to mind another victim of official violence portrayed by Phillips in an earlier work, Rudy in the story “The Cargo Rap” (*Higher Ground*, 1989). In one of his prison letters Rudy writes: “because I refuse to genuflect before them, because I refuse to wear the garb of humility and stretch out rug-like so they might wipe their feet on me, it appears that I am doomed to suffer their constant visitations.”¹⁵ Similarly, because Oluwale refused to be humiliated, refused to make himself invisible, the police officers not only continued but increased their harassments and violence to the point of killing their prey.

Although the historian makes us understand that Leeds never has been a city to welcome newcomers, there is no attempt in “Northern Lights” to explain what lies behind this lack of hospitality, on occasion even hostility, to strangers. In contrast to Gilroy’s attempt to analyse British xenophobia and racism in terms of a “postcolonial melancholia” – to which we will return later – Phillips

15 Caryl Phillips, *Higher Ground. A Novel in Three Parts* (New York: Viking, 1989): 106.

does not suggest other motives driving the police officers than a desire to keep the city 'clean.' The reader does not know whether this is an example of the racist violence Gilroy describes as a "means to 'purify' and rehomogenize the nation" (*PM*, 102) or simply two police officers who are out of line, two "black sheep." However, in another context, in an essay on racial relations in Leeds and England, Phillips describes arbitrary violence against foreigners he himself has witnessed as a child and, on noting that three of the four 7 July 2005 suicide bombers in London came from Leeds, he suggests that this racial violence was contagious and has spurred a desire for destructive revenge.¹⁶ It is as if it is a social disease, what Machiavelli would have called a "malignant humour" (*omore maligno*), affecting the body politic.¹⁷

"Northern Lights" also provides the reader with several critical insider reports from the police, for instance from a young police officer who found it difficult to adjust to the *esprit de corps* and the demand that one should only make friends with other police officers, not with civilians. Nevertheless, this young officer did not try to intervene or report what was going on; his only "act of resistance" consisted in not actively participating in the physical abuse, in not doing what Kitching and Ellerker were doing. But it was not only the police that were making life hard for Oluwale on the streets, also the other "dossers" excluded him from their community. This was also the case for certain social aid organisations – such as St Georg's Crypt – which did not have place for a black man. In other hostels it was again the "guests" that did not see kindly on the presence of a black person, and again Oluwale would be turned out on the street, where he became an easy target for Kitching and Ellerker.

With few exceptions, the plurality of voices in "Northern Lights" are all bystanders, on-lookers, witnesses. Yet by not intervening they were in a sense all guilty of letting this happen to a member of their community.¹⁸ Although the narrator does not put forward explicit charges, the accusation brought forward by the narrator in the first "English life" in *Foreigners*, "Doctor Johnson's Watch," makes itself reverberate in "Northern Lights":

¹⁶ Caryl Phillips, "Colour Me English," in *Colour Me English* (London: Harvill Secker, 2011): 14–15.

¹⁷ Niccolò Machiavelli, *Discorsi sopra la prima deca di Tito Livio* (Milano: Rizzoli, 1984): 29.

¹⁸ Cf. Derek Parfit, *Reasons and Persons* [1984] (Oxford: Oxford UP 1986): 86: "It is not enough to ask, 'Will my act harm other people?' Even if the answer is No, my act may still be wrong, because of its effects. The effects that it will have when it is considered on its own may not be its only relevant effects. I should ask, 'Will my act be one of a set of acts that will *together* harm other people?' The answer may be Yes. And the harm to others may be great. If this is so, I may be acting *very* wrongly [...]."

