

Literature and the Limits of Human Rights

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Philosophy

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Abstract

In this thesis I argue that there are qualities of literary writing which can illuminate human rights discourse and, specifically, its limit points. I focus on one such limit-point: the difficulty of fully possessing human rights. Rights are most likely to be securely guaranteed under the legal system of a nation-state. However, such rights – possessed on the basis of citizenship rather than through humanness – are not always considered *human* rights. The position of the nation-state, the possibility of legal enforcement and the category of the human are therefore ambiguities for the discourse. Literary texts from two countries which have been central to debates about human rights – Uganda and South Africa – will provide the focus for this study.

Joseph Slaughter proposes that the plot of the Bildungsroman both resembles and promulgates the citizenship model of human rights-possession. However, in texts addressing the involvement of children in war in Uganda, I read experiments with the Bildungsroman form to indicate human rights discourse's preoccupation with merely human identity. Child soldier narratives appeal to a decontextualized, universal image of the child, while in the fiction of Goretty Kyomuhendo there is an excessive repetition of familial language and symbol which throws the traditional narrative arc of the Bildungsroman off course.

Critics including Slaughter see literature as compensating for the ambivalence of human rights discourse about the possibility of its own enforcement through the law. Instead, I explore the ways in which certain texts, in the context of South Africa, enact their own irreducibility to legal categories. I make this argument through a discussion of the way the literature and the literary appear in the *Report* of South Africa's Truth and Reconciliation Commission alongside readings of Antjie Krog's *Begging to Be Black* and Nadine Gordimer's *Burger's Daughter* and *The House Gun*.

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Introduction

In this thesis I argue that human rights are defined by how difficult it is to fully possess them. Drawing on what human rights theorist Jack Donnelly describes as the ‘possession paradox’, I contend that a human rights claim is most meaningful in a situation of rightlessness and vulnerability.¹ Human rights are the rights nobody wants to be forced to rely on, because to make a human rights claim means that all other options have been exhausted. In particular, it means that the everyday protection of basic rights, which should generally be guaranteed through citizenship, is under threat. On the other hand, human rights discourse seems to have little to do with a situation in which rights are freely enjoyed without restriction. Perhaps it would even sound hyperbolic to use human rights language where rights are always (or almost always) guaranteed. That is, it is difficult to grasp human rights because they seem to exist primarily in their non-possession: they have value when they are under threat, and appear irrelevant where they are enjoyed.

I draw attention to three, linked ambiguities in the discourse of human rights which are caused by this crisis of possession: the position of the nation-state, the category of the human and the possibility of legal enforcement. International human rights law is a last resort. Its mechanisms can only be accessed once domestic remedies have been exhausted. This suggests that the preferable forum for the legal realization of human rights is the nation-state. However, this makes the protection of human rights dependent on the protective capability of the nation-state, and this seems to contradict the claims of human rights to universality or to being based simply on human identity. There are two alternative models of the possession of human rights here, and neither is entirely satisfactory. Rights may be legally possessed through the nation-state, but these rights do not seem to be human rights, both because they are possessed (and thus lack the association with human vulnerability and crisis) and because they are citizenship rights rather than rights possessed through humanness. On the other hand, the nation-state might abuse or fail to protect your rights, in which case you would have recourse to the weaker and less effective international legal system. But here rights are not

¹ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed (London: Cornell University Press, 2003), p.9.

possessed, except in the sense that a human rights claim is being made – in fact, the possession of rights is in jeopardy.

This difficulty is not just a problem of inadequate realization: it is a limit-point which is inherent in the way human rights discourse has been articulated. It is for this reason that literary writing has a crucial role to play in disentangling what human rights discourse is and how it operates. What is distinctive about literary writing is its tolerance of tension and ambivalence; literariness, I argue, is in large part connected with the simultaneous existence of multiple meanings. Unlike theoretical writing or writing which makes an argument, literature can keep in play multiple possibilities without contradiction. Here I do not assume that literature can in a straightforward way represent and intervene in an external reality. Literary texts are much more self-conscious about their own representational ability than this would imply. But this is why they are useful for thinking through the incompletions and tensions of human rights discourse.

What are Human Rights?

The contemporary discourse of human rights has achieved remarkable prominence as a global language of politics and of morality whilst remaining, in important ways, difficult to define satisfactorily or grasp conceptually. One source of ambiguity is the controversy over the historical origins of the concept of human rights. The Universal Declaration of Human Rights (UDHR), adopted by the UN's General Assembly in 1948 and sometimes considered to be the first major landmark in the development of contemporary human rights, is written in such a way as to mimic and recall the eighteenth-century declarations of rights; its form, structure and language are reminiscent of the French declarations of rights of 1789 and 1793.² As human rights scholar Stephen Marks has argued, the 'French heritage of the UDHR appears in the

² Universal Declaration of Human Rights (adopted 10 December 1948) UN General Assembly Resolution 217 A (III) (UDHR), available at

<<http://www.un.org/en/documents/udhr/>> [accessed 23 August 2014].

An alternative translation of the French 'Déclaration des droits de l'Homme et du Citoyen' is Declaration of Human and Civic Rights. 'Declaration of Human and Civic Rights of 26 August 1789', available at

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst2.pdf>

[accessed 23 August 2014]. 'Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793)', available at <<http://www.columbia.edu/~iw6/docs/dec1793.html>> [accessed 23 August 2014].

writing style and the basic structure of the text³ and the UDHR ‘follows the same structure as the French Declarations, with the length of the preamble, the number of articles, and the degree of generality.’⁴

The stylistic similarities have led some critics to argue that there is direct trajectory between the eighteenth-century tradition and contemporary rights talk. Lynn Hunt suggests in her account of the relationship between eighteenth-century rights discourse and literature, for example, that:

[f]or nearly two centuries [...] the Declaration of the Rights of Man and Citizen incarnated the promise of universal human rights. In 1948, when the United Nations adopted the Universal Declaration of Human Rights, Article 1 read, ‘All human beings are born free and equal in dignity and rights.’ In 1789, Article I of the Declaration of the Rights of Man and Citizen had already proclaimed, ‘Men are born and remain free and equal in rights.’ Although the modifications in language were meaningful, the echo between the two documents is unmistakable.⁵

However, this link between eighteenth-century ideas about the rights of man and contemporary human rights discourse has been vigorously challenged. For the historian Samuel Moyn, ‘the *droits de l’homme* that powered early modern revolution and nineteenth century politics need to be rigorously distinguished from the “human rights” coined in the 1940s’.⁶ This is because the eighteenth-century declarations emerged as the modern democratic nation-state was founded; ‘[t]he overwhelmingly important point’, he writes, ‘is that the rights of the revolutionary era were very much embodied in the politics of the state’.⁷

Moyn argues that contemporary understandings of human rights represent a break with, rather than a continuation of, this eighteenth-century tradition. Consequently, ‘the central event in human rights history is the recasting of rights as

³ Stephen Marks, ‘From the “Single Confused Page” to the “Decalogue for Six Billion Persons”: The Roots of the Universal Declaration of Human Rights in the French Revolution’, *Human Rights Quarterly*, 20.3 (1998), 459-514 (p.486).

⁴ Marks, p.488.

⁵ Lynn Hunt, *Inventing Human Rights: A History* (London: Norton, 2007), p.17.

⁶ Samuel Moyn, *The Last Utopia: Human Rights in History* (London: Harvard University Press, 2010), p.12. For Moyn’s direct engagement with Hunt, see Samuel Moyn, *Human Rights and the Uses of History* (London: Verso, 2014), pp.1-18.

⁷ *Last Utopia*, p.25.

entitlements that might contradict the sovereign nation-state from above and outside rather than serve as its foundation.⁸ Where Hunt suggests that ‘the Declaration of the Rights and Man and of the Citizen incarnated the promise of universal human rights’,⁹ Moyn argues that applying the phrase ‘human rights’ to an eighteenth-century document disguises a fundamental conceptual discontinuity.

I return to this question of the nation-state in eighteenth-century and contemporary conceptions of human rights in Chapter One. For now the key point is that it is widely agreed that the concept of human rights is not timeless – it emerged and caught hold of political imagination at a particular historical moment. The difficulty is that there is very little consensus on the date in question. This is complicated by the multidisciplinary uses of human rights discourse. Tom Bingham is discussing the rule of law, though he could easily be discussing human rights, when he states that ‘the expression was constantly on people’s lips, I was not quite sure what it meant, and I was not sure that all who used the expression knew what they meant either, or meant the same thing.’¹⁰ Human rights have been institutionalized in international law, campaigned for by international human rights organizations and adopted as ostensible guiding principles for the foreign policies of governments. But there is, of course, no guarantee that in these very different contexts the term ‘human rights’ has the same meaning.

A third reason for human rights’ lack of conceptual clarity is that, in what seems like a contradiction, one of the characteristic features of human rights discourse is that it is often articulated in such a way as to obscure its defining and distinctive characteristics. For this reason, the particularity of its imaginative framework – the specificity of its guiding assumptions and its patterns of representation – has tended to be difficult to isolate analytically or characterize precisely. Take for example the way in which the protection of human rights is routinely described as pragmatic, minimalist and neutral. Politician and human rights theorist Michael Ignatieff, a prominent representative of this approach, has stated that human rights ‘is not a creed; it is not a metaphysics.’¹¹ He argues that human rights should be compatible with many different

⁸ *Last Utopia*, p.13.

⁹ Hunt, p.17.

¹⁰ Tom Bingham, *The Rule of Law* (London: Allen Lane, 2010), p.vii.

¹¹ Michael Ignatieff, *Human Rights as Politics and Idolatry*, ed. by Amy Gutman (Woodstock: Princeton University Press, 2001), p.53.

kinds of religions, with atheism, and with the varying cultures of the world because they do not rely on claims about human nature or about what the good life is:

people from different cultures may continue to disagree about what is good, but nevertheless agree about what is insufferably, inarguably wrong. The universal commitments implied by human rights can only be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist. Human rights can command universal assent only as a decidedly 'thin' theory of what is right, a definition of the minimum conditions for any kind of life at all.¹²

Human rights can be universal, he argues, but this is a particular version of universality: human rights do not prescribe what is right, or even what is advisable, but proscribe only what is utterly unacceptable. Human rights show us what cannot be accepted under any circumstances and in this way they can fit in with almost all human diversity and be accepted by all cultures. They tell us what must never be allowed to happen but leave all other choices about social organization open.

In Ignatieff's account this leads to a restricted set of goals for 'believers in human rights':

[w]e may not be able to create democracies or constitutions. Liberal freedom may be some way off. But we could do more than we do to stop unmerited suffering and gross physical cruelty. That I take to be the elemental priority of all human rights activism: to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of ordinary people. My minimalism is not strategic at all. It is the most we can hope for.¹³

Human rights discourse aims at the prevention of the worst abuses. This is a minimalist aspiration, Ignatieff argues, despite the obvious difficulty of accomplishing such a goal, because it does not entail any attempt to establish political structures or change the organization of political communities on the macro scale.

In a telling reading of Ignatieff's argument, however, Wendy Brown points out its problems:

there is no such thing as mere reduction of suffering or protection from abuse, the nature of the reduction or protection is itself productive of political subjects and political possibilities. Just as abuse itself is never generic but always has particular social and subjective content, so the

¹² Ignatieff, p.56.

¹³ Ignatieff, p.173.

matter of how it is relieved is consequential. Yes, the abuse must be stopped but by whom, with what techniques, with what unintended effects, and above all, unfolding what possible futures? The pragmatist, moral, and antipolitical mantle of human rights discourse tends to eschew, even repel, rather than invite or address these questions.¹⁴

Brown makes two important arguments here. First she shows that, though the urgent necessity of ending the worst kinds of abuses cannot be argued with, this does not mean that the methods used to end such abuses are similarly obvious and unquestionable. She shows that there is nothing neutral or given about the way suffering is opposed; methods are chosen from a range of possible options, they have their own particular consequences in the world, and they structure the way future events are understood.

Secondly, she suggests that by presenting the program of ending the most egregious violations of rights as a pragmatic, minimalist approach, Ignatieff is able to foreclose any discussion about the particularity of the responses to suffering proposed by ‘believers in human rights’.¹⁵ In other words, the lack of definitional clarity associated with human rights has a purpose: constructed as minimal, as concepts for emergencies only, as the last possible resort for the worst of all possible situations, human rights escape critical scrutiny, appearing as necessary, inevitable, natural and essential.

Possessing Human Rights

In this thesis, I focus on one particular ambiguity which, I suggest, structures human rights discourse: the difficulty, even impossibility, of ever fully possessing human rights. Literary and cultural historian Peter de Bolla suggests that contemporary discussions of universal human rights are paralyzed by a blurring of the distinction between two ways of thinking about the possession of rights, both of which originated in the eighteenth century. At present, he states, ‘we are trapped within a conceptual architecture that will not do the work we demand of it.’¹⁶ On the one hand, human rights tend to be understood ‘as a set of claims that have content. These claims will always be on behalf of claimants and therefore antagonistic to those upon whom the

¹⁴ Wendy Brown, “‘The Most We Can Hope For...’ Human Rights and the Politics of Fatalism”, *South Atlantic Quarterly*, 103.2/3 (2004), 451-463 (p.460).

¹⁵ Ignatieff, p.173.

¹⁶ Peter de Bolla, *The Architecture of Concepts: The Historical Formation of Human Rights* (New York: Fordham University Press, 2013), p.278.

claims are made.¹⁷ When we think of human rights in this way, he argues, we produce lists of rights – the right to housing,¹⁸ say, or the right to freedom of assembly¹⁹ – that imply definable obligations. For example, if I have a right to freely assemble, then the government has a responsibility to ensure that the police do not use unreasonable force to suppress protests.

The problem, de Bolla argues, is that is difficult to conceive of such a list of distinct claims which can also belong to all humans at the same time: '[w]e need to recognize [...] that rights as claims cannot be universal in the sense of always and everywhere simultaneously applied equally.'²⁰ A list of rights of definable rights like this requires a bounded, limited political community – like, for example, a nation-state – in which rights claims can be balanced against one another. If rights as claims are to be universal, then there will inevitably be conflict between rights holders and not everybody can possess all rights at the same time.

He suggests an alternative. Human rights, 'rather than being defined as those we hold by dint of being human, may come to be understood [...] as our collective aspiration on behalf of humanity.'²¹ In this case, rights are 'human' because they express hope for the future, a way of articulating what is wrong with current systems of political organization and attempting to imagine a different system. But 'rights' here does not express a set of claims, and thus it misleading to speak of rights as things which might be possessed. de Bolla argues that, in this way of thinking about human rights, they are 'unspecifiable, simply those rights that are aspirational, those that can be declared as a bundle [...] but not necessarily be realized as specific claims'.²² That is, if we understand rights to mean claims that imply obligations then we cannot have universal human rights: not all humans can have such rights at the same time. On the other hand, if we

¹⁷ de Bolla, p.285.

¹⁸ UDHR, art.25.

¹⁹ UDHR, art.20.

²⁰ de Bolla, p.285.

²¹ de Bolla, p.288.

²² de Bolla, p.286.

think of human rights as non-specifiable aspirations for the whole of humanity then we have to give up on the idea of rights as possessions.²³

The difficulty of possessing human rights recurs again slightly differently in what Donnelly describes as the ‘possession paradox’, in which “‘having” a right is of most value precisely when one does not “have” (the object of) the right – that is, when active respect or objective enjoyment is not forthcoming.”²⁴ Donnelly observes that if [r]ights are a sort of “last resort” in that ‘they usually are claimed only when things are not going well’ then *human* rights ‘are the final resort in the realm of rights: no higher appeal is available.’²⁵ Human rights seem to be important, even relevant, only in the situation of lack.

When human rights are not possessed they become more significant. For Donnelly, it is this which distinguishes them from legal rights:

[o]ne can – and usually does – go very far before human rights arguments become necessary. An appeal to human rights usually testifies to the absence of enforceable positive (legal) rights and suggests that everything else has been tried and failed, leaving one with nothing else (except perhaps violence) [...] Legal rights ground legal claims to protect already established legal entitlements. Human rights ground moral claims to strengthen or add to existing legal entitlements. That does not make human rights stronger or weaker, just different. They are human (rather than legal) rights. If they did not function differently, there would be no need for them.²⁶

²³ Another alternative to thinking of rights as possession is, Howard Caygill argues, suggested by Emmanuel Levinas, for whom ‘[t]he origin of right does not lie in an act of possession but in the event of dispossessing the self before the other’. (Howard Caygill, *Levinas and the Political* (London: Routledge, 2002), p.152.) According to Caygill, Levinas ‘insists on the *a priori* character of human rights, *a priori* in the sense of being prior to institutions and acts of association’ and ‘derives the *a priori* character of human rights from his ethics of alterity, now developed in the direction of an account of responsibility and love that aspires to universal fraternity.’ (Caygill, p.152). However, in Chapter Three I will argue through a reading of Jacques Derrida’s work on the fraternal that the concept of fraternity is centrally implicated in human rights discourse’s difficulties of possession.

²⁴ Donnelly, p.9.

²⁵ Donnelly, p.12.

²⁶ Donnelly, pp.12-13.

Donnelly thus distinguishes human rights from legal rights: appeals to human rights occur in the ‘absence’ of legal rights.²⁷ However, though it is clear that human rights ‘function differently’²⁸ from legal rights, they are also closely linked to them:

[c]laims of human rights thus ultimately aim to be self-liquidating [...] Human rights claims characteristically seek to challenge or change existing institutions, practices, or norms, especially legal practices. Most often they seek to establish (or bring about more effective enforcement of) a parallel ‘lower’ right. For example, claims of a human right to healthcare in the United States typically aim to create a legal right to health care.²⁹

But here we see the reverse side of the possession paradox: once ‘active respect or objective enjoyment’³⁰ of a right is enjoyed, or where an accessible legal process has a reasonable chance of ensuring that such a right is protected in future, it tends not to be considered a human right at all. Discussing the changing tactics of social movements in postwar Britain, Adam Lent writes that ‘the peaceful march and rally through a drizzly central London had become such an accepted feature of political life that, by the early 1980s, it could hardly be regarded as a radical tactic anymore.’³¹ Even though the ability to march unimpeded up the Mall in the rain is to enjoy the right to freedom of association, the possession paradox suggests that human rights language is only likely to be invoked, is only likely to be thought in play, if the police start to attack protestors, or if the right is put in jeopardy in some other way.

Both Donnelly and de Bolla therefore understand human rights to be difficult, perhaps impossible, to possess. For de Bolla this is because of the connection between the terms ‘human’ and ‘rights’. If we understand that connection to mean that all humans can claim a list of definable rights, then human rights cannot ever be universally be possessed because this will inevitably cause conflict between different rights-holders. This would require adjudication between different parties – as is facilitated by the legal system within nation-states. But such adjudication would seem to betray the essence of human rights, which are thought to be unequivocally possessed on the basis of humanity

²⁷ Donnelly, p.12.

