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### Selectivity: Time and Human Rights

In her recent book Upheavals of Thought: The Intelligence of Emotions, Martha Nussbaum offers the following paraphrase of Theodor Fontane's 1895 novel Effi Briest: "Instetten, a successful civil servant who has married a much younger wife, discovers years later that she has had an affair during the early days of their marriage. Because he can think of moral decision only as a process of following social rules, he proves unable to allow his distant instincts of love and forgiveness to come forward... He shoots the rival, banishes the wife, brings up his child to lack all love for her mother, and finds his own life increasingly hollow and pointless."<sup>1</sup> Critics have invoked the husband, Nussbaum goes on, "as an example of the limitations of Kantian morality." This charge is unfounded, she says; Instetten is acting not from Kantian morality but from a code of honor—perhaps something like what Michael Ignatieff means by "a warrior's honor." What the story really shows, Nussbaum argues, is the need for ethical rules to be supplemented by "love and imagination." Its moral center is (I quote again) "the faithful dog Rollo, who knows only sympathy and love, and whose loyalty [to Effi] remains uncorrupted" (390).

This may seem like quibbling, but I think it's important that like the faithful dog Rollo, Nussbaum appears to have no sense of time. She says nothing whatsoever about the fact that Effi's affair happened in the relatively distant past. She mentions the word "forgiveness," it's

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<sup>1</sup> Theodor Fontane, Effi Briest trans High Rorrison and Helen Chambers, intro Helen Chambers (Harmondsworth: Penguin, 1995 [1895]). Nussbaum...

true, but she says nothing to indicate that forgiveness might become less difficult with time.<sup>2</sup> Nussbaum does not ask whether the husband's code of honor is any *more* at fault in its judgment of an affair that ended many years before than it would have been in judging an affair that was still going on, or whether it is any different in this respect from Kantian ethics. Time does not seem to matter. On the contrary, Nussbaum tells us that we are supposed to love with the sort of love represented by the faithful dog Rollo, love that is not affected by time. But if love is forever, we might well conclude should there be genuine cause for blame, then blame too would be forever; Effie's own conduct would be just as blamable if it had happened six years ago or a hundred years ago.

In justice to Fontane's wonderful and unjustly neglected novel, it's perhaps worth adding that the husband is no caricature of aristocratic benightedness or rigid moralism. Shortly after discovering his wife's infidelity, he confesses to his best friend that he feels (I quote) "no hate at all, much less any thirst for revenge. And when I ask myself why not, the only explanation I find is that the years have passed. People talk about inexpiable guilt; it's certainly not true, not in the eyes of God, and not in the eyes of men either. I would never have believed that *time*, pure time, could have such an effect" (172).<sup>3</sup> When the husband nevertheless decides to go through with the duel, he does so as a modern ethical subject, one who is very much aware of the threat to his own ethics, and perhaps to any ethics, represented by "*time*, pure time." After the duel, he thinks as follows, "Where is the dividing line? After ten years a duel is still necessary, and they call it honor, and after eleven years, or perhaps only ten and a half, they call it folly. The dividing line, the dividing line. Where is it? Has it come? Has it already been crossed?" (178).

Knowing that time does draw lines, but not knowing with certainty where those lines are, what it would mean to have crossed one, how much of a division they mark: this is the sort of

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<sup>2</sup> as Derrida says in his essay of that name, "In principle, there is no limit to forgiveness, no *measure*, no moderation, no 'to what point?'" Jacques Derrida, Cosmopolitanism and Forgiveness, 27.