Who in Lichfield had truly tried to help the faithful friend and servant of the city's foremost son? While I was sure that Francis Barber's own failings had led him to death's door in that inhospitable infirmary, I was also convinced that others had conspired in his demise by simply standing to the side and looking on. Dr Johnson's favourite, deprived of the protection of his master, and exposed to the hostile apathy of first London, and then Lichfield, had lost his way. (*NL*, 61)

In "Northern Lights" it is instead the Leeds police officer who was unhappy about the *esprit de corps* in the force who puts forward a similar accusation: "The worst feeling of all is that the tragedy was predictable, and that no one, including myself, prevented it. [...] I had a feeling of guilt then and I've got it now. We shouldn't have let it happen" (*NL*, 230). In contrast to the narrator of Barber's story, here the accusation is as much directed to the speaker himself.¹⁹

The last part of "Northern Lights" consists mainly in a summary account of the trial: Presentations of the main actors and of the formal accusation; the pleadings of the two defendants – Sergeant Kenneth Mark Kitching and former inspector Geoffrey Ellerker – and the witnesses testifying in their defence; then the very different version from the witnesses testifying for the prosecution, primarily different officials and colleagues to Kitching and Ellerker (several of which had by then left the police force), report from the coroner, etc. It is noticeable that the order is reversed from normal trial procedure; we would expect to first hear from the prosecution and then from the defence. The story concludes by the return of the narrator, who first seeks out the home of one of the – now retired – policemen responsible for the death of Oluwale, but he does neither enter into conversation nor confront him; and then he visits some of the places where Oluwale was hounded and where he was thrown into the river Aire. In the final scene the narrator visits Oluwale's grave, at Killingbeck Cemetery, where he is buried together with nine other strangers.

3. An Elegy of Black Diaspora in England

Although "Northern Lights" gives us very little direct insight into Oluwale's different mental states during the period covered by the story, it is apparent that he was not faring well in Leeds. In the early years he appeared to be well integrated in the diaspora community, but we also learn through several voices that

¹⁹ A similar self-accusation is voiced by Phillips in relation to a childhood memory of having passively witnessed racial abuse against a classmate from Asia. See Phillips, "Colour Me English," 15.

he kept his reserve; however, we never learn his reasons for keeping a distance to people. For others, not only the police, Oluwale appeared violent – both verbally and physically – and for which reason he was arrested and then ‘treated’ in a mental institution; but this aspect of his person never really comes into focus in the story. A compatriot from Nigeria relates that Oluwale lacked the art of diversion, that he “wasn’t able to think around a situation and do something else” (*NL*, 191); and in particular not knowing how *not* to respond to provocations, which would then inadvertently become an excuse for both verbal and physical abuse by his tormentors.²⁰ The problem for the reader is to know whether Oluwale always had been headstrong and somewhat of a loner or if this was caused by his situation in Leeds; and if his unwillingness or inability to establish close relationships with people was due to melancholia caused by dislocation and living in a hostile environment or if there were other reasons.

The story presents a multiplicity of perspectives on both Oluwale and the city of Leeds, yet it gives us only a vague outline of him as a person and of his situation. However, his “maladjustment” to society after having been released from the mental institution appears in equal measures to have been caused by the “treatment” he had suffered, the inhospitality of the social authorities and the hostility of the Leeds police. At this time in his life, if not before, it would seem that Oluwale in many ways fits Freud’s description of melancholia: “a profoundly painful dejection, cessation of interest in the outside world, loss of capacity to love, inhibition of all activity, and lowering of the self-regard feelings to a degree that finds utterances in self-reproaches and self-revilings, and culminates in a delusional expectation of punishment” (*M&M*, 244). But instead of speculating on the mental state of Oluwale and its possible origins, I will explore the relation the author – or authorial instance – has in relation to the narrative subject.

In an interview Phillips has labelled the three stories in *Foreigners* as “creative biographies” – “creative” both because of the use of literary devices and a certain poetic license.²¹ However, for the last story, about Oluwale, an equally

²⁰ The Nigerian compatriot elaborates: “David needed somebody to sit down and tell him what was happening to him. Some of us nearly went mad in England because the environment was new. We spoke the same language and we thought everything would be okay, but we soon found out. David really was a smart cat who could always think fast if he had to, but he was a loner who wanted to do everything by himself” (*NL*, 191). Commenting on this passage, Kathie Birat makes a reference to Eduard Glissant’s notion of “diversion” as a way of deflecting a direct confrontation with racial prejudice. See Birat, “Creative Biography,” 64, making reference to Glissant’s *Le Discours antillais* (Paris: Gallimard, 1981).