²⁸ Donnelly, p.13.

²⁹ Donnelly, p.12.

³⁰ Donnelly, p.9.

³¹ Adam Lent, *British Social Movements Since 1945: Sex, Colour, Peace and Power* (Houndmills, Basingstoke: Palgrave, 2001), p.185.

alone. On the other hand, if human rights are understood as aspirations for humanity – a description of what humanness should mean – they are not able to be possessed, because rights understood in this aspirational way are not things, or particular claims, to be possessed by individuals. They belong to humanity as a whole, to the idea of humanity, not to individual humans.

For Donnelly human rights are difficult to possess because they have most value where they are not respected – where they are a last resort. Where they are securely possessed they are not really human rights at all. They tend to be thought of in a different way, lacking human rights' sense of urgency, and protected as civil rights in national legal systems. The possession of human rights is therefore always caught up in a moment of crisis. They are possessed only in their non-possession. In this thesis I argue that this is a limit-point for the discourse of human rights, and I propose that literary texts can show how and why this is the case.

Structure of Thesis

In Chapter One I compare the definitions of human rights advanced by historian Samuel Moyn and literary theorist Joseph Slaughter.³² Moyn argues that what is distinctive about human rights is that they are thought to be possessed on the basis of human identity alone. He suggests that human rights are thought to belong to a world citizenry of human beings, one which has not yet been fully brought into being, but which is in the process of being built. This new cosmopolitan order tends to be distinguished from or defined against the Westphalian system. On the other hand, Slaughter points to the mechanics of international human rights law to argue that, despite the cosmopolitan rhetoric with which they are associated, human rights are realized through citizenship in nation-states. I argue that human rights discourse is characterized by the tension between these ways of conceptualizing rights possession.

This is to suggest that the difficulties Hannah Arendt identified in eighteenth-century conceptions of rights have not been dealt with. In fact, though Arendt shows that simple humanness cannot ground the possession of rights in a meaningful way, there is a recurrent strain in contemporary human rights discourse which attempts to enable sheer human identity to do just this. This is because the distinctiveness of human

³² Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007).

rights as a category is thought to require the concept to mean more than simply the legal rights of citizens. I suggest that the concept of the rights-possessing citizen is, within human rights discourse, always shadowed by the ideal of the rights-possessing human.

Furthermore, I suggest that this tension can be read in literary terms – that literary texts can make it apparent and make its limiting effects legible. Slaughter proposes that the Bildungsroman and human rights discourse are homologous, because both share a commitment to the integration of the individual into the nation-state. He suggests that where Bildungsromane experiment with generic conventions, this suggests the difficulties of fully realizing human rights in actuality. I suggest that the nation-statist model of rights possession is not the whole story about human rights, because there is always a suggestion that human rights might be able to be possessed through merely human identity. Accepting that the Bildungsroman models and reflects the nation-statist version of human rights, I propose that there are certain types of innovation with the form of the Bildungsroman which do not just bring to light the problems of practical implementation, but suggest a more fundamental problem: the tension between human rights as the rights of citizens, and human rights as the rights of the human being as human being.

Chapter Two focuses on child soldier narratives because these are texts which have been directly used for the purposes of human rights campaigning which also resemble the Bildungsroman. Focusing on Ugandan examples, I suggest that analyzing the way in which these texts adopt the Bildungsroman form is revealing about the way human rights discourse works. Where the Bildungsroman is typically a story about growing up, child soldier narratives attempt to maintain the childish state of their protagonists. Where the Bildungsroman is usually concerned with the development from a pre-political home life to belonging in the political, public sphere, the child soldier narratives tend to halt development while the central figure is isolated and vulnerable.

This is not a mimetic representation of the consequences of rights abuse – it is a strategic narrative choice. I suggest that where the Bildungsroman represents the model of rights possession through the nation-state, the variations on the Bildungsroman's formal conventions typical of Ugandan child soldier narratives suggest the alternative version of human rights: the idea that rights can be grounded on mere humanness. I support this through a discussion of the wider narrative practices of human rights organizations, and, in particular, their use of decontextualization strategies. These work

to construct the subject of rights as a vulnerable figure, isolated from social context. That is, they tend to reproduce (rhetorically at least) the consequences of rights violation in the attempt to bring such violation to an end.

In Chapter Three I ask why this is the case. Why should rights, which ought to be guarantors of agency and freedom, produce a discourse which tends towards the representation of disempowered and constantly vulnerable, always-injured subjects? I pursue this question through literary analysis. In this chapter I focus on three novels by the Ugandan novelist Goretta Kyomuhendo. Like the child soldier texts, these novels have been understood by critics as types of Bildungsromane. However, what I draw attention to in my readings of these texts is the way the conventions of the Bildungsroman are not only interrupted – as in some of the experimental examples Slaughter examines – but are also interrupted by a specific strain of imagery: an excessive and overwhelming repetition of familial language and symbol.

Jacques Derrida argues that the family is an innately ambivalent symbol within the political discourse of the democratic nation-state. He argues that democracy has at once two contradictory desires: to welcome everyone, and to construct a political community based around sameness which excludes difference. The imagery of the family symbolizes this ambiguity. For example, the concept of fraternity is used to describe the freely chosen relations between the equal individuals of the democratic public sphere. It is, therefore, supposed to represent the opposite of the pre-political family sphere. But, of course, in one of its meanings fraternity is a familial word. Why choose a word which means ‘brotherhood’ (the ties of blood and birth) to symbolize the exact opposite of literal brotherhood (constructed equality and deliberately chosen ties)? Derrida suggests that the word is, in this way, an example of democracy’s autoimmunity, its inherent contradiction.

My question is what the family might symbolize for human rights discourse. The point is not to suggest that there is anything innately non-political about the family, or that actual familial relations are merely human in a way that relationships between citizens, say, are not. The family is an intrinsically political space. In fact, legal theorists Celina Romany and Catherine MacKinnon critique human rights discourse on precisely this basis: they suggest that it reproduces conventional divisions between the public and private so that particular kinds of violence which disproportionately harm women, and which often take place in the domestic sphere, do not figure in discussions of human

rights abuse.³³ What matters here is that the family has often been *understood* to stand for what is outside of the political sphere, though – as Derrida suggests – in a conflicted and complicated way. The family signals, contradictorily, both apolitical and political identity. If the Bildungsroman is, as Slaughter proposes, the literary form which reflects and promotes the citizenship model of human rights possession, then the repetitious presence of familial imagery represents a deep contradiction for the discourse.

When the citizen-developing form of the Bildungsroman is disrupted by the familial, it indicates the limits of Slaughter's account of human rights, which associates them exclusively with the abstract identity of the citizen in the nation-state. It suggests instead that the citizenship model of rights protection is troubled by mere humanness, and that these two ways of thinking about human rights are mutually implicated and inseparable. Furthermore, because, as Arendt suggests, rights cannot be possessed on the basis of mere humanness, this appears to support Donnelly's claim that the possession of human rights is always inseparable from their non-possession.

In Chapters Four and Five, I suggest there are legal dimensions of this crisis of possession. Human rights discourse has often been understood as legalistic. However, if human rights exist most fully in their non-possession, then they may actually have an ambivalent relationship with the possibility of their own enforcement through the law. I

³³ Celina Romany, 'Women as *Aliens*: A Feminist Critique of the Public/Private Distinction in International Human Rights Law', *Harvard Human Rights Journal*, 6 (1993), 87-125. Catharine A. MacKinnon, *Are Women Human and Other International Dialogues* (London: Belknap Press, 2006), see pp.17-27 and pp.41-43. For more general critiques of the invisibility of issues specifically affecting women to the human rights frame, see *Women's Rights, Human Rights*, ed. by Julie Peter and Andrea Wolper (London: Routledge, 1995). It should also be noted that 'the family' is not a universal phenomenon – it signifies differently in different societies. This is particularly important to note in the context of discussing literary texts from Uganda. For the complexity of the relation between human rights norms and family structures in comparative African perspective, see Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Oxford: Hart Publishing, 2005), pp.85-157. But again, my emphasis is not on the family as a complex formation with multiple iterations but on what the family signifies in the context of Bildungsroman. As Louise Yelin notes, discussing *Burger's Daughter*, one of the texts I will discuss in Chapter Five, 'the conventional trajectory of the *bildungsroman* [...] takes its protagonist away from mother and father', and in this way figures social and political identity as distinct from the family sphere, and as contingent on its being left behind. (Louise Yelin, 'Problems of Gordimer's Poetics: Dialogue in *Burger's Daughter*', in *Feminism, Bakhtin and the Dialogic*, ed. by Dale M. Bauer and Susan Jaret McKinstry (Albany: State University of New York Press, 1991), pp. 219-238 (p.223)).

make this argument through a discussion of the role human rights discourse played in South Africa's transition to democracy. On the one hand, human rights were instrumental in the development of the interim Constitution. But on the other, they played a crucial role in the Truth and Reconciliation Commission, a quasi-legal body. The TRC's quasi-legality was defended and justified in its *Report* through reference to human rights discourse.

I then ask what literature can contribute to a fuller understanding of human rights' ambivalent legality. Slaughter's argument about the Bildungsroman suggests that where the law is weak – as the international law of human rights is – literary texts might take on some of its functions. He argues that the Bildungsroman disseminates human rights norms in the absence of fully effective international mechanisms. I respond in two ways to this. First, I suggest that positioning literature as if it can compensate for the ambivalence of human rights' legal enforcement is to miss the point about human rights somewhat. I suggest that ambivalence about legality is central to the way the discourse operates – it is not a problem caused by inadequate implementation. If we want to understand the contemporary discourse of rights, then it is this uneasiness concerning the possession of rights that we need to probe further. Positing that literature can make up for some of the limits of human rights' relationship with the law has the effect of decentering the importance of those limits for an understanding of how the discourse operates.

Secondly I suggest that this use of literature to make up for what the law cannot accomplish risks subordinating literature to legalistic criteria. I show this through a discussion of the way Desmond Tutu reads a play – Ariel Dorfman's *Death and the Maiden* – in his foreword to the *TRC Report*. He invokes the literary text at precisely the moment of crisis I have been discussing: he uses it to show that the TRC's quasi-legality, and in particular the emphasis on truth that it implies, can do something that the law cannot. In so doing, he associates literature with the category of truth. But when his reading is examined, it becomes clear that he flattens some of the play's ambiguities. Even though he is using the play to discuss the value of the quasi-legal, legalistic definitions of truth become apparent: it is the play's insistence on suggesting multiple possibilities without fully resolving them which is lost.

This leads me to ask whether there is another way to conceptualize the link between literature and the ambivalent legality of human rights. Is there an alternative to

the use of literature to make up for the limits of the law? The first step towards an answer is suggested by Nadine Gordimer's novel *The House Gun*, published in 1998. Although it thoroughly celebrates the new constitutional order partly brought into being through human rights discourse, it also articulates a conception of justice which seems to oppose the new rights-based order. This alternative is articulated through the characters' readings of literary texts. In the novel, therefore, the existing practices of the law and the alternative vision of the literary are therefore rigorously separated.

Having shown through my discussion of the South African transition that human rights discourse was used to defend the quasi-legal as well as to establish the law, and therefore that human rights have an ambivalent relation with their own fully-legal enforcement, I move on to consider a second dimension of this ambivalence: the paradigmatic situation for the making of a human rights claim. As Costas Douzinas writes, '[t]he absence of legislative approval, often the legislator's opposition to the new [human rights] claims, is their structural characteristic.'³⁴ Donnelly argues similarly that human rights 'are the final resort in the realm of rights: no higher appeal is available'³⁵ and that they tend to be appealed to most when the law does not guarantee them. In Chapter Five, I focus on two texts which directly engage with and represent contexts where there appears to be little possibility of the recognition of human rights through the law: Antjie Krog's *Begging to Be Black* and Nadine Gordimer's *Burger's Daughter*. In *Burger's Daughter* this is the height of apartheid in the 1970s, for *Begging to Be Black* it is the period immediately preceding the first democratic elections in which violence dramatically escalated.

In both of these texts it becomes apparent that human rights cannot be secured through the law. Slaughter argues that, where international human rights law is insufficient, the Bildungsroman performs some of the work that the law cannot perform. However, in contrast to Slaughter, I suggest that these texts continually draw attention to their own points of failure. For example, *Begging to Be Black* is preoccupied by the limits of imagination and suggests that though fiction may produce the sense of imaginative connection, it may be more necessary to be confronted with the extent to

³⁴ Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart Publishing, 2000), p.344.

³⁵ Donnelly, p.12.

which some other lives are unimaginable.³⁶ *Burger's Daughter* has a shifting and unstable narrative surface in which perspective is continually moving around. It also includes a wide range of quotation. In these ways, it refuses, within its own structure, to associate literature with the category of truth: the reader is unsettled in her attempt to find a secure narrative perspective or a straightforward narrative voice. Given human rights' ambivalence about legal enforcement, I argue that a connection between literature and human rights might therefore be located in the way literary texts produce their own irreducibility to legalistic criteria.

The Nation and International Human Rights

Chapter One therefore introduces the concerns of the thesis in theoretical terms. Chapters Two and Three focus on literary texts from or concerning Uganda, and Chapters Four and Five on South African texts. One of the major arguments I make in this thesis is that human rights discourse is ambivalent about the nation-state: it is understood as a key location for the realization of rights, but also as an obstacle impeding the development of a world of individual human rights. I have chosen to focus on two distinct national contexts because I propose that this is the best way to investigate and to better understand the ambivalent place of the nation-state for human rights discourse.

I could have selected literary texts from a number of different countries, which has been the approach of a number of the existing accounts of relationships between literature and human rights.³⁷ But in Chapter Two I argue that the texts produced by

³⁶ I therefore distinguish my discussion of the human rights-literature link from that of Lynn Hunt, who strongly centres empathy and imagination. For example, she writes that in the eighteenth century 'reading accounts of torture and epistolary novels had physical effects that translated into brain changes and came back out as new concepts about the organization of social and political life. New kinds of reading (and viewing and listening) created new individual experiences (empathy), which in turn made possible new social and political concepts (human rights).' Hunt, p.33-4. The texts I consider – notably *Begging to Be Black* – are much more sceptical than Hunt about the connection between reading, empathetic engagement, and political organization.

³⁷ Slaughter takes this approach as does Elizabeth S. Anker in *Fictions of Dignity: Embodying Human Rights in World Literature* (London: Cornell University Press, 2012). I engage with Slaughter's ideas throughout this thesis. My account can be distinguished from Anker's because she tends to associate human rights with liberalism more generally, while I try to distinguish the conceptual specificity of human rights, particularly through the difficulty of possession.

human rights organizations tend to draw links between disparate political communities on the basis of the type of abuse perpetrated within them. This replaces contextual information and explanation with injury and works to conceptualize the injured primarily through their vulnerability to abuse. This is suspicious, I suggest, because it makes invisible precisely what I have been arguing is a problem – the relation of the individual to the nation-state in rights discourse. This seems too convenient; decontextualizing de-emphasizes, and thus makes less amenable to scrutiny and discussion, the position of the nation-state.

This is a problem I have wanted to avoid replicating. In order to draw attention to the ways in which historicization is being performed or avoided, I focus in-depth on selected political contexts rather than drawing upon examples from a wide range. Yet, at the same time, I argue in Chapter One that one of the key features of human rights discourse is a tension concerning the nation-state. As we have already seen, it is unclear whether rights are possessed on the basis of citizenship, or on the basis of humanness alone. I suggest that there is always a dimension of human rights discourse which seeks to transcend the nation-state. Because I suggest that it is crucial to take into account the tension between the projected cosmopolitanism of the discourse of human rights and its national realization, there is a need to focus on more than one national context.

I have chosen to focus on Uganda and on South Africa in particular because in different ways both have been deeply implicated in the development of human rights norms.

Uganda and Human Rights Discourse

Uganda's inhabitants have repeatedly been the victims of extreme violations of human rights, including massacres of particular ethnic groups, extrajudicial killings, the imprisonment of political opponents of multiple governments, torture, the expulsion of all Asian residents of the country in 1972, extensive failures to protect freedoms of speech and expression, and the abduction of children who are forced to become soldiers. The country has also repeatedly been the focus of international human rights campaigns and reporting, but the extremes of violence and the high points of international attention to human rights abuses in the country have not always precisely coincided – these are two parallel though not identical narratives.

Samuel Moyn argues that 1977 was the ‘breakthrough year’ for human rights and he identifies the 1970s more generally as the decade in which the concept first became used as part of an international ethical language.³⁸ In arguing that human rights achieved unprecedented international prominence in the 1970s, Moyn stresses in particular the importance of American presidential interventions and the growth in the number and influence of human rights organizations like Amnesty International. Uganda was affected by both factors.

As human rights began in the 1970s to be understood as a category of the foreign policy of rich and powerful states, a language through which other countries could be denounced from Washington or London but one with very limited use in the West’s own domestic sphere, Uganda was from the outset placed in this new type of global spotlight. The rule of Uganda’s most internationally notorious president, Idi Amin, very neatly coincided with this period: he came to power after a coup in 1971 and he was in turn deposed in 1979 by Ugandan exiles and the Tanzanian army, who had been provoked by Amin’s annexing of Tanzanian land. In 1978 the US began a trade embargo with Uganda, specifically because of human rights concerns; Ralph D. Nurnberger writes that ‘the October 10, 1978, embargo of United States’ trade with Uganda established new precedents in America’s commitment to human rights’ because it made an explicit link between substantive economic action and violations of human rights, articulated as such.³⁹

Uganda was also the subject of sustained attention from international NGOs in the 1970s; between 1974 and 1976 the International Commission of Jurists (ICJ) alone made five separate submissions about human rights violations in Uganda to the United Nations.⁴⁰ Hans Peter Schmitz argues that international human rights organizations, including Amnesty International and the ICJ, ‘transformed the international image of

³⁸ *Last Utopia*, p.122.

³⁹ Ralph D. Nurnberger, ‘The United States and Idi Amin: Congress to the Rescue’, *African Studies Review*, 25.1 (1982), 49-65 (p.49).