<sup>3</sup> Look up the German: is it possible that "pure" ought to be translated "mere"?

difficult, principle-blurring semi-knowledge I'm interested in. It's of course not unfamiliar. Much has been said about time in the context of historical apology, restitution, and reparations, for example with regard to the Jewish victims of the Holocaust or indigenous victims of colonial massacre and dispossession. I quote Elazar Barkan in The Guilt of Nations: "A principled argument in favor of restitution is that no matter how long ago the injustice occurred, its legitimization only encourages other wrongdoings. The counterargument is that since there is no passage of time without changed circumstances, the perceived injustices may have been over time erased by historical changes. This is not to say that the mere passage of time lends legitimacy to the results of injustices but rather that changed circumstances do. This presentist moral predicament exists in regard to every historical injustice."<sup>4</sup> A discourse that's closely related to that of restitution, and again is self-consciously temporal, emerged around institutions like South Africa's Truth and Reconciliation Commission in the mid-1990s and more generally around the issue of how or whether deeply divided nations can heal in the immediate aftermath of civil war and collective trauma. I think it is safe to say that there has been no consensus. The emergence of what has been called a "culture of victimization" is something on which contemporary commonsense does not simply congratulate itself. The degree of debt owed to victims remains controversial even when there is no controversy whatsoever about the initial injustice. One determining factor, perhaps *the* determining factor, is differing beliefs about how much the passage of time ought to matter— unarticulated but strong beliefs, perhaps akin to those evoked by a long-delayed discovery of long-discontinued marital infidelity.

My premise in this talk is that like Nussbaum, who is one of its notable exemplars, human rights discourse has had a hard time acknowledging and articulating the dimension of time and that it needs to do so, and precisely because "*time*, pure time" resists assimilation to abstract ethical principle. It may not be obvious what an engagement between human rights and

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<sup>4</sup> Elazar Barkan, The Guilt of Nations: Restitution and Negotiating Historical Injustices (NY: Norton, 2000), xxxiii. Barkan, who does not seem very persuaded by this presentist argument, is citing the legal theorist Jeremy Waldron, who in fact makes a much better case for it. See below.

time might mean. So let me give a brief example. I have recently found myself involved in an effort to persuade the administration of my university to divest from companies selling military hardware to Israel. At the same time I have also been speaking intermittently at demonstrations against the planned war in Iraq. Opponents of divestment have pointed out that many other countries have a record of human rights abuses rivaling or surpassing that of Israel. So why pick on Israel, they ask. Meanwhile I myself have been saying that if the Bush administration was serious about the flouting of UN resolutions, the development of weapons of mass destruction, and verifiable threats to neighboring countries, then Israel would be at least as good a target for invasion as Iraq. As Bill Keller wrote in the New York Times on December 14<sup>th</sup>, “The Bush administration's enthusiasm for human rights would be more believable if it were less selectively applied.” You can see the problem. The principles in the name of which I oppose the singling out of Iraq are not self-evidently adequate to explain why I want us to divest from Israel but am not calling for other divestments, or not calling for them with the same sense of urgency, or not calling for them now.

But perhaps the word “now” signals a way out of this dilemma. Distinguishing between what must be done now and what must also be done but can be done later would mean trying to escape an absolute language of hypocrisy and double standards and replacing it with a relativizing language of temporality, sequence, and priority. It’s an escape without guarantees, so to speak. The difference between “now” and “later” might well signify hypocrisy (if “later” means “under no circumstances”), but it also might not. This gray area, which may or may not be subject to principle, is one thing I mean by “time in human rights,” an unexplored zone that might offer some useful perspective on the dilemmas of selectivity.

But my subject this evening is less what time has to do with the discourse of human rights as such and more what time has to do with the intersection of human rights and the humanities. As we all know, the humanities were initially constituted around a fundamental commitment to the culture of the past, which it was their job to preserve and transmit. In recent decades this attention to the past has been attenuated or offset (I try to put this issue as neutrally

as possible) by an increasing and of course contested turn to the culture of present. [We can congratulate ourselves or berate ourselves for our self-politicization only to the extent that our work aims at the present-- the one period that, asymmetrical in this respect with all others, gives meaning to the goal of "action."'] It seems likely that this is one reason why we in the humanities have also turned to human rights-- a turn that was not self-evident, given the hostility to human rights thinking intrinsic to the concept of culture, not to speak of the specific anti-humanism of more recent theoretical developments. Human rights discourse, like Nussbaum's reading of Fontane, is radically presentist (though as I hope to have time to show, it is not fully or consistently so).<sup>5</sup> So when we talk about human rights as humanists, it's our own presentist commitments, such as they are, commitments to things like politics and action, that we are offered an opportunity to consider.

