

“Two Lives, One Order”¹

The aim of this essay is to fine tune and elaborate on the proposition that the contemporary art regime (CAR) functions as a support-system for the human rights regime (HRR), both of which are first and foremost seen as modes of instilling a particular kind of a global ethico-political order. The starting point of this essay is in effect the end-point of the conversations that unravelled in Theory classes devoted to Democracy, Human Rights, Transnationalism and Neoliberalism, as well as a response to Suhail Malik’s paper “The Politics of Neutrality: Constructing a Global Civility.” Given the nascent status of both the theoretical and the empirico-analytical discussions on this topic, what appears to be urgent at this juncture is a more precise formulation of the problematics that emerge from the above proposition as well as a more concise characterisation of the terms and symptoms at stake. This essay will be largely dedicated to the aforementioned “mission of specification,” while also shifting the argument further by suggesting that CAR is in fact an *Ersatz* framework for the HRR given that it is by far better attuned to a neoliberal global logic.

Hardt’s and Negri’s (no longer particularly groundbreaking nor controversial) characterisation of the neoliberal constitution of Empire serves as a useful point of departure. Just at the turn of the 21st century, the theorists stated:

“[...] it is important to emphasise both capitalism’s continuous foundational relationship to (or at least a tendency toward) the world market and capitalism’s expanding cycles of development; but proper attention to the *ab origine* universal or universalising dimensions of capitalist development should not blind us to the rupture or shift in contemporary capitalist production and global relations of power. We believe that this shift makes perfectly clear and possible today the capitalist project to bring together economic power

¹ Inspired by a Russian proverb - “two lives, one childhood” - which alludes to two parallel strands of evolution despite a common environment and similar conditions.

and political power, to realise, in other words, a properly capitalist order. In constitutional terms, the processes of globalisation are no longer merely a fact but also a source of juridical definitions that tends to project a single supranational figure of political power” (8-9).

Here the emphasis is placed on how the institution of a global market is interlocked with and procured by the constitution of a global political logic that reinforces the ethico-political merit of spatial expansion and temporal foreclosure by becoming indefinitely embedded in the fabric of (previously differentiated in terms of ordering mechanisms) societies. The global political logic thus serves as an ideological lubricant and a pivotal condition for a universalist neoliberal economy. It seems that at the heart of Hardt’s and Negri’s argument lies Antonio Gramsci’s theoretical framework that requires the ordering of material conditions to be necessarily determined and maintained by a hegemonic superstructural formation; in other words - ideology. Hardt and Negri state:

“From the beginning, then, Empire sets in motion an ethico-political dynamic that lies at the heart of its juridical concept. This juridical concept involves two fundamental tendencies: first, the notion of a right that is affirmed in the construction of a new order that envelops the entire space of what is considered civilization, a boundless, universal space; and second, a notion of right that encompasses all time within its ethical foundation. Empire exhausts historical time, suspends history, and summons the past and future within its own ethical order. In other words, Empire presents its order as permanent, eternal, and necessary” (11).

The “juridical concept” is on the one hand manifested in the supranational framework of regulatory and adjudicatory bodies, which are represented by various entities such as the United Nations, the IMF, the World Bank and NGOs that operate on the basis of international legislation, but more crucially it is a reference to the bio-political dimension of a transnational juridico-normative system that takes human life as the object to be invested in and subjected to specific forms of nurture and

protection. The human rights regime occupies an important cross-section of this juridico-normative system in so far as it works to establish standards according to which individuals must be treated, holding state actors accountable for observing these codes and offering juridical means of redress and retribution for acts of transgression. Consequently, the human rights regime includes everything and anything that draws its authority from a transnational source of juridical legitimacy, which may be based on legislation (Declarations, Treaties, Conventions, national legislation that incorporates regional or global directives) and on the missions and strategies of self-proclaimed global defenders/defence of human rights (Amnesty International, but also more generally liberal political rights activism).

