CEU CENTRAL EUROPEAN UNIVERSITY

The Activist

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HRSI AWARE CONCERNED ENGAGED

About HRSI

Human RightS Initiative (HRSI) is an awareness raising and capacity building organization based at Central European University (CEU) in Budapest. It was founded in 1999 by the students of the CEU Legal Studies Department, Human Rights Program. Since then, it has grown into an internationally-recognized human rights organization, focusing on youth involvement, informal education and student participation. HRSI's mission is to promote social engagement through awareness raising and capacity building. Our main target groups are CEU students and alumni, local and regional NGO staff and activists.

The Activist team

Cover Image

Demonstration for academic freedom and against the expulsion of Central European University (CEU), held in Budapest on 24th November 2018.

Courtesy of https://444.hu, photo credits Halász Júlia. Originally published online at https://444.hu/2018/11/24/tobb-ezren-tuntetnek-a-szabad-oktatasert-es-a-ceu-maradasaert on 24 November, 2018.

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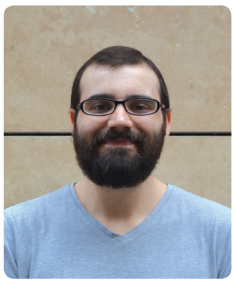
Authors



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Editorial

While it may sound like a warm wish or a blessing, the supposed Chinese curse, "May you live in interesting times," has always been used – with a dose of irony– to refer to an age of chaos and turmoil. Indeed, anyone observing recent global trends and developments in politics, the economy, and society will surely admit that we have been graced –or rather, cursed– with interesting times.

Our alma mater has found itself, not for the first time, in the epicenter of it all. The wave of democratic transition in post-Soviet Central and Eastern Europe and its presence in Budapest is ingrained in the university's DNA. Then, the zeitgeist was one of enthusiasm and optimism for the future, with CEU quickly becoming the source of academic, intellectual and activist force strengthening democratic governance and the protection of human rights in this region and beyond. Fast-forward 30 years, and we see that the times have changed towards something intensely 'interesting': the star of liberal democracy has lost its shine, and the causes of human rights and open society are facing ever-stronger backlash.

The star of liberal democracy has lost its shine, and the causes of human rights and open society are facing ever-stronger backlash

Previous editions of The Activist provided superb documentation and reportage of the protests surrounding CEU's fate. This year's edition also would not be complete without recognition of the recent civil unrest surrounding academic freedom in Hungary, in particular the memorable occupation of the Parliament's square in November 2018 started by Szabad Egyetem, an activist group formed by CEU students. You can see glimpses of the protest through a selection of photographs included in this journal.

Undoubtedly, this year's submissions reflect perhaps the most unique feature of CEU – namely, diversity. All of the articles, though varied in topics and geographical focus, are nonetheless unified in engaging with some of the most pressing human rights issues of today. Alongside articles providing strong theoretical underpinnings for key concepts in human rights such as colonialism, the international human rights system, repatriation, and victimhood, we also have articles written from an activist perspective, describing stories of protest and resistance in the face of impunity and injustices. The authors have certainly contributed to broader and existing academic debates, and have done so in a fresh, innovative, and critical manner.

Amidst the crisis, it is our hope that this year's edition will reassure the reader that although the fight for human rights is unceasing, it is nevertheless one worth fighting.

Thank you to the authors and editors for their hard work and contributions to The Activist, and to HRSI for providing a platform for student publications. .

– Agnieszka Januszczyk, Editor-in-Chief
MA Human Rights, Legal Studies Department

Contents

Decolonizing drug use

Why drug prohibition is a legacy of colonialism and white supremacy

Jake Agliata

It is well documented that drug prohibition disproportionately harms people of color, indigenous communities, and other marginalized groups. What is not acknowledged as often is how from the very beginning, drug prohibition has been used as a tool to justify colonialism and uphold white supremacy by utilizing rhetoric painting people who use drugs as savages and dangerous. Forms of drug use popular among marginalized communities have been targeted and outlawed while forms of use among ruling classes have been, at the very least, regulated.

Colonialism has been supported through drug prohibition for centuries. In the 17th century three distinct classes emerged in Spanish-American colonies: European colonizers, Indigenous peoples, and African slaves. As these classes mixed together, a legal system of racial hierarchy was established to ensure Spanish economic interests were protected. One way of enforcing this hierarchy was to prohibit traditional practices such as the ceremonial use of psychoactive drugs.[1] This not only criminalized indigenous peoples who were threats to the colonial social order but pushed these communities towards cultural integration. Colonists believed the further removed people were from their culture, the less likely they would resist colonization. While this form of legal discrimination has ended, the legacy of colonial drug laws still exists in Latin America. Drug laws pushed by Western influencers continue to criminalize indigenous peoples from practicing their cultural traditions and keep them in a lower-class status.

Modern day drug prohibition has roots in the United States.

Modern day drug prohibition has roots in the United States. Due to fears among many white people in California that Chinese men were using opium to poison and seduce white women, Congress passed the Anti-Opium Act in 1909. The law specifically targeted forms of opium consumption popular among Chinese immigrants and African Americans while allowing exceptions for forms of consumption popular among white people.[2] Cocaine regulations followed in 1914 with the Harrison Tax Act, fueled by newspaper articles connecting cocaine use with violent African American behavior.[3] Public outcry led policymakers to criminalize drug use as part of

1 Ali, Ismail Lourido, and Magalie Lerman. "Colonization Laid the Groundwork for the Drug War." The Fix. April 11, 2018. https://www.thefix.com/colonization-laid-groundwork-drug-war.

2 Redford, Audrey, and Benjamin Powell. "Dynamics of Intervention in the War on Drugs: The Buildup to the Harri son Act of 1914." The Independent Review 20, no. 4 (2016): 516.

3 French, Laurence, and Madaleno Manzanárez. NAFTA & Neocolonialism: Comparative Criminal, Human & Social Justice. Lanham, MD: University Press of America, 2004. 128.

efforts to keep people of color out of white society. Perhaps the most blatantly racist campaign was run against cannabis by Harry Anslinger in the 1930s. During this time there were increasingly high racial tensions between white Americans and Latin immigrants. Anslinger, the director of the newly established Federal Bureau of Narcotics, saw an opportunity to capitalize on these tensions. He launched a discriminatory public campaign claiming cannabis – which he started calling by the Mexican term marihuana to make the association with Latin immigrants more obvious – made people violent and promoted interracial marriage. Anslinger enlisted the help of newspaper mogul William Randolph Hearst, who very publicly despised Mexicans and eagerly pushed this propaganda. Just as with opium and cocaine, public fear from the white community stemming from a highly racist campaign pushed Congress to pass the Marihuana Tax Act of 1937, officially making cannabis illegal.

Drug prohibition became institutionalized as a form of racial discrimination when Richard Nixon launched the War on Drugs in 1972, giving law enforcement unprecedented power to harass communities of color using drugs. Mass incarceration of black Americans through drug criminalization has been referred to as "The New Jim Crow",[4] referencing pre-segregation laws which upheld white supremacy. The War on Drugs was not limited to domestic policy, as the United States helped establish an international drug control regime mandated through United Nations conventions. By coordinating a global consensus on drug prohibition, they were able to justify foreign intervention in drug-producing regions such as Central Asia and South America. This brings the problem full cycle; once again, a Western power is using drug prohibition to legitimize violence on colonized peoples. Today, even as the ineffectiveness of prohibition is acknowledged, many powerful states utilize drug prohibition within their own borders to criminalize communities of color.

The problem has not gone completely unnoticed. The UN Office of the High Commissioner for Human Rights has acknowledged challenges in drug control enforcement related to discrimination against minorities and indigenous communities.[5] The Committee on the Elimination of Racial Discrimination has stated concern about incarceration among indigenous communities and persons belonging to minority groups.[6] The Working Group of Experts on People of African Descent believes racial profiling is encouraged due to drug laws.[7] Members of civil society often cite racial discrimination as an argument in favor of a human rights approach to drug policy.

Despite this acknowledgement, there is still a troubling lack of urgency by states to provide real remedies addressing prohibition's origins in colonialism and white supremacy. It is critical to understand this context if we are to properly move into a post-prohibition world. Drug legalization should be viewed as part of a movement to heal traumatized communities. This can be done through restorative justice which provides reparations to those whose lives have been ruined through drug criminalization and expungement of criminal records related to drugs. Furthermore, as legal drug industries begin to emerge, equity programs should be established to empower former victims of drug criminalization to directly benefit from the profits of legalization. As more states begin to acknowledge the failures of drug prohibition, we must keep in mind the origins of the global drug control system and seek solutions which put support of the most impacted populations first. Drug policy reform should seek to not legalize drugs, but to decolonize drug use and actively repair centuries of harm caused by colonization, racism, and exploitation. •

Drug legalization should be viewed as part of a movement to heal traumatized communities.

4 Alexander, Michelle. The New Jim Crow: Mass Incarceration in the Age of Colorblindness. New York: New Press, Distributed by Perseus Distribution, 2010.

5 "Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights". OHCHR (HRC/39/2-8), 2018.

6 "Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada". (CERD/21-23), 2017.

7 "Report of the Working Group of Experts on People of African Descent". (HRC/33/9), 2016

Lawlessness, resilience and the need for an international binding digital rights framework

Anastasiia Valdimirova

Over the past three years the number of cyber-attacks against human rights defenders, activists and journalists has skyrocketed. In 2016, a Toronto-based digital rights watchdog, CitizenLab, tracked the use of highly-sophisticated, one-of-a-kind spyware called Pegasus linked to an Israeli private cybersecurity company, the NSO Group, in at least 45 countries.[1] The spyware targeted some of the most prominent human rights defenders across the globe, including Emirati blogger and activist Ahmed Mansoor, a large number of journalists, human rights lawyers, legislators and politicians in Mexico, as well as Amnesty International staff,[2] to mention just a few.

Had Mansoor not been able to identify a string of suspicious text messages and pass them onto CtizenLab's researchers, for how long would his government have kept snooping on his private correspondence? How many activists, journalists and civil society organizations continue doing their sensitive and important work unbeknown to the fact that someone is keeping an eye and an ear on their every move?

How realistic is a legal framework, especially given the absence of binding obligations for private entities and businesses under the international human rights law?

This case is just the tip of the iceberg in the global phenomenon of illegal target hacking. It reveals a disturbing pattern of State behavior; engaging in illegal surveillance operations against their own citizens, in clear violation of international human rights norms. Even more alarming, however, is States' collaboration with private companies which provide them with the means to commit such cyberattacks.