In a recent documentary, the American indigenous writer Leslie Marmon Silko spoke about time in these words: "Time is an ocean, and so the fact that we're all sitting here right now is very dependent on what happened five hundred years ago; and you can't just say, 'Aw, five hundred years ago, that's way in the past.' No, that linearity, that emphasis of making time all strung out like a string, that's political, that's what colonialists do....The colonialist always says 'Oh that was so long ago, we really can't address the things that've happened. You know that happened a long time ago.' But [to] people who experience time as an ocean, what happened five hundred years ago is right here, just as much as what happened five minutes ago is right here. How can you say that five minutes ago is more important than five hundred years ago?"<sup>6</sup>

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<sup>5</sup> there's no doubt that Nussbaum is factoring time into her thinking about human rights, though without saying so. For example, when she talks about "adaptive preferences" (Hayden 230)-- the way people adjust their expectations over time to fit their actual possibilities, thus undermining the value of their own statements about their well-being in a utilitarian calculus. Or when she speaks of affirmative action. Nussbaum's argument for forms of affirmative action-- her example is Indian state aid to "formerly despised caste and tribal groups" (231)-- as temporary rights, meant to disappear!

<sup>6</sup> Leslie M. Silko, a film by Matteo Bellinelli; written by Andreas Belloni in collaboration with Claudio Belotti, et al. A production of TSI Swiss Television, Lugano. Princeton, N.J., Films for the Humanities, 1995. Thanks to Mary Lawlor for the reference.

If we are inclined to honor this sentiment—and it's a real if-- it may be because Silko's picture of oceanic, anti-colonial time is not all that different from time as it has been traditionally conceived and put to work by the humanities. It has been our self-appointed mission to remind people who care only what happened five minutes ago about things that happened five hundred years ago. The residual disciplinary force of this mission helps explain the sympathy we are prepared to extend, *as a discipline*, to anti-colonial projects.<sup>7</sup>

But this disciplinary commonsense has now been troubled in productive and interesting ways. Consider for example Assia Djébar's *Fantasia: An Algerian Cavalcade*, a historical novel about the nineteenth-century French invasion of Algeria and the twentieth-century struggle for national liberation. In telling this story, the novel also remembers a moment approximately five hundred years ago that might be called Ottoman colonialism-- or remembers just enough to indicate what it is choosing to forget, and *that* it is choosing to forget.<sup>8</sup> The Chronology, printed with other introductory matter, begins with the date of 1510, marked "Beginning of Turkish rule in Algeria." The glossary, which comes before the Chronology, includes a number of Turkish terms for political office and military rank, all of which remind us that the armies that opposed the French invasion were Turkish armies, with Turkish janizaries "in the front lines of every battle" (17). Still, the idea that for the peoples of Algeria the French invasion might have meant the exchange of one set of foreign conquerors for another remains almost unspeakable. The anti-colonial struggle of the 1950s, whose voices Djébar intercuts with the history of the 19<sup>th</sup> century

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<sup>7</sup> let us remember that **indigenism** is native, so to speak, to literary criticism as well as to ethnography. Criticism made room for itself in a crowded and competitive field of disciplines by selling to the public a legitimizing narrative in which the necessary and desirable publicness of "culture," which was in imminent danger of being overrun by the crass culture-substitutes mass-produced by the so-called culture industry, could only be preserved by a new branch of expertise devoted to its redemption. And this same "salvage" model (Clifford's term) in which culture or cultures must forever be rescued from the very brink of extinction has much to do with the legitimization of the discipline of anthropology.

<sup>8</sup> Assia Djébar, *Fantasia: An Algerian Cavalcade*, trans. Dorothy S. Blair (London and NY: Quartet Books, 1985).

French invasion, pressures the novel to forget the earlier colonialism as a debilitating distraction. Yet the novel does choose to remember the Berber background and Berber language of the novelist's family. And to insist on her Berber or "indigenous" identity, as Djébar increasingly has, is to recall the conquest of Algeria *by the Arabs*, hundreds of years before the Ottomans, and yet perhaps—why not?— a colonial occupation nonetheless.<sup>9</sup> Djébar herself is clearly ambivalent about whether this colonialism should be remembered or forgotten. Or you might say that she points out the existence of unacknowledged and unarticulated rules of temporal engagement, rules stipulating both the remembering and the forgetting of "social catastrophe," and challenges us to acknowledge and articulate them.