⁴⁰ International Commission of Jurists, *Uganda and Human Rights: Reports of the International Commission of Jurists to the United Nations* (Geneva: International Commission of Jurists, 1977).

human rights violating regimes in Kenya and Uganda'; in the case of Uganda, he argues, this transformation began in 1973-4.⁴¹

The evidence provided by the ICJ reports produced very little substantive response from the UN – by 1977, in fact, Uganda had become a member of the Human Rights Commission, the UN body tasked with investigating abuses of human rights. It did, on the other hand, provoke a significant response from the Ugandan government. Amin and his ambassadors regularly denounced Amnesty International and the ICJ at the UN, but criticisms of the regime on human rights grounds also prompted a response couched in the same language as the critiques themselves: in March 1978, Amin created a national human rights committee.⁴²

The Tanzanian invasion forced Amin into exile and began a period of extreme political uncertainty – between April 1979 and December 1980 there were three presidents for short periods and then a presidential commission. In 1980 Milton Obote, who was Uganda's first post-independence prime minister, took power again in controversial elections and his five-year rule was characterized, like Amin's, by extreme repression. Yoweri Museveni's National Resistance Army (NRA, but later known as the National Resistance Movement or NRM) seized power in 1986 and Oliver Furley and James Katalikawe write that their '[t]he campaign was not to end in just another coup d'etat; it was to bring about a major change in the way in which Uganda was to be governed.'⁴³

The period after 1986 saw increasing, though partial, stability after the violence of Amin's government and the government of Milton Obote which followed it. However, democratic institution-building and the growth of civil society occurred alongside extensive use of presidential power and electoral violence. When in power, the NRM's democratizing reforms were centrally concerned with public participation in politics: it decentralized power and some judicial authority to local bodies known first as

⁴¹ Hans Peter Schmitz, 'Transnational Activism and Political Change in Kenya and Uganda', in *The Power of Human Rights: International Norms and Domestic Change*, ed. by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), pp.39-77 (p.40).

⁴² See Schmitz, pp.46-7.

⁴³ Oliver Furley and James Katalikawe, 'Constitutional Reform in Uganda: The New Approach', *African Affairs*, 96.383 (1997), 243-260 (p.259).

Resistance Councils and then as Local Councils in the 1980s, for example.⁴⁴ In 1995 a new constitution was written after what the chair of the Constitutional Committee, Justice Benjamin J. Odoki, describes as an unprecedentedly open process: ‘neither Uganda nor any other country I am aware of had ever gone through such a lengthy, comprehensive and participatory exercise in forming its constitutional order.’⁴⁵

Despite the increasingly participatory nature of politics, Ali Mari Tripp has described Uganda during this period as ‘semiauthoritarian’ arguing that ‘[a]s many African countries moved toward electoral democratization in the 1990s, Uganda remained essentially authoritarian, but incorporated democratic innovations in varying degrees.’⁴⁶ Political parties were banned until 2006, the NRM characterized itself as an all-encompassing movement for the whole of Uganda, rather than merely a party, and candidates for political office were to be voted for on the basis of individual merit and not party affiliation.⁴⁷ When the ban on political parties was finally reversed, this was accompanied by a number of other changes to the constitution, including removing the two-term limit for Presidents. This is an ambiguous situation, Tripp argues:

[t]o portray a semiauthoritarian state like Uganda as a country without overt oppression is to gloss over numerous continuing violations of rights of association and free speech. At the same time, to study only the limits of political freedom overlooks important changes that have occurred in autocratic African rulers' behavior since the early 1990s.⁴⁸

The major way in which Uganda featured in international human rights discourse in the late 1990s and 2000s was through the issue of children involved in armed conflict. Uganda became closely associated with the issue of child soldiers because the insurgent group the Lord’s Resistance Army (LRA), which has been fighting the government led by Museveni since 1986, regularly abducted children. It has committed extreme violence against civilians across the north of Uganda and more than one and half million people in the region were moved into internal displacement camps

⁴⁴ For a discussion of the Resistance Councils, see Rosalind E. Boyd, ‘Empowerment of Women in Uganda: Real or Symbolic’, *Review of African Political Economy*, 16.45-46 (1989), 106-117 (pp.109-111).

⁴⁵ Benjamin J. Odoki, *The Search for a National Consensus: The Making of the 1995 Uganda Constitution* (Kampala: Fountain, 2005), p.289.

⁴⁶ Ali Mari Tripp, ‘The Changing Face of Authoritarianism in Africa: The Case of Uganda’, *Africa Today*, 50.3 (2004), 3-26 (p.4).

⁴⁷ See Tripp, pp.7-8 and pp.15-19.

⁴⁸ Tripp, p.4.

with unsanitary and dangerous conditions as a result of the group's operations.⁴⁹ After 2006, the LRA was forced out of Uganda to the Central African Republic and Democratic Republic of the Congo. Despite this, in 2012 Uganda became the focus of an extremely controversial and high-profile human rights campaign organized by the American NGO Invisible Children. I will discuss this further in Chapter Two.

Human Rights in the South African Transition to Democracy

The language of human rights was central to South Africa's transition from apartheid to democracy. This was a surprising development. Though the negotiations involved a wide range of groups, the two key parties were the National Party (NP), led by F.W. de Klerk, which had been in power since 1948 and instigated the development of the apartheid system, and the opposition African National Congress (ANC) unbanned only in 1990, and led by Nelson Mandela.⁵⁰ Saul Dubow notes that 'if there was one issue uniting Afrikaner and African nationalisms through most of the second half of the 20th century, and throughout the Cold War, it was a mutual suspicion of liberal ideology and of individual-based human rights.'⁵¹ On the ANC's part, this was because of a commitment to alternative ways of thinking about freedom and justice. According to Steven L. Robins,

[d]uring the course of the ANC's dramatic transformation from liberation movement to ruling party there was a seismic shift in its political lexicon. Radical keywords and concepts such as socialism, national liberation, class struggle, peoples' revolution, resistance to racial capitalism and colonialism-of-a-special type, were replaced with tamer words such as rights, citizenship, liberal democracy, nation-building, transformation, black economic empowerment (BEE) and so on.⁵²

⁴⁹ See Tim Allen and Koen Vlassenroot, 'Introduction', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen and Koen Vlassenroot (London: Zed Books, 2010), pp.1-23 (pp.14-15).

⁵⁰ An extensive body of legislation enforced racial segregation in South Africa before 1948, but it was the election of the National Party in that year which brought about the transition from segregation to apartheid which 'purported to be a rigorous and totalizing ideology in a way that segregation had never been.' (William Beinart and Saul Dubow, 'Introduction: The Historiography of Segregation and Apartheid', in *Segregation and Apartheid in Twentieth-Century South Africa*, ed. by William Beinart and Saul Dubow, (London: Routledge, 1995), pp.1-24 (p.12)).

⁵¹ Saul Dubow, *South Africa's Struggle for Human Rights* (Athens, OH: Ohio University Press, 2012), p.14.

⁵² Steven L. Robins, *From Revolution to Rights in South Africa: Social Movements, NGOs and Popular Politics After Apartheid* (Woodbridge: James Currey, 2008), p.3.

‘That the apartheid government exhibited active hostility to the concept of individual human rights’, Dubow remarks, ‘is undeniable’:

[t]his attitude followed from the brand of conservative anti-humanism and neo-Calvinism which led its ideologues to equate the notion of liberal rights-bearing individuals as a fearsome challenge to God’s primacy and therefore as coextensive with other secular heresies, communism most especially.⁵³

The use of human rights as a common language was partly made possible by factors outside of South Africa. In the speech he made to parliament announcing the unbanning of the liberation movements and the release of Mandela in February 1990, de Klerk said that ‘the year of 1989 will go down in history as the year in which Stalinist Communism expired’:

[t]he collapse, particularly of the economic system in Eastern Europe, also serves as a warning to those who insist on persisting with it in Africa. Those who seek to force this failure of a system on South Africa, should engage in a total revision of their point of view.⁵⁴

As Richard Wilson suggests, the ‘fall of the Berlin wall [...] challenged the National Party elite to revise its ideological commitment to fighting the “international Communist threat” which had for so long been the mantra to justify state repression.’⁵⁵ This allowed the NP to adopt the language of human rights.

Additionally, for the purposes of the negotiations, the lack of a human rights tradition articulated as such within either the ANC or the NP became a benefit. Wilson argues that

[d]espite the apparent discontinuities between National Party and anti-apartheid political thought, rights talk was indeterminate enough to suit the programs of both the NP and ANC [...] The ascendancy of human rights talk thus resulted from its inherent ambiguity, which allowed it to weld together diverse political constituencies.⁵⁶

⁵³ Dubow, p.12-13.

⁵⁴ F.W. de Klerk, ‘F. W. de Klerk’s speech at the opening of Parliament 2 February 1990’, available at: <<http://www.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02103/05lv02104/06lv02105.htm>> [accessed 24 August 2014].

⁵⁵ Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), p.6.

⁵⁶ *Politics of Truth and Reconciliation*, p.6.

The global struggle against apartheid, meanwhile, was not always framed in human rights terms either.⁵⁷ Håkan Thörn has described the ‘discursive diversity’ of the anti-apartheid movement:

[a]lthough human rights was an important element in the discursive repertoire of the movement throughout the anti-apartheid struggle, the issue was also articulated through discourses with different ideological implications – for example, anti-imperialism, national self-determination, de-colonization, anti-capitalism, or Pan Africanist anti-racism.⁵⁸

However, though the global opposition to apartheid was not always understood as a human rights issue, apartheid was crucial to the development of international human rights standards. Richard Schifter has suggested that because South Africa was so internationally isolated, its human rights violations could become the subject of strong international response at the UN in a way that other states’ actions could not:

it very well may have required a friendless, racist human rights violator such as South Africa to break down the barriers that stood in the way of United Nations scrutiny of a member state’s abusive treatment of its own citizens.⁵⁹

For Rob Skinner, ‘is possible to go so far as to say that the attention and criticism focussed on South Africa over its racial policies provided a context for the emerging language of human rights’.⁶⁰ The country became, he argues, ‘the subject of a discursive shift in which ideas of democracy and universal rights became a normative standard for political legitimacy’.⁶¹ And Dubow suggests that ‘[f]ollowing Sharpeville, apartheid became a global metonym for the racially motivated abuse of human rights’ and that the

⁵⁷ Additionally, there were few institutional connections between Britain’s Anti-Apartheid Movement (which began as a boycott campaign in 1959 in London) and Amnesty International (founded in 1961 in London). In his detailed study of AAM in Britain, Roger Fieldhouse notes that it was only ‘[i]nfrequently and irregularly over the years’ that Amnesty International and AAM ‘exchanged information about the detention and torture of political prisoners’. Roger Fieldhouse, *Anti-Apartheid: A History of the Movement in Britain, A Study in Pressure Group Politics* (London: Merlin Press, 2005), p.416.

⁵⁸ Håkan Thörn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Houndmills: Palgrave, 2006), p.68.

⁵⁹ Richard Schifter, ‘Human Rights at the United Nations: The South Africa Precedent’, *American University Journal of International Law and Policy*, 8.36 (1993), 361-372 (p. 363).

⁶⁰ Rob Skinner, *The Foundations of Anti-Apartheid: Liberal Humanitarians and Transnational Activists in Britain and the United States, c.1919-64* (Houndmills: Palgrave Macmillan, 2010), p.59.

⁶¹ Skinner, p.59.

‘internationalisation of apartheid’s iniquities thereby gave fresh currency to worldwide human rights awareness.’⁶²

For a combination of reasons, then, both internal and external to South Africa, the discourse of human rights became important and strategically useful during the transition to democracy. It was a language which both the ANC and the NP became comfortable with using to describe their visions of the future of the country, however much these visions competed, and in this way it facilitated dialogue and negotiation. In Chapters Four and Five I focus on two particular ways in which human rights discourse was used in the transition: the quasi-legal TRC and the drafting of the interim constitution. I suggest that, read together, these indicate the ambivalence of the relationship between human rights discourse and the law, a particular dimension of the difficulties of possession which are characteristic of the discourse.

⁶² Dubow, p.79.

Chapter One: The Person and the Human in Human Rights Discourse

What are human rights? The most straightforward answer is the one proposed by human rights theorist Jack Donnelly, who argues that '[h]uman rights are, literally, the rights that one has simply because one is a human being.'¹ Others suggest that human rights are only realizable for – or are only able to be truly possessed by – citizens of nation-states, and thus that the qualification of citizenship, rather than simple humanness alone, is the grounds for human rights possession. This is an ambiguity first explored by Hannah Arendt in *The Origins of Totalitarianism* in reference to the rights discourse of the eighteenth century.² Although there are important differences between contemporary human rights discourse and this earlier rights tradition, I suggest that the problems Arendt identifies have not been fully resolved.

In this chapter, I compare the way historian Samuel Moyn and literary scholar Joseph Slaughter define human rights. Moyn suggests that what is distinctive about contemporary human rights is that they are thought to be possessed on the basis of human identity alone.³ He argues that human rights as we understand them today emerged as an influential and widely-used concept only in the 1970s. In his account, what distinguishes contemporary human rights from earlier rights ideas is their independence from the nation-state: they do not envisage the nation-state as the primary protector of rights claims. Instead, they attempt to establish institutional forms

¹ Donnelly, p.10.

² Hannah Arendt, *The Origins of Totalitarianism*, 2nd edn (London: George Allen and Unwin, 1958).

³ It is important to note that Moyn, unusually among theorists of human rights, is not seeking to defend or promote a particular understanding of the discourse of human rights which he finds theoretically persuasive. Instead he is arguing that human rights mean something specific – it is a key thesis of his book that this specificity is often ignored in contemporary discussions of human rights. But he is, to a significant extent, sceptical of the efficacy of human rights as he understands them, and of the desirability of their current formulation. As a shorthand, I will refer throughout to Moyn's conceptualization of rights, but it should be noted that this is not a way of thinking that he ever suggests is convincing or conceptually rigorous, but rather one which he thinks is accurate as a way of describing what human rights are and how they operate as a language of contemporary morality.

with greater power than the nation-state in order to protect the rights of individuals. By contrast, Slaughter argues that in practical terms the universal commitments of human rights discourse become realized only through the mechanism of citizenship in nation-states.

Both Moyn and Slaughter convincingly point to aspects of human rights discourse in order to support their very different descriptions of the human rights-nation link, so in reading them together it becomes apparent just how contradictory the discourse of human rights is. Here I am not seeking to resolve what seems like a contradiction, or suggest that one perspective is the correct interpretation. Instead, I consider the effects of this tension. I suggest that one of its important consequences is a confusing and conflicted picture of the ‘human’ to whom rights are thought to belong. For Moyn, the distinctiveness of contemporary human rights resides in their attempt to make humanness alone the grounds of rights possession. Lynn Hunt describes this definition of human rights when she suggests that ‘[f]or rights to be *human* rights, all humans everywhere in the world must possess them equally and only because of their status as human beings.’⁴ For Slaughter, the crucial characteristic of the human rights-possessing subject is not human identity but the identity offered by citizenship.

My argument is that the confused picture of the human rights-possessing human – who is, variously, only a human and also a citizen – constitutes a limit-point for human rights discourse. I propose that literary texts can show how and why this is the case. For Slaughter, there is an important relationship between human rights and the Bildungsroman. He shows that the drafters of the UDHR referred to *Robinson Crusoe* as they debated whether or not society was essential for the development of an individual’s personality.⁵ Slaughter argues that, in the end, the human rights norms developed through the UDHR came to share the same basic assumption as the Bildungsroman form: that integration into society and into social identity is the primary aim towards which individuals should aspire. For both, too, the society in question is that of the nation-state. Slaughter argues that this is not merely a homology. He suggests that the Bildungsroman works to support, promote and normalize the discourse of human rights.

⁴ Hunt, p.20.

⁵ *Human Rights, Inc.*, pp.47-55.

My understanding of human rights differs from Slaughter's, resulting in a different way of reading the Bildungsroman. Where for him human rights are realized through citizenship in the nation-state, I suggest that this concern with citizenship is in tension with the idea that human rights 'are, literally, the rights that one has simply because one is a human being.'⁶ Slaughter shows that the Bildungsroman is both an analogy of and a partner in the attempt to protect human rights through national citizenship. But I suggest that securing rights through the nation-state is always an ambiguous project for human rights discourse because human rights have often been defined in opposition to the nation-state, and understood to be possessed on the basis of humanness alone. There are, I suggest, literary terms in which this tension becomes apparent, and through which it can be better understood.

It has been widely noted that critics have paid as much attention to the ways in which actual examples of Bildungsromane deviate from the form's conventions as to how they meet them. In the context of thinking about the meaning of human rights, I suggest that experiments with the generic conventions of the Bildungsroman take on particularly important meaning. Slaughter argues that experimental Bildungsromane, particularly postcolonial examples, reveal the difficulties of producing fully-incorporated citizens. By departing from the formal traditions of the Bildungsroman and disrupting the moment of social integration which is their anticipated climax, Slaughter suggests that these texts stage the frustrations and difficulties of realizing contemporary human rights guarantees.

I argue that experiments with the Bildungsroman do not merely show how the reality of human rights protection fails to accord with an ideal, or depict the general ambiguities or difficulties of human rights realization. I agree with Slaughter that the Bildungsroman is an apt model of the nation-statist understanding of human rights. But I propose that particular types of experimentation with the form of the Bildungsroman suggest not merely the difficulty of realizing human rights, but a tension at the heart of the concept itself. Those innovations which interrupt the Bildungsroman's citizen-forming logic can make this uncertainty about the basis of rights possession apparent, and show why it is a limit for the discourse of human rights.

⁶ Donnelly, p.10.

Hannah Arendt and 'the Right to Have Rights'

Hannah Arendt argues that eighteenth-century discussions of the rights of man ambiguously conflated universal rights, held by all 'men', with the rights of the members of the particular territorially and imaginatively bounded community of the nation-state - that is, with the rights of citizens. This conflation has been extensively discussed; Etienne Balibar, for example, writes that the French Declaration of the Rights of Man and of the Citizen is 'an intrinsically equivocal text, as is indicated by the dualities of its title and of its first line':

rights of man *and* of the citizen, are born *and* remain, free *and* equal. Each of these dualities, and particularly the first, which divides the origin, harbour the possibility of antithetical readings: Is the founding notion that of *man*, or of the citizen? Are the rights declared those of the citizen as man, or those of man as citizen?⁷

Arendt argues that this ambiguity had disastrous consequences, which only became visible during the crises of statelessness of the twentieth century. When their citizenship rights were revoked, the stateless were forced to rely on their rights as 'men'. If inalienable, universal rights had value (if the rights declared were those of the 'citizen as man')⁸ the stateless should have been able to fall back on their protection. But when they became non-citizens, they became vulnerable precisely because of their identity as 'men' and only 'men' – this identity was the source of their defencelessness, it did not guarantee their rights.

Arendt makes this argument as part of a wider contention in *The Origins of Totalitarianism* that various structures and behaviours in European history can be causally related to the emergence of totalitarian governments in the twentieth century; though the death camps are 'insane', the coming into being of social conditions which allow the emergence of such camps are not – they are, she argues, 'transparent and logical'.⁹ Seyla Benhabib cautions that the relationship Arendt posits is fragile and dependent, not an

⁷ Etienne Balibar, 'Citizen Subject', in *Who Comes After the Subject?*, ed. by Eduardo Cadava, Peter Connor and Jean-Luc Nancy (London: Routledge, 1991), pp.33-57 (p.44). Discussions of Arendt's argument about the citizen/man confusion include: Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. by Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), pp.126-135. Julia Kristeva, *Strangers to Ourselves*, trans. by Leon S. Roudiez (Hemel Hempstead: Harvester Wheatsheaf, 1991), pp.97-99 and pp.148-154.