In using the NSO Group's spyware, Mexico violated the International Covenant on Civil and Political Rights, ratified in 1981. The United Arab Emirates cannot be held accountable for hacking its citizens as they are not a State Party to any of the relevant international treaties. The more concerning issue in the minds of many digital rights advocates and policy makers

1 Ron Deibert, et al, 'Tracking NSO Group's Pegasus Spyware to Operations in 45 Countries' (CitizenLab, 18 Septem ber 2018) < https://citizenlab.ca/2018/09/hide-and-seek-tracking-nso-groups-pegasus-spyware-to-operations-in-45-countries/ > accessed 13 March 2019

2 Ron Deibert, et al, 'Reckless Exploit Mexican Journalists, Lawyers, and a Child Targeted with NSO Spyware' (Citizen Lab, 19 June 2017) <https://citizenlab.ca/2017/06/reckless-exploit-mexico-nso/ > accessed 13 March 2019

is the absence of any operational legal framework of accountability for private actors, like the NSO Group, for infringing human rights online. As such, there is clear limitation and inadequacy of international human rights law to address such violations.

There are just two ongoing lawsuits against the NSO Group, including one filed by Mexican journalists and civil society activists. As their fight continues, it is apposite that we devise, draft and enact an operational legal instrument to prevent illegal communication surveillance. In his recent statement to the Human Rights Council the Special Rapporteur on Privacy, Joe Cannataci, said that such legal framework would serve as an international tool for holding governments engaging and abetting in illegal surveillance accountable for their actions. But how realistic is such a framework, especially given the absence of binding obligations for private entities and businesses under the international human rights law?

The International Principles on the Application of Human Rights to Communications Surveillance, also known as the "Necessary and Proportionate Principles", is perhaps the closest to a global standard on communications surveillance that the international community has generated. This document was launched at the UN Human Rights Council in Geneva in September 2013 and relies heavily on the international legal framework.[3] In addition to important principles of international law, such as legitimacy, necessity and proportionality of State actions, the document emphasizes the applicability of such extraterritorially and highlights the obligation of States "to protect individual human rights from abuse by non-State actors, including business enterprises."[4] Despite its rigorous approach to the issue, the "Necessary and Proportionate Principles" remain aspirational due to the lack of their legal status.

Nevertheless, international law is not the only tool for addressing human rights violations online. The overwhelming focus of the digital rights community remains in the development of tools that can be used by civil society to defend themselves and to build resilience against such violations.

At this year's Internet Freedom Festival - a global gathering of digital rights activists, human rights defenders, technologists, developers and digital security experts - little attention was directed towards policy and law. Instead the community shared skills, knowledge and state-of-the-art tools aimed at boosting digital security and privacy against digital threats. This capacity-building is directed at mitigating a wide range of risks and threats coming from state and non-state actors.

The overwhelming focus of the digital rights community remains in the development of tools that can be used by civil society to defend themselves and to build resilience against such violations.

Tools driven by values such as security, privacy and transparency represent immediate, practical and useful solutions to the most pressing challenges we face in online spaces. As such, open-source human rights-driven technology offers us more protection in the short-term than international human right law can. Nevertheless, the digital rights movement should not rely on purely technological solutions to address law and policy-driven challenges. As most of the threats and challenges we face online are the result of laws and policies purposefully designed to constrict digital spaces, we should continue working towards a legal instrument to challenge state and non-state actors infringing upon human rights online, with the full force of law. .

3 'Necessary and Proportionate. International Principles on the Application of Human Rights to Communications Surveillance' (Necessary & Proportionate) <https://necessaryandproportionate.org/principles> accessed 14 March 2019

4 *Ibid.*

Justice for David

On the possibility of protest in semi-authoritarian regimes

Marija Ivanović

Since its birth in 1992, Republika Srpska (RS) was imagined and constructed as a geo-political entity both for and of Bosnian Serbs.[1]

This imagination is captured in its very name, it flies its flag; it celebrates its 'national' holiday (January 9th)[2] and it sleeps in the hearts of some of its inhabitants. Furthermore, many of its politicians, starting primarily with the ruling SNSD[3] party and its leader Milorad Dodik exalt RS as a stable and prosperous entity where Bosnian Serbs have found their 'long needed freedom' and political expression. But the events of 24th March 2018 disrupted this seemingly calm reality.

On that day, a dead body of 21-year-old student David Dragičevi was found near the river. First investigation of the case concluded that his death was an accident. His father, Davor, refused to believe this. For this reason, he organized daily protests on Banjaluka's main square demanding "truth and justice" for his son, protests that led to the emergence of the informal group of citizens called 'Justice for David'.[4] Even though the protests started out as being about David, it will become apparent that his death (and its aftermath) is a larger metaphor for how the political system operates, one that will open the eyes of many and force us to ask ourselves: in what kind of a polity do we actually live in?

Davor Dragičević (David's father) holds a paper which reads "Who killed David Dragičević???", while facing Milorad Dodik (SNSD) the then President of Republika Srpska. Credits tv1.

Today, Milorad Dodik and his party SNSD have almost absolute power in RS. Their 'rule' is sustained through several strategies, which largely boil down to control (over public institutions, media, etc.) and fear (from Bosniaks and Croats, abolishment of RS, outside enemies).[5] Having this in mind, it is needless to say that very few protests, especially those mobilizing many people, have taken place in RS.

1 Republika Srpska is one of the two administrative entities of Bosnia and Herzegovina (BiH). Before the war 1992-1995, BiH was a unitary state, but this changed with the Dayton Peace Agreement (1995) which ended the war and divided the country along ethnic lines. As a consequence of forced displacement, ethnic cleansing, genocide and similar war tactics Republika Srpska became a largely Serb-dominated entity with 81.5% Serbs, 14% Bosniaks (until 1993 Bosnian Muslims), 14% Croats, and 2.1% others.

2 On the 9th of January 1992, the leadership of Bosnian Serb nationalistic party SDS declared the independence of 'Serb areas' from the rest of BiH

3 "SNSD" stands for "Alliance of Independent Social Democrats," whose leader is Milord Dodik. Since 2006 the party has won all elections, and Dodik was first the Prime Minister of RS, then its President, and today he is Serb Representative in the collective presidency of BiH.

4 At the time of writing this article the Facebook group 'Justice for David' has 270,235 members, and some estimate that its largest gathering attracted 40,000 people

5 https://www.slobodnaevropa.org/a/ko-uspesnije-kontrolise-vlastite-gradjane-vucic-ili-dodik/29812253.html

Nevertheless, this all changed with David's death. First of all, Davor was right in rejecting that his son's death was an accident, as the second investigation confirmed that David was murdered. Second, some indications of the regime's involvement in the cover up of the crime and the general slowness of investigation forced people to protest daily until the 25th of December. On this day, the regime decided it had enough of its disobedient citizens, and that it was time it reasserts control in the public space. Thus, the police force was dispatched to Banjaluka's main square and instructed to break up the gathering and remove the flowers, candles and hearts that were brought there in memory of David.[6] The will of the regime was carried out through the use of violence, as citizens refused to leave the square without resistance.

The arrests of citizens together with the prohibition of gathering have been the two main tactics used by the government to repress the movement and decrease its mobilizing force.[7] On 25th December a number of citizens was arrested, amongst them were David's parents and several opposition politicians. A member of 'Justice for David' recounts: "After one year (...) we still don't know what happened to David. No one is punished. (...) punished are only those who are asking for truth and justice. Punished and criminalized."[8] Furthermore, even though the Ministry of the Interior claims that the meetings of the Group are not prohibited, this is not effectively true as none were allowed since the end of 2018.[9] Moreover, during the walk organized by a local NGO for Women's Day this year, some of the participants shouted "Justice for David," which resulted in the organizer being summoned by the police.[10] Suzana Radanovi·, David's mother, aptly captures the atmosphere "Publicly, I cannot even say the name of my son or the word "justice", because I could be arrested."[11]

Without a doubt, Suzana is right. The name of her son became a powerful symbol of two starkly opposite but closely related phenomena. First of all, David's death revealed the foundations on which

Suzana Radanović (David's mother) on 25th of December approached the police officers who surrounded her and asked them if they had mothers and if she violated the law by standing there in the public are. Credits N1.

political power is exercised in this entity. Evidently, RS is a place where institutions do not function, where after one year, because of lost evidence and false toxicological reports the murderer remains unknown. It is a place where murderers walk the streets freely while citizens are being arrested for shouting "Justice for David". It is a place where the laws only function properly when they serve to protect the regime from its citizens, and not the other way around. It is a place where the father of a murdered child is accused of 'coup d'état', and is forced into fleeing the country as if he were a criminal. It is a place where the regime eats its own children, although it swears that the essence of its being is to protect 'us' from all our 'enemies'. But, what happens when this 'enemy' is the regime itself?

This leads me to the second phenomenon that David's name symbolizes. Even though his death is a dense metaphor for all that is wrong in RS, the utterance of his name came to represent a rupture in the current regime. His name came to symbolize hope that a different reality is possible. Not just hope, but also the willingness to actively struggle for truth and justice. For citizens of Banjaluka, David's murder liberated hearts in their mouths, and suddenly all the injustices that were shoved down their throats for years, left their lips in the form of shouts and demands for justice. "Justice for David" came to mean justice for all of us. Thus, David became all of us, and all of us became David. ●

6 https://www.youtube.com/watch?v=9KPyASy7AUA

7 The arrests of citizens continue to this day. Currently, people gather daily in smaller number in front of the church in Banjaluka in order to light candles for David, since they cannot gather on the main square

8 http://www.6yka.com/novosti/na-godisnjicu-davidovog-nestanka-banjaluka-nijema-bez-skupa-setnje-zapaljenih-svijeca?fbclid=IwAR2wS-3D4flUXLo4GjkyAQNOka3JOkyJBs3zMnpjblaCgyRlOwj59tNV2zw

9 http://www.6yka.com/novosti/na-godisnjicu-davidovog-nestanka-banjaluka-nijema-bez-skupa-setnje-zapaljenih-svijeca?fbclid=IwAR2wS-3D4flUXLo4GjkyAQNOka3JOkyJBs3zMnpjblaCgyRlOwj59tNV2zw

10 https://banjaluka24h.com/aktivistkinja-dala-izjavu-policiji-zbog-osmomartovskog-marsa-u-banjaluci/

11 https://www.slobodnaevropa.org/a/pravda-za-davida-teror-nas-ne-može-zastrašiti-/29689654.html

Between rule of law and social norms

The example of appointing female judges in Egypt

Mahmoud Elsaman

The consistency between social norms and laws is essential for a well-functioning democratic society.[1] Laws enacted in isolation from prevailing social norms are more likely to be violated.[2] Appointment of female judges in Egypt is a clear example of tension between social norms and legal rules.

Most opinions conclude that women are excluded from the judiciary in Egypt because the Egyptian society is not ready to accept female judges.[3] The common social norms preventing women from being judges in Egypt include the difficulty of judicial work, lack of stability of work place, the heavy social commitments of women, and the conservative nature of the Egyptian society.[4]

The historical legal incident that first raised the debate over the right of women to be appointed to the Egyptian judiciary is the case of Aisha Rateb, a lawyer who applied to be a judge at the State Council of Egypt in 1949.[5] The State Council of Egypt declined Rateb's application based on her gender.[6] Consequently, Rateb filed a lawsuit before the competent court, which happened to be the court of the State Council. Thus, the State Council acted as judge and jury in this case.