Is this something we are prepared to do? I'm not sure. In an essay about the legacy of British colonialism in Ireland, which he likens to an uncauterizable wound, Luke Gibbons draws parallels with the meaning of the Middle Passage to African Americans and the meaning of the Holocaust to Jews. He then poses a rhetorical question: "Would anyone seriously suggest that the traumatic lessons of the Holocaust shouldn't be as pertinent in a hundred years time as they are today?"<sup>10</sup> One gets a stark sense of the contrast between the humanities, where a question like this is liable to be allowed to stand as rhetorical, and the world of politics, where it is probably not, if we contrast Gibbons's words with an essay called "Against the Double Blackmail" written by Slavoj Žižek shortly after the NATO bombing of Serbia began in March 1999. Žižek refused (I quote) the "notion that Balkan people are living in the past, fighting old battles, perceiving recent situations through old myths." There are "no 'old myths' that we need to study if we are really to understand the complex situation," he said; there is "just the *present* outburst of racist nationalism, which, according to its needs, opportunistically resuscitates old

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<sup>9</sup> For Berber background see for example Tassadit Yacine, "Massinissa ou les débuts de l'histoire: au-delà de la Kabylie," *Le Monde des débats*, 27 juillet/aout 2001, 61 or "Berber Unrest Threatens Algeria's Government," *New York Times*, June 18, 2001, A5.

<sup>10</sup> Luke Gibbons, *Transformations in Irish Culture* (Notre Dame and Cork: University of Notre Dame Press and Field Day, 1996), 172.

myths. To paraphrase the Clinton motto: ‘No, it’s not the old myths and ethnic hatreds, it’s the *political power struggle, stupid!*’” (21).<sup>11</sup> “Ottoman colonialism,” which Djebbar did not want to remember, was being remembered with a vengeance by Serbian apologists defending “ethnic cleansing” in Kosovo. Žizek asks us to oppose this act of remembrance not simply because we repudiate ethnic cleansing, whether past, present, or future (under the heading of “future” I’m thinking of the so-called “transfers” of Palestinians currently being planned in Israel once the Iraqi War starts). He is also suggesting that the passage of time has made a difference. If the traumatic lessons of the Holocaust should be as pertinent in a hundred years time as they are today, what about in two hundred years, or, thinking back to the Battle of Kosovo in 1389, the battle from which Serb Christians date their forced submission to the Muslims, six hundred years? Faced with the moral absoluteness of conquest and atrocity, we are tempted to think that time is irrelevant. But if there can be no statute of limitations on colonial crimes, isn’t there at any rate some temporal scale, some implicit deviation from moral absoluteness, that helps us decide what or how to remember, what or how to forget?<sup>12</sup> This is not a plea for Žizek’s

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<sup>11</sup> Slavoj Žizek, “Against the Double Blackmail,” The Nation (May 24, 1999), 20-22.

<sup>12</sup> There is reason to suspect that questions like these will emanate from the political right and will aim at relativizing and softening grievances against European colonialism and neo-colonialism. Pascal Bruckner argues for example against the “genealogical blackmail” which claims that “the West is genocidal by its essence” (218-19). “What happened, happened, once and for all,” he says, “but why would we be responsible for it to all eternity? For how long are the peoples of Europe and America going to be accused of the vilenesses committed by their ancestors?” These questions are necessary as well as risky, however, for though they threaten to depoliticize, to lead away from battle, without them we don’t know whether we are fighting the proper battles, the right enemies. The urge to restore the meaning of the term colonialism to its original, more generalized meaning—referring to any implantation of settlements on foreign territory—may well be an urge to run away from the specificity of post-Renaissance European colonialism, which as Ashcroft, Griffiths, and Tiffin write, is a “sufficiently specialized and historically specific form of imperial expansion to justify its current general usage as a distinctive kind of political ideology” (46). This is sometimes rephrased to argue that it’s the addition of capitalism to colonialism that has made the European version distinctive, and distinctively harsher in its transformation of the life of the general population. But as Gregory Jusdanis notes, the Ottomans too transformed the everyday life of their subject populations, and did so without benefit of capitalism—for example, by building up certain aspects of traditional society (the hierarchy of the Orthodox Church) at the expense of others. Is this so different from