⁸ Balibar, p.44.

⁹ *Origins of Totalitarianism*, p.447.

‘inevitable continuity’¹⁰ – for her *The Origins of Totalitarianism* emphasizes ‘the radical contingency of the historical moment that led to the constellation of elements resulting in the disasters of humanity in the twentieth century.’¹¹

What Arendt traces are certain patterns in Western history to give what she describes as a ‘historical account of the elements which crystallized into totalitarianism’.¹² Part of the distinctiveness of her discussion of the rights of man is the place they occupy in this historical account; her suggestion is that a failure of rights discourse – and, in particular, an unconsidered aspect of the way the rights of man are implicated in state formations – allowed the emergence of some of those elements which ‘crystallized into totalitarianism.’¹³

After the First World War millions of people – the mass unemployed, the minorities created by the re-organization of European state boundaries in the Peace Treaties, and the stateless – formed an unprecedented mass of humanity who were unheeded, unable to play any role in society and whose situation could not be helped by any government or power. They were, Arendt says, ‘living corpses’.¹⁴ She argues that the development of the conditions in which so many people throughout Europe became like living corpses and yet could not be helped acted as ‘silent consent’ to the mass physical death instigated by totalitarian governments in concentration camps.¹⁵

¹⁰ Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* (Oxford: Rowman and Littlefield, 2000), p.64.

¹¹ *Reluctant Modernism*, p.71.

¹² Hannah Arendt, ‘A Reply’, *Review of Politics*, 15.1 (1953), 76-84 (p. 78).

¹³ ‘A Reply’, p.78. Arendt’s discussion of the links between the Holocaust and rights talk is particularly important because it has become widely accepted that the horrors of the Holocaust caused the international community to revive, institutionalize and internationalize eighteenth-century conceptualizations of rights in the 1940s. For an example of such a history of human rights, see Ignatieff, pp.63-66 and 77-95, and for a critique of this connection on historical grounds, which argues that it was not until the 1970s that the Holocaust became central to the development of human rights discourse, see Samuel Moyn, *Human Rights and the Uses of History*, pp.87-98. Arendt’s depiction of the relationship between human rights and the Holocaust is strikingly different, and more troubling for our understanding of rights.

¹⁴ *Origins of Totalitarianism*, p.447.

¹⁵ *Origins of Totalitarianism*, p.447.

But for Arendt, the situation of the ‘living corpses’¹⁶ - people without place or role or social meaning - is itself the consequence of something else: the failure of traditional understandings of the rights of man.

[it] could only happen because the Rights of Man, which had never been philosophically established but merely formulated, which had never been politically secured but merely proclaimed, have, in their traditional form, lost all validity.¹⁷

Arendt’s critique of these rights is based on her perception of a fundamental flaw in the concept, a flaw which in the inter-war period allowed a process to begin which reached its final realization in the concentration camps.

Arendt argues that a tension is present from the very emergence of the rights of man in the French Declaration of the Rights of Man and of the Citizen. The Declaration represents a change in the conceptualization of law in history because ‘[i]t meant nothing more or less than that from then on Man, and not God’s command or the customs of history, should be the source of Law.’¹⁸ But at the same time, the entire document is the basis for national sovereignty, and the figure of the abstract Man of rights thus becomes indistinguishable from the citizen of the newly founded nation-state. Arendt writes that

man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people.¹⁹

She argues that in historical terms, this merging of the figure of the abstract Man of rights and the citizen did not become apparent until the crises of statelessness and of minorities following the First World War. The Rights of Man claim to be inalienable, and

should remain valid and real even if only a single human being existed on earth; they are independent of human plurality and should remain valid even if a human being is expelled from the human community.²⁰

¹⁶ *Origins of Totalitarianism*, p.447.

¹⁷ *Origins of Totalitarianism*, p.447.

¹⁸ *Origins of Totalitarianism*, p.290.

¹⁹ *Origins of Totalitarianism*, p.291.

²⁰ *Origins of Totalitarianism*, pp.297-298.

In the situation of those made stateless, Arendt sees a group who are indeed removed from the human community; people who should, nonetheless, be protected by those inalienable rights which attach to humans because of their humanity.

Arendt calls the stateless the ‘most symptomatic group in contemporary politics’.²¹ Each new political occurrence after the First World War, she argues, added more people to this symptomatic group, through widespread state cancellation of naturalization and denationalization. For example, refugees were created all over Europe in unprecedented numbers when, having left their countries due to revolutions or changes of government, they had their nationalities taken away; Arendt writes that

[t]o this group belong, in chronological order, millions of Russians, hundreds of thousands of Armenians, thousands of Hungarians, hundreds of thousands of Germans, and more than half a million Spaniards – to enumerate only the more important categories.²²

The stateless posed an enormous challenge to European nation-states. Benhabib argues that for Arendt statelessness is part of a transformation in the way that sovereignty is understood in the twentieth century. That minorities were protected by the League of Nations under the Peace Treaties suggested that governments could not be trusted to protect the rights of those who did not belong to the nation. Similarly, Benhabib argues, the consequent crisis of statelessness illustrated the growing identification of legal status and rights with belonging to the nation. She writes that the creation of stateless peoples,

of groups of people who were rejected by their respective nation-states, the massive denaturalizations of other groups of individuals who were deemed ‘alien’ by their host countries, were simply juridical steps that increasingly transformed the nation-state into an instrument serving the needs and interests of one group only.²³

As Margaret Canovan puts it, the stateless revealed ‘a profound tension between the notion of the *state* as the legal guarantor of rights, and the idea of the *nation* as an

²¹ *Origins of Totalitarianism*, p.277.

²² *Origins of Totalitarianism*, p.278.

²³ *Reluctant Modernism*, p.81.

exclusive community.²⁴ The stateless were, therefore, in a very particular and troubling situation; they were humans with no governmental protection.

For Arendt, the problem is that when faced with the existence of such humans, removed from the life of their nation-states, '[t]he conception of human rights, based upon the assumed existence of a human being as such, broke down'.²⁵ This conception of human rights proposes that rights are possessed on the basis of humanness alone, and other qualities or considerations – such as being the citizen of a nation-state, or being a member of a particular community – are irrelevant. However, when humans who seemed to fulfil the conditions of this individual human subject emerged – the stateless – they were in fact revealed to be completely without rights. She argues that

it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.²⁶

In the situation of the stateless then, the idea of essential rights based upon humanness alone was revealed to be a fiction – without the protection of citizenship and seen only in their humanity, the stateless had, Arendt argues, no rights at all.

But for Arendt this rightlessness is of a very particular character. She argues that the stateless have not lost specific rights; they are rightless not because they have lost individual human rights articulated in declarations but because they do not belong in any context where possessing such rights matters. For example, she argues, Jews in Nazi Germany were not initially made rightless through the attack on their right to life – the beginning of the process was the steady erosion of their ability to hold rights at all through their removal from the political community: they were made second class citizens, removed to ghettos and concentration camps and before the Nazis 'set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people'.²⁷ For Arendt, rightlessness means a position in which one's speech and action are unimportant and inconsequential. Stateless people may have freedom of opinion or some freedom of

²⁴ Margaret Canovan, *Hannah Arendt: A Reinterpretation of her Political Thought* (Cambridge: Cambridge University Press, 1992), p.32.

²⁵ *Origins of Totalitarianism*, p.299.

²⁶ *Origins of Totalitarianism*, p.292.

²⁷ *Origins of Totalitarianism*, p.296.

movement – they may possess some of the classic rights of man – but this does not alter their fundamental situation of rightlessness if their opinions do not matter or if their physical place within the state is vulnerable and uncertain.

Therefore:

[s]omething much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice.²⁸

The situation of statelessness reveals a right which underlies and is more critical than the types of rights enunciated in bills of rights; ‘the right to have rights’.²⁹ Arendt argues that ‘[t]he fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.’³⁰ To have rights, she argues, you must exist within a framework which gives your rights meaning.

In what sense though is this right more fundamental or important than the right to freedom or to justice? The argument hinges on how we understand the distinguishing features of human life. Before the crisis of statelessness in the twentieth century, Arendt writes, ‘what we must call a “human right” today would have been thought of as a general characteristic of the human condition which no tyrant could take away’.³¹ She argues that since Aristotle the human ‘has been defined as a being commanding the power of speech and thought’ and as the “political animal,” that is one who by definition lives in a community’³²; the loss of the right to have rights means that speech is irrelevant and that the place in the community is revoked. The rightless person thus loses some of the most important characteristics of human identity.

Statelessness shows that a person can be removed from the context in which their speech and actions have value, in a way that was inconceivable for Aristotle and consequent political theory. The stateless thus exist in a kind of sheer humanness. Arendt writes:

²⁸ *Origins of Totalitarianism*, p.296.

²⁹ *Origins of Totalitarianism*, p.296.

³⁰ *Origins of Totalitarianism*, p.296.

³¹ *Origins of Totalitarianism*, p.297.

³² *Origins of Totalitarianism*, p.297.

[i]f a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.³³

She argues that the stateless are thrown back upon ‘mere givenness’³⁴, upon the individual difference which is characteristic of the private life in Arendt’s thought.³⁵

According to Serena Parekh:

[f]or Arendt, the phrase ‘nothing but human’ means that the stateless person has lost her public persona, her legal status, all distinctions that require public recognition, and her unique identity. All that is left when we see such a person, all that she has to fall back upon, is her givenness, her existence as a human being.³⁶

Paradoxically, however, this mere human existence for Arendt is not enough to guarantee the rights we think of as the rights of the human – in fact, she argues, mere humanness can be a danger to the rightless person.

Givenness is antithetical to the political sphere, to what Arendt calls the human artifice. For her, the political world is entirely different from the private: ‘[e]quality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization insofar as it is guided by the principle of justice’.³⁷ The person who is merely human and who does not have an equal place in the political sphere to act and to speak therefore carries a danger:

[t]he ‘alien’ is a frightening symbol of the fact of difference as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy.³⁸

In the political sphere, humans act and create and rule, but mere humanness - the simple fact of being human, of being a human who is alive, and the irreducible

³³ *Origins of Totalitarianism*, p.300.

³⁴ *Origins of Totalitarianism*, p.301.

³⁵ Arendt’s ideas about private life and its relationship with public identity are further explained in *The Human Condition*. Hannah Arendt, *The Human Condition* (London: University of Chicago Press, 1958).

³⁶ Serena Parekh, *Hannah Arendt and the Challenge of Modernity: A Phenomenology of Human Rights* (Abingdon: Routledge, 2008), pp.25-26.

³⁷ *Origins of Totalitarianism*, p.301.

³⁸ *Origins of Totalitarianism*, p.301. .

individuality of each human life – can never be controlled in this way. Paradoxically, it is difficult for the stateless person to be treated as human precisely *because* she seems to embody the qualities of the private and merely human in the public sphere, and thus appears alienated from its public equality.

The rights of man suggest that rights are possessed on the basis of human identity alone – but the stateless, who could only rely on their identity as humans, rather than as citizens, found themselves in a position of utter rightlessness. Arendt argues that human life in the political sphere is antithetical to given human life; when the stateless found themselves outside frameworks in which their speech and actions were effective, their mere humanness, the biological fact of being human, was not enough to guarantee them rights. In fact, it suggested something alien to the humanly constructed artifice and equality of the political sphere – they were reliant on what they merely were – and became dangerous to them. The rights of man were revealed to be, instead, the rights of the citizen.

Universal Human Rights in the UN Era

The Origins of Totalitarianism was published in the early years of the United Nations' existence. In the final years of the Second World War, the Allies had begun to plan the re-organization of international relations to attempt to secure lasting and prosperous peace. In this attempt to 'replace a world of chaos and conflict with a new, rules-based system'³⁹ as Philippe Sands puts it, a new international organization, the United Nations, was formed to replace the beleaguered League of Nations and to become the centre of greater international co-operation in the pursuit of worldwide security. As Arendt was arguing that the unacknowledged ambiguities of the rights of man had contributed to the crisis of statelessness, the UN began to deploy rights discourse after a long period in which the notion of rights had little political purchase. As Peter de Bolla notes, 'rights talk faded from public discourse in the [...] one hundred fifty or so years' between 'the late eighteenth century and the mid-twentieth'.⁴⁰

In wartime rhetoric, certain moral values had become bound up with the Allies' efforts; President Roosevelt's January 1941 address to Congress, for example, focused

³⁹ Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (London: Penguin, 2005), p.xi.

⁴⁰ de Bolla, p.277.

on ‘four freedoms’, baseline guarantees for life which, he argued, should be enjoyed around the world.⁴¹ The four freedoms were freedom of speech, freedom of religion, freedom from want (‘which [...] means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants’) and freedom from fear (‘a worldwide reduction of armaments [...] that no nation will be in a position to commit an act of physical aggression against any neighbour’).⁴² The US, he said, was committed to freedom, and ‘[f]reedom means the supremacy of human rights everywhere.’⁴³

The UN Charter, the organization’s founding document, was signed on 26th June 1945 at the San Francisco Conference on International Organization. Amongst the seven articles in the Charter which mention human rights are Article 62.2, which says that the Economic and Social Council (ECOSOC) ‘may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all’,⁴⁴ and Article 68 which allows ECOSOC to establish a Human Rights Commission.⁴⁵ This Commission was created and met for the first time in 1947 with Eleanor Roosevelt as its chair; it immediately began considering how the UN might use an international bill of rights to, as the Charter promised, ‘promote respect for, and observance of, human rights.’⁴⁶ The initial debates concerned the form such an international human rights bill would take and over the course of the Commission’s next sessions, it was agreed to draft a non-binding declaration of principles, to be followed by a binding treaty. It was envisaged that the treaty and the declaration together would form the international bill of rights.

As the Commission drafted the initial declaration, which would become the Universal Declaration of Human Rights, various philosophical positions were espoused

⁴¹ Franklin D. Roosevelt, ‘Franklin D. Roosevelt’s “four freedoms speech”, Annual Message to Congress on the State of the Union: 1/06/1941’, available at <<http://www.fdrlibrary.marist.edu/pdfs/fftext.pdf>> [accessed 27 August 2014].

⁴² Roosevelt, p.8.

⁴³ Roosevelt, p.8.

⁴⁴ Charter of the United Nations, art.62, para.2, available at <<http://www.un.org/en/documents/charter/chapter10.shtml>> [accessed 23 August 2014].

⁴⁵ Charter of the United Nations, art.68.

⁴⁶ Charter of the United Nations, art.62, para.2.

by the delegates.⁴⁷ However, there was little attempt to resolve differences in philosophical opinion; as Vratislav Pechota notes,

[n]othing in the records suggests that the Commission ever felt the need of a uniform theory, let alone ideology of human rights [...] The goal of the Commission was not to achieve doctrinal consensus but to reach a set of agreements that might be justified even on highly divergent doctrinal grounds.⁴⁸

The Declaration, therefore, lists the human rights which could be agreed upon in 1948 despite philosophical differences; it does not represent any attempt to formulate a coherent philosophy of rights.

The key question here is: to what extent does the conceptualization of human rights which emerges from the UDHR render the difficulties identified by Arendt obsolete? A distinctive answer to this question has been advanced by Joseph Slaughter and it is one which centrally implicates literary texts. What the desperate situation of the stateless reveals, for Arendt, is a split in the category of the human itself, a split which, she argues, would have been incomprehensible to Aristotelian political philosophy. What the stateless and, later, the death camps illustrate is that the natural human is not always also Aristotle's 'political animal' – the two can be separated.⁴⁹ The eerie givenness of natural life can be split off from 'the being commanding the power of speech and thought'⁵⁰ who has 'a place in the world which makes opinions significant and actions effective'.⁵¹ In *Human Rights, Inc.* Slaughter argues that contemporary international human rights discourse can be understood as an attempt to repair this split between 'man' and 'citizen'.

This repairing of the split between man and citizen is accomplished, he argues, through the use contemporary human rights ideas make of the concept of the 'personality'. He observes that in the UDHR, '[e]xcluding the title',

⁴⁷ See Johannes Morsink, 'The Philosophy of the Universal Declaration', *Human Rights Quarterly*, 6.3 (1984), 309-34.

⁴⁸ Vratislav Pechota, 'The Development of the Covenant on Civil and Political Rights', in *The International Bill of Rights: The Covenant on Civil and Political Rights*, ed. by Louis Henkin (New York: Columbia University Press, 1981), pp.32-71, (p.36).

⁴⁹ *Origins of Totalitarianism*, p.297.

⁵⁰ *Origins of Totalitarianism*, p.297.

⁵¹ *Origins of Totalitarianism*, p.296.

the word ‘human’ appears [...] eleven times [...] and only twice does it act like a noun to denote a ‘human being’. ‘Person’, on the other hand, appears eight times, always as a noun (person or personality).⁵²

These words, ‘human’ and ‘person’, have tended to be treated as synonyms in discussions of the UDHR and human rights law more generally, but for Slaughter this is a mistake. In order to understand how the rights regime brought into being by contemporary human rights law works, ‘we must understand the juridical meaning of the word “person” and the work that “person” does that human does not.’⁵³

The person in human rights law, Slaughter argues, is an artificial construct, a substitute or place-holder for the human in the legal sphere. He writes that:

in the case of human rights, ‘person’ is the rhetorical vehicle through which the law personifies (or incorporates) the human as a creature capable of bearing rights. It is the legal mask (*persona*) for the human’s figural projection in the law – in the sense of both an image and a task still to be completed.⁵⁴

‘Incorporation’⁵⁵ is Slaughter’s preferred term to describe the work performed by the construct of the person under the law; it is through the formal structure of the person and its legal recognition that individuals, in all their difference and multiplicity, come to be recognized and given rights within legal systems, their individual difference – givenness, in Arendt’s terms – replaced by a formal equality under the law. That is, ‘as it appears throughout human rights law, “personality” does not have the popular psychological meaning of the complex of characteristics that are unique to the individual’.⁵⁶ Instead, ‘it is imagined to be an individual instance of the abstract, universal human personality.’⁵⁷

The aim of human rights law is that the ‘legal image of the person might come to be seen as coextensive with the actual human being.’⁵⁸ That is, the ‘goal [...] is to kill the very metaphor that founds human rights, the enabling analogy that establishes the

⁵² *Human Rights, Inc.*, p.332, fn. 50.

⁵³ *Human Rights, Inc.*, p.57.

⁵⁴ *Human Rights, Inc.*, p.58.

⁵⁵ *Human Rights, Inc.*, p.23.

⁵⁶ *Human Rights, Inc.*, p.58.

⁵⁷ *Human Rights, Inc.*, p.58.