Though the Court acknowledged gender equality, the Court concluded that the public administration has the discretion to consider the existing social norms, to decide the right time to appoint female judges.[7] As such, the Court dismissed Rateb's case.

In 2015, sixty-two years after Rateb's case, a young lawyer named Omnia Taher filed an identical case following the rejection of her appointment to the position of judge at the State Council of Egypt. Taher's case has not been decided yet; however, the Unit of Commissioners of the State Council[8] submitted their report in January 2017 advising the court to dismiss the case based on similar reasons to those addressed in Rateb's judgment of 1953.

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1 Amir N. Licht, Social Norms and the Law: Why Peoples Obey the Law, 4 Rev. L & Econ. 715 (2008)

2 Daron Acemoglu & Matthew Jackson, Social Norms and the Enforcement of Laws, (2014).

3 Ahmed El Sayed, Female Judges in Egypt, 13 Y.B. Islamic & Middle E. L. 135 (2006-2007).

4 *Id.*

5 Nancy Messieh & Suzanne Gaber, A Win for Women in Egypt's Courts, Atlantic council (2015), available at http://www.atlanticcouncil.org/blogs/menasource/a-win-for-women-in-egypt-s-courts.

6 *Id.*

7 Case no. 243/1953/Administrative Court's Decision.

8 The Unit of Commissioners has a preliminary role, which is to prepare lawsuits before being referred to the relevant court within the Council. As such, the Unit drafts a preliminary guiding non-binding decision. See Law No. 47 of 1972 (State Council Law), 40 Al-Jarida Al-Rasmiyya, 5 October 1972 (Egypt)

The Commissioners' report of 2017 breached the rule of law principle by being in conflict with a constitutional rule. Article 11 of the Egyptian Constitution of 2014 expressly provides for women's right to participate in public posts in general as well as judicial posts in particular.

One justification for the Unit of Commissioners' non-compliance with Article 11 of the Egyptian Constitution of 2014 could be the unexpected interference of the Egyptian Constituent Assembly ("the Assembly") which drafted the Constitution. It seems that the Assembly aimed to override the inherited social norms that deprive women of their right to become judges by drafting the Egyptian constitution of 2014 in line with the values of January revolution that called for social justice and freedom. However, the Assembly failed to assess how deep this social norm was inherited inside the society. Thus, the sudden interference of the Assembly made the court prioritize the application of the inherited social norms over the provisions of the Constitution, and accordingly, breaching the proper application of the rule of law principle.

The social norms that deprive women of their right to become judges are defective and should be overridden.

In fact, the social norms that deprive women of their right to become judges are defective and should be overridden. Women's participation in the judiciary may bring many benefits. Women judges open more opportunities for categories that are represented less in the judiciary.[9] Female judges may focus more on adopting and implementing laws that enable full protection of women in addition to enabling their full participation in society. In addition, they help other women and children overcome challenges in their lives.[10]

However, the mere existence of a defective social norm does not always justify the interference on the side of the legislature by enacting new regulation. The sudden involvement of the legislature to overcome defective social norm, without weighing how deep the social norm is inherited within the society, may result in the failure of such intervention.[11] Alternatively, the most effective strategy the state should adopt to override defective social norm may start with indirect intervention in order to facilitate the norm replacement in the future by a direct intervention. For example, the Assembly should have provided for the main principle of gender equality without providing for the specific right of women to be appointed as judges. Constitutions are meant to represent the general framework for the operation of the state rather than going into details which should be organized by virtue of laws and regulations.[12] As a next step, the government may take initiatives to set a cornerstone for a subsequent reform process. Such initiatives may include spreading awareness, engaging media, or seeking the assistance of civil society. After ensuring that the society is ready to accept the new change, the following step could be the issuance of a law to provide for women's full engagement with Egypt's courts. In this case, the proposed law may find social acceptance by people and courts.

In conclusion, the blame is only directed at the Constituent Assembly's attempt to regulate an existing social norm before weighing how much power the social norm has in the society. Legislation is meant to serve the goal of strengthening the application of the rule of law principle. Therefore, the legislator should not enact laws in isolation of the society where these laws should be applied. Social, political, and economic factors shall be mainstreamed during the drafting process of legislation. Otherwise, legislations will not be well-enforced, which will result in impairing the rule of law principle instead of empowering it. ●

9 Theresa M. Beiner, *Female Judging*, 36 U. Tol. L. Rev. 821 (2005)

10 *Id.*

11 *Id.*

12 Nora Hedling, The Fundamentals of a Constitution, International Institute for Democracy and Electoral Assistance, (April 2017), available at https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf.

The Universal Periodic Review of the Human Rights Council

An ethos to strengthen human rights protection

Agostina Allori

The Universal Periodic Review of the Human Rights Council (UPR) was established in the same General Assembly Resolution that created the Human Rights Council in 2006 (Res. 60/251) and was regulated by the Resolution 5/1 of the Human Rights Council as well.

The UPR is a unique process, since it "involves a periodic review of the human rights records of all 193 UN Member States."[1] The principles and aims that guided its creation are commendable, as its main objective concerns "the improvement of the human rights situation on the ground"[2] and "the fulfillment of the State's human rights obligations and commitments and assessment of positive developments and challenges faces by the States."[3] But, is the UPR a mechanism to strengthen the protection of human rights by the States? In this essay I intend to address this question.

I will first consider the "silver lining" aspects of the UPR as a tool to enhance the protection of human rights by States; then I will reflect on its deficiencies and challenges. In both cases, I will provide with examples that will lead me to a conclusive reflection.

THE "SILVER LINING SIDE": UPR AS A SECULAR RITUAL

First, the uniqueness of the UPR is based on its ideal of "equal treatment."[4] All the 193 members of the United Nations are subjected to review by its peers. As Charlesworth and Larking state, "'the equal treatment' aspiration was a response to the perceived failings of the HRC's predecessor, the UN Commission on Human Rights," [5] which was regarded as a way for the States to mask human rights violations. Moreover, equal treatment entails that all the UN Member States are in the spotlight regarding their treatment of human rights and that they will be reviewed under the same process and criteria. It is noteworthy that this process includes the five permanent members of the Security Council as well, which allows them – as Rhona Smith puts it – "to see themselves as other see them."[6]

1 Office of the High Commissioner for Human Rights (OHCHR), 'Universal Periodic Review', https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.
2 Resolution 5/1 of the Human Rights Council.
3 *Ibid.*
4 OHCHR, *supra* note 1.
5 Hilary Charlesworth and Emma Larking (eds.), *Human Rights and the Universal Periodic Review* (Cambridge: CUP 2014), p.1.
6 Rhona Smith, "'To See Themselves as Others See Them': The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review" (2013) 35 *Human Rights Quarterly* 1.

A second key aspect of the UPR is that unlike the treaty bodies and special rapporteurs, the UPR analyzes "all spectrum of rights," which provides a comprehensive landscape. In fact, the UPR considers the human rights obligations that States have regarding the UN Charter, the Universal Declaration of Human Rights, human rights instruments to which the State is party, voluntary pledges and commitments made by the State, and international humanitarian law.[7] This portrays the big picture of how a state is performing and not only the areas in which it may have improved or succeeded.

Third, the participation of NGOs is essential in the UPR. The UPR is based on three UN documents: the national report prepared by the State under review (SuR); a document compiled by the Office of the High Commissioner for Human Rights (OHCHR), with information from treaty bodies, special procedures and other UN documents; and "an OHCHR compilation of additional, credible, reliable information provided by other relevant stakeholders to the universal periodic review."[8]

The Human Rights Council is not a technical body, but a political one... the tensions and alliances that belong to global politics are also present in the UPR.

The last, and, from my perspective, the most important, aspect of the UPR is its "regulatory character". Julia Black defines regulation as: "the sustained and focused attempt to alter the behavior of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behavior-modification."[9] Charlesworth and Larking add that this definition "makes clear that regulation goes beyond legal rules or mechanisms. It is not limited to the activities of centralized authority with coercive power and takes us beyond traditional 'command and control' models that characterize the state as the major regulatory authority."[10]

Using this approach to analyze the UPR allows us to realize the relevance of the UPR per se, which is closely related to the concept of "ritual" used by the same authors. They conceive rituals "as ceremonies or formalities that, through repetition, entrench the understandings and the power relationships that they embody. Rituals are means of enacting a social consensus."[11] Furthermore, Walter Kälin compares the UPR with a secular kind of ritual, or "secular trial,"[12] which brings all United Nations States together with the aim of making human rights a "universal endeavor." This "secular trial" helps to build consensus, reaffirms the fundamental human rights values shared by the international community, and contributes to monitoring such rights.[13] One might think these aspects should be a consequence of human rights treaty ratifications and customary law. But to ratify a treaty is not the same as acquiring a broader and shared practice of what the international community understand as respect for human rights. As I interpret it, while bringing States together into a dialogic and a non-confrontational dynamic, the UPR creates a habit that could function as an ethos for the respect for human rights.[14]

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7 OHCHR, *supra* note 1.

8 Ben Schokman and Phil Lynch, "Effective NGO engagement with the Universal Periodic Review", in Hilary Charlesworth and Emma Larking, *supra* note 5, p. 130.

9 Julia Black, 'Critical Reflections on Regulation' (2002) 27 *Australian Journal of Legal Philosophy 1*, 26.

10 Charlesworth and Larking, *supra* note 5, p. 8.

11 *Ibid*.

12 Walter Kälin, "Ritual and ritualism at the Universal Periodic Review: a preliminary appraisal", in Hilary Charlesworth and Emma Larking *supra* note 5, p. 26.

13 From an anthropologist perspective, Jane K. Cowan denominates the UPR as a "public audit ritual". What the author seeks to emphasize is the cooperative character of the UPR; that "whereas the term 'review' conveys the idea of repeated surveillance (literally, reviewing, looking again), the term 'audit' can be defined as an 'account of compliance with a set of expectations or standards'. This better captures the nature of the UPR as a form of 'soft power', involving a combination of coercion and voluntary engagement, and of external (collective peer) oversight plus self-revelation and anticipatory self-regulation" Jane K. Cowan, "The Universal Periodic Review as a Public Audit Ritual", in Hilary Charlesworth and Emma Larking (eds.), *supra* note 5, p. 50.

14 This is especially important, for instance –as Kälin points out– for those States that have not ratified the Interna tional Covenant on Civil and Political Rights (ICCPR). The case of China is illustrative. Although it is not a State Party of the ICCPR, it has "accepted a recommendation in line with the Covenant to advance the rule of law and to deepen reform of the judicial system". Kälin, *supra* note 12.