²¹ Ledent, “Only Connect: An Interview with Caryl Phillips on *Foreigners*,” 188.

fitting literary label would be the elegy.²² The word *elegy* stems from the Greek word ἔλεγος, meaning lament, yet in ancient Greek and Latin literature this was the name of a verse form rather than a particular subject matter. Thus, elegies could cover a wide range of subjects, amorous, erotic and mythological as well as witty, humorous and satiric topics. It could of course also be used for mournful or plaintive poems, especially funeral songs or a lament for the dead. In this connexion one can also mention Ovid's *Tristia*, an elegy centred on the experience of the poet's exile in Tomis (now Constanța, Romania). In English literature, the modern and restricted meaning of elegy – a lament for a departed beloved or a tragic event – is only current since the sixteenth century, although the broader concept was still employed by John Donne for his elegies written in the early seventeenth century. For later writers the term has come to mean a serious meditative poem, often exemplified by Thomas Gray's *Elegy Written in a Country Churchyard* (1750).

In a study over the English elegy from Spenser to Yeats, Peter M. Sacks singles out a number of thematic and formal conventions governing the genre, several of which are present in "Northern Lights."²³ Among the thematic conventions of the elegy, the use of vegetation myths is perhaps the most obvious. This theme is not immediately present in Phillips' story, but in its stead there is the recurrent waves of migrants arriving in England and Leeds and, although treated with hostility, they have grafted themselves onto the city and eventually became a living part of it. Among the formal conventions, with the exception of not being written in verse, basically all the elements that Sacks lists are found in "Northern Lights": repetition and refrain; reiterated questions; vengeful anger and cursing; eclogical division between voices.²⁴ For this reason I would argue

²² Among the many reviewers of *Foreigners*, I have found only two that identifies it as "elegiac" (Vincent Carretta, "Unhappy Endings Made in England," [5 February, 2008], *The Washington Post* <<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/04/AR2008020402455.html>> [acc. 1 September, 2015]) or, more specifically "Northern Lights," as an "elegy" (Margaret Busby, "Three Hundred Years of Solitude," [21 September, 2007], *The Independent* <<http://www.independent.co.uk/arts-entertainment/books/reviews/foreigners-three-english-lives-by-caryl-phillips-464497.html>> [acc. 1 September, 2015]). Other reviewers called it a "novel," a "fictionalised biography" or a "hybrid" of fact and fiction.

²³ Peter M. Sacks, *The English Elegy: Studies in the Genre from Spenser to Yeats* (Baltimore: Johns Hopkins UP, 1987): 18–37.

²⁴ It is perhaps no surprise that modern elegies no longer primarily are written in verse but in prose. In a study of "figuring grief" in twentieth-century fiction, Karen E. Smythe has identified a number of prose writers who cultivate what she calls "fiction-elegy." Among modernist writers she singles out James Joyce and Virginia Woolf; and among late modernists Mavis Gallant and

that Phillips' polyvocal account of the life and tragic death of Oluwale largely participates in the conventions of the genre. In his study over the English elegy, Sacks suggests that one should understand the genre not only as a poetic representation of loss and the expression of grief, but as a verbal figuration of the work of mourning.²⁵ This means that the elegy should not be viewed as separate from the labour of mourning, not merely a representation of grief but constitutive of mourning. Applied to Phillips' biographic account of Oluwale, it may be argued that he is not mourned in this sense, that none of the voices were close to him or knew him well. But the tragic event depicted in "Northern Lights" is not so much something that affected individual persons as the community as such; what was lost was a sense of security and trust. The trial against the two police officers responsible for his death probably contributed to the working through of this collective trauma, yet Phillips makes us understand that the city wants to deny its responsibility in a deeper sense, that it would prefer to forget that Oluwale ever existed, just as the police officers appear to have wanted to make him disappear from the city. In this sense, then, Phillips' story serves as a verbal figuration of the work of mourning by insisting not only on not forgetting Oluwale but also on claiming a place and meaning for him in the present.