In *The Politics of Neutrality: Constructing a Global Civility*, CAR is interpreted as a supportive mechanism for HRR in virtue of its enactment of a “second-humanism” according to which liberty is determined by the subject’s freedom to choose the character of their experience and spiritual/affective enjoyment when confronted with an artwork (this resonates with Ranciere’s “emancipated spectator”). The viewer does not need any specific socio-economic standing or educational background in order to make a judgement-choice, while the artwork itself does not demand a single “correct” reading, thereby flattening out the relevance of all responses and interpretations to a matter of democratic choice. Malik argues that the artwork’s indeterminacy coupled with the indeterminacy of its addressee construct a universal subject defined by their innate right and ability to choose thoughts and emotions, thereby affirming their standing as a universal subject of human rights. Such universal juridico-aesthetic regime maps very well onto Hardt’s and Negri’s formulation of Empire’s constitution of subjecthood. However, I would also like to argue that apart from the support function that is rightly pointed out by Malik, CAR is in fact in the process of replacing HRR as the dominant force on the global ethico-political terrain precisely because of its ability to equate indeterminacy (i.e. resistance to overdetermination and filled in centres) with the

inherent virtue of liberalism. In order to substantiate this claim, I will go through what I consider to be the defining characteristics of HRR - liberalism, the nation-state, law and monitoring - in an attempt to explain why CAR may in fact serve as a far better arbiter of the global ethico-political imperative within unregulated capitalism than HRR.

(1)

Liberalism - as the absolute cornerstone of the HRR - fixes the inherent rights of individuals in society. Liberal democracy is positioned as the “natural” home for a well-functioning human rights system and hence a fight for rights and justice has been historically aligned with a war for the establishment of liberal-democratic political systems (whether by direct force or diplomacy). Since the Second World War, HRR’s internationalism has been a highly productive vehicle for the expansion of liberalism, marching hand in hand with the struggle for comparative advantage and increasing profit margins for the world’s most powerful economic actors (whether state or corporate). As a result, the critics of the HRR have always pointed to how the system is instrumentalised for geo-political control that is tied to the allocation of resources and economic strategy. At the same time, as Malik rightly points out, the HRR is historically predicated on impartiality to anything outside of itself (such as politics proper and especially economic power games). The HRR is thus traditionally wired to exclusively strengthen, implement and perpetuate itself as *the* model for upholding ethical values on a global level - in this sense, HRR is its own and only political project, foreclosing the possibility of integrating economic rationalities, context-driven and tailor-made political responses into its agenda. It must be noted, however, that in the recent years there has been a move towards trying to address the root causes of human rights violations as opposed to just treating their after-effects. Susan Marks is rightly suspicious of this gesture, highlighting how current analyses do not go far enough in addressing the root causes because doing so could incriminate HRR as an essential puzzle-piece in the perpetuation of

“planned misery” on which the furthering of predatory economic interests is based. The solution could be to radically politicise HRR, which would mean transforming the very ideological basis of the system by rewiring its relationship to economic politics. Transforming HRR into a project of political economy would not only mean dissolving its current infrastructure but also reconceptualising the current constellation of liberalism and perhaps even exiting liberalism altogether.

Consequently, it seems that today’s liberalism is in fact threatened by the impossibility of reconciling the prescriptive nature of HRR’s content (i.e. the fixity of its constructed subjecthood and the demands of legal implementation) with being instrumentalised for *Realpolitik* gains, especially under the guise of presumed neutrality, and in the face of the elementising striving of economic functioning that either subjugates totalising mechanisms of control or deems them obsolete when they become obstructive. In other words, HRR’s overdetermination and prescriptive fixity is on the one hand in stark dissonance with the transnational fluidity of immaterial and material movements, and on the other hand its existence as an embedded form of international humanist thinking is an irritating benchmark, which acts as a constant reminder of the irredeemable failures of the “first humanism.”

As a result, it’s potentially life-saving for liberalism - an ideology invested in individual choice as the determining factor of ethics and sociality (when all of its strands are reduced to their lowest common denominator) - if the ethico-political standards are simultaneously all-encompassing and much more nebulous than those that are provided by law. To continue utilising Laclau and Mouffe’s characterisations, articulation - the shifting between elemental nodes (singularity) and transient totality in constant redetermination of the social whole - is an apt concept for the kind of ethico-political order that satisfies liberalism from the points of view of democratic governance and

neoliberal economy. In contrast, overdetermination and fixity as proposed by law, apart from drawing direct criticisms from opponents of liberal hegemony for its Western bias and striving towards biopolitical control, also suffers from the obligation to act on the promise of specified rights. Meanwhile CAR capitalises on articulation as an enactment of reality in which choice is left as an open category that doesn't need to be substantiated by tracking accountability.