THE DARK SIDE OF THE UPR: POLITICIZATION AND RITUALISM

Unlike the treaty bodies and special rapporteurs, the Human Rights Council is not a technical body but a political one. Therefore, the tensions and alliances belonging to global politics are also present in the UPR. This can lead to comments on bad faith or recommendations that are not specifically related to human rights issues or are too broad. One example is the recommendation given by Sri Lanka to the United Kingdom to "consider holding a referendum on the desirability or otherwise of a written Constitution, preferably republican, which includes a bill of rights,"[15] or the recommendations made by India to Nepal, which mirrored the ongoing crises between the two States.[16]

Another threat is that the aforementioned rituals can result in ritualism. Ritualism has been defined as the "acceptance of institutionalized means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves."[17] One of the challenges of the UPR is to avoid turning such an important ritual into a mere formalistic process or even a "spectacle". Thus, it is important to heed to the words used in the reports, to the way States communicate with the SuR; how much time they spend in the interactive dialogues to congratulate them and how they address the important matters related to urgent human rights situations.[18]

CONCLUSIONS

As the reader might have foreseen, my response to the posed question at the beginning is "yes". Although I recognize its deficiencies and challenges, I can see in the UPR a great potential to secure the protection of human rights by States. The regulatory approach proposed by Charlesworth and Larking and the conception of the UPR as a ritual is certainly persuasive. Rituals give a sense of what is right and valuable for a community – in this case the international community – and this is the main idea we have to extract from the UPR; that all UN Member States are engaged in a dialogue with the aim of establishing some kind of ethos of human rights. Like every practice it gets better with repetition and it can always be mastered through time. I also believe that we (civil society, human rights professors, human rights students, activists, NGO members) are part of that practice and play a crucial role in its improvement, acknowledging when there are advancements but mainly keeping always reflective and critical. ●

15 Comment given to the UK by Sri Lanka in the first cycle of UPR. See: Leanne Cochrane and Kathryn McNeilly, "The United Kingdom, the United Nations Human Rights Council and the first cycle of the universal periodic review" (2013) 17(1) *International Journal of Human Rights* 152.

16 Mie Roesdahl, "Universal Periodic Review and its Limited Change Potential: Tracking the Complexity of Multiple Ac tors and Approaches to Human Rights Change through the Lens of the UPR Process of Nepal" 9(3) *Journal of Human Rights Practice* (2017), p.415.

17 Charlesworth and Larking, *supra* note 5, p.10.

18 The work of Mie Roesdahl casts light on this aspect. The author states that: "During the review of Nepal, the global North spent an average of 21 seconds on recognition of positive developments in the human rights situation of Nepal and an average 53 seconds on recommendations for improvements. By comparison, states from the global South spent on average 36 seconds on recognizing positive developments and 33 seconds on giving recommendations that were far less critical" Roesdahl, *supra* note 16, p. 415.

Femi-ni-*cide(s) as a historical concept*

Camila Ordorica Bracamontes

Since the 1990s, feminist theoreticians around the globe have worked to make the murder of feminine bodies for gender reasons more visible. In order to do so, feminist thinkers proposed a newfangled concept that addresses this: ***femicide***.[1]

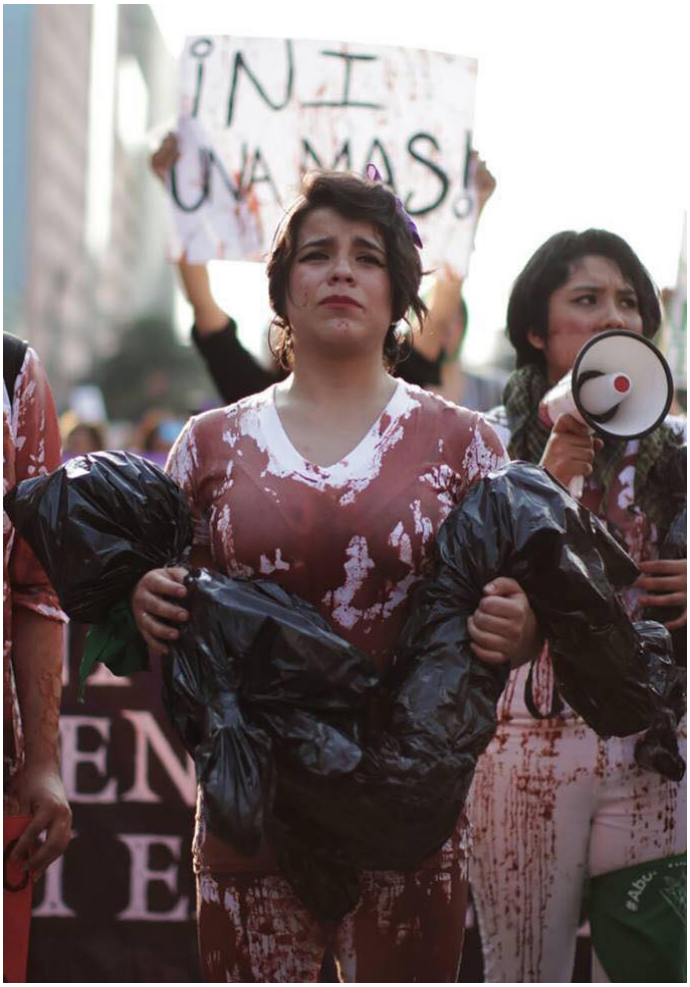
Three years have been important in the timeline of the development and contextualization of the concept. The term *femicide* was first coined by Diana Russell in the First International Tribunal of Crimes Against Women in Brussels in 1976.[2] In 1992 the first academic book addressing the subject was published under the title *Femicide: The Politics of Women Killing*. The book's production was supervised by Russell and Jil Radford. In 1993, due to the shocking case of the Dead Women of Juárez,[3] Mexican and Latin American academic feminists and activists started working in proposals aiming to develop a satisfying response as to why women's bodies were being disposed in such a violent and visible manner. Thus, the concept *femicide* was changed in order to adapt to the Mexican context and it was denominated *femi-ni-cide*. The purpose of this change was to create a more meaningful translation to Spanish grammar, which would also reflect the contextual and structural conditions of this occurrence. This grammatical change is in many ways a theoretical and political move with decolonial aims. The desire to change the spelling of the word, and thus its overall meaning, is that of "dismantling the colonialist formulation of Latin America as a 'field of study, rather than a place where theory is produced'.[4] This original modification was proposed by Mexican anthropologist Marcela Lagarde de los Ríos, and she defined it as "a genocide against women, and it occurs when the historical condi-

1 Skeptics may ask: why is it necessary to coin a term that refers specifically to the death of women? The informed conclusion of international institutions of analyses shows that the statistics of murders of women have a different behavior than the statistics that regard the homicide of men. According to specialized interpretation of data, the answer is that the rates of women's homicide, in comparison to the homicide of men, persisted and is resistant to decline. This suggests that the killings of women behave in a specific fashion and has its own explanatory factors. See: ONU Mujeres/SEGOB/INMUJERES, "La Violencia Feminicida En México, Aproximaciones y Tendencias 1985-2016" (Entidad de las Naciones Unidas para la Igualdad de Género y el Empoderamiento de las Mujeres, 2017). All translations mine.

2 Consuelo Corradi et al., "Theories of Femicide and Their Significance for Social Research," *Current Sociology* 64, no. 7 (November 2016): 975–95, https://doi.org/10.1177/0011392115622256.

3 This refers to the killing of an approximate 700 women between 1993 and 2012 in the Mexican city of Ciudad Juárez, located in the state Chihuahua. It is accepeted that the proliferation of the concept of feminicide in the Mexican context has its roots in this case. See: Mariana Berlanga Gayón, "Feminicidio," in *Conceptos Clave En Los Estudios de Género.* Volumen 1, ed. Hortensia Moreno and Alcántara Eva, 1st ed. (México: Universidad Nacional Autónoma de México, Centro de Investigación y Estudios de Género, 2016).

4 Rosa Linda Fregoso, Cynthia Bejarano. 2010. *Terrorizing Women: Feminicide in the Americas.* United States of America: Duke University Press., p.4



Women marching covered in red paint that represents the blood of the murdered women in Mexico. Their absence and death is symbolized by the body-like figure made out of trash bags. Credits: Marea Verde México

tions generate social practices that allow for violent attempts against the integrity, health, liberties, and lives of girls and women.[5]

These concepts have transcended the original barriers of the Mexican/Ciudad Juárez case, which has overruled the literature scene on the subject since the 90s, and they have become important concepts both in feminist and gender studies all around the world. Likewise, both these concepts have a strong interdisciplinary link with anthropology, sociology, and legal studies. Nevertheless, history as a discipline has been left out of the loop. History has not participated as a main conversational agent in *femicide/feminicide* literature, and its analytical value has been overstated. This has happened due to the temporal claim history has to the past and its apparent disengagement with the present as a historical time. This has happened mainly because *femicide* is seen as a contemporary occurrence, something requiring in-the-moment engagement. So how can history contribute to such a phenomenon, and why is it necessary to include history into the conversation?

I believe a historical analysis about the development of the multiple meanings of the concepts of *femicide/feminicide* can deepen the understanding concerning the world that they try to encompass, while it will also give further insight as to how concepts are created in the present as a historical time. Concepts are constructed through societal foundations which, according to Reinhart Koselleck, is the condition of possibility for History.[6] Currently, the significance of these concepts are under development, and the main site of construction is academia.