Not surprisingly, Sacks suggests that one should decode the English elegy in the light of Freud's theory of mourning and melancholia; and more specifically that the elegy is part of successful mourning, avoiding the dangers of melancholia.²⁶ This motivates – even forces us – to turn to Freud's analysis of mourning and melancholia. Indeed, approaching the story through the lenses of the psychoanalytic theory of mourning and melancholia helps us to understand diaspora as a psychological predicament and not only as a cultural phenomenon.

4. Mourning and Melancholia

In the article "Mourning and Melancholia" Freud describes mourning and melancholia as in several ways similar psychological phenomena, but whereas the former is a passing state and is considered normal, the other is viewed as pathological and is generally a more lasting condition. Mourning is "the reaction to the loss of a loved person or to the loss of some abstraction which has taken

Alice Munro. See Karen E. Smythe. *Figuring Grief: Gallant, Munro, and the Poetics of Elegy* (Montreal: McGill-Queen's UP, 1992).

²⁵ Sacks, *The English Elegy*, xii.

²⁶ Sacks, *The English Elegy*, 6.

the place of one, such as one's country, liberty, an ideal, and so on" (*M&M*, 243). In the present context it is noteworthy that Freud states that mourning can be caused by the loss of one's home country – what is often called homesickness or *mal du pays*. This is not to say that the loss of a beloved person – taken away by death or lost through betrayal – has the same effect as leaving one's country or longing for a "home country" one has perhaps never seen, but in both cases the loss of a loved object has to be accepted and accommodated in the imaginary representation of reality. Freud goes on to write that for some people "the same influences produce melancholia instead of mourning" (*M&M*, 243). The distinguishing mental features of melancholia are according to Freud "a profoundly painful dejection, cessation of interest in the outside world, loss of capacity to love, inhibition of all activity, and lowering of the self-regard feelings to a degree that finds utterances in self-reproaches and self-revilings, and culminates in a delusional expectation of punishment" (*M&M*, 244). Freud notes that with one exception the same traits are met with in mourning – "the same painful frame of mind [...], the same loss of capacity to adopt any new object of love [...] and the same turning away from any activity that is not connected to thoughts of him" (*M&M*, 244) – the exception being "the disturbance of self-regard" (*M&M*, 244). Freud writes that the melancholic displays an extraordinary diminution in his self-regard, an impoverishment of his ego on a grand scale: "In mourning it is the world that has become poor and empty; in melancholia it is the ego itself" (*M&M*, 246).

Freud notes that it "is remarkable that this painful unpleasure [in mourning] is taken as a matter of course by us" (*M&M*, 245) and that it is only because "we know so well how to explain it that this attitude does not seem to us as pathological" (*M&M*, 244). Similarly the distressed behaviour of a person afflicted by homesickness is familiar to us: He or she is distracted, shows signs of restlessness and is unable to focus on his or her tasks; typically this person is also indifferent to people in the new environment, even to the point of apathy. As a way to compensate for the loss of the home country, *émigrés* often develop an interest in objects or aspects related to the homeland, even seeking out the company of fellow patriots to share memories.²⁷ In fact, it is not uncommon that one starts to cherish or even fetishize things reminiscent of the home country which one did not care for before. However, once the person gets used to the new environment and finds his/her bearings – and even better when starting to make friends – this feeling of homesickness usually begins to wane. This is again similar to

27 A. Cesar Garza-Guerrero, "Culture Shock: Its Mourning and the Vicissitudes of Identity," *Journal of the American Psychoanalytic Association* 22 (1974): 408–429.

mourning, as Freud writes: “when the work of mourning is completed the ego becomes free and uninhibited again” (*M&M*, 245). In psychology and in intercultural studies one usually refers to this phenomenon as culture shock; and international students and professionals working abroad are often primed either before departure or on arrival to the new country.²⁸ But whereas homesickness and culture shock typically are passing phenomena – just like mourning – diaspora denotes a lasting condition in several ways similar to melancholia.