presentism, which universalizes rational actors and their “power game” in such a way that neither history nor culture can appear at all pertinent. It is a plea that colonialism be seen historically, but in a sense of history somewhat different from Gibbons’s: not as Original Sin, or a trauma so great and absolute that time cannot be allowed to touch it, but as a memory forever jostling for space and priority among other, competing memories. And properly so. This means giving up on the pretext that colonialism is a steadfast and unerring guide to action, as if the intervention of time has changed nothing. For to treat colonialism as historical in this sense is to encourage the perverse suggestion that perhaps it is after all *not* a subject about which there is something to be done, that it achieved its current visibility precisely because it demands so *little* in the way of supple and adaptive political action. Getting colonialism back into history will be

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the policy of “indirect rule” that the British pioneered in Nigeria? Wouldn’t it be a form of Eurocentrism, a continuation of the “peoples without history” trope, to assume that the density of everyday life could be transformed *only* by a European invention like capitalism and not by non-European modes of administration? If one *does* focus on capitalism, meanwhile, one has to remember that capitalism was transforming the colonizer as well, and often despite similar sorts of resistance. To take capitalism as antagonist would thus be to invite alliances across the line between colonizer and colonized. It would *not* entail organizing around the primacy and coherence of colonialism. Nor would it entail assuming the existence of a trans-historical subject like “the West” or “Enlightenment” in which the historical impulse to colonialism still lives, and which would be supposed to represent adequately the injustices we see around us today.

Much might be said about the dangers of this complicity between indigenism and cosmopolitanism, whether because being pro-Berber can mean in practice being pro-French or, to go back to my example, because being pro-Kosovar in a certain way can mean being uncritically pro-bombing. The Kosovars, it should be noted, were the victims of an explicit 20<sup>th</sup> century policy of colonization: before and after the First World War, Serbs willing to take over confiscated territory there --like Americans settling the “Wild West”-- were promised substantial amounts of free land, free transport, and a 3-year exemption from taxes. Yet in situations of multiple and overlapping colonialism, as in Serbia or the settler colonialisms of the US and Australia, servitude to the colonial paradigm does not help. On May 24, 1999 the International Action Center in NY opposed the bombing of Yugoslavia in the following terms: “In 50 days of bombing, NATO’s goal has been to break the Yugoslav people’s resistance to an army of foreign occupation—the main demand presented by the US at Rambouillet before the bombing began.” “Foreign occupation” is all you need to know, with no mention of whether we are talking of NATO or UN forces. The war must be opposed simply because foreigners on our soil must be resisted. Thus obsession with Ottoman imperialism can and perhaps must give way to an equal obsession with NATO imperialism, the one necessity being that *someone* must play the role of imperialist. It’s as if outside the colonial paradigm we are afraid we won’t see any politics at all.

good for political action, though not necessarily for anti-colonial action. For it will mean holding open the question of when, where, and how reference to a colonial past does indeed define the actions that the present requires.

In his book Writing History, Writing Trauma, Dominick LaCapra has recently warned against “the over-all conflation of history or culture with trauma” and the way a “fixation on enacting or acting-outpost-traumatic symptoms”—one possible description of the work of literary criticism—obscures “crucial historical distinctions.”<sup>13</sup> LaCapra makes a polemical connection between trauma and a temporality that has become characteristic of criticism in the wake of deconstruction. In post-traumatic acting out, he argues, “one is haunted or possessed by the past and performatively caught up in the compulsive repetition of traumatic scenes... tenses implode, and it’s as if one were back there in the past reliving the traumatic scene.” Time is “experientially collapsed or productive only of aporias and double binds. In this sense, the aporia and the double bind might be seen as marking a trauma that has not been worked through” (21). He goes on to talk about trauma as offering “a source of elation or ecstasy” (23) in part because it also becomes a source of identity. What he calls “founding traumas” are those that “paradoxically become the valorized or intensely cathected basis of identity for an individual or a group rather than events that pose the problematic question of identity” (23).<sup>14</sup>