The primary characteristic of *femicide/feminicide* is that of its historical presentness. These concepts are being constructed in real-time as events unfold and as new investigations regarding the murder of women are made public. Following the work proposed by the historiographical postulate of the history of the present time (HPT), I accept the premise that the past is not the only temporal commitment that History has, and that the present as a historical time can and should also be studied by history.[7] Thus, when history engages with the study of the present, it has a political agenda that regards the current social reality with the history that all actors, including the historian, live and are shaped by. Hence, historians of the present time argue that the historization of the present is of primordial importance, for history has the possibility to discern fundamental characteristics of the contemporaneity. As a political commitment, the HPT postulate aims to find answers to the historical circumstances that drove certain societies to where they are now. Thus, it answers to the demand to historicize the present, specifically regarding themes of violence,

5 Ríos, Marcela Lagarde y de Los. 2010. "Preface: Feminist Keys for Understanding Feminicide. Theoretical, Political, and Legal Construction ." In *Terrorizing Women. Feminicide in the Americas,* by Cynthia Bejarano Rosa-Linda Fregoso, xi-xxviii. United States of America : Duke University Press., p.xvi

6 Koselleck, Reinhart. 2002. *The Practice of Conceptual History. Timing History, Spacing Concepts.* Stanford, California: Stanford University Press, p.6

7 Hugo Fazio and Daniela Fazio, "El tiempo y el presente en la historia global y su época," *Revista de Estudios Sociales* 65 (July 1, 2018): 12–21, https://doi.org/10.7440/res65.2018.02., p.16

Purple symbol of feminism placed in front of the Fine Arts Palace (Palacio de Bellas Artes) in Mexico City's City Center that reads: "In Mexico, 9 women are murdered every day (En México 9 mujeres son asesinadas al día). Not one more woman dead! (¡Ni una más!)" Credits: Marea Verde México

trauma and pain.[8]

The importance of *feminicide* in the Iberoamerican world in general and in Latin America in particular has become a prevailing subject of attention from all forms of civil society. This can be perceived through the region-wide movement #NiUnaMás (not one [woman] more) which demands structural changes which can prevent the violent death of women. As a female Mexican historian, I am concerned with the challenges *femicide/feminicide* poses both as a necessary category through which justice can be accomplished, as well as a historical challenge that can bring in-depth analysis in both the political and cultural discourses that are shaping the violent reality that has produced the concepts. •

8 Eugenia Allier Montaño, "Balance de La Historia Del Tiempo Presente. Creación y Consolidación de Un Campo Historiográfico," *Balance Sheet of the History of the Present Time: The Creation and Consolidation of a Historiographic Field.,* no. 65 (July 2018): 100–112, https://doi.org/10.7440/res65.2018.09., p.110

Kossuth Tér Occupation

Budapest, Hungary, November 2018

On April 4, 2017, National Assembly representatives from the Fidesz–Christian Democratic People's Party(KDNP) governing coalition adopted amendments to the 2011 Law on National Higher Education that were officially intended to regulate the activities of all foreign universities operating in Hungary.

However, critics claim that the illiberal government of Prime Minister Viktor Orbán designed the amendments specifically in order to force the closure of the Central European University (CEU) in Budapest as part of its broad campaign to suppress liberal institutions, non-governmental organizations and policies associated with Hungarian-American investor and philanthropist George/ György Soros. This law has now been dubbed 'Lex-CEU'. Even though CEU fulfilled all conditions set by Lex CEU, the government had been stalling signing the agreement for more than a year.

On 24 November 2018, students from CEU and supporters of the university organized a demonstration as a final protest of the expulsion of the first higher education institution from an EU country since the Union's formation. Protestors highlighted recent governmental policies affecting the freedom of other higher education institutions in the country and the consequences this interference would hold for Hungarian higher education and academia. The protest continued with a week-long occupation on the square in front of the Hungarian Parliament. Organizers hosted a Szabad

Egyetem (Free and Open University) where classes, community events and gatherings were conducted. Faculty from Budapest's major universities held their classes and lectures there in solidarity.

The demonstrator's three demands were for the approval of CEU's contract to remain in Hungary; the ending of government censorship in Hungarian research and higher education; and the guarantee of funding for quality, accessible, independent research and education.

Unfortunately, the government failed to sign CEU's contract by the end of the occupation, and continues its offensive against the autonomy of Hungarian academic institutions today.

These photos offered here provide a glimpse into the fruits of a spontaneous moment of coordinated action: tents in rainy winter weather, girded by the neo-gothic façade of the Parliament and decorated with signs, banners, and– memorably– a wooden coffin pronouncing the end of academic freedom in Hungary.

Images:

Pages 20-21: The Occupation at Kossuth Ter, daytime and nighttime.

Page 22, clockwise from the top left: Game night; two of the sixty public lectures on topics ranging from economy, politics, gender studies to data science and history held at the occupation site; Hungarian student bloc deliberation hosted at the occupation.

Page 23, top to bottom: An open civic forum hosted at the occupation to build coalitions between multiple civil groups and organizations; a symbolic 'funeral ceremony' for academic freedom held on the last day of the occupation as creative direct action.

Photos courtesy Szabad Egyetem Collective.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AUB

Education for social upward mobility? Not in the Netherlands

Lisette Reuvers

Jeroen and Abu play football together every Tuesday evening in a park in a Dutch city. They are both twelve years old and in the final year of elementary school. Jeroen lives close to the park with his mom, who works as a teacher, and his father, who works in insurances. Abu and his parents live in one of the flats on the other side of the park. His father, who is a taxi driver, and his mother moved from Sudan to the Netherlands when Abu was four years old. Next year, they will go to a new school, with new friends, new teachers and with a new backpack, which they are both very excited about. However, due to their backgrounds and the structure of the Dutch school system this will unfold very differently for the boys, increasing the already existing inequality between them.

The Dutch education system favors children who already have a good position in society and limits the opportunities available to children from lower socio-economic backgrounds, even if they are smarter or work harder. Early selection in the school system is supposed to make education suited to all students' needs but combined with a decreasing possibility of intertrack mobility and the rising importance of shadow education (and the financial means required for that), it increases inequalities and creates a divide in society. This is illustrated by the hypothetical cases of Jeroen and Abu.

At the end of elementary school, it will be decided to which of the six secondary school levels Abu and Jeroen will go. The level they end up at hugely shapes their opportunities in their lives and careers. There is a large difference between elementary schools and students with equal capabilities in different primary schools sometimes end up two secondary level apart[1]. In the Netherlands school segregation is a serious problem, even larger than in the United States[2]. Schools with a large proportion of migrant background students have a bad reputation among parents from higher social classes. They engage in what is commonly called the 'white flight' and send their children to schools further away from their neighbourhoods, further increasing school segregation[3]. While Abu goes to his neighbourhood school, Jeroen's parents are making him cycle to a better school in another neighbourhood.

In order to decide which level they can go to, both Abu and Jeroen take the national elementary school exam[4]. Surprisingly, Abu manages to score the exact same score as Jeroen while going to a school

1 Onderwijsinspectie (2016). *De Staat van het Onderwijs 2016.*
2 Vink, A. (2018). *Arme en rijke kinderen zitten steeds minder vaak bij elkaar in de klas (en daar is wat aan te doen)*
3 Onderwijsinspectie (2016). *De Staat van het Onderwijs 2016*
4 The national CITO test (Centraal Instituut voor Toets Ontwikkeling)

with lower quality education. However, this does not mean that they will both go to the same school level, as school teachers can alter the advice based on their perception of the student. Abu's teacher realizes he works very hard but is afraid that he won't be able to keep up with the language classes on the higher level, because Abu rarely speaks Dutch at home. She knows his parents will not be able to support him, so she sends him to the lower level. This is not uncommon; children of parents with lower education or a migration background are often sent to a lower school level, twice as often as other children with the same test scores[5]. Jeroen's teacher makes similar considerations, but his parents have scheduled a meeting with the teacher to convince him that they will support their son in any way possible. Jeroen goes to the higher level.

Early selection in the school system is supposed to make education suited to all students' needs, but ... it increases inequalities and creates a divide in society.

The next year, Jeroen and Abu both cycle a long way to school, but in different directions. The early selection in the Dutch education system is justified by the theoretical possibility of mobility between school levels and students who are not on the right track should easily be able to 'stream up' or 'stream down.' However, streaming up has proven to be difficult for many reasons. Although Abu does very well in school, his teachers won't let him 'stream up' because they are worried about his language level and his school does not have the materials to prepare him. His parents can also not afford the extra tutoring needed to prepare him for the higher level. Jeroen, on the other hand, is struggling. He is not very interested in school and finds it hard. However, his parents make him go to a homework institute every day after school, so he keeps up his school work. This is increasingly common in the Netherlands, especially among students in the higher school tracks. Parental spending on shadow education increased by fourfold between 2000 and 2015[6].

Five years later, both Abu and Jeroen have finished secondary school and Jeroen is studying business at a *hogeschool* (university of applied science). This is also Abu's goal, but he must first complete four years of vocational education before being able to go to a *hogeschool*. When Jeroen is 21, he is done with school and can start his career. When Abu is 21, he can finally go to the *hogeschool*. However, his secondary school and vocational training trained him for a certain vocation, and he did not learn the general skills needed at the *hogeschool*[7]. No one in Abu's environment has gone to *hogeschool* before, so he has no one to help him when he struggles. Within the first year Abu drops out, because he decided that it's better to try to find a job rather than invest in four extra years of education which he might not complete. After their Tuesdays on the football field, Abu has never seen Jeroen again. •

5 Onderwijsinspectie (2018). *De Staat van het Onderwijs 2018*
6 Centraal Bureau Statistiek (2016). *Uitgaven aan bijles en huiswerkbegeleiding*
7 Elffers, L. (2016). *Kansrijke schoolloopbanen in en op weg naar het hbo*

Whose "cultural property" is it, anyway?

Frank Promise Ejiofor

I.

On November 28, 2017, French president Emmanuel Macron–in an attempt to gesture cultural dialogue and camaraderie between France and its former colony, Burkina Faso–uttered the following statement to an audience of around 800 students at the University of Ouagadougou:

> *I cannot accept that a large part of cultural heritage from several African countries is in France. There are historical explanations for that, but there are no valid justifications that are durable and unconditional. African heritage can't just be in European private collections and museums. African heritage must be highlighted in Paris, but also in Dakar, in Lagos, in Cotonou. In the next five years, I want the conditions to be met for the temporary or permanent restitution of African heritage to Africa. This will be one of my priorities.*[1]

Whilst Macron's proposition was undoubtedly applauded by his audience in Ouagadougou, it surreptitiously raised - as, of course, such grand statements invariably do - questions as to the possibilities and pitfalls of repatriations. It engendered ethical dilemmas surrounding cultural artefacts acquired (legally or illegally) from former colonies and preserved in the museums of the ex-colonisers. But it is not just in Africa that the sentiment of cultural repatriation is often brought to the fore. Indigenous peoples like the Aborigines in Australia and Native Americans in the United States have campaigned, with some notable successes, for the repatriation of sacred cultural objects that were stolen from them in the heydays of European global conquest.

Not all claims to repatriation of cultural heritage have been successful. On the one hand, the ex-colonisers feel disinclined to return the artefacts to the places they were taken from, the rationale being that the cultural artefacts now rightfully belong in the exquisite museums where they are apparently well-preserved; on the other hand, those in the ex-colonies want to reclaim the artefacts from the ex-colonisers to better comprehend their unique cultures and histories. The incongruities implicit in the power asymmetries between varied ex-colonisers and ex-colonies consequently raise the following question: Should cultural artefacts expropriated from ex-colonies be repatriated?

II.

Two major antithetical responses have been rendered in the debate about cultural repatriation: (1) the cultural nationalist, and (2) the cultural internationalist–cosmopolitan–perspectives. The cultural nationalist approach accentuates that expropriat-

1 Rea, Naomi. (2017). Will French Museums Return African Objects? Emmanuel Macron Says Restitution Is a 'Priority' https://news.artnet.com/art-world/french-president-promises-restitution-african-heritage-ouagadougou-university-speech-1162199 (Accessed April 1, 2019).

ed cultural artefacts[2]. For cultural internationalists, however, each culture is part of the all-embracing human culture, therefore everyone has an interest in cultural artefacts[3]. Unsurprisingly, the cosmopolitan approach contends that expropriated cultural artefacts should be placed anywhere in the world; what matters is that we appreciate art as art regardless of their geographical locus.