(2)

The nation-state is the key actor in the HRR framework, since it is accorded the status of being both the main threat to and simultaneously the chief guarantor of human rights in a liberal democracy. This seeming paradox has been a topic of prolific theorising on the part of liberal theorists. The other side of the legal justice coin is accountability, which hinges on the existence of claimants and defendants. Given the preeminence of the Westphalian model in international law that promotes national sovereignty and territorial-jurisdictional control of a nation-state by the State, HRR relies on the State as the pivotal point of equilibrium in its international infrastructure. Yet, the State is rarely the only implicated actor in human rights violations; quite frequently, it is the least significant one in so far as the state structure itself isn't the locus of coercive power interests. Oil spills as a result of negligent practices by transnational corporations such as Shell as well as covert backing of the activities of criminal groups and mercenaries by legitimate businesses that are interested in the control of certain markets (DRC is the classic example of the latter model, although examples abound in all countries even if the models differs in the developed world) point to the inadequacy of the HRR model as a means of dealing with human rights violations that flow out of exploitative practices. In fact, HRR's claimant-defendant model distorts our understanding of the manner in which human rights violations occur and are perpetuated by neglecting and thereby implicitly exculpating the implicated structures and networks.

The nation-state system is frequently written off as an anachronism and an impediment to an integrated transnationalism. However, corporate globalisation of the 1990s has been vexed for its homogenising tendency and these past decades have made it clear that although universalism remains a coveted objective as far as humanist ideals are concerned, eradication of difference that accompanies globalisation burns the candle of these ideals from the other end. HRR, with its top-down operations and simultaneously with its investment into a strong (horizontal) democracy as understood by Barber's school of liberal theorists, is perceived by post-structuralists as part and parcel of globalisation's predatory attack of homogenisation and normativisation.

CAR offers a solution. Although Western bias may not be entirely exorcised, it becomes far less relevant in so far as CAR manages to balance out the global with the local, acting as a "glocal" force the messages of which are both singularised and legible everywhere and to anyone. The range and adaptability of CAR's language makes it sensitive to local concerns, thereby catering to the different formulations of neoliberal capitalism across the globe (which is in effect an elaboration on Ong's argument), while continuing to resonate globally. CAR fosters a locally differentiated global unity through its use of the singularity of every human being's experience and the unifying feature of all human beings' right to choose as channels for communicating unity whilst emphasising difference.

(3)

Law is the defining tool of the HRR. At the height of the Nuremberg and Tokyo trials, legal theorist Judith Shklar proclaimed that these trials marked the triumph of *legalism* over authoritarian demagoguery and extrajudicial violence, and marked the start of a new and final era in the history of liberalism and History altogether. Shklar's enthusiastic overtones were dampened by the ensuing decades of Cold War proxy warfare, in which the use of force served as the key regulatory

mechanism on the global arena. Legalism was picked up again as a theme of civilisation's triumph over barbarity with the establishment of ICTY (International Criminal Tribunal for Yugoslavia), the ICTR (International Criminal Tribunal for Rwanda) and the ICC (International Criminal Court) in the late 20th and early 21st centuries. However, the excitement quickly dissipated as the ICC drew criticism for only opening cases against "bad black man in Africa" with an occasional indictment of a high profile Serbian military leader, while also disappointing legal enthusiasts who believed that some of the procedures (especially those that extend decision-making power to UN's Security Council) were in grave violation of the key principles of criminal law, and the ICC could never function as a criminal court anyways since it lacked an enforcement arm - a global police force. In the meantime, the post-9/11 period saw an increased rhetorical legitimization by the harbingers of the HRR (such as the US and the UK) of the necessity to enact extrajudicial procedures in the "War Against Terrorism." Extraordinary renditions, secret prisons, detainment without charge, implementation of legislation that violates privacy laws and basic civil liberties, as well as backstage deals between world leaders to brush international law aside became business as usual in these supposedly "exceptional" circumstances that quickly became the norm. In my dissertation for MSc Human Rights, relying on Carl Schmitt's writing on the constitution of *ius publicum Europaeum* and on post-colonial theorists who have focused on the use and suspension of law in the former European colonies, I argued that "exceptional" extrajudicial violence has been part and parcel of the international law project since its inception, and the former has been in fact employed as a legitimization for the protection of the latter on a persistent basis (i.e. protecting the sanctity of law through unsanctioned violence). Just like Immanuel Kant's unattainable "perpetual peace" towards which we must nonetheless strive by any means possible including war, the achievement of full-fledged legalism is a project in persistent deferral, intricately enmeshed with means that are contrary to its very nature but that are allegedly employed in the fight for its survival. Yet, since it is also a project that claims monopoly on the universal understanding of the ethico-political

imperative, this status disallows it from an introspective analysis of its intrinsic historical alignments.