In the article Freud then proceeds to distinguish between mourning and melancholia in greater detail. He suggests that whereas in mourning the object-loss is always conscious, in melancholia loss is “withdrawn from consciousness” (*M&M*, 245). Freud notes that this may also be the case when a patient is aware *whom* he has lost but not *what* he has lost in him. A well-known example from literature is Antonio’s unexplainable “want-wit sadness” in the beginning of *The Merchant of Venice* (1596).²⁹ Antonio’s friends Salerio and Solanio both offer suggestions of how he has “caught it, found it, or came by it” (*MV*, 1.1.3), but these are all refused by Antonio. Although his sadness appears to be a recent affliction rather than a ‘humour’ in the sense of a character trait or medical diagnosis, Antonio professes to Bassanio that it is a more permanent condition; he famously says that the world is but a “stage, where every man must play a part, / And mine a sad one” (*MV*, 1.1.78–79). This kind of unexplainable sadness is also often common among immigrants and can also be transferred to their children whose experience of loss in a sense will be second-hand, but nevertheless may be experienced as immediate and real; the absence of a country that one can call one’s own.

The essential difference between mourning and melancholia is according to Freud that the person in mourning has “suffered a loss in regard to an object” whereas the melancholic has suffered “a loss in regard to his ego” (*M&M*, 247). This loss is connected to the self-accusations that one finds in the melancholic, but not in the person in mourning. According to Freud, this occurs through the transference of reproaches first made against a loved object, which then have been “shifted away from it on to the patient’s own ego” (*M&M*, 248). A precondition for melancholia is thus an *ambivalency* in relation to the loved object. To illustrate this mechanism, Freud writes that a “woman who loudly pities her husband for being tied to such an incapable wife as herself is really accusing her husband of being incapable, in whatever sense she may mean this” (*M&M*,

²⁸ Paul B. Pedersen, *Five Stages of Culture Shock: Critical Incidents Around the World* (Westport: Greenwood P, 1995).

²⁹ William Shakespeare, *The Merchant of Venice*, 1.1.6. Further references in text, abbreviated with “*MV*”.

248). According to Freud, there is “no difficulty” in reconstructing the process: “An object-choice, an attachment of the libido to a particular person, had at one time existed; then, owing to a real slight or disappointment coming from this loved person, the object-relationship was shattered” (*M&M*, 248–249). The result of this process is not the normal one of withdrawal of the libido from this object and displacement of it on to a new one, but something different, determined by various conditions. The emotional attachment to the object is not strong enough and is brought to an end, but the free libido is not shifted on to another object; it is withdrawn into the ego. Freud now comes to the core of the process, and I quote in full:

There, however, it was not employed in any unspecified way, but served to establish an *identification* of the ego with the abandoned object. Thus the shadow of the object fell upon the ego, and the latter could henceforth be judged by a special agency, as though it were an object, the forsaken object. In this way an object-loss was transformed into an ego-loss and the conflict between the ego and the loved person into a cleavage between the critical activity of the ego and the ego as altered by identification. (*M&M*, 249)

There are a number of things that it is necessary to unpack in this passage in order to understand the complex genesis and dynamic of melancholia. According to Freud, who here refers to his colleague Otto Rank, the combination of a “strong fixation to the loved object” and “little power of resistance” indicates that “the object choice has been effected on a narcissistic basis” (*M&M*, 249), i.e., that there exists a narcissistic identification between ego and object. The result is that despite the loss of the loved object, the love relation does not need to be given up. According to Freud this reaction implies “a *regression* from one type of object-choice to original narcissism” (*M&M*, 249). Referring to an earlier study of his on the introduction of narcissism in psychoanalysis, Freud suggests that the tendency to identification represents a preliminary – and ambivalent – stage of object choice, in which the ego “wants to incorporate this object into itself” (*M&M*, 249).³⁰ Freud writes that he would have liked to draw the conclusion that the disposition to fall ill of melancholia lies in a predominance of the narcissistic type of object-choice, but that this conclusion has “unfortunately not yet been confirmed by observation” (*M&M*, 250). Unable to empirically determine a predisposition or pathological genesis, he limits himself to write that melancholia “borrows some of its features from mourning, and

³⁰ Freud is referring to his article “Zur Einführung des Narzißmus” [1914], *Gesammelte Werke X* (London: Imago Publishing, 1946): 137–170.

others from the process of regression from narcissistic object choice to narcissism" (*M&M*, 250).