Both approaches are inherently problematic. The nationalist approach particularly fails to see that nation-states are made up of different ethno-cultural groups and that modern nation-states are not synonymous with those groups. This is specifically why the Australian Aborigines could request the repatriation of their sacred cultural artefacts from the Australian government. Again, the internationalist approach seems to dispense with the emotional sensitivities of these issues as historically oppressed and marginalised groups perceive the continued possession of their cherished - and, in many cases, sacred - cultural artefacts as the extension of imperialism.

Should cultural artefacts expropriated from ex-colonies be repatriated?

Of course, no reasonable mind would dispute that it is despicable injustice for stolen artefacts to be retained by appropriators. Indeed, I sympathise with the multifarious groups and nation-states that incessantly strive to reclaim stolen items from ex-colonisers. Axiomatically, the very fact that some of these artefacts were stolen is a sufficient reason to request their repatriation. The repatriation is, in other words, a matter of justice. But what about when these artefacts were legally acquired? In principle, it makes no sense to request the repatriation of cultural artefacts that could be shown to be legally acquired from groups in ex-colonies. Nationalists must note that they do not have a claim to every cultural product that emanates from their territory.

Even the use of the term "cultural property" is oxymoronic in large part because culture is essentially dynamic, and property is seemingly immutable

III.

But who owns "cultural property"? Even the use of the term "cultural property" is oxymoronic in large part because culture is essentially dynamic, and property is seemingly immutable, for whilst it is in the nature of cultures to evolve, it is in the nature of property to be "owned" by a specifiable entity. It is difficult, perhaps even impossible, to establish ownership of some cultural artefacts, because individual genius is usually the *fons et origo* of many such artefacts.

Consider, for example, Nefertiti Bust which was purportedly crafted in 1345 BC by Thutmose. This is the artwork of individual genius that might not be subsumed to an abstract group under the guise of cultural homogeneity. To return the Nefertiti Bust to the rightful owner is to look for Thutmose or Thutmose's progenies. I am very much leery of the possibility of establishing connections between persons currently inhabiting the modern Egypt with Thutmose who himself lived in ancient Egypt. And even if the argument is that Thutmose was Egyptian, and thus all his artworks are Egyptian, I am sceptical of the veracity linking ancient Egypt with modern Egypt. What do modern Egyptians have in common with ancient Egyptians? Most modern nation-states have existed, on average, for approximately 60 years - to lay claim to cultural artefacts is to homogenise culture and to synonymise it with property. We need to disentangle culture from this vacuous neoliberal proclivity wherein everything is propertised to preclude others from having access to them..

Though the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* is an attractive trajectory at repatriating stolen items, it has its limits, too, for it holds that only cultural artefacts expropriated *after* the institution of the convention must be repatriated. Proponents of cultural repatriation and restitution must learn, however, that not every historical injustice can be mitigated; that, in fact, in the world we inhabit one of the best ways of addressing injustice is systematic forgetting. What we all should be

2 Merryman, John Henry. (1986). Two Ways of Thinking About Cultural Property. *The American Journal of International Law*, 80(4): 831–853.

3 Appiah, Kwame Anthony. (2006). *Cosmopolitanism: Ethics in a World of Strangers.* London: W. W. Norton & Company.

looking at is "stewardship"–cultural artefacts ought to be relished by everyone–everywhere and everywhen–regardless of our varied spatio-temporal loci. Indeed, it is through appreciation of art that we all come to cherish how we are all different and similar and that makes for a harmonious cross-cultural, mutual, comprehension in a world complexly polarised across myriad identitarian lines. Cultural artefacts belong to us all and we should appreciate them as products of gifted human imagination notwithstanding the unsavoury histories. Rather than thinking backwards, we should be thinking forwards.

Macron's assertoric proposition is seductive in consequence of identifying the necessity of mitigating historical injustices through repatriation. But it is, in my view, ultimately empty of meaning, for it does not question whether these artefacts would be well-preserved in Burkina Faso, nor does it make any mention of the need to appreciate artwork for what they are: the product of the human imagination. If the nationalistic sentiments of seeing artwork as products of post-colonial nation-states rather than the work of the imagination to be admired by all continues, I am sceptical of the prospects for a world of convivial communion with one another as we strive to systematically forget our excruciating pasts. •

Second victimization in cases of sexual abuse

Carla Patiño Carreño

Mary started school in Ecuador when she was six and soon began having nightmares.[1] When Mary's mother learned that a teacher there gave schoolgirls gifts in exchange for kisses, she asked if he had done something to her. Mary responded that he touched her private parts and kissed her, but she was scared to talk because the teacher threatened her and her parents.

We used to believe that once children spoke, the worst part was over. The reality in most countries is that this is when the hard part begins. The Ecuadorian Constitution expressly refers to "preventing the revictimization" of victims in criminal processes and protecting them against intimidation.[2] The criminal code reiterates this right,[3] and the 2017 Law for Preventing and Eradicating Violence Against Women defines 'revictimization' as new aggressions, intentional or unintentional, suffered within the judicial or extrajudicial process' phases of care and protection. This can include, for example, unjustified delays, lack of protection, or inadequate responses by competent State institutions.[4] Unfortunately, Ecuador's legal promises are often empty and ineffective.

Secondary victimization (or 'revictimization') occurs not as a direct result of criminal action, but results from the responses of people and institutions, and can oftentimes constitute the complete denial of victims' human rights by refusing to recognize the victim's experience.[5]

Only forty percent of abused children speak.[6] Even then, usually only to a friend and the issue will never reach the authorities.[7] The data varies from country to country. In Argentina, for example, of one thousand cases concerning child sexual abuse, only one hundred are officially reported, and from those, only one will receive a final judgement.[8] In Spain seventy percent of reported cases are problematically not tried.[9] These statistics are alarming.

1 Mary is a fictional name used for protection. She suffered two abuses in a public school in Ecuador. The cases in the Criminal Court are 17295201800167 and 17295201800607G.

2 The Ecuadorian Constitution 2008, Article 78. Translation by the Author.

3 Código Orgánico Integral Penal, Article 11.

4 Ley para Prevenir y Erradicar la Violencia Contra las Mujeres, Article 4(10). Further in Article 15(2) the Law refers also to private institutions. Translation by the Author.

5 UN Office on Drugs and Crime (UNODC), *Handbook on Justice for Victims,* 1999, p9 <http://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf>. Last accessed: 11 April 2019.

6 Darkness to Light, 'CHILD SEXUAL ABUSE STATISTICS' <https://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf> Last accessed: 15 April 2019.

7 ibid.

8 La Nación, 'Solo uno de cada 1000 abusos infantiles tiene condena' (13 May 2018) <https://www.lanacion.com.ar/sociedad/solo-uno-de-cada-1000-abusos-infantiles-tiene-condena-nid2134093> Last accessed: 15 April 2019.

9 'Las denuncias de los abusos sexuales a menores' (Save the Children, 1 August 2018) <https://www.savethechildren.es/actualidad/las-denuncias-de-los-abusos-sexuales-menores> Last accessed: 15 April 2019.

We should address revictimization as one of the primary causes of few reports and even fewer convictions.

In Mary's case, the prosecutor's office only officially accepted the complaint one month after it was first reported by her mother. Beforehand, Mary's mother needed to attend multiple offices and have a psychological examination of her daughter. Consequently, Mary and her family have suffered, and continue to suffer, revictimization from various persons and institutions. I will explain how some examples from Mary's case make revictimization within the justice process evident.

First, the presence of procedural hurdles. At the time of writing - 19 months later - we have neither a first instance judgement (pending May 2019) nor reparations for Mary. Six-year-old Mary has had to tell her story to more than four professionals even after expressing her reluctance to return to the authorities and examination offices. Moreover, Mary was asked to be present at the court where she feared the aggressor would also be in attendance. These forms of revictimization are a symptom of the system. Professional exams are performed to obtain proof, without which the legal case cannot proceed. There is continued exposure of victims to their traumatizing event which prevents them from resuming their normal lives. This is why many victims prefer not to expose themselves to the so-called 'protection' and 'justice' processes, as evidenced by the volume of cases abandoned or never even presented.

We should address revictimization as one of the primary causes of few reports and even fewer convictions.

The second and most recurrent mode of secondary victimization is the discreditation of victims; authorities, institutions and people surrounding them disbelieve their story in favor of the aggressor. This happened in Mary's case several times. An authority from the Ministry of Education,[10] when Mary's mother brought official notification of the case and explained there were more victims, asked her to keep quiet to prevent hysteria. On another occasion, a lawyer of the same office told her this was a serious accusation and questioned whether Mary had made a mistake. Another example was a psychology test; Mary was asked to "remember that we talked about how bad it is to lie," insinuating that her story was false. The result was that Mary did not talk, even though she could recall her story clearly to her mother. Fortunately, Mary's mother believes in her daughter and will fight for her. These are, however, common examples of revictimization whereby public servants make victims doubt themselves, effectively denying their experiences of abuse and reliving their victimization.

Third, revictimization also derives from within the victim's community. One of the most serious causes of revictimization in this case emanated from school. A teacher publicly asked girls to raise their hands if the perpetrator had touched them, naming one girl whom she knew sat on the perpetrator's lap.[11] With this comment, the teacher shamed the girls and ascribed responsibility to them and their behaviors.[12] This manner of revictimization is seen in too many cases; blame the victims and they will never complain.[13] Additionally, other parents were more concerned with the integrity of the school than that of the girls. They prohibited Mary's mother from participation in school meetings and blamed the lack of teachers on her 'accusations'. Mary's mother had to front this isolation and recrimination from the school community for the protection of her daughter. It is important to note that revictimization not only affects primary victims, but also secondary victims.

Secondary victimization must be addressed comprehensively in cases of sexual abuse. It sources from the process itself, the attitudes and biases of authorities, public servants, and personal communities, as well as from inadequate information and acknowledgement of problems regarding sexual and gender violence. The impact is great; the degradation of victims' health and mental status, the demoralization and dissuasion in seeking justice, and the effective impunity of perpetrators. •

10 The director of the district office in charge of that particular school.

11 The girl named is also a victim, but she does not have any legal process.

12 Helene Flood Aakvaag and others, 'Shame Predicts Revictimization in Victims of Childhood Violence: A Prospective Study of a General Norwegian Population Sample', (2019) 11 *Psychological Trauma: Theory, Research, Practice, and Policy* [43].