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<sup>13</sup> Dominick LaCapra, Writing History, Writing Trauma (Baltimore and London: Johns Hopkins, 2001). “Some of the most powerful forms of modern art and writing, as well as some of the most compelling forms of criticism (including forms of deconstruction) often seem to be traumatic writing or post-traumatic writing in closest proximity to trauma. They may also involve the feeling of keeping faith with trauma in a manner that leads to a compulsive preoccupation with aporia, an endlessly melancholic, impossible mourning, and a resistance to working through” (23).

<sup>14</sup> Consider Cathy Caruth’s formulation, which seems to avoid LaCapra’s description, but...: “The trauma is a repeated suffering of the event, but it is also a continual leaving of its site. The traumatic reexperiencing of the event thus *carries with it* what Dori Laub calls the ‘collapse of witnessing,’ the impossibility of knowing that first constituted it. And by carrying that impossibility of knowing out of the empirical event itself, trauma opens up and challenges us to a new kind of listening, the witnessing, precisely, of *impossibility*” (10). “The inherent departure, within trauma, from the moment of its first occurrence” (10-11). Cathy Caruth, Introduction, Trauma: Explorations in Memory (Baltimore: Johns Hopkins, 1995).

This is precisely the objection to the discourse of rights that Wendy Brown articulates in her volume Left Legalism/Left Critique. I quote: “the question of when and whether rights for women are formulated in such a way as to enable the escape of the subordinated from the site of that violation, and when and whether they build a fence around us at that site, regulating rather than challenging the conditions within...the more highly specified as rights for women, the more likely they are to build that fence insofar as they are more likely to encode a definition of women premised on our subordination in the transhistorical discourse of liberal jurisprudence” (422).<sup>15</sup> In noting the risk that identities will be fixed by rights discourse, Brown is also doing what I’m saying needs to be done: seeing rights in time. Yet her own preferred sense of temporality seems quite close to LaCapra’s account of traumatic fixation. Describing rights for women as paradoxical (“simultaneously politically essential and politically regressive” [432]), she seeks to remove this paradox from what she calls “a progressive historiography” and to place it in “a nonprogressive historiography.” What “nonprogressive” means here is (I quote) “affirming the impossibility of justice in the present and ... articulating the conditions and contours of justice in the future” (432). Does anyone deny what Brown asks us to affirm? Who believes that the possibility of justice has already been realized in the present? Who believes that possibility resides anywhere *but* the future? If this statement asserts anything other than the impossibility of justice ever separating itself off from every hint of paradox (no problem there), if it means anything specific about justice in time, then it can only be referring to an impossibility of justice not only *in* the present but also extending *beyond* the present, into the future. Which is just the structure of trauma LaCapra describes: a temporality stripped of any capacity to “work through.”

As will be obvious enough, I am in favor of temporality in the other sense: temporality as a dimension in which forgetting and “working through” are possible, or what I would stubbornly

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<sup>15</sup> Wendy Brown, “Suffering the Paradoxes of Rights,” in Wendy Brown and Janet Halley, eds., Left Legalism/Left Critique (Durham: Duke University Press, 2002), 420-434. [She asks “how can rights be procured that free particular subjects of the harms that porn, hate speech, and a history of discrimination are said to produce without reifying the identities that these harms themselves produce?” (424).]

label “progressive” temporality. But the effort to add or restore such temporality to modes of thinking that resist it, whether human rights discourse or the discourse of the post-theory humanities, can only be, politically speaking, a very chancy business. In his book, The Warrior’s Honor: Ethnic War and the Modern Conscience, Michael Ignatieff argues that in places like Serbia, Rwanda, and Afghanistan, a human rights framework in terms of which perpetrators can be called to account for their crimes is not what is called for. On the contrary, “Sometimes what these societies need is forgetting” (7). In a world in which “human rights have little or no purchase,” it makes more sense to accept the moral status quo on the ground, however distant from the abstract human rights ideal, and work only within it. I quote: “Far better to appeal to these fighters as warriors than as human beings, for warriors have codes of honor; human beings—qua human beings—have none” (6).<sup>16</sup>