Law may be the backbone of HRR but as the above section on the shift within the liberal agenda shows, legalism no longer possesses the same monopolising ethico-political credentials as during the various peaks of HRR's hegemony (such as in the aftermath of the Second World War and in the early 1990s). Post-structuralist thinkers and specifically Derrida have critiqued the HRR for its equation of justice as an aporetic experience with something as concrete and determinant as law. CAR integrates this criticism and operates through an affect-driven logic, which resists overdetermination and instead fosters semantic antagonism, which is then promoted as a mirror projection of the kind of democratic society that we should be invested in. Simultaneously CAR distances liberalism's reality from its pronounced aims by taking HRR's operation of deferring their realisation to another level - to the level of affect where we can feel freedom whilst living in highly oppressive circumstances, without having the two clash in any necessary way. This explains why it is possible to position CAR as the harbinger of the political agency that isn't attached to any specific qualifications - political agency becomes equated with the *je ne sais quoi* that is singular to every individual viewer, while it is never up to CAR to quantify or qualify the effects of its affective logic, since such particularisation would overdetermine freedom in potentially elitist, exclusionist and manipulatory ways. Such rewiring of liberalism's credo distances the ideology from its blatant inconsistencies and outright hypocrisies by allowing it to take refuge in the universal value of indeterminate freedom that no longer needs to be attached to legalism.

(4)

Witnessing and monitoring human rights offences is the final defining characteristic of the HRR. Systematic gathering of evidence was incremental in establishing the human rights system as a

global regime. Monitoring and reporting became the bread and butter work of every human rights NGO, thereby ensuring that States are held accountable for their transgressions and that such state of affairs is held as a universal ethico-political norm. Although witnessing and reporting has pushed globalisation into a new era, much has been said about the shortcomings of this methodology and its dominant position in the HRR imaginary. Just like the HRR language and mechanisms in general, reporting tends to sever historical preconditions and structural realities that set the scene for transgressions. Reporting styles also tend to create a binary world of victims and perpetrators in their attempt to remain impartial and just talk (very bloody and atrocious) facts. The latter criterion is considered as a strength of the reporting mechanism in so far as it this reductive matter of fact recounting that gets the ears of governments and the UN. Other critics have pointed to the neocolonial bias in the very functioning of monitoring as it is for the greater part conducted by “Westerners” with the help of local fixers.

Despite these criticisms, what should be highlighted is that monitoring and witnessing are predicated on system-building that allows to accrue knowledge, which can then be mobilised as power. HRR fails to exploit this resource of representation due to the system’s pledge to impartiality. CAR’s relationship to representation strikes the ethico-political note that HRR has no range for. Within CAR, presented art content often builds on particular manifestations of injustice or violence (e.g. Sharon Hayes, Omer Fast, Cyprien Gaillard, Chto Delat?, Francis Alys, Paul Chan, Christoph Schlingensiefel, etc), but most importantly, as Andrea Geyer pointed out in a panel discussion on art and politics at the Vera List Centre, contemporary art is considered to be “a space of reflection for community.” This distinguishing feature seems to flow out of a Rancierian approach to contemporary art as a mechanism for redistributing the sensible, which allows for the formation of commonality, rendering visible what hasn’t been before and giving speech to repressed

voices. Such implicit dimension of empowerment and endorsement of grassroots activism stands in stark opposition to the bureaucratised mainstreaming of inherently depoliticised HR reporting.