13 This teacher was removed from the school.

Re-framing the "anti-gay purge" in Chechnya

Anonymous

When Russian newspaper *Novaya Gazeta* reported on dozens of gay men being rounded up and killed in a concentration camp in 2017, Chechnya was propelled to the headlines of major newspapers in the Western world. What was soon called the "gay purge" seriously alerted the global public, who, for the most part, had not heard of Chechnya before. A small republic in the Russian Federation, Chechnya has been controlled for more than fifteen years by Ramzan Kadyrov, an authoritarian leader who took hold of the region in the aftermath of the two Chechen wars. These amounted to approximately 160,000 deaths between 1994 and 2000, half of which were civilian. Kadyrov, chaperoned by Russian President Vladimir Putin, has been known to exert virtually unchecked power in the Republic.

While concentration camps represent a grave abuse of human rights and deserve special attention, it is important for the media to highlight the purge as part of a broader and long-term tradition of relentless persecution of LGBT+ people with the complicity of state authorities.

The heavy persecution of LGBT+ people is by no means a new phenomenon in the Chechen republic. Honor killings – murders committed by relatives to repair family's honor – are officially endorsed as traditional practices. These regard not only gay men, but gay women and all people whose rumored or true practices "stain" the honor of a family – e.g. women who have had sexual encounters, women who have been raped, and people engaging in a same-sex relationship.[1] In short, there is an untold expectation for the relatives of a moral criminal to repair the honor of the family by killing them.

Naturally, this practice is not inscribed in the Russian law, but the enforcement of federal law in Chechnya does not resemble that of the rest of the country. Honor killings are rarely reported, and even more scarcely prosecuted. These crimes have thrived since the wars erupted in the 1990s and have been explicitly condoned by Chechen President Ramzan Kadyrov. In 2009, he endorsed honor killings in the name of women being property of men. In 2017 he re-emphasized his prioritization of "tradition" over law by stating that he supported honor killings against gay people, even if they were illegal.[2]

As various reports have shown, honor killings have been the norm against women who had engaged in sexual activity outside of marriage and women who had been raped. Additionally, when the police let go some of the arrested men in 2017, they proceeded to out them to their families, therefore

1 "39 People Murdered in Honor Killings in Russia's North Caucasus, Dutch NGO Reports." The Moscow Times, December 7, 2018. https://www.themoscowtimes.com/2018/12/07/39-people-murdered-honor-killings-russias-north-caucasus-dutch-ngo-reports-a63748.

2 "Chechen President Kadyrov Defends Honor Killings". St. Petersburg Times. 3 March 2009. Archived from the original on 18 March 2010. "Chechen Republic dictator Ramzan Kadyrov offers disturbing look into his reign, says his MMA fighters would beat America's". NY Daily News. July 18, 2017.

suggesting that the families carry out honor killings which is, allegedly, also the fate reserved to LGBT+ women.[3] This put the LGBT+ Chechens at great risk of being killed in ways that are not widely reported.

Furthermore, LGBT+ women and transgender people are greatly missing from most reports and narratives on the purge. One reason is that most people rounded up, tortured, and/or killed in the camps were men. This can be attributed to the fact that women are less likely to enter a clandestine relationship without their family finding out, as Chechen women are heavily monitored by their families. Consequently, if their same-sex relationships are discovered, they can be married off to men or become victims of honor crimes. Furthermore, honor killings are more frequent against women, and thus rarely make it to the Western radar.[4]

In addition, women have less chances of making it out of the country. It has been reported that a few waves of intensified persecution also targeted LGBT+ women in April 2017 and late 2018 - early 2019. However, escaping out of the republic and the country is virtually impossible for women without their families finding out. Women travelling alone outside of Chechnya are systematically seen as suspicious. Often, taxi drivers will refuse to take them outside of the republic. If they make it out, they can be reported missing by their families and looked for in the entire Russian Federation. As a result they have to avoid all interactions with the police or databases such as those implemented at border controls. Chechen sounding names can even sound suspicious enough to neighboring countries officials to refuse entry. In one such case reported on by Russian-American journalist Masha Gessen in *The New Yorker*, the fear of terrorism on the part of Chechens was enough for a border agent in an undisclosed neighboring country to refuse entry to three women fleeing persecution for being lesbians.

Honor crimes against and persecution of LGBT+ people are not limited to the borders of the republic: LGBT+ members of the Chechen diaspora across Europe have also been under threat.

Honor crimes and persecution against LGBT+ people are not limited to the borders of the republic: LGBT+ members of the Chechen diaspora across Europe have also been under threat. As Kadyrov became a "spiritual leader" for many Chechens both at home and abroad, some members of the diaspora have undertaken the duty to impose some aspects of sharia law that the leader promotes abroad.[5] Refugees from the LBGT+ community have testified about being subjected to various intimidation techniques ranging from violent threats to full-fledged physical assaults.[6] As a result, the Russian LGBT Network -- an NGO that has been actively helping to relocate victims from Chechnya into safety -- has emphasized that because of the fear of retaliation from the diaspora, any information regarding survivor's location should be kept secret. Field journalists and survivors are therefore unable to testify without anonymity, fearing violent retaliation on the part of Kadyrov's international militia. In Chechnya, the arrests were usually conducted by using phone contacts from one potential gay person to track down and arrest as many members of the community as possible. As a result, the survivors of the purge are still very much concerned over giving their personal information to the public, and rightly so.

In conclusion, it is crucial to tell the story of intense persecution of gay men in Chechnya, but it cannot be properly done without the broader social and temporal context of honor killings and gendered violence. The silencing of survivors profits those who mean to terrorize LGBT+ Chechens both at home and abroad, and their security remains at stake. •

3 "Many Girls 'Would Probably Rather Die': Chechen Lesbians Tell Of Stifling Existence." RadioFreeEurope/RadioLiberty. Accessed March 30, 2019. https://www.rferl.org/a/chechnya-lesbians-repression-suffocating-existence/28746353.html.

4 Gessen, Masha. "Fleeing Anti-Gay Persecution in Chechnya, Three Young Women Are Now Stuck in Place." *The New Yorker,* October 1, 2018. https://www.newyorker.com/news/our-columnists/fleeing-anti-gay-persecution-in-chechnya-three-young-women-are-now-stuck-in-place.

5 "He Was Targeted in Chechnya for Being Gay. Now, He's Being Hunted in Europe." *TIME.Com* (blog). Accessed March 23, 2019. http://time.com/chechnya-movsar/.

6 Gessen, "Fleeing Anti-Gay Persecution".

The Engineer and the Giant Foetus

Visual Representations in Argentina's Anti-Abortion Demonstrations

Ana Belén Amil & Agostina Allori

On March 5th, 2018, a bill for the "Voluntary Interruption of Pregnancy" was presented for the seventh time before the Chamber of Deputies in Argentina by the National Campaign for Legal, Safe and Free Abortion[1]. Its core aims were the decriminalization, legalization and free provision of abortion by the public health system, on demand, up to the 14th week of gestation. For the first time in the history of the country the bill was debated in the Congress with unprecedented informative and deliberative hearings[2]. This represented a milestone for women's rights since in the last decades, sexual minorities had made a significant progress in the conquest of important rights such as legalization of same-sex marriage and a gender identity law. However, the feminist movement has not been able to make congresspersons deliberate about abortion.[3] On the 13th June the bill was treated by the Deputies. There was a vigil in front of the Congress, waiting for the results of the final discussion, and the Chamber finally approved it at noon on June 14th. Nonetheless, in August the bill was rejected by the Senate.

The political treatment of the abortion bill in the Congress was accompanied by great civic participation from both sides of the debate, with several demonstrations during the parliamentary deliberation. The main slogan of the anti-abortion movement was "Let's save both lives" ("Salvemos las dos vidas"), proposing that the woman/pregnant body[4] should carry their pregnancy to term and give the baby for adoption.

Although it was not the first time that anti-abortion groups made themselves present in the streets – such as in - *The Parade of Bootees* and *The Party of Life*[5] – this time visual representations of the

1 " Proyecto de Ley de Interrupción Voluntaria del Embarazo." Aborto Legal. Accessed March 30, 2019. https://www.abortolegal.com.ar/proyecto-de-ley-presentado-por-la-campana/

2 In March 2018, the Chamber of Deputies formed a Special Plenary with representatives of the different Commissions of General Legislation, Health and Criminal Law. From March to May, every Tuesday and Thursday, experts from different fields (Biology, Medicine, Ethics, Law, Religion, Philosophy, among others) presented their opinions in public and televised hearings before the Chamber of Deputies, both for and against the legalization of abortion. This was the first time that Argentina experienced a concretization of the ideal of deliberative and qualitative de mocracy. Furthermore, the topic was installed in every space of society. The quality of the presentations of most of the speakers showed commitment to treating "women as human beings" and to giving them the status of full citizens.

3 Ariza Navarrete, S., & Saldivia Menajovsky, L. (2015). Matrimonio igualitario e identidad de género sí, aborto no. Derecho Y Crítica Social, 1(1), 181–209.

4 In Argentina, the expression "pregnant body" ("cuerpo gestante") was widely used by activists to signal that not only women can be pregnant but also trans men.

5 Bessone, P. G. (2017). Catholic anti-abortion activism in Argentina: performances, discourses and practices. *Sexualidad, Salud Y Sociedad,* (26), p.49

foetus went viral on social networks and reached international media. Feminism has largely avoided focusing on foetal subjects; this has left the topic in the hands of anti-abortion movements[6] that have managed to position themselves in a higher moral

Figure 1. Alma ("Soul" in Spanish), the 6-meter-tall foetus that could not bear the disproportionate weight of its own head and ended up self-decapitated. She is being transported back in a truck. Photo Credit: INFOBAE

ground. For this reason, there is a need to engage in a reflexive discussion about foetus from a feminist perspective[7].

In this article, we briefly analyse two visual representations used by anti-abortion demonstrators. We frame this work within a larger tradition of literature that examines the political impact of images, the importance that visuals have in social movements to create powerful arguments through their capacity to produce "moral shocks and emotional meanings"[8]. Anti-abortion visual materials are part of an epistemological standpoint in which images are considered to reveal straightforward truths. According to this narrative, sight is thought to be culturally unmediated (or more immediate than other senses) and thus able to provide an "important corrective" to the many times "misleading and manipulative" effect of words[9].

One of the visual representations of anti-abortion demonstrations was a gigantic 6-meter doll made of papier mâché by the organization "We Choose Life." The doll, baptized as Alma ("Soul" in Spanish), was supposed to represent a foetus in the 12th week of gestation. The demonstrators marched several blocks holding the doll over their heads as a sign of devotion. This attempt to make the foetus "larger than life" had an ironic ending when the doll could no further stand the weight of its own disproportionate head and ended up self-decapitated. The size of the doll and the way it was carried in the "procession" evokes religious connotations of sacredness[10] connects it to the topic of sanctity of human life[11] and afterwards, unintentionally, of religious sacrifice.

The second representation was a picture of a sonogram of an approximately eight weeks of development embryo accompanied with the text "I want to be a (male) engineer" ("Yo quiero ser ingeniero"). The captions and language used with the images are not separate items; they are key components of how an image is offered to

Figure 2. A picture of a sonogram portraying an embryo of approximately 8 weeks of gestation that reads: "I want to be an engineer".