Here it may also be added that Freud, in the article on narcissism, writes that the object of narcissistic identification is not necessarily an individual, but may also be with a group such as "a family, a class or a nation."³¹ This is important in this context because the libidinal relation one has to one's country typically has the form of identification rather than a desire for an object that satisfies a need or gives pleasure. At the same time, the identification with a collective is often effected through a proxy, e. g., family member, celebrity or head of state. An emigrant typically not only maintains an attachment to the home country, but develops an even stronger identification with his/her country than before – at least during the first stage of the acculturation process. In other words, since diaspora is defined in relation to the loss of and longing for the home country, with which there is a narcissistic identification, this suggests – but it is wise to retain Freud's caution – a predisposition towards melancholia rather than mourning.

Another important feature of melancholia is according to Freud the effect of feelings of ambivalence toward the loved object, feelings that may only "come into the open" when the object is lost. Freud writes that where there is a "disposition to obsessional neurosis" the conflict due to ambivalence gives a "pathological cast to mourning" and forces it to express itself in the form of self-reproaches to the effect that the mourner blames himself for the loss of the loved object. Freud speculates that this conflict due to ambivalence is possibly a "precondition of melancholia." He continues: "If the love for the object – a love which cannot be given up though the object itself is given up – takes refuge in narcissistic identification, then the hate comes into operation on this substitute object, abusing it, debasing it, making it suffer and deriving sadistic satisfaction from its suffering" (*M&M*, 251).³² In other words, in both obsessional neurosis and melanco-

31 Freud, "Zur Einführung des Narzißmus," 169 ["einer Familie, eines Standes, einer Nation"].

32 Later in the article "Mourning and Melancholia" Freud elaborates further: "The ambivalence is either constitutional, i. e., is an element of every love-relation formed by this particular ego, or else it proceeds precisely from those experiences that involved the threat of losing the object. For this reason the exciting causes of melancholia have a much wider range than those of mourning, which is for the most part occasioned only by a real loss of the object, by its death. In melancholia, accordingly, countless separate struggles are carried on over the object, in which hate and love contend with each other; the one seeks to detach the libido from the object, the other to maintain this position of the libido against the assault. [...] Constitutional ambivalence belongs by its nature to the repressed; traumatic experiences in connexion with the object may have activated other repressed material. Thus everything to do with these struggles due to the ambivalence remains withdrawn from consciousness, until the outcome characteristic of melancholia has set in" (*M&M*, 256).

lia, “by the circuitous path of self-punishment” (*M&M*, 251), the person is able to take revenge on the original object. Among persons who have been forced to leave their home country due to economic or political reasons such feelings of ambivalency are not uncommon.

An important implication of the psychoanalytic theory of melancholia is that “the conflict between the ego and the loved person [is transformed] into a cleavage between the critical activity of the ego and the ego as altered by identification.” In later texts Freud will elaborate on this cleavage or split of the ego into a critical activity and – what he will call – an ego-ideal.³³ The importance for melancholia is that this split enables the ego to “treat itself as an object” and, in directing the hostility against itself that relates to an object, this explains why “the ego can kill itself” despite the vast amount of ego’s self-love which cannot consent to its own destruction (*M&M*, 252). According to Freud this mechanism explains the self-destructive behaviour often found in individuals suffering from melancholia. One of the striking – and unexplained – character traits of Oluwale in Phillips’ account of his life is a certain lack of self-preservation. That is, it is not that Oluwale actively tried to hurt himself, but he seemed at times to have sought out his tormenters in the Leeds police force rather than to have avoided them.