Yet, what also emerged from the Vera List discussion is that “art does not need to do ‘doing’ in the way we typically think of activism” since “artworks have a different feeling of urgency” and hence “a difference temporality.” Such characterisation is symptomatic of CAR’s ambivalent approach towards political commitment. There is a tension between the purported political nature of CAR as that which instils liberal values, fends off totalitarian thinking, makes space for criticality, and politics as understood from the point of view of cause and effect. Indeed the latter vision of politics demands a pragmatic temporality, in which the details of today’s actions matter for tomorrow, and will have to face judgement. CAR’s temporality forecloses the possibility of judgment not only because no criteria of judgement and accountability exist but also because causality is discredited as an oppressive concept and a hang-over legacy from modernity. Thus, CAR’s affect-driven logic is far more effective in “[encompasses] all time within its ethical foundation” (Hardt&Negri) than HRR’s juridical concept, which remains bound to causality.

To conclude, I chose to focus on the key qualities, symptoms and malaises of the HRR in order to first of all demonstrate that since its inception HRR has been a system in crisis and in persistent deferral of the realisation of its aims, as well as to put forward a claim that builds on Suhail Malik’s proposition regarding the status of CAR vis-a-vis the ethico-political dimension of neoliberalism. It seems that the shifts that I describe above are very much tied to the post-9/11 era, which prompted a

considerable deflation of the idea that legalism occupies a preeminent role in liberal values² and that “freedom” should be correlated with anything as specific and vulnerability-inducing as subscription to legal norms. The detachment of liberal values from law is also the realisation of the post-structuralist demand on modernity. Today, “freedom,” “justice” and “accountability” exist as floating signifiers - concepts with an empty centre - ready to be attached to and filled in by whatever power has most traction. CAR is the perfect companion for an order that resists entrenchment of specific values, rules and norms whilst holding on to the meta-value of affective intensities (or what Deleuze and Guattari describe as “haecceities”) attached to individualised experience and transient commonalities completely detached from material conditions.

As a way of signalling a direction for ensuing research and action, I would like to propose a mode of curating that could start deviating from the kind of programmed engagement that is today associated with CAR. I would suggest that there are two key phases: undermining confidence in the current regime and instilling confidence in system-building, transparency (even and especially if it exposes incongruent hypocrisies), and realignment of material realities with immaterial production.

References

- Barber, Benjamin. *Strong Democracy. Participatory Politics for a New Age*. Berkeley/Los Angeles/London: University of California Press, 2003.
- Derrida, Jacques. “Force of Law: the Mystical Foundation of Authority,” in *Cardozo Law Review* 11, 1990.

² I would also argue that “human rights fatigue” has been in the air even within the system of HRR’s institutions. While it may be difficult to substantiate that claim apart from resorting to anecdotal evidence, examples such as UK’s flirtation with the idea of temporarily withdrawing from the European Convention on Human Rights in order to ensure the removal of Abu Qatada from the UK and also to secure a more smooth and effective furthering of the Conservative government’s interests. Meanwhile, institutional dysfunctions (i.e. terrible backlog of cases at the main international courts, bureaucratic quagmire, diplomatic set-backs, etc) and inability to keep up with the fluid and constantly morphing circumstances has rendered the HRR not only ineffective but also outmoded.

- Gramsci, Antonio. "Hegemony, Relations of Force, Historical Bloc" in *An Antonio Gramsci Reader*, ed. by David Forgacs. New York: Schocken Books, 1998.
- Hardt, Michael, and Negri, Antonio. *Empire*. Cambridge: Harvard University Press, 2000.
- Kant, Immanuel. "Perpetual Peace: a Philosophical Sketch," <https://www.mtholyoke.edu/acad/intrel/kant/kant1.htm> (accessed on 28.06.2013), 1795.
- Laclau, Ernest, and Mouffe, Chantal. *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*. London/New York: Verso, 1985.
- Malik, Suhail. "The Politics of Human Neutrality: Constructing a Global Civility," in *Human Snapshot*, 2013.
- Marks, Susan. "Human Rights and Root Causes," in *The Modern Law Review*, Vol. 74, Issue 1, pp. 57-78, 2011.
- Ong, Aihwa. *Flexible Citizenship: the Cultural Logics of Transnationalism*. Durham/London: Duke University Press.
- Ranciere, Jacques. *The Emancipated Spectator*. London: Verso, 2009.
- Ranciere, Jacques. *The Politics of Aesthetics*. London/New York: Continuum, 2004.
- Schklar, Judith. *Legalism: Law, Morals and Political Trials*. Cambridge: Harvard University Press, 1964.
- Schmitt, Carl. *The Nomos of the Earth in the International Law of the Jus Publicum Europeum*. New York: Telos Press Publishing, 2006.