6 Petchesky, R. P. (1987). Fetal Images: The Power of Visual Culture in the Politics of Reproduction. *Feminist Studies*, 13(2), 263

7 Michaels, M. W., & Morgan, L. M. (1999). Introduction: *The Fetal Imperative. In Fetal subjects, feminist positions* (pp. 1–9). Philadelphia: University of Pennsylvania Press, p.2

8 McLaren, K. (2013). The Emotional Imperative of the Visual: Images of the Fetus in Contemporary Australian Pro-Life Politics. In *Research in Social Movements, Conflicts and Change: Vol. 35. Advances in the Visual Analysis of Social Movements,* p. 85

9 *Ibid*., p.96

10 McLaren, K. (2013). The Emotional Imperative of the Visual: Images of the Fetus in Contemporary Australian Pro-Life Politics. In *Research in Social Movements, Conflicts and Change: Vol. 35. Advances in the Visual Analysis of Social Movements*

11 Michaels, M. W., & Morgan, L. M. (1999). Introduction: The Fetal Imperative. In *Fetal subjects, feminist positions* (pp. 1–9). Philadelphia: University of Pennsylvania Press

interpretation, and should always be analysed together[12]. This type of image is a more conventional medium in anti-abortion movements that evokes empathy towards the foetus' weakness and need of protection[13]. This type of image is a more conventional medium in anti-abortion movements that evokes empathy towards the foetus' weakness and need of protection. In this case, the ambiguity of pairing the image of an almost unrecognizable human form with a text giving voice to its supposed vocational desires does not create a contradiction but rather emphasises the foetus' moral significance as an autonomous social subject. Time gets collapsed by the simultaneous depiction of a foetus who is underdeveloped and weak in the physical body (image of the sonogram), while stronger and greater in mind and spirit ("I want to be an engineer")[14], thus creating a sense of "inevitability in foetal development"[15].

This sense of inevitability rests on the illusion that all human potential is already contained within the embryo, and it is just a matter of time that this potential will unfold. The role of the mother (and society at large) is reduced to not aborting that potential. This assumption rests on the erasure of the woman, who is considered to be a mere incubator for the foetus[16]. In both images the embryo/foetus appears in a vacuum surrounded by empty space, and the woman's body is excluded; not even the umbilical cord is depicted. As a consequence, the spectator is encouraged to identify with the foetus rather than with the woman who carries it. The foetus is portrayed as an autonomous, individual organism of the human species with a vulnerable body that needs special protection particularly due to its incapacity[17]. As such, it acquires greater moral significance, reflected by the disproportionate dimensions of *Alma*.

To conclude, both pictures were meant to evoke "the wonder of life", a feeling of empathy and protectiveness for the foetus, while rendering the woman's subjectivity and individuality invisible, and hence denying her empathy, autonomy and any rights of her own[18]. This is a clear example of how, through the political use of images, the woman's right to self-determination is sacrificed in favour of foetal subjectivity. ●

12 McLaren, K. (2011). *Imperative images: The use of images of the foetus in the Australian abortion debate, 1998-2009*. Australian National University., p.23

13 The sentence "Yo quiero ser ingeniero" also carries sexist and classist connotations that we will not be able to analyse in this article.

14 McLaren, K. (2013). The Emotional Imperative of the Visual: Images of the Fetus in Contemporary Australian Pro-Life Politics. In *Research in Social Movements, Conflicts and Change: Vol. 35. Advances in the Visual Analysis of Social Movements,* p. 93

15 *Ibid*, p. 91

16 Michaels, M. W., & Morgan, L. M. (1999). Introduction: The Fetal Imperative. In *Fetal subjects, feminist positions* (pp. 1–9). Philadelphia: University of Pennsylvania Press, p.5

17 *Supra* note., p. 97

18 Newman, K. (1996). *Fetal Positions: Individualism, Science, Visuality.* Stanford: Stanford University Press., p.88

Procreation of absurdity

Assisted reproduction and same-sex couples' rights in France

Jovana Simić

Where do we draw the line in taking control over nature? Are we entitled to "kidnap" natural processes? In the background of these questions is adjustment of our understanding of what is natural and normal to human and technological progress. On many occasions, that line has been redrawn and blurred, but never completely clarified.

This progress undoubtedly enabled marginalized groups to acquire equal status and opportunities in society. When we talk about sexual minorities, reproductive medicine is a giant step forward in rethinking parenting possibilities in same-sex couples. Still, the path to reconciling medical and ethical reasoning is thorny, even in the societies where LGBT rights have progressed the most.

LEGALLY GAY: RESTRICTIVE PERMISSIONS

Great news for French same-sex couples emerged in 2013 when they were granted the right to marry and adopt children in France.[1, 2] In the beginning of 2019, France ratified an amendment which provided for parents in school administration to be mamed "*parent 1*" and "*parent 2*" instead of "mother" and "father" in order not to discriminate against children from same-sex couples and ensure their parents could legally represent them. However, this just seems like a superficial measure on the path to complete legal equality in building a family.

DOUBLE STANDARDS

First and foremost, heterosexual couples are the only ones who have the legal ability to use treatments for infertility such as intrauterine insemination (IUI) and in-vitro fertilization (IVF), meaning that even single heterosexual mothers are not able to undergo such treatments, let alone lesbian and gay couples.

As for surrogacy, it is entirely banned in French law.[3] In order to circumvent these restrictions, same-sex couples and single mothers often turn to the popular option of health tourism, which enables them to undergo procedures abroad where they are legal, such as the United Kingdom or the United States.

1 Begley, S. (October 18, 2013). First Gay Adoption Approved in France. Time. Retrieved from <http://world.time.com/2013/10/18/first-gay-adoption-approved-in-france/> on 8.3.2019; Conseil Constituionel. Décision n° 2013-669 DC du 17 mai 2013. Retrieved from <https://www.conseil-constitutionnel.fr/decision/2013/2013669DC.htm> on 8.3.2019.

2 Emma, R. (February 17, 2019). France changes 'mother' and 'father' to 'parent 1' and 'parent 2' under new law. Voice of Europe. Retrieved from <https://voiceofeurope.com/2019/02/france-changes-mother-and-father-to-parent-1-and-parent-2-under-new-law/> on 8.3.2019.

3 Cuddy, A. (September 13, 2018). Where in Europe is surrogacy legal? Euronews. Retrieved from https://www.euronews.com/2018/09/13/where-in-europe-is-surrogacy-legal on 8.3.2019.

EXPAT FETUS

In theory, a woman in a same-sex couple can legally undergo IUI or IVF abroad, give birth in France and have her child adopted by her partner, bypassing the law and making its restrictions useless.[4] Regardless, a court in Versailles denied the adoption of one partner's child by the other in a lesbian marriage in 2014.[5] TThe legal reasoning behind this decision was that the couple tricked the law by undergoing IVF, a treatment that is forbidden in France. Arguably this is an issue of biopolitical hypocrisy because it would be less problematic if she were impregnated by an unknown man and left a single mother. At this point the law and medical possibilities and social norms were in conflict with each other.

This issue was resolved in 2017, when a gay couple who had a child abroad via surrogacy was legally granted recognition of their child, even though the practice is still altogether banned in France.[6] This allowed both parents to have a legal relationship with the child. This case seems particularly odd because surrogacy as such is forbidden in France but accepted when done abroad. This legal loophole could prove to be a positive development for heterosexual couples as well. It seems like the problem with the existing prohibition is that it only applies on French soil and is not set in biological or moral reasoning.

A family with heterosexual parents used to be only the biological and social possibility and therefore remained a legal norm.

EXPENSIVE TASTE?

Yet, discrimination deriving from the law does not stop here because, in resorting to health tourism, same-sex couples are exposed to significantly higher costs. Adding to travel costs, procedural expenses represent a real financial burden on these families. Assisted reproduction procedures are notably more costly in countries where they are accessible to same-sex couples, as in the US where it tends to be up to three times more costly than in France.[7] Besides that, the French state subsidizes IVF for heterosexual couples, making it affordable at home and therefore widening the discriminatory gap.[8]

QUESTIONABLE PARENTAGE

Another important fact to consider is the presumption of legitimacy which exists in the French law of filiation, the idea that children born inside a marriage have a presumed biological and legal relationship to both of the spouses. This concept derives from Roman law in which the mother is always known, therefore her spouse must be the father.[9] It would be a very fortunate circumstance for same-sex couples if they were eligible. Although this is an old norm and it did not foresee today's new circumstances, it currently acts in a discriminatory fashion against same-sex marriages that are otherwise legally equal to heterosexual marriages.

The fallacy of this concept is it presumes a necessary biological link between a husband and his wife's child, which is not always the case. The only sensible way to uphold this without giving the rights to same-sex spouses is to institute a kind of mandatory DNA test which would support the claim of biological connection with evidence. Other than that, this only remains a request which derives from some social norms about how family should function and look like. That is, a family with heterosexual parents used to be only the biological and social possibility and therefore remained a legal norm. The current situation, however, requires the law to be revised.

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4 McCormick, P. (January 12, 2013). Thousands of French lesbians travel to Belgium for artificial insemination. PinkNews. Retrieved from https://www.pinknews.co.uk/2013/01/12/thousands-of-french-lesbians-travel-to-belgium-for-artificial-insemination/ on 8.3.2019.

5 Wilsher, K. (May 2, 2014). French court blocks gay woman from adopting partner's child born by IVF. The Guardian. Retrieved from https://www.theguardian.com/world/2014/may/02/french-court-blocks-gay-womans-adoption-partners-child-ivf on 8.3.2019.

6 France 24 (July 5, 2017). French high court grants new rights to gay parents. Retrieved from https://www.france24.com/en/20170705-french-high-court-grants-new-rights-gay-parents on 8.3.2019.

7 Pallavi, J. (May, 2017). France IVF Services Market. Allied Market Research. Retrieved from https://www.alliedmarketresearch.com/france-ivf-services-market on 8.3.2019.

8 Berg Brigham, K. et al. (2013). The diversity of regulation and public financing of IVF in Europe and its impact on utilization, Human Reproduction, 28:3, 666–675.

9 Engelhard-Grosjean, M.L. (1977) *The French Law of Filiation*, 37 La. L. Rev.

After all, if marriage and parenting mean both equal rights for all and the setting of an ethical standard, it makes no sense to forbid people who happen to have partners of the same sex, not to mention those who have no partner at all, from procreating in the same assisted way as the ones who have partners of the opposite sex. It makes it a perverted ethical standard and a right for some with no moral justification. Instead of relaxation and adaptation of legal provisions, the legal framework insists on outdated norms, and loses its functions due to loopholes and fosters discrimination.

The question remains – who is going to challenge this assisted procreation of absurdity? .

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