This may sound plausibly pragmatic as well as attractively sensitive to cultural difference. But what it amounts to is ratifying the code of honor by which the husband in Effi Briest belatedly kills his former “rival” and stops his wife from raising their child. Or, to be less allegorical, ratifying the already-existing policy by which, in its supposed national interest, the United States turns a selectively blind eye to the corrupt, undemocratic regimes of its allies, no matter how bad their behavior in the domain of human rights, while mouthing indignant human rights pieties only against its enemies. It’s true that, as Ignatieff remarks in a later book, one should not reduce to a simple matter of “hypocrisy” what is in fact “a fundamental conflict of principle” (24-25). I quote: “Western states want to promote human rights, but not at the price of

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<sup>16</sup> Michael Ignatieff, The Warrior’s Honor: Ethnic War and the Modern Conscience, (NY: Henry Holt, 1997). “Warrior’s honor was both a code of belonging and an ethic of responsibility. Wherever the art of war was practiced, warriors distinguished between combatants and noncombatants, legitimate and illegitimate targets, moral and immoral weaponry, civilized and barbarous usage in the treatment of prisoners and the wounded. Such codes may have been honored as much in the breach as in the observance, but without them war is not war—it is no more than slaughter. Warrior codes are sharply particularistic: that is, they applied only to certain people, not to others. The protections afforded by the chivalric code applied only to Christians. Toward infidels, a warrior could behave without restraint” (117).

dismembering viable democracies and adding to the number of failed, collapsed, or disunited states in the world system.” More protection is indeed offered for the human rights of ordinary citizens in states with poor human rights records than in states that have simply come apart. But thinking about human rights in time does not lead to this inevitable, principle-subverting destination. Honoring a non-Western moral alternative to human rights as the best that can practically be sought, Ignatieff does something like what Samuel Huntington does in The Clash of Civilizations: he allows a whiff of cultural relativism to perfume a foreign policy that stinks. But it does not stink because it is selective. Selectivity itself is as inevitable as temporality. My point here is that this principle of selectivity can only be criticized in the name of, and if it is replaced by, another such principle.

In order to prevent pragmatic presentism from functioning as a God-term, in order to stop it from looking like the so-called TINA option-- there is no alternative-- let me say a word in conclusion about so-called “positive rights.” In her introduction to Ignatieff’s Tanner Lectures, Human Rights as Politics and Idolatry, Amy Gutman makes the point that Ignatieff, like the human rights mainstream in the US and the West, understands human rights to “protect the core of negative freedom, freedom from abuse, oppression, and cruelty” (ix).<sup>17</sup> Thus he leaves out what she calls “subsistence rights,” first and foremost the right to food, the right not to starve. Now there is a well-established position in human rights discourse holding that economic and social rights like subsistence, also referred to as “positive” rights, should be given priority over the “civil and political” rights championed by the West.<sup>18</sup> In a strange real-world echo of critics

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<sup>17</sup> Gutman says this is inconsistent, since Ignatieff makes his case in terms of protecting people’s agency, and “starving people are denied their human agency” too (xii). Wendy Brown too clearly has in mind (mainly) civil and political rights, not economic and social ones. Rights like the right to water or housing do not fix identities in the way that protecting women from the harm of porn or hate speech might. On the contrary, building infrastructure puts identities in motion!

<sup>18</sup> “According to the developing and many socialist countries, the second group is the one that ought to be favored in international action. Firstly, these rights are intrinsically more important. What sense is there in talking of freedom of expression when one is hungry, jobless or homeless? Economic and social rights have absolute priority, for it is only when they are fully realized that

in the humanities insisting that no world is realer than any other, that nothing is “merely cultural,” the Western countries have argued that no rights are any more basic than any others, that it is “meaningless to set up a hierarchy among categories of rights” and to relegate civil and political rights to second place, “as if they were a luxury” (159).