The study of melancholia of course neither begins nor ends with Freud. Aristotle already discusses the phenomenon of melancholia in his *Problemata* and ever since it has been described and discussed in medicine, philosophy, psychology, religion and of course in art and literature.³⁴ Freud himself returns several times during his career to the question, and from different perspectives.³⁵ Also today there is an on-going discussion within and between different schools of psychology regarding both the mechanisms involved and the relative costs and benefits of psychotherapy and psychopharmaca. The development that I want to highlight here is the extension and application of the psychoanalytic theory to social psychology, in particular a study conducted by the two psychoanalysts Margarete Mitscherlich and Alexander Mitscherlich in post-world-war-two West

33 Sigmund Freud, “Das Ich und das Es,” *Gesammelte Werke* [1923] (London: Imago Publishing, 1955): 13: 237–289.

34 For an historical account of melancholia, see Stanley Jackson, *Melancholia and Depression. From Hippocratic Times to Modern Times* (New Haven: Yale UP, 1986). See also Jennifer Radden, ed., *The Nature of Melancholy: From Aristotle to Kristeva* (Oxford: Oxford UP, 2000).

35 George Pollock, “Mourning and Adaptation,” *The International Journal of Psycho-Analysis* 42 (1961): 343–345; Tammy Clewell, “Mourning Beyond Melancholia: Freud’s Psychoanalysis of Loss,” *Journal of the American Psychoanalytic Association* 52 (2004): 43–67.

Germany.³⁶ Based both on individual case studies and on studies of social and political phenomena, they attempted to understand the German people's reaction to the death of their beloved leader and the abandonment of illusions of omnipotence encouraged by the Nazi ideology. According to the Mitscherlichs, the German people warded off a collective process of mourning for what they had loved and lost by means denial and repression that inhibited any capacity for responsible and reconstructive activity. The collective feeling of guilt was narrowly projected on the political leaders and their close accomplices; and the German people – seemingly effortlessly – transferred their identification to their victors. The two researchers also found a denial of the destructiveness of the German military campaign, which together with the denial of guilt blocked and deferred the country's comprehension of its own history. The effect on the individual psyche was such that it left a blank space in their memories, creating patterns of intergenerational complicity that contributed to a culture of alienation not only in relation to the past but to anything that entailed responsibility.

Not surprisingly, central in the analysis of the Mitscherlichs is the role of narcissistic fantasies, in particular of racial kind – regarding the Aryan master race. The fact that the relationship to Hitler was largely of a narcissistic kind – and not without ambivalence – would suggest the development of mass melancholy after his death. However, according to Mitscherlichs this did not happen, basically for the same reasons that prevented mourning to take place, i.e., denial and repression. Instead of engaging in self-accusations and diminished self-regard, the Germans blocked out and suppressed any affective relations to the Nazi party and its leaders.³⁷ Because of the persistence of this autistic attitude, the Mitscherlichs argue that a majority of citizens in Germany have been unable to identify themselves with anything beyond its economic system.

Inspired by the Mitscherlichs' theory of the German people's inability to mourn, Gilroy has tried to understand the cultural dynamics and social psychol-

36 Margarete Mitscherlich, Alexander Mitscherlich, *Die Unfähigkeit zu trauern: Grundlagen kollektiven Verhaltens* [1967] (München: Piper, 1991): in particular 13–85.

37 Mitscherlich, *Die Unfähigkeit zu trauern*, 37–38: "Die Bundesrepublik ist nicht nicht in Melancholie verfallen, das Kollektiv all derer, die eines gemeinsam geteilten Ich-Ideals, konnte der eigenen Entwertung dadurch entgehen, dass es alle affektiven Brücken zur unmittelbar hinter ihnen liegenden Vergangenheit abbrach. [...] Mit dieser Abwendung der inneren Anteilnahme für das eigene Verhalten im Dritten Reich wurde ein in ungezählten Fällen kaum zu bewältigender Verlust des Selbstwertes und damit der Ausbruch einer Melancholie vermieden. Die Auswirkung dieser aussergewöhnlichen psychischen Anstrengung des Selbstschutzes, die keineswegs aufgehört hat, ist der heute herrschende psychischen Immobilismus angesichts brennender Probleme unserer Gesellschaft."

ogy of post-imperial Great Britain in terms of melancholy.³⁸ In contrast to the Mitscherlichs, who argue that the Germans were unable both to mourn and sink into melancholia, Gilroy argues that the British people's inability to mourn the loss of its colonial empire implies a melancholy reaction, as it were dialectically. He argues, in short, that before the British people can accommodate the crimes and horrors of their own modern history and start to build a new national identity "from the debris of their broken narcissism," they will have to learn about – and accept the responsibility for – the brutalities of colonial rule enacted in their name and to their benefit. Seen in this light, the fictional works of Phillips, which predominantly deal with colonial and postcolonial conditions, serve to educate the public about the many crimes committed by British colonial rule as well as institutionalised racism in contemporary society.