⁵⁸ *Human Rights, Inc.*, p.22.

figural correspondence between – but that also separates – the human and the person.’⁵⁹ Human rights law aims to incorporate the natural human into the person under the law and thus to remove the distinction between them. In this way, Slaughter argues, it tries to ‘repair the rupture between man and citizen that [...] Arendt critiqued’.⁶⁰ It can be understood as the project of bringing humanity into line with personality, or ensuring that all humans possess the artificial personality to which rights attach.

At first sight, this might seem like a restatement of Arendt’s argument: mere human givenness is not enough; humans must also possess ‘a place in the world’, here understood through the concept of personality.⁶¹ But Arendt is criticising an *assumption* made by earlier discussions of rights. She argues that the rights of man merely assumed that the sheer human creature and political identity were coextensive, believing that ‘man’ and ‘the citizen’ were the same and – like Aristotle, as Arendt reads him – that political identity was not something that could be removed. Slaughter’s discussion sees human rights developing at the point at which this earlier assumption was shown (by the stateless and by the death camps) to be extraordinarily dangerous. Contemporary rights ideas address the problem of split in the category of the human, Slaughter argues. They do so not by merely assuming that humanness coincides naturally with political, social being, but by seeking to put in place the mechanisms by which humanness can be transformed into political, social being.

The personality is thus understood to be both something which is integral to human identity (this is the same kind of assumption that the French Declaration makes as it enunciates the rights of man and of the citizen) and to be something which is to be brought into being (this is its key innovation). That is, contemporary human rights law in Slaughter’s account responds to the problems identified by Arendt by positing political identity as that which is to be partly developed, rather than that which is merely assumed to occur naturally.

The preamble to the UDHR, Slaughter writes,

initially treats the human personality as if it were an innate aspect of the human being, but the articles describe it as an effect of human rights – the product of contingent civil, political, social, cultural, and economic

⁵⁹ *Human Rights, Inc.*, p.22.

⁶⁰ *Human Rights, Inc.*, p.22.

⁶¹ *Origins of Totalitarianism*, p.296.

formations and relations; on the whole, the Declaration images the human person as an improbable composite of a pre-social, natural human personality and a positive project of personality development.⁶²

For example, Slaughter argues that equality and dignity are characteristics of human personality: '[t]he abstract equality of the inalienable human personality and its inherent dignity is the theoretical foundation of contemporary human rights law'.⁶³ But these qualities of equality and dignity are presented both as 'inalienable' properties of the human person and, at the same time, as the result of the protections human rights law brings about. Tautologically, human rights protections seek to bring into existence the personality already belonging to the human and develop the human into the person she is always understood to be already.⁶⁴ In stressing the personality as something which is to be, at least partially, developed in this tautologous manner, Slaughter suggests that, instead of the fact of the split between man and the citizen which Arendt identifies, what contemporary human rights law attempts is a way of turning the human into the rights-bearing personality; the movement and progression – development – is crucial.

The development of the human rights-bearing personality in Slaughter's account is always imagined to occur through social relations. Slaughter shows that when the UDHR was constructed, the drafters turned to a novel, *Robinson Crusoe*, to articulate their differing conceptions of human personality and its relation to society. The Belgian representative, Fernand Dehousse, said that '[i]t might...be asserted that the individual could only develop his personality within the framework of society; it was, however, only necessary to recall the famous book by Daniel Defoe, *Robinson Crusoe*, to find proof of the contrary.'⁶⁵ Alexei Pavlov, the Soviet representative, responded that the novel actually proved that human personality development is dependent on society, because

⁶² *Human Rights, Inc.*, pp.61-2.

⁶³ *Human Rights, Inc.*, p.55.

⁶⁴ In fact, Slaughter argues that this is near-tautological rather than fully tautological because though equality and dignity are inalienable characteristics of the human person, the human person is not a naturally-occurring phenomenon, but something which is constructed, itself brought into being by human rights law. The human person does not always exist but where it does, all persons are equal and characterized by dignity.

⁶⁵ Quoted in *Human Rights, Inc.*, p.47.

‘Robinson had...at his disposal the products of human industry and culture, namely the tools and books he had found on the wreck of his ship.’⁶⁶

This debate ended with the adoption of Article 29; Slaughter comments:

if a vote can be taken as evidence of such things, Pavlov’s reading proved the more compelling to the interpretative community of the UN [...] with no objections and six abstentions, human personality entered international law as both the product and medium of social relations in Article 29: ‘Everyone has duties to the community in which alone the free and full development of his personality is possible.’⁶⁷

Personality in this sense is, again, tautologous and has two roles in relation to society: it develops *because* of the organization of society, and it also is the form individual humanity takes on in order to *enable* social relations. For human rights, the society in question, Slaughter goes on to assert, is primarily the nation-state.

The second way in which contemporary human rights law responds to and tries to remedy the problems described by Arendt is its new iteration of citizenship. It announces a new version of international citizenship to operate through and with national belonging (which was of course the key locus of political community in the pre-UN era). Human rights are often understood through concepts like universal human values and the cosmopolitan but, though the version of internationalism Slaughter identifies is indeed different from traditional models of national citizenship, it is also more complicated, and more entangled with the nation-state, than a straightforwardly universalistic register implies. This is a consequence of the way international law works, and so disentangling this complex interrelation of the national and the international in Slaughter’s account requires, first, a brief discussion of the international legal system.

International Human Rights Law and the Nation-State

International human rights law is a branch of international law. International law originally developed to regulate the relationships between states; it sought to establish principles for the interaction of states as entities. States, not individuals, were therefore

⁶⁶ *Human Rights, Inc.*, p.48.

⁶⁷ *Human Rights, Inc.*, p.48.

its primary subjects.⁶⁸ It concerned itself with the way that state A related to state B, but state A was understood to be forbidden from involving itself in the way state B treated state B's own citizens. The lives of individuals living within states were considered to be a matter for their own governments.⁶⁹

International human rights law, by contrast, has used the mechanisms and structures of international law to furnish all individuals everywhere with rights in their capacity as individuals; in the process it makes individuals the subjects of international law for the first time. This places a limit on state sovereignty – the principle which means that the state has complete power over its own domestic affairs. As Rosalyn Higgins writes, it also ‘stipulates that obligations are owed directly to individuals (and not to the national government of an individual)’.⁷⁰

The Minority Treaties in the aftermath of the First World War had required the protection of minorities in certain countries. But these were protections for certain groups in particular countries rather than rights possessed by all individuals everywhere. Moreover, as Paul Gordon Lauren notes, ‘the League did not apply these obligations to all members, would not create effective measures for enforcement’ and was continually hampered by states’ insistence that their sovereignty did not allow international oversight of such issues.⁷¹ Higgins observes that under such systems, ‘[t]he individual is left with no direct access to a forum, no legal right that he can call his own, no redress against his own state.’⁷² International human rights law seeks to provide all three of these elements missing from the minority protections, recalibrating the relationship between the nation-state and the individual.

⁶⁸ The subjects of law are those entities to whom it is addressed. According to Dixon, McCorquodale and Williams, aside from the state and (today) the individual, additional subjects of international law are ‘other territorial entities’, ranging from Taiwan to Northern Ireland to Chechnya, (p.138), international organizations such as the UN and EU (p.144) and, in some situations and ‘depend[ing] on the acquiescence of, or recognition by, States’, groups such as the International Red Cross and Red Crescent or NGOs (p.155). Martin Dixon, Robert McCorquodale and Sarah Williams, *Cases and Materials on International Law*, 5th edn (Oxford: Oxford University Press, 2011).

⁶⁹ On the other hand, if state A's citizens were mistreated in state B, state A could justifiably involve itself.

⁷⁰ Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), p.95.

⁷¹ Paul Gordon Lauren, ‘First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter’, *Human Rights Quarterly*, 5.3 (1983), 1-26 (p. 3).

⁷² Higgins, p.95.

It is for such reasons that international human rights law has often been described as ‘cosmopolitan’. Seyla Benhabib argues, for example, that

since the UN Declaration of Human Rights in 1948, we have entered a phase in the evolution of global civil society which is characterised by a transition from *international* to *cosmopolitan* norms of justice.⁷³

She argues that ‘[n]orms of international justice most commonly arise through international treaty obligations and bilateral agreements among states and their representatives’ and ‘regulate relations among states and other principles that are authorized to act as the agents of states in multiple domains’.⁷⁴ On the other hand, ‘[c]osmopolitan norms of justice, whatever the conditions of their legal origination, accrue to individuals as moral and legal persons in a worldwide civil society.’⁷⁵

However there are significant limits to the cosmopolitanism of human rights law, and to its attentiveness to the individual; it should not be understood as the superseding of the nation-state or its replacement by an international system. Benhabib explains:

[t]he evolution of cosmopolitan norms [...] is rife with a central contradiction: although territorially bounded states are increasingly subject to international norms, states themselves are the principal signatories as well as enforcers of the multiple human rights treaties and conventions through which international norms spread. In this process, the state is both sublated and reinforced in its authority.⁷⁶

Let us take an example. After the creation of the UDHR, a non-binding declaration of principles, the UN’s Human Rights Commission turned its attention to the other part of the projected international bill of rights: a multilateral treaty, which would be binding as international law. In 1949, the year after the UDHR was adopted by the General Assembly, the Human Rights Commission began considering such a convention.

By 1952 it had been agreed to split the convention into two documents, one dealing with economic, cultural and social rights (which became the International Covenant on Economic, Social and Cultural Rights (ICESCR)) and one dealing with civil and political rights (which became the International Covenant on Civil and Political

⁷³ Seyla Benhabib, *Another Cosmopolitanism*, with Jeremy Waldron, Bonnie Honig and Will Kymlicka, ed. by Robert Post (Oxford: Oxford University Press, 2006), pp.15-16.

⁷⁴ *Another Cosmopolitanism*, p.16.

⁷⁵ *Another Cosmopolitanism*, p.16.

⁷⁶ *Another Cosmopolitanism*, p.31.

Rights (ICCPR)).⁷⁷ The ICCPR includes rights such as the right to a fair trial, the freedom from torture and freedom from slavery where the ICESCR includes the right to an adequate standard of living, the right to work and the right to join a trade union, amongst others.⁷⁸

The ICCPR and the ICESCR set out binding human rights standards and mechanisms for the enforcement of these standards. But the covenants are only binding on those states which have signed them. The US, for example, has not ratified the ICESCR, so those living under its jurisdiction will not be guaranteed the rights contained in it under international law, although they may be protected by constitutional or other guarantees. In this way, rights protection is dependent on the decisions made by governments; if your government does not sign the treaty, then you will not be protected by it. Though the rights protections listed in the covenants restrict the power of the state, the state can avoid restrictions on its power by simply refusing to sign and ratify the treaty in the first place.⁷⁹

⁷⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171 (ICCPR), available at: <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> [accessed 23 August 2014].

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UN Treaty Series 3 (ICESCR), available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/cescr.aspx>> [accessed 23 August 2014].

⁷⁸ Certain theoretical arguments were advanced to justify the splitting of the covenants. It was argued, for example, that ESC rights could not be immediately enforced by States because they require positive action, often expensive positive action. The freedom from torture is said to require nothing from States; they must just refrain from torturing. The implementation of a system of social security is, by contrast, a costly and long-term project. But the theoretical debates were underpinned by ideological division which made resolution and agreement impossible. What seems like a fundamental conceptual division between two types (or ‘generations’) of rights has profoundly political roots in the Cold War. Matthew Craven writes: ‘[t]hat economic, social, and cultural rights have been identified as a discrete category of human rights is most usually explained in terms of their distinct historical origin [...] In fact the reason for making a distinction [...] could be more accurately put down to the ideological conflict between East and West pursued in the arena of human rights.’ Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), pp.8-9.

⁷⁹ There are a limited number of exceptions to this, known as jus cogens norms. Torture, for example, is always illegal under international law, regardless of the ratification of treaty law.

Similarly, both the ICCPR and the ICESCR have individual complaints mechanisms, contained in optional protocols.⁸⁰ Although states do not have to ratify the optional protocol in order to be party to the convention as a whole, as of 2014 the ICCPR's has 115 state parties.⁸¹ The protocols means that individuals living under the jurisdiction of those states party to them can submit complaints to the Committee about abuses of rights contained in the treaties. This enables the individual whose rights have been violated to bypass their own nation-state (or the nation-state under whose jurisdiction the violation has been committed) and seek the arbitration of an international body. But this by-passing of the state is partial; you can only access the individual complaints procedure once you have 'exhausted domestic remedies'.⁸² According to international law, the international mechanism can only be used once domestic solutions have been tried and have failed. This locates the optimum remedy for human rights abuses in the nation-state.

⁸⁰ First Optional Protocol to the 1966 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>> [accessed 23 August 2014].
Optional Protocol to the International Covenant on Civil and Political Rights, UN General Assembly Resolution 63/117 (adopted 10 December 2008, entered into force 5 May 2013) UN Doc A/RES/63/117, available at:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>> [accessed 23 August 2014].

⁸¹ For the status of the First Optional Protocol to the ICCPR, including current number of ratifications, see the UN Treaty Collection, available at:

<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en> [accessed 23 August 2014].

As of 23 August 2014, the ICESCR's Optional Protocol has only 15 state parties; while the ICCPR's individual complaints procedure has been in operation since 1976, the Optional Protocol to the ICESCR was opened for signature only in 2009, and had to wait until 5 May 2013 to enter into force. The 15 states party to the ICESCR's Optional Protocol are Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Cabo Verde, Ecuador, El Salvador, Finland, Gabon, Mongolia, Montenegro, Portugal, Slovakia, Spain and Uruguay.

For the status of the Optional Protocol to the ICESCR, see

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en> [accessed 23 August 2014].

⁸² Additionally, as long as the domestic remedies are not overly prolonged; see the Optional Protocol to the ICCPR Article 5.2 (b) and Optional Protocol to the ICESCR Article 3.1.

Human Rights, National Citizenship and the Bildungsroman

What this amounts to, Slaughter argues, is a modification of the nation-state system. International human rights law does not mean that nation-states have ceased dominating the international law; what it attempts instead is a particular configuration of national citizenship:

[i]n its articulation of an international imaginary that is based on nation-statist forms, the UN deferred to what it understood to be the *de facto* geopolitical relations of state sovereignty and reserved the adjudication of so-called international human rights to its member states. Thus, the projected human rights-based international order has little in the way of forms of its own. I do not mean that it has no material immediacy or sensible existence; rather, its institutional and administrative structures remain weak.⁸³

Slaughter argues that there was a clear desire in the postwar period to bring about a new kind of international order. But even though certain non-governmental organizations did have an influence on the development of the United Nations and its human rights commitments, nation-states were always the most important decision-makers.⁸⁴ Consequently the UN's human rights regime and its recognition of universal human rights revolve around nation-states. An important degree of state sovereignty was sacrificed, and in fact in a number of instances powerful states found that their rhetorical commitment to human rights ended up costing them much more than they had envisaged.⁸⁵ But, nonetheless, the developing focus on human rights still centred the nation-state as the forum in which rights should be protected.

⁸³ *Human Rights Inc.*, p.84.

⁸⁴ On the influence of NGOs in the development of the UN Charter, see Jan Herman Burgers, 'Road to San Francisco: The Revival of the Human Rights Ideal in the Twentieth Century', *Human Rights Quarterly*, 14.4 (1992), 447-476.

⁸⁵ In an early example of this, the contradiction between the universalist rhetoric being employed by the major powers and the reality of continuing colonial domination was exploited by many anticolonial campaigners. A.W Brian Simpson gives the example of Chapter XI of the UN Charter, which 'in effect stated, in somewhat pompous terms, official British paternalist colonial policy, though it was more specific than the Colonial Office would ideally have wished'. (A.W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), pp.271-2). However Simpson shows that the Chapter – and in particular the part that obliged colonial governments to provide regular reports on the 'economic, social and educational conditions' in the colonies 'became a major bone of contention as the anti-colonialists attempted to develop machinery for supervision out of a Charter designed not to provide one.' (Simpson, p.271). In a way utterly unforeseen

Therefore, international human rights law adopts the nation-statist forms that preceded it, imagining the society in which the individual's personality will be developed as the nation-state. But while national citizenship remains absolutely central to rights protection as envisaged in human rights law, Slaughter argues, it is a modified version of citizenship, inflected with the values of a universally-imagined humanity.

Specifically, it is the notion of the 'free and full development of the human personality' which works as 'a means of remediation' between the state and the individual.⁸⁶ Slaughter argues that it is through the notion of personality that human rights law reconciles the concern with the individual which characterizes its universalist, cosmopolitan rhetoric with the continued importance of the nation-state system to the international system. On the one hand, human rights law proposes that free and full development of the human personality is only realizable as a citizen in a nation-state; in this way, the dominance of the international order by the state is re-entrenched. On the other hand, international law establishes the features of human personality – its dignity and formal equality, for example – and binds states to respect and protect these equal and dignified persons. In this way, the power of the state is attenuated and the state and the individual are brought into a new kind of relationship.

For Slaughter international human rights law is, perhaps unexpectedly, primarily concerned with the conditions and possibilities of belonging in the nation-state. He argues that human rights aim to incorporate the human into the rights-bearing personality, that personality is always envisaged in human rights discourse as developable in society, and that that society is typically the nation-state. As the description of the person defined through abstract equality and dignity indicates, this is an understanding of human rights which places the discourse squarely within a liberal political register.⁸⁷ The nation-state envisaged in his argument as the primary site for the development of the human personality is, specifically, one organized on the liberal democratic model.

by the colonial powers, the mechanisms of the UN became a site for debates about the continuation of colonial rule, even as Britain's Colonial Office (for example) thought it was merely restating the status quo.

⁸⁶ *Human Rights, Inc.*, p.90.

⁸⁷ See Elizabeth S. Anker's *Fictions of Dignity* for an extended discussion of the liberal assumptions at the centre of human rights discourse.

The fact that the new internationalist rights language does not have particularly substantial legal institutions has another consequence, Slaughter argues. It means that cultural forms have been conscripted to support, promulgate and disseminate its norms; Slaughter suggests that in ‘contrast to the weakness of legal apparatuses, cultural forms like the novel have cooperated with human rights to naturalize their common sense.’⁸⁸ Further, because the weakness of international institutions has led human rights law to modify the conditions of citizenship in the nation-state rather than developing new forms, Slaughter suggests that ‘it has little in the way of cultural forms that are not proper to the nation-state to provide symbolic legitimation for its projected social formations.’⁸⁹ Just as the nation-state system is modified in order to place the rights of individuals at the centre, so human rights adopts cultural forms traditionally associated with the liberal democratic nation-state, specifically the *Bildungsroman*, to assist with the dissemination of human rights norms.

This is possible because of the assumptions that human rights and the *Bildungsroman* share:

[b]oth the *Bildungsroman* and human rights law recognize and construct the individual as a social creature and the process of individuation as an incorporative process of socialization, without which individualism itself would be meaningless.⁹⁰

The *Bildungsroman* in its traditional form depicts the coming of age of an individual: the plot is typically a process of individual development; the narrative conclusion tends to be a moment of social becoming. The protagonist progresses from individual family life to the scene of public integration. The *Bildungsroman* is, Slaughter suggests, ‘the liberal public sphere’s most favored novelistic form for plotting human personality development and the acquisition of human dignity as the normative story of modern socialization’.⁹¹ Because of these overlaps with the concerns of human rights:

[t]he *Bildungsroman* has acted as a cultural surrogate for the missing executive authority of international human rights law, expanding its purview by projecting the social and cultural conditions out of which human rights might be recognised as commonsensical.⁹²

⁸⁸ *Human Rights, Inc.*, p.25.

⁸⁹ *Human Rights, Inc.*, p.84.

⁹⁰ *Human Rights, Inc.*, p.19.

⁹¹ *Human Rights, Inc.*, p.145.

⁹² *Human Rights, Inc.*, p.29.

Human Rights and the Human

However, this is not the only way that human rights have been understood. For Samuel Moyn, contemporary understandings of human rights are so different to earlier rights ideas that they need to be thought of separately, as a distinct category. What causes him to insist on this distinction is the link contemporary human rights envisage between rights and the nation-state. Rights in the eighteenth century were articulated and achieved institutional form as a part of the process of forming and founding the democratic nation-state: the rights they were concerned with were the rights of citizens, despite the expansive, universal language they were sometimes framed in. Moyn argues that contemporary human rights discourse is different because it ‘promises to penetrate the impregnability of state borders, slowly replacing them with the authority of international law.’⁹³

It therefore, he argues, sets itself up in opposition to the power of the nation-state in the name of a universal humanity: ‘[t]he phrase implies an agenda for improving the world, and bringing about a new one in which the dignity of each individual will enjoy secure international protection.’⁹⁴ Slaughter argues that human rights’ cosmopolitan rhetoric exists alongside the centrality of the nation-state to their practical implementation. But Moyn is concerned to differentiate contemporary conceptions of human rights from earlier rights discourse, and for him the key difference – the essential aspect of human rights’ conceptual specificity – is their rejection of the nation-state.

It is the 1970s rather than the 1940s (when the UDHR was drafted) which is the founding moment for Moyn’s notion of human rights, because he thinks of the contemporary discourse as dependent upon a high level of public awareness. By this, he generally means public awareness in the US and Europe. He argues that human rights can be said to have truly emerged when they became embedded in everyday discussion; though the Universal Declaration of Human Rights was adopted by the UN in 1948, he argues that human rights ideas did not spur public discussion or social movements at that time, the UN’s human rights efforts generally toiling in arcane obscurity until much later.

⁹³ *Last Utopia*, p.1.

⁹⁴ *Last Utopia*, p.1.

But in 1977, which Moyn considers to be human rights' 'breakthrough year'.⁹⁵ American President Carter was inaugurated in January and his inauguration speech, according to Moyn, 'put "human rights" in front of the viewing public for the first time in American history.'⁹⁶ Moyn argues that 'the symbolic novelty and resonance of the phrase in Carter's policy is what mattered most of all, since he embedded it for the first time in popular consciousness and ordinary language.'⁹⁷ In Czechoslovakia the Charter 77 movement brought dissent in the Soviet states to worldwide attention and used the language of human rights to do so. At the end of the year Amnesty International would be given the Nobel Peace Prize. 'For the first time in large numbers' he writes 'people started to use the language of human rights to express and act on their hopes for a better world'.⁹⁸

The understanding of human rights which became so prominent in the 1970s was always about somewhere else. President Carter, in Moyn's reading, introduced Americans to the notion of human rights, but it was human rights understood primarily as an approach to foreign policy: Carter first began by drawing attention to rights abuses in the Soviet Union, before, in Moyn's word, 'scolding' Uganda, then ruled by Idi Amin, before 'the focus shifted to Latin American dictatorships'.⁹⁹ The significance of the Carter presidency for Moyn is that

American foreign policy discussions were permanently altered, with new relevance for a 'moral' option that now referred explicitly to individual human rights. And even more important, Carter introduced the idea in all of its ambiguity to a vast global audience it had never reached – and Americans first among them.¹⁰⁰

Taking this moment in the 1970s as a paradigmatic example of what contemporary human rights discourse means allows Moyn to distinguish human rights from earlier notions of the rights of man: '[t]he one implied a politics of citizenship at home, the other a politics of suffering abroad'¹⁰¹; the "rights of man" were about a whole people

⁹⁵ *Last Utopia*, p.118.

⁹⁶ *Last Utopia*, p.155.

⁹⁷ *Last Utopia*, p.155.

⁹⁸ *Last Utopia*, p.121.

⁹⁹ *Last Utopia*, p.158.

¹⁰⁰ *Last Utopia*, p.158.

¹⁰¹ *Last Utopia*, p.12.

incorporating itself in a state, not a few foreign people criticizing another state for its wrong-doing.’¹⁰²

The rejection of the nation-state through which he defines human rights causes him to distinguish contemporary human rights emphatically from other political discourses which might ordinarily assumed to be linked to it. For example, he writes, ‘[i]nsofar as a generally rights-based movement like the women’s movement took on international form, its internationalism was about sharing techniques and building confidence for national agitation, not making the global forum itself a scene of intervention or reform.’¹⁰³

He makes a related argument about anticolonialism:

[a]nticolonialism’s vision of rights remained [...] so selectively focused on the threshold right of self-determination, qualified by subaltern antiracism only, as to count as a wholly different conception. In fidelity to earlier Euro-American conceptions of rights, anti-colonialism prioritized the independence and autonomy of the new nation as the forum in which rights had to be won.¹⁰⁴

In fact Moyn goes further in this case, arguing that for human rights to achieve its discursive dominance as the global language of idealism, colonial rule needed to have ended. But, secondly,

the widespread rise of the belief that anticolonialism in its classic forms had shipwrecked as a moral and political project mattered a great deal too – not least because of the sorts of concerns once thought

¹⁰² *Last Utopia*, p.26.

¹⁰³ *Last Utopia*, p.39.

¹⁰⁴ *Last Utopia*, p.117. He also argues that anticolonial movements were characterized by their willingness to accept and promote violence in a way that human rights activism is not: ‘even some of the more moderate figures were not above threatening violence in response to compromise’ whilst ‘no NGOs organize revolutionary insurgency’ (*Last Utopia*, p.117). But this does not seem to securely distinguish human rights from anticolonialism; perhaps it is the case that human rights discourse is less enamoured with what Moyn calls ‘the romance of third-world revolution’ (*Last Utopia*, p.115), associated, for him, with Fanon and Sartre. But human rights discourse is nonetheless intimately entangled with violence, even if the form of violence endorsed as moral has changed. The language of human rights has been used to justify violent action around the world, even if the violence in question is not guerrilla warfare but bombing campaigns; not insurgency but intervention. A simple violence/non-violence dichotomy does not easily distinguish anticolonialism and human rights.

legitimately put on hold while third-world leaders consolidated power.¹⁰⁵

For a time, he suggests, some restrictions on civil liberties were considered acceptable in newly-independent states, for the greater national good. Only when this consensus could be reconsidered – in the wake of disappointment with postcolonial governance – could a new supranational concern with individual rights achieve widespread appeal:

[o]nly when self-determination entered crisis, for Western observers at least, could there be an opening for a move from the enduring dream of postcolonial liberation to the far more recent utopia, the hope of a world of individual human rights.¹⁰⁶

‘Western observers’ here is somewhat disingenuous; Western states were never merely observers. Former colonial powers bear significant responsibility for the shape and structure of postcolonial governments, and for a number of difficulties facing their polities. In Chapter Two, for example, we will see that the differential treatment of ethnic groups by British colonial powers in Uganda led to tensions and to conflict in the postcolonial state.

But the main point for the purposes of this chapter is not the historical accuracy of this statement, but rather its conceptual grounding. This is a different and more specific argument than the suggestion that anticolonial movements used the language of human rights sparingly, and tended to conceptualize their struggle in different ways. Moyn argues that anticolonialism cannot be considered a human rights movement because it was centrally concerned with the nation-state, and with the founding of national government. For this reason anticolonialism, he argues, was much more like eighteenth-century rights discourse than it was like contemporary human rights.

Moyn freely acknowledges that this conceptualization of human rights does not solve the difficulties raised by Arendt. Discussing her argument, he writes:

Arendt contended that the so-called ‘right to have rights’ accorded by collective membership remained key to the values that the new Universal Declaration of Rights listed: without communal inclusion, the assertion of rights itself made no sense. Rights had been born as the first prerogatives of citizens; now, she felt, they risked becoming the last chance of ‘humans,’ without membership and therefore without

¹⁰⁵ *Last Utopia*, p.118.

¹⁰⁶ *Last Utopia*, p.119.

protection. She was correct: there is a clear and fundamental difference between earlier rights, all predicated on belonging to a political community, and eventual ‘human rights.’¹⁰⁷

But what guarantees the right to have rights if not the nation-state? Moyn argues that in the eighteenth century

it was universally agreed that [...] rights were to be achieved through the construction of spaces of citizenship in which rights were accorded and protected [...] human rights after 1945 established no comparable citizenship space, certainly not at the time of their invention – and perhaps not since.¹⁰⁸

I suggest, therefore, that there is a tension in human rights discourse between the idea that rights can be possessed on the basis of humanness, and the idea that rights can only be possessed through the nation-state. The difficulty is that, as Arendt suggests, simple human identity cannot guarantee human rights in any meaningful way. She writes that ‘[m]an [...] can lose all so-called Rights of Man without losing his essential quality as a man, his human dignity. Only the loss of a polity itself expels him from humanity.’¹⁰⁹ Conversely, a human could possess all human rights and be fundamentally rightless, in Arendt’s account, if she lacked political status, an identity to make rights meaningful, a place from which to act and to speak. I make two key arguments as a consequence of this. One is that there is a recurrent idea that the possession of human rights can rely on humanness rather than citizenship, the second is that this idea encodes a fundamental rightlessness – a failure to possess human rights – at the heart of human rights discourse itself. I suggest that this can be explored and clarified through literary texts.

The ‘dissensual’ Bildungsroman

For Jerome Buckley

the hero of the English bildungsroman is typically “the young man from the provinces” who completes his initiation, for better or for worse, in the city to which he travels. The values of his childhood are frequently challenged, yet sometimes prove sustaining, and the first sensitive impressions remain traumatically vivid [...] Yet it is part of the youth’s ordeal to suffer ‘alienation’, to experience the loss of home and father

¹⁰⁷ *Last Utopia*, p.12.

¹⁰⁸ *Last Utopia*, p.13.

¹⁰⁹ *Origins of Totalitarianism*, p.297.

and the correlatives of innocence and faith, and to seek self-realization in a new often unaccommodating environment.¹¹⁰

However, Tobias Boes has pointed out, it is ‘surprisingly hard to discover novels that fulfill the strictures of totality, teleology, and normativity demanded by the idealist understanding of *Bildung*, even if one consults works that were written in immediate temporal vicinity to *Wilhelm Meister’s Apprenticeship*.¹¹¹ But not only does the theory of the form rarely coincide with actual examples of it, but, he argues, ‘the most interesting thing about the *Bildungsroman* [...] is that the fact of its “nonfulfillment” isn’t merely accidental to, but rather constitutive of, the critical tradition that it has spawned.’¹¹² That is, critics have generally proceeded by showing how actual texts deviate from what are assumed to be the *Bildungsroman*’s conventions.

Slaughter argues that deviations from the formal conventions of the *Bildungsroman* can be read as reflections of the suffering caused by human rights violations, or as critiques of human rights ideas. For example, his reading of Michael Ondaatje’s novel *Anil’s Ghost* argues that the text initially establishes one of the key tropes of the *Bildungsroman*: the return home of the matured protagonist. In this case Anil, a forensic anthropologist who has been living in the West, returns to Sri Lanka to work for an NGO. This, Slaughter argues, ‘poses the problem of Anil’s identity in terms of a conflict between her Sri Lankan past and her contemporary cosmopolitan habits and assumptions as a “citizen of the world” who represents a court of world opinion.’¹¹³

But, though the narrative ‘poses the problem’, the ‘projected harmonization of Anil’s cosmopolitan desires and Sri Lanka’s national needs never materializes.’¹¹⁴ The ‘plot of the novel unfolds under a declared permanent state of emergency that suspended the 1978 constitutional protections of human rights’¹¹⁵ and when she discovers a body of a man who has been tortured and killed, she presents her research

¹¹⁰ Jerome H. Buckley, ‘Autobiography in the English *Bildungsroman*’, in *The Interpretation of Narrative: Theory and Practice*, ed. by Morton W. Bloomfield (Cambridge, MA: Harvard University Press, 1970), pp.93-104 (p.95).

¹¹¹ Tobias Boes, *Nationalism, Cosmopolitanism, and the Bildungsroman* (Ithaca, NY: Cornell University Press, 2012), p.24.

¹¹² Boes, p.25.

¹¹³ *Human Rights, Inc.*, p.187.

¹¹⁴ *Human Rights, Inc.*, p.188.

¹¹⁵ *Human Rights, Inc.*, p.188.

and analysis to government representatives who refuse to accept her findings. *Anil's Ghost* seems as if it is going to be story about the incorporation of Anil into Sri Lankan society, and ends up frustrating this suggested narrative resolution.

Slaughter reads this truncation of the Bildungsroman's form as a comment on the international human rights regime, which Anil represents because of her job with the NGO. He argues that the novel shows that international human rights ideas cannot flourish without 'an egalitarian national public sphere, a functional democratic nation-state, and a common national narrative.'¹¹⁶ *Anil's Ghost* indicates that where the governmental structures of the nation-state have declined into violence, the individual's personality cannot be realized. Even where the Bildungsroman form is adapted or deviated from, Slaughter argues that it can still be read as an engagement with the ideas of personality development which link it with the project of human rights.

Moreover, Slaughter argues that 'the idealist *Bildungsroman* [...] is conventionally narrated in the third person'.¹¹⁷ But where Bildungsromane are narrated in the first person, and 'particularly in postcolonial *Bildungsromane*, which are suspicious of the genre's traditional missionary plot logic,'¹¹⁸ the novel form comes to (even) more closely resemble the structure of human rights law in a way which opens up particular opportunities for critiquing it. In the Bildungsroman narrated in the first person, the plot works to show how the narrator grew into the personality narrating the story:

[t]hese novels plot the acquisition of self-narrative agency in stories that circle back to where they began after bringing the past into conjunction with the present and an earlier protagonist self into correspondence with the later narrator self, producing the ostensibly self-substantiating figure of the narrator-protagonist¹¹⁹

The first-person Bildungsroman, that is, narrates the process of becoming what the narrator already is. In this way it is a more direct analogue for international human rights law than the third person mode, because it reflects the tautology which for Slaughter is central. Human rights law proposes that dignity and equality are inalienable, and, at the same time, proposes that dignity and equality are the products of rights

¹¹⁶ *Human Rights, Inc.*, p.191.

¹¹⁷ *Human Rights, Inc.*, p.213.

¹¹⁸ *Human Rights, Inc.*, p.214.

¹¹⁹ *Human Rights, Inc.*, p.214.

protection. Personality development is presented as the process of becoming the rights-bearing citizen that one is also already understood to be.

In the examples that Slaughter examines, the *Bildungsroman* narrated in the first person also allows critiques of the logic of human rights to be made. Of Tsitsi Dangarembga's *Nervous Conditions*, for example, Slaughter argues that there is a significant gap between the 'sardonic disposition' of the narrator and her coming-of-age story.¹²⁰ The reader never quite finds out what it is that creates the tone and attitude of the narrating voice and this gap is explicitly acknowledged in the text:

something in my mind began to assert itself, to question things and refuse to be brainwashed, bringing me to this time when I can set down this story. It was a long and painful process for me, that process of expansion. It was a process whose events stretched over many years and would fill another volume.¹²¹

In this way 'what is narrated in the guise of the *Bildungsroman* is not the fusion but the fission of the narrator-protagonist.'¹²² The tautologous logic of personality development which underlies human rights law and the *Bildungsroman* and human rights law is in this way drawn into question.

In Tununa Mercado's *In a State of Memory*, the central character is exiled from Argentina during the military dictatorships. Slaughter suggests that 'Mercado's narrator suffers exile as depersonalization and dissociation, a disappearance that traps her between the social world of public personality and the self-absorption of lyrical subjectivity.'¹²³ This, he argues, is manifested in literary terms. He observes that the book has a 'fragmented structure'¹²⁴, creating a 'sedimentation of discrete episodes (which are not events in the narratological sense) that exposit various states of being and unbelonging'.¹²⁵ This is very different to the cumulative incidents which produce the citizen in the conventional, 'idealist' *Bildungsroman*. 'For the narrator,' Slaughter writes,

¹²⁰ *Human Rights, Inc.*, p.229.

¹²¹ Tsitsi Dangarembga, *Nervous Conditions* (London: The Women's Press, 1988), p.204, quoted in *Human Rights, Inc.*, p.229.

¹²² *Human Rights, Inc.*, p.239.

¹²³ *Human Rights, Inc.*, p.169.

¹²⁴ *Human Rights, Inc.*, p.172.

¹²⁵ *Human Rights, Inc.*, p.166.

to be expelled from the national public sphere is to be exiled from biographical and historical time, consigned to the detained present of 'lyrical immediacy,' which she suffers as a kind of suffocating, socially insignificant Arendtian individuality.¹²⁶

At the end of the text, having returned to Argentina but having found that this return does not produce the social incorporation that she has hoped for, and which the Bildungsroman traditionally moves towards, Mercado's narrator 'finally manages to write in earnest after exile, on a wall outside the window of her Buenos Aires apartment.'¹²⁷ Slaughter observes:

[t]he wall is transformed [...] until, in the novel's final sentence, it slips 'down into the line at its very foundation, like a sheet of paper sliding vertically into a slot.' The narrator's ultimate act of writing assumed the symbolic significance of an act of balloting – that quintessential democratic activity that links the individual to the community.¹²⁸

Slaughter argues that this text is a particular type of Bildungsroman, which he describes as 'dissensual'.¹²⁹ He writes:

I posit that among contemporary examples of *Bildungsromane* (especially from the Global South) the most common variation of the genre [...] places an ambivalent, double-edged marginality [...] at the center of the field of *Bildungsroman* possibilities. This dissident subgenre depicts the imperatives of modernization, socialization, and human personality development not as an idealist process of consensual harmonization, but neither does it discount such concordance as an absolute, abstract impossibility [...] it neither accepts the grossly compromised terms of enfranchisement [...] nor rejects them outright; instead, it holds onto the ideal of harmonious integration even as it narrates the unfulfilment of the promises of human rights and the idealist *Bildung*.¹³⁰

In the text, the final gesture in which writing is transformed into voting offers the possibility of the full integration of the citizen into the state. In this way it 'holds onto the ideal of harmonious integration' even as, throughout the majority of the text, the narrator has been able to grasp 'no more than fleeting impressions of belonging, of

¹²⁶ *Human Rights, Inc.*, p.166.

¹²⁷ *Human Rights, Inc.*, p.175.

¹²⁸ *Human Rights, Inc.*, p.175.

¹²⁹ *Human Rights, Inc.*, p.181.

¹³⁰ *Human Rights, Inc.*, p.181.

transcendence of Arendtian individuality'.¹³¹ The ideal remains, even as it is shown to be difficult to fulfil.

Here we can observe the consequences, in literary terms, of Slaughter's interpretation of Arendt. He sees 'Arendtian individuality'¹³² as the consequence of the nonfulfillment of rights. He proposes that if only we could make the development of personality – public identity within the nation-state – a realistic possibility for all around the globe, then the vulnerability that Arendt identifies in the merely human could be eradicated. That is, he suggests that it is the non-possession of human rights which produces 'Arendtian individuality'¹³³ and that in literary terms this is readable in fragmented Bildungsromane, which postpone or trouble the textual realization of social identity.

I suggest a different way of thinking about human rights discourse. I argue that the idea that human rights can be possessed through the nation-state is always in tension with the idea that human rights 'are, literally, the rights that one has simply because one is a human being.'¹³⁴ As Arendt shows, human identity cannot ground the possession of rights meaningfully, because what underlies lists of rights is the more fundamental right to have rights: the right to belong to a political community. Simple humanness, however, is antithetical to the way political community is understood in Western political theory, and for this reason the merely human subject is a source of fear and anxiety for the political sphere, and is in danger. Slaughter suggests that 'Arendtian individuality'¹³⁵ might be ameliorated through the integration into the nation-state which human rights aims to deliver. I argue that because of the persistence of the idea that simple humanness can ground human rights, the possession and non-possession of human rights are always inseparable: the vulnerability of utter rightlessness is not something to which human rights discourse is wholly opposed. Instead it can be found at the very centre of what it is to possess human rights. This is something which can be examined in more detail through a comparison of what

¹³¹ *Human Rights, Inc.*, p.177.

¹³² *Human Rights, Inc.*, p.177.

¹³³ *Human Rights, Inc.*, p.177.

¹³⁴ Donnelly, p.10.

¹³⁵ *Human Rights, Inc.*, p.177.

Slaughter means by the term ‘dissensual’ with what it means for Jacques Rancière, from whom he adopts it.

Rancière’s account of human rights is based upon his distinctive definition of politics. For him, much that would be generally called politics, for example ‘the set of procedures whereby the aggregation and consent of collectivities is achieved, the organization of powers, the distribution of places and roles, and the systems for legitimizing this distribution,’ is not truly political.¹³⁶ This realm of activity he calls policing. Policing is concerned with locating things in their proper place: it has to do with order, allocation and differentiation. Steven Corcoran writes that for Rancière ‘every hierarchical order ultimately rests on a logic of the “proper” that works to separate out different domains, and to allocate different shares to groups based on the supposed propriety of their place and function of their activity.’¹³⁷ In every such order is a group – Rancière calls them the demos – who are inferior in this order, who ‘in a given classification are unequal to others in that classification,’ as Todd May puts it.¹³⁸

True politics, Rancière argues, bases itself on the presumption of equality, starting from the point at which all speaking subjects, especially including the demos, are equal – not the factual proof of equality in all senses, but the theoretical presumption of equality as a beginning point for political action.¹³⁹ Political activity has, then, a very specific character: Rancière writes that it ‘is whatever shifts a body from the place assigned to it or changes a place’s destination [...] [it is] always a mode of expression that undoes the perceptible divisions of the police order by implementing a basically heterogeneous assumption’.¹⁴⁰ Politics demonstrates this through bringing into

¹³⁶ Jacques Rancière, *Dis-agreement: Politics and Philosophy*, trans. by Julie Rose (Minneapolis: University of Minnesota Press, 1999), p.28.

¹³⁷ Steven Corcoran, ‘Editor’s Introduction’, in Jacques Rancière, *Dissensus: Politics and Aesthetics*, ed. and trans. by Steven Corcoran (London: Continuum, 2010), pp.1-24 (p. 5).

¹³⁸ Todd May, ‘Rancière in South Carolina’, in *Jacques Rancière: History, Politics and Aesthetics*, ed. by Gabriel Rockhill and Philip Watts (London: Duke University Press, 2009), pp.105-119 (p.115).

¹³⁹ This is not, May points out, an argument that insists all people are equally intelligent or able in particular areas – he argues that equality in Rancière’s thought is not factually asserted but rather a presupposition which can be used as the first step in thinking about fruitful political action. (See May, p.112).

¹⁴⁰ *Dis-agreement*, p.30.

conflict the logic of policing and the logic of the political, and this itself happens through political subjects.

For Rancière, the ‘subject’ need not imply a discrete individual. As Costas Douzinas writes, glossing Rancière, human rights ‘do not belong to humans, rights constitute the subject of modernity’.¹⁴¹ Rancière argues that ‘[p]olitics is a matter of subjects, or, rather, modes of subjectification.’¹⁴² Subjectification, in this account, means a process whereby identities (such as ‘women’ or ‘workers’) become political subjects – that is, become opened up as spaces of dispute between the ostensible role of the woman or worker under the logic of policing (which sees the woman or the worker as unimportant to the social hierarchy) and the underlying equality of all, (because of which women and workers are in reality indispensable to the social order).

In the case of workers, it is the process of subjectification which brings to light the Marxist sense of a contradiction between the economic importance of workers and their societal degradation. The coming into being of a political subject ‘workers’, means that the subject ‘measures the gap between the part of work as a social function and the having no part of those who carry it out within the definition of the common of the community.’¹⁴³ The political subject ‘workers’ thus displays a conflict, which Rancière calls dissensus. ‘A political subject’ he writes ‘is a capacity for staging scenes of dissensus.’¹⁴⁴

Rancière claims that the ‘subject’ of human rights (again, not an individual) is ‘enacted through a double negation. The subject of rights is the subject - or more accurately the process of subjectivation, that bridges the interval between the two forms of existence of those rights.’¹⁴⁵ Rights, he argues, exist in two forms: one, as written inscriptions; as concrete guarantees of certain conditions for existence, which must shape the way the community understands itself. This is true even when rights claims are not fulfilled – the existence of guarantees of rights acts to shape or affect the political space, even in the situation of being without rights.

¹⁴¹ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon: Routledge-Cavendish, 2007), p.106.

¹⁴² *Dis-agreement*, p.35.

¹⁴³ *Dis-agreement*, p.36.

¹⁴⁴ Rancière, ‘Who is the Subject of the Rights of Man’, in *Dissensus*, pp. 62-75 (p. 69).

¹⁴⁵ ‘Who is the Subject.?’ , p.67. .

Secondly rights exist in action, in the way in which the content of the right is established and its borders delineated by the practice of possessing rights. Rancière explains the two forms of existence of rights by reference to women's rights during the French Revolution; on the one hand women used the inscribed rights of the Declaration to show that they did not yet possess the rights they were entitled to; on the other their actions showed that they had the rights, for example to participate in the political process, which they did not possess by law. Rancière argues that 'they acted as subjects of the Rights of Man in the precise sense that I have mentioned. They acted as subjects that did not have the rights that they had and had the rights that they had not.'¹⁴⁶ For Rancière, then, the political subject of human rights is structured by a dissensus in which two types of possession of rights are displayed.

For Rancière, this is exactly the political potential (though not current reality) of human rights:

[t]he strength of those rights lies in the back-and-forth movement between the initial inscription of the right and the dissensual stage on which it is put to the test. This is why the subjects of the Soviet constitution were able to make reference to the Rights of Man in opposition to the laws that denied their effectiveness [...] When such groups can – and there are always individuals among them that do – make something of these rights to construct a dissensus against the denial of rights they suffer, they really have these rights.¹⁴⁷

However, in contemporary political practice Rancière sees an attempt to close the distance between the two relations to rights, to finally settle and decide the positive character of the subject of rights, rather than allow the productive tension to continue. Consequently, he argues, human rights begin to appear empty in some contexts:

[a]nd when rights are of no use, then just like charitable persons do with their old clothing, they are given to the poor. Appearing useless, these rights are sent abroad along with medicine and clothes to people deprived of medicine, clothes and rights. As a result of this process, the Rights of Man become the rights of those who have no rights.¹⁴⁸

Rancière suggests that when the subject of rights is fixed, rather than being allowed to maintain the ongoing process of subjectification the tension between the possession

¹⁴⁶ 'Who is the Subject...?', p.69.

¹⁴⁷ 'Who is the Subject...?', p.71.

¹⁴⁸ 'Who is the Subject...?', p.72.

and non-possession of rights becomes a binary, in which the poor are continually figured as the lacking subject.

When Rancière's discussion of dissensus is fully explored, it becomes clear that a Bildungsroman is very unlikely to be dissensual in his sense of the term. There are three reasons for this. First, Rancière's subject of human rights is collective, not individual. For Slaughter, the subject of human rights (and the protagonist of the Bildungsroman) is the individual who comes to be incorporated into the nation-state. For Rancière, the subject of human rights is a group in the demos. Second, Rancière's subject is brought into being by the scene of dissensus – which means that rights are truly possessed in the moment of dissensus, the dissensus is not a staging post on the way to fully incorporated personality.

That is, the dissensus for Rancière is what it means to possess rights – for Slaughter it means *not* fully possessing rights. Slaughter's dissensual Bildungsroman is one in which full incorporation has not yet occurred, and in the idealist form, there is a picture of what the fully-incorporated citizen might look like. What Rancière is suggesting, meanwhile, is that there is a sense in which human rights are fully realized at the moment where they are in question; that they have meaning precisely in the gap between their enunciation and their entrenchment in law. For Slaughter, the 'dissensual' Bildungsroman is produced by human rights' failures, their incompleteness, but Rancière does not see dissensus as incompleteness – he suggests that it is a sudden glimpse of the truly political.

Finally, Rancière's dissensus is unpredictable. It doesn't occur at the end of a teleological process, but appears suddenly. The Bildungsroman is a form concerned with the progressive development of an individual. It is difficult to imagine any Bildungsroman which could really be dissensual – collective/unpredictable – in Rancière's sense of the term. To reiterate, Rancière argues:

[t]he strength of [human rights] lies in the back-and-forth movement between the initial inscription of the right and the dissensual stage on which it is put to the test. This is why the subjects of the Soviet constitution were able to make reference to the Rights of Man in opposition to the laws that denied their effectiveness [...] When such groups can – and there are always individuals among them that do –

make something of these rights to construct a dissensus against the denial of rights they suffer, they really have these rights.¹⁴⁹

Slaughter writes:

[i]nternational human rights derive their energy from a [...] discrepancy that emerges when the proposition that such universal things exist is confronted with the historical evidence and experience that they do not; that is, the struggle for human rights occurs in the space between the world that law and discourse (including the idealist *Bildungsroman*) imagine and the one that they address in fact.¹⁵⁰

For Slaughter, the possession and non-possession of rights are opposed to one another, and human rights' 'energy'¹⁵¹ is a consequence of this gap between the world as it is and the world as it should be. This is why the *Bildungsroman* is so closely linked to human rights for him: it is a progressive genre of development, in which a particular state or stage of existence (for example, childhood and its association with the private life) can be replaced by another (the abstract identity of the person under the law). But Rancière is not proposing a 'discrepancy'¹⁵² he is proposing a 'back and forth'.¹⁵³ This indicates a more complicated relationship between the possession and non-possession of rights. Slaughter says that 'historical evidence and experience' indicate that promised 'universal things' such as rights do not exist.¹⁵⁴ For Rancière, though, where rights do not exist in fact they exist in the grasping of them. He writes that when groups who are denied their rights in practice 'make something of these rights to construct a dissensus against the denial of rights they suffer, they really have these rights.'¹⁵⁵

For me, Rancière suggests a more radical interpretation of the way human rights work than Slaughter's *Bildungsroman*-human rights analogy can contain. For Rancière, human rights are fragile and fleeting – they appear and then they disappear, and their possession is always entwined with non-possession. I do not think the *Bildungsroman*, with its predictable climax of social integration, is the literary form which can model or

¹⁴⁹ 'Who is the Subject...?', p.71.

¹⁵⁰ *Human Rights, Inc.*, p.178.

¹⁵¹ *Human Rights, Inc.*, p.178.

¹⁵² *Human Rights, Inc.*, p.178.

¹⁵³ 'Who is the Subject...?', p.71.

¹⁵⁴ *Human Rights Inc.*, p.178.

¹⁵⁵ 'Who is the Subject...?', p.71.

enact the possession of human rights in this sense. From here, this thesis develops in two connected directions.

Over the next two chapters I advance my own theory of how deviations from the Bildungsroman form can be understood. I agree with Slaughter that the Bildungsroman is a homology of the nation-statist version of human rights discourse. However, I argue that this model of rights-possession is always in tension with the idea that rights can be founded on humanness alone. If the Bildungsroman analogizes human rights discourse, I suggest that some variations from the form of the Bildungsroman might be read not merely to indicate the problems of real-life realization of rights but also to suggest the tension between the human rights-possessing citizen and the merely human. Reading Bildungsromane can therefore reveal how this tension acts as a limit-point for human rights discourse, its costs and its difficulties.

Having suggested that the ambiguity of possession is a limit-point for human rights discourse, in the final chapters of this thesis I return to a question I have raised here. The entwining of possession and non-possession is limiting for human rights discourse, and in Chapters Two and Three I show why this is the case. But for Rancière, the tension between possession and non-possession may, sometimes and somewhat unreliably, be the discourse's source of value. I have argued here that the Bildungsroman cannot be dissensual in Rancière's terms, but in Chapter Five I suggest that there are forms of writing which do allow human rights' delicate and troublesome difficulties of possession to be thought and understood more clearly.

Chapter Two: Child Soldier Narratives and Mere Humanness

Child soldier narratives directly employ the form of the Bildungsroman for the purposes of human rights campaigning. But where the traditional Bildungsroman aims at social incorporation, development in the child soldier narrative tends to be presented as interrupted and frustrated. In part, of course, this is because the texts' protagonists are the victims – and in many cases also the perpetrators – of serious human rights violations. It is logical to expect that when childhood is so disrupted, the form of the traditional coming-of-age narrative would come under significant pressure as it seeks to represent these children's experiences.

But in this chapter I argue that this is not all that is going on. The child soldiers tend to be depicted as vulnerable and isolated. But their vulnerability and isolation is not presented as a temporary condition produced by a particular situation. Instead it is their defining characteristic: it is who they are in the texts' terms. The projected end-point of the conventional Bildungsroman is the incorporation of the individual into society. But in the child soldier text which is the main focus of this chapter, *Girl Soldier: A Story of Hope for Northern Uganda's Children*, the child soldier's personal experience of trauma is textually separated from the discussions of the historical and political factors which produced the war she fought in.¹ I argue that in insisting on the separation of personal experience from context, *Girl Soldier* refuses the integration of the individual into the nation-state which is the Bildungsroman's usual resolution.

As we have seen, in his account of the relationship between literature and human rights, Slaughter focuses on the Bildungsroman for two connected reasons. In the first place, the form is homologous with his understanding of human rights discourse: he argues that human rights aim at the incorporation of the individual into the society of the nation-state, and that this is also the standard narrative arc of the Bildungsroman. Secondly, and because of this homology, the Bildungsroman can be

¹ Faith J.H. McDonnell and Grace Akallo, *Girl Soldier: A Story of Hope for Northern Uganda's Children* (Grand Rapids: Chosen Books, 2007).

used to promote and normalize human rights discourse. It therefore makes up for the inadequacies of international law: international human rights law is too weak to fully realize its aims, so the Bildungsroman transmits human rights norms in its place.

The child soldier narrative is a particularly direct example of this second point because it is a variation on the Bildungsroman that has been specifically used by human rights organizations for advocacy purposes. Because it is directly employed in this way, I propose that reading the child soldier narrative's deviations from the traditional conventions of the Bildungsroman is revealing about human rights discourse itself. In the Bildungsroman, the development from childhood to adulthood comes to signify the movement from private life to political identity. It is for this reason that Slaughter suggests it is analogous and complementary to human rights: he sees contemporary human rights discourse as an attempt to repair the rupture between man and the citizen through the figure of the person.

It is precisely this aspect of the Bildungsroman that *Girl Soldier* draws into question. Where the typical Bildungsroman is about the development of a child into an adult through her incorporation into the social-historical world, the child soldier narrative is a story about a child who, in the narrative, must remain a child, a maintenance of childhood which is accomplished through a distancing from society and from history. Slaughter suggests that the Bildungsroman and human rights discourse are closely related because both are concerned with the development of abstract personality. But the child soldier narrative is an example of a way in which the form of the Bildungsroman has actually been put to use by human rights discourse, and in the examples of child soldier texts that I consider, it is the pre-political merely human identity signified by the child that the texts seek to maintain and prolong.

In the previous chapter I argued that human rights discourse is characterized by a tension between the idea that rights can be possessed on the basis of mere humanness and the idea that national citizenship is essential for the realization of rights. Here I show that child soldier narratives employ the nationalist form of the Bildungsroman but do so in such a way as to delay its final moment of social incorporation. I argue that, in this way, they make the tension between the two models of rights possession apparent. I also suggest that they show why this tension is a limit-point for the discourse of human rights. The maintenance of childlike identity in the child soldier narrative is related to wider practices of decontextualization in human rights writing, and towards

the end of the chapter I discuss the uses to which such decontextualizing strategies are put. This leads me to argue that the human depicted through decontextualized writing bears a striking resemblance to Arendt's descriptions of the utterly rightless subject. That is, there is a risk of the violation, and the subsequent non-possession of rights, being repeated by the discourse which sets out to oppose it.

Human Rights and Narrative

It has been widely argued that story-telling is a crucial dimension of the practice of human rights NGOs; it is through the writing and disseminating of narrative that human rights organizations seek to halt human rights violations. For example, Hurst Hannum lists a number of possible NGO strategies for 'address[ing] a serious human rights concern', and it is notable how many of them use writing.² These include 'sending letters to the country in which the violations are taking place', 'contacting the media with information regarding the human rights violations that have occurred or are threatened' and 'issuing a report on the human rights situation in question based on an on-site investigation or, where that is not feasible, on other means of fact-finding'.³ Stanley Cohen notes Amnesty International's use of full-page newspaper advertisements, and discusses the effort expended on their style:

[t]he driving emotional message is 'a quiet rage'. The advertising agency described its brief as converting 'outrage into action'. The Amnesty promotions officer noted that the copy-writers of an Iraq advertisement 'are continually striking a nerve – it uses rage, but it is controlled and directed rage.'⁴

Moreover, as Kay Schaffer and Sidonie Smith have argued, 'over the last twenty years, life narratives have become one of the most potent vehicles for advancing human rights claims'.⁵ They argue that life narratives and human rights campaigns should be understood

as multidimensional domains that merge and intersect at critical points, unfolding within and enfolding one another in an ethical

² Hurst Hannum, *Guide to International Human Rights Practice*, 3rd edn (Ardsley, NY: Transnational Publishers, 1999), p.35.

³ Hannum, p.35.

⁴ Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge: Polity, 2001), p.201.

⁵ Kay Schaffer and Sidonie Smith, *Human Rights and Narrated Lives: The Ethics of Recognition* (Houndmills, Basingstoke: Palgrave Macmillan, 2004), p.1.

relationship that is similarly productive of claims for social justice and problematic for the furtherance of this goal.⁶

James Dawes goes further, and expresses an increasingly popular view, when he writes that '[a]fter years spent interacting with human rights and humanitarian fieldworkers, I have come to believe that human rights work is, at its heart, a matter of storytelling.'⁷ He suggests not only that there is a mutual interaction between narrative and the work of human rights organizations, but that human rights work itself can be understood as the production and utilization of narrative, the attempt to tell a story in such a way that it induces people to take particular types of action.

Child Soldier Narratives

The children who are the focus of child soldier narratives tend to be characterized by human rights campaigns as 'child soldiers' though, as the non-binding Paris Principles on the issue make clear, involvement in fighting is only one role which children have played in armed conflict:

'[a] child associated with an armed force or armed group' refers to any person below 18 years of age who is, or has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies, or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.⁸

Although NGOs had been attempting to raise awareness of the problem for some time, the significant change in the international consensus on the issue during the 1990s can be measured by the fact that the Convention on the Rights of the Child (which entered into force in 1990)⁹ allows children above the age of 15 to participate in armed conflict, despite strong opposition to this low minimum age from NGOs.¹⁰ By

⁶ Schaffer and Smith, p.2.

⁷ James Dawes, 'Human Rights in Literary Studies', *Human Rights Quarterly*, 31.2 (2009), 394-409 (p.394).

⁸ UNICEF, 'The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups' (2007) <<http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>> [accessed 24 August 2014] p.7.

⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UN Treaty Series 3 (CRC), available at: <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> [accessed 24 August 2014].

¹⁰ See Claire Breen, 'The Role of NGOs in the Formulation and Compliance with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict', *Human Rights Quarterly*, 25.2 (2003), 453-481 (pp.460-1).

2000, however, an Optional Protocol which, inter alia, requires states to prevent children under 18 from joining state armies or other armed groups was opened for signature.¹¹

In the period between these treaties, the issue had received a great deal of public attention, in large part due to focused and sustained NGO campaigning; the Coalition to Stop the Use of Child Soldiers – a joint initiative between a number of large human rights organizations, including Amnesty International, Human Rights Watch and World Vision – was, for example, formed in 1998.¹² The growing interest in this issue led to the creation of many narratives concerning child soldiers, ranging from the full-length non-fiction texts published by generalist commercial publishers, mostly located in Europe and North America, to novels and short films.¹³

The books published during the 1990s and 2000s which took child soldiers as principal subjects fall into three major groups. In the first category are the first person accounts written by a former child soldier who has typically left his or her home country – usually through the intervention of the UN or a non-governmental organization – and now lives in the US, Canada or Europe. A Ugandan example is China Keitetsi's memoir *Child Soldier*, which was first published in Denmark in 2002 and focuses on her

¹¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN General Assembly Resolution 54/263 (adopted 25 May 2000, entered into force 12 February 2002) U.N. Doc. A/54/49, available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>> [accessed 24 August 2014]. The CRC is the international system's most widely ratified human rights treaty; famously, or infamously, only 3 states have not ratified it: South Sudan, the newest state in the world, Somalia – which does not have a functioning government, and the United States – which has not ratified the convention even though it signed in 1995. As of 24 August 2014, 156 states are party to the Optional Protocol on the involvement of children in armed conflict. For the status of the CRC, including current number of ratifications, see the UN Treaty Collection, available at: <https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en> [accessed 24 August 2014]. For the status of the Optional Protocol to the CRC on the involvement of children in armed conflict, see: <https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en> [accessed 24 August 2014].

¹² It later changed its name to Child Soldiers International. See Child Soldiers International, 'Our History', <http://www.child-soldiers.org/our_history.php> [accessed 24 August 2014].

¹³ As Eleni Coundouriotis remarks, '[t]he recent proliferation of African child soldier narratives largely reflects' a 'new shape of African literature, written and marketed outside Africa'. Eleni Coundouriotis, 'The Child Soldier Narrative and the Problem of Arrested Historicization', *Journal of Human Rights*, 9.2 (2010), 191-206 (p. 192).

participation in the National Resistance Army, led by Yoweri Museveni.¹⁴ In some cases the writing of the memoir has been recommended as part of a therapeutic process of recovery; sometimes these books are written with the assistance of ghost-writers.¹⁵ A number of the memoirs have attracted significant publicity; the UK edition of *Child Soldier* features photographs of Keitetsi with Nelson Mandela, Bill Clinton, Whoopi Goldberg and Harrison Ford.¹⁶ Ishmael Beah's memoir *A Long Way Gone*,¹⁷ set in Sierra Leone, was for a time sold in US branches of Starbucks.¹⁸

In the second broad category, someone who has never been a child soldier – usually a European or American writer – compiles the stories of a number of child soldiers, sometimes in a particular army or country, sometimes more generally. This category includes books like Romeo Dallaire's book *They Fight Like Soldiers, They Die Like Children* and, centred on Uganda, Donald Dunson's *Child, Victim, Soldier: The Loss of Innocence in Uganda* and Peter Eichstaedt's *First Kill Your Family: Child Soldiers of Uganda and the Lord's Resistance Army*.¹⁹ The latter two texts combine sections of testimony from a number of different child soldiers with explanations of the history and context of the LRA. Additionally, there were some novels published in the 2000s which took child soldiers as subjects: these include Delia Jarrett-Macaulay's *Moses, Citizen and Me* (set in Sierra Leone) and Uzodinma Iweala's *Beasts of No Nation* (set in an unspecified country),

¹⁴ China Keitetsi, *Child Soldier: Fighting for My Life* (London: Souvenir Press, 2004). This memoir is unusual, among the texts which deal with Uganda, because it is centred on this earlier conflict (Keitetsi claims to have been involved between 1984 and 1995) and not on child soldiers' involvement in the Lord's Resistance Army.

¹⁵ For a discussion of co-writers in child soldier memoirs and the ways they are acknowledged in the texts see Maureen Moynagh, 'Human Rights, Child Soldier Narratives, and the Problem of Form', *Research in African Literatures*, 42.4 (2011), 39-59 (p.47).

¹⁶ Keitetsi, between p.178 and p.179.

¹⁷ Ishmael Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (New York: Farrar, Straus and Giroux, 2007).

¹⁸ Julie Bosman, 'Disturbing Memoir Outsells Literary Comfort Food at Starbucks', *New York Times* (10 March 2007) <<http://www.nytimes.com/2007/03/10/books/10star.html>> [accessed 5 September 2014].

¹⁹ Romeo Dallaire, *They Fight Like Soldiers, They Die Like Children* (London: Hutchinson, 2010). Donald H. Dunson, *Child, Victim, Soldier: The Loss of Innocence in Uganda* (Maryknoll: Orbis Books, 2008). Peter Eichstaedt, *First Kill Your Family: Child Soldiers of Uganda and the Lord's Resistance Army* (Chicago: Lawrence Hill Books, 2009).

both published in 2005 and Ahmadou Kourouma's *Allah is Not Obligated*, first translated into English (from the original French) in 2007, and set in Liberia and Sierra Leone.²⁰

History and Trauma in *Girl Soldier*

The primary focus of this chapter is *Girl Soldier*, subtitled *A Story of Hope for Northern Uganda's Children*. The book was co-authored by Grace Akallo and Faith McDonnell and published in 2007 by American Christian publishers Chosen Books. Grace Akallo was one of one hundred and thirty nine schoolgirls who were abducted on 9 October 1996 from a Catholic boarding school called St Mary's College in Aboke, in Lira District, northern Uganda, by the LRA. The rebels were chased by three of the school's teachers (including an Italian nun, Sister Rachele) who managed to negotiate the release of one hundred and nine students; thirty remained with the LRA. These thirty became known internationally as the Aboke girls. Five of the thirty were killed whilst with the group and by 2006 – when the LRA had moved outside of Uganda – twenty three of the others had escaped, Grace Akallo among them. She was abducted for seven months in total.

The Aboke girls received significant media attention.²¹ Moreover, in addition to *Girl Soldier*, there are two other books which focus on them in particular – Els de Temmerman's *Aboke Girls: Children Abducted in Northern Uganda* and Kathy Cook's *Stolen Angels: The Kidnapped Girls of Uganda*.²² In *Girl Soldier*, Akallo explicitly addresses the media interest their abduction generated, writing that, while she was in captivity, a senior LRA commander said to her '[y]ou should be killed, and we will see why you are

²⁰ Delia Jarrett-Macaulay, *Moses, Citizen and Me* (London: Granta, 2005). Uzodinma Iweala, *Beasts of No Nation* (London: John Murray, 2005). Ahmadou Kourouma, *Allah is Not Obligated* (London: Vintage, 2007).

²¹ See for example Jesper Strudsholm, 'Abducted in the Name of the Lord', *The Independent*, 7 June 1998 <<http://www.independent.co.uk/news/abducted-in-the-name-of-the-lord-1163464.html>> [accessed 3 September 2014].

Bamuturaki Musinguzi, 'Recollections of the Aboke Girls Abduction', *The Observer*, 31 January 2013 <http://observer.ug/index.php?option=com_content&view=article&id=23472:recollections-of-the-aboke-girls-abduction> [accessed 3 September 2014].

²² Els de Temmerman, *Aboke Girls* (Kampala: Fountain, 2001). Kathy Cook, *Stolen Angels: The Kidnapped Girls of Uganda* (Toronto: Penguin Canada, 2007).

more important than the others. Why are they after you and not the other children? Does it mean that the other children are not important?’²³ Akallo writes:

[w]hy were the Aboke girls singled out? It was because of Sister Rachele, who publicized our abduction. We were talked about on the radio all the time [...] People could not understand the thousands of missing children. It was too much to comprehend. But they could identify with thirty schoolgirls.²⁴

For Maureen Moynagh, there are other reasons that this group of children became a symbol for the wider crisis in texts about child soldiers. She writes that

[i]t is not surprising that there has been so much interest in the Lord’s Resistance Army (LRA) in northern Uganda, and especially in the ‘Aboke girls,’ [...] These works appeal to a particular kind of readership, one whose sensibilities can be gleaned in the focus on a group of girls who are well-educated, independent minded, and Christian. That is to say, they are much like many North American and European readers; the distance sympathy must leap is not too great in their case.²⁵

Moynagh begins her analysis of *Girl Soldier* by arguing that it is problematic ‘[i]f, in the place of a properly historicized analysis of the political situation, the circumstances of the suffering, one finds instead a communitarian narrative that summons the indignation of readers already constituted as a group (of Christians, of “Westerners”).’²⁶ But though the emphasis the text places on the Christianity of the Aboke girls is certainly troubling for this reason, what Moynagh does not discuss is the type of ‘historicizing’ *Girl Soldier* does perform. It is not really the case in *Girl Soldier* that a ‘communitarian narrative’ replaces ‘historicized analysis of the political situation’.²⁷ There is such analysis in the text, but the way this analysis is used is interesting and distinctive. It is this aspect of the text – the way it uses and positions historical context and political information – that I concentrate on here.

In the introduction– which is just one of the book’s three prefatory sections; the others are a foreword by Dan Haseltine, who is the singer in a Christian rock band

²³ McDonnell and Akallo, p.138.

²⁴ McDonnell and Akallo, p.139.

²⁵ Moynagh, p.44.

²⁶ Moynagh, p.43.

²⁷ Moynagh, p.43.

called *Jars of Clay* and a preface by Henry Orombi, an archbishop in the Anglican church of Uganda – Faith McDonnell writes:

Grace’s story and the story of Uganda are told in two voices in the coming pages. One voice is that of Faith McDonnell, an American researcher and writer who gives the historical context for the current crisis in Uganda [...] The other voice is that of Grace Akallo, who tells her own story of sinking into the abyss of hopelessness as an unwilling soldier [...] and finding her way back through a miraculous and dangerous escape.²⁸

As McDonnell explains, then, the text’s authors write separate, alternate chapters: Akallo describes her ‘own story’; McDonnell provides ‘the historical context’.²⁹

McDonnell’s history of Uganda is in some ways an unusual one. In particular, she tends to emphasize the activities of the Christian church in the country, and to read it as evidence of an underlying spiritual trajectory; this tends to result in a distinctive articulation of the meaning of history. ‘The Christian community is on the cutting edge of history that is being written today’ she writes. ‘It is the history of how God’s people are answering his call to save the children of northern Uganda.’³⁰ There are also moments of lurid description which reduce the complexities of the political situation to stark, somewhat Conradian, terms:

[a] raw and savage grief fills the air in Uganda. The sadness in that grief is overlaid with an evil so irrational and unfiltered that it seems like the stuff of folk tales. It belongs to a nether world of ogres, monsters and demons of the night that come in the dark to snatch the innocent.³¹

McDonnell also shows in some detail how the LRA’s insurgency is rooted in Ugandan politics and history.³² Though, as I’ve mentioned, the account places a great deal of stress on the church’s actions in Uganda, and though it is not scholarly in tone, McDonnell’s account does locate the LRA’s uprising in its political context.

²⁸ McDonnell and Akallo, p.22.

²⁹ McDonnell and Akallo, p.22.

³⁰ McDonnell and Akallo, p.26.

³¹ McDonnell and Akallo, p.30.

³² For a discussion on the various ways that ‘African trauma literature’, including child soldier memoirs, present and incorporate historical material see Robert Eaglestone, “‘You would not add to my suffering if you knew what I had seen’: Holocaust Testimony and Contemporary African Trauma Literature’, *Studies in the Novel*, 40.1-2 (2008), 72-85 (pp.79-80).

For example, in Uganda as elsewhere, the mechanisms of colonial governance, particularly the differential treatment of ethnic groups, continued to exert significant influence on the post-colonial state. According to Adam Branch, for example, the groups the British designated as distinct ‘tribes’ became ‘the administrative units of indirect rule’³³ and in this way, Blanton, Mason and Athow argue, ‘the British structured ethnic conflict into their system.’³⁴ What McDonnell traces in her sections of *Girl Soldier* is the process by which, as Branch argues, ethnic divisions which were integral to the system of indirect rule continued to play an important role in postcolonial politics as they ‘changed from a category of colonial administration to a category of political identity and action’ through which claims to national political representation were made.³⁵

McDonnell locates the emergence of the LRA in the fluctuating position of the Acholi, the ethnic group to which Joseph Kony belongs, on the national stage, describing how members of the group were conscripted into the army in large numbers under colonial rule and during Milton Obote’s first presidency, and how Acholi soldiers were then massacred by Amin on the basis of perceived loyalty to Obote. During Obote’s second presidency (1980-85), she writes:

Museveni and his National Resistance Army (NRA) began a guerrilla war against Obote in southern and northwest Uganda. They established bases in the Luwero Triangle, an area north of Kampala. Obote countered the resistance with brutality [...] During this conflict [...] Obote’s troops, mostly Acholi and Lango, another northern Nilotic ethnic group, massacred as many as three thousand civilians [...] Many Acholi believe that their troubles now stem from the Museveni government’s continuing bitterness toward them.³⁶

After the coup against Obote in 1985, led by the Acholi army officers Tito Okello Lutwa and Basilio Olara Okello, and thought to be motivated by the promotion of a Langi officer over an Acholi, there was a struggle for power between the NRA, Obote and Okello. McDonnell writes: ‘After their defeat by the NRA, Okello’s Acholi UNLA

³³ Adam Branch, ‘Exploring the Roots of LRA Violence: Political Crisis and Ethnic Politics in Acholiland’, in *The Lord’s Resistance Army: Myth and Reality*, ed. by Tim Allen and Koen Vlassenroot (London: Zed Books, 2010), pp.25-44 (p.26).

³⁴Robert Blanton, T. David Mason and Brian Athow, ‘Colonial Style and Post-Colonial Ethnic Conflict in Africa’, *Journal of Peace Research*, 38.4 (2001), 473-491 (p.480).

³⁵Branch, p.26.

³⁶ McDonnell and Akallo, p.73-74.

forces fled back to the north with their guns.³⁷ From this point, a number of northern insurgencies began against Museveni's government, including that of the LRA.

McDonnell situates the rise of the LRA in the context of the politicization of ethnic identity and in the competition for power in the state between the various groups produced by this politicization. Her account is not incontestable: she maintains, for example, that the LRA has no political cause underlying its actions, quoting an International Crisis Group report which states that 'the LRA is not motivated by any identifiable political agenda, and its military strategy and tactics reflect this.'³⁸ Academic work on the conflict, by contrast, has sought to combat the perceived inexplicability of the LRA; Sverker Finnström draws attention to the LRA's manifestos, and the way these relate to the experiences of those living in the north of the country, who have both historically and under Museveni had less access to governmental resources and power.³⁹ Nonetheless, without wishing to claim that McDonnell's account is comprehensive, free from bias or in any way a model for the historiography of an African country, I do suggest that it offers an historicization of the conflict.

In contrast, Akallo's first chapter begins: '[t]he soil has become my blanket. Where am I? Maybe home? No, this is not home.'⁴⁰ In this, the opening section to the book proper, she has been buried alive; she is in the dark, confused, and utterly disorientated. Even in the sections which recount her life before she was abducted into the LRA, this tone dominates: "'Grace, where are you?'" My mother called. I jumped out of bed and ran outside with my eyes closed. I suddenly was so scared that I could not even answer her.'⁴¹ In fact, Akallo's first three chapters all begin with her waking up suddenly. This is the opening of Chapter Three:

'[w]ake up! It's time to go!' a voice screams. Yes, the day has begun in the usual tedious manner [...] *When will this end, and why did I come back from that grave?* The only interesting thing in this life is the pain.⁴²

³⁷ McDonnell and Akallo, p.75.

³⁸ Quoted in McDonnell and Akallo, p.116.

³⁹ Sverker Finnström, 'An African Hell of Colonial Imagination? The Lord's Resistance Army in Uganda, Another Story', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen and Koen Vlassenroot (London: Zed Books, 2010), pp.74-89.

⁴