But the no-priority position amounts in effect to relegating the economic and social rights to second place, and this because of their greater or more overt embeddedness in time. Civil and political rights seem to be instantaneous matters of non-interference: they merely require that the state stop doing something it’s already doing. Economic and social rights on the contrary visibly require that the state take “positive measures.” The implementation of these measures can only be, as they say, “progressive,” for like providing food, it requires funding, infrastructure, back-up and follow-up, sustained and complex effort. Now the same is true for something like “affirmative action”-- not a human rights term, though very definitely a human rights policy.<sup>19</sup> But ordinarily, civil and political rights are not seen in time, and this non-temporality is the dimension of their privilege. It’s because they don’t seem to require the lengthy and expensive action that economic and social rights do require that civil and political rights and their defense of negative liberty always seem to come first.

And it’s because Ignatieff “supports only negative liberty” (xiii), because he does not put

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it is possible to create the *de facto* equality that makes civil and political rights fully realizable. The second reason is that, especially in developing countries, it is in the economic and social fabric that the most painful shortcomings exist, so that this is where intervention is most needed. In those countries, economic and social backwardness means that not only are roads, hospitals and infrastructures generally lacking, but so are elementary and higher education. This, then, is the area where intervention is needed, to narrow the gap which separates these countries from the industrialized ones. Accordingly, progressive recognition of economic, social and cultural rights must be insisted on, at the international level” (158-59). Antonio Cassese, “Are Human Rights Truly Universal?” in The Politics of Human Rights, edited by Obrad Savic for The Belgrade Circle (London: Verso, 1999), 149-165.

<sup>19</sup> (Unequal representation of women and minorities is supposed to be remedied by party quotas on candidate lists-- and “positive measures” like this are seen as temporary rights, intended to cease when their job is done.)

his hope and effort into the “progressive implementation” of positive rights, that in the name of practicality he has to have recourse to “the warrior’s honor.” Things might be different if there were more “consensus,” in Antonio Cassese’s words, “as to the *relative order of importance* of the various rights; in other words, an understanding in principle as to their ‘hierarchy.’”<sup>20</sup> And of course if we could point to evidence that this hierarchy, translated into a temporal sequence, was being supported by actions, actions that in the name of human rights gave first priority to providing food, water, housing, and so on.<sup>21</sup>

Moving into real time means selectivity, but it does not entail abandoning oneself to the mystifications of pragmatist presentism. Nor does it mean abandoning all principle. Positive or subsistence rights represent one principle of selectivity, and there are others. Selectivity might even be considered a sometime synonym for culture, another risky but necessary way of marking principled departures from abstract moral and epistemological principle. For students of culture, the challenge is to recognize the unavoidable ambiguities and dilemmas of life in time without trying to anchor ourselves, trauma-like, against its flows. We cannot afford to model our fidelity to the memory of injustice on the love of the faithful dog Rollo. I would not want to imagine a timetable according to which memories would expire or be erased. But even the most

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<sup>20</sup> Antonio Cassese, 162. The quotation continues: “(although of course any human right is important and indispensable per se, one may however establish an order of priority, subject to the caveat that this is tentative, historically relative and primarily operates as a sort of working hypothesis). This understanding is to some extent reflected in a speech delivered in 1977 by the then US Secretary of State Cyrus Vance. In his view, the fundamental core of human rights is made up of the right to life and security: the right not to be tortured or killed illegally. There then follow rights relating to fundamental needs of the human person: the rights to work, to decent housing, to nourishment, to protection of health. Thirdly, still in some sort of order of importance, are some civil and political rights like freedom of expression and of association, the right to choose a government and hold public office, and so on. I feel that this grading departs considerably from traditional Western conceptions and goes some way to meet the aspirations and ideological conceptions of the Third World and the socialist countries...(the fact that subsequent US administrations have not consistently upheld Vance’s view in no way detracts from its intrinsic importance).”

<sup>21</sup> [I for one would be happy to accept any consequences of identities fixed by these rights.]

responsible humanists and even the most ecumenical left cannot favor a temporal leveling out in which the oldest and the most recent suffering count equally, time elapsed counting for nothing.

## Notes