The social trauma of losing a colonial empire is – just as losing the Second World War for the Germans – compounded by a number of additional shocks. Among them is the obligation to work through the criminal reality of imperial and colonial history and to "transform the paralyzing guilt into a more productive shame that would be conducive to the building of a multicultural nationality that is no longer phobic about the prospect of exposure to either strangers or otherness" (*PM*, 99). According to Gilroy one finds very similar phenomena and psychological mechanisms in other former colonial powers – such as Belgium, France, the Netherlands and Spain.

In contrast to Nazi Germany, which was narcissistically centred on the figure of the *Führer*, the historical experience of British world dominance and habituation to imperial pre-eminence have, Gilroy notes, "no single iconic human cipher" (*PM*, 100). There was no imaginary embodiment of its imperial greatness, and the figure of imperial power is therefore left unmourned. Gilroy wants to suggest that in contemporary Britain, it is "the infrahuman political body of the immigrant rather than the body of the sovereign that comes to represent all the discomfiting ambiguities of the empire's painful and shameful but apparently exhilarating history" (*PM*, 100). According to Gilroy, it is the immigrant that serves as a reminder that Europe was "once out there"; and that this undeniable recognition "provides stimulus for hostility rooted in the associated realization that today's unwanted settlers carry all the ambivalence of empire with them" (*PM*, 100). He suggests that the immigrant – both in person and figuratively – "may be unwanted and feared precisely because they are the unwitting bearers of the imperial and colonial past" (*PM*, 100–101). Gilroy continues:

38 Gilroy, *Postcolonial Melancholia*, 98–106.

In this precarious national state, individual and group identifications converge not on the body of the leader or other iconic national objects [...] but in opposition to the intrusive presence of the incoming strangers who, trapped inside our perverse logic of race, nation, and ethnic absolutism not only *represent* the vanished empire but also refer consciousness to the unacknowledged pain of its loss and the unsettling shame of its bloody management. (*PM*, 101)

The British people's inability to mourn its loss of Empire has revealed an extensively fragmented national collective that – just as in post-world-war-two West Germany – so far has “not been able to meet the elemental challenge represented by the social, cultural, and political transition with which the presence of postcolonial and other sanctuary seeking people has been unwittingly bound up” (*PM*, 102). Instead, racist violence has provided an “easy means to ‘purify’ and rehomogenize the nation” (*PM*, 102).

I find both the Mitscherlichs' and Gilroy's extensions and different adaptations of Freud's psychoanalytic theory of mourning and melancholia instructive as ways of reading the collective psyche and of decoding contemporary social imaginary significations. They help us understand the subject position of people like police officers Kitching and Ellerker.

The analogies between melancholia and diaspora that I have suggested follow the same general lines of argument; yet at the same time it should be emphasised that I do not want to reduce diaspora to a question of melancholia – diaspora is a much more complex social and cultural phenomenon. Nevertheless it is notable that in Western European countries today – on a very concrete, street level – the melancholic subjects of diaspora are facing the subjects of postcolonial melancholia. This encounter between subjects of melancholia is by necessity a troubled one, since it takes place without mutual recognition. Phillips' story about Oluwale's unwelcome welcome to Leeds plays out the autistic and destructive face-off between different orders of melancholia.

In other words – and to conclude – to the extent that the story of Oluwale is determined by the encounter of subjects belonging to different orders of melancholia – diaspora and postcolonial – Phillips' elegiac treatment could help to understand – if not heal – the social ailment, on both sides of this troubled encounter. In creating a narrative space for mourning this forsaken life, it is possible to move from denial and repression to recognition and acknowledgement of guilt. It is, after all, not only the two police officers who are found guilty; it is also the community that failed to protect its weakest member. In this way, then, Phillips' polyvocal elegy makes possible the transition from melancholy to the work of mourning.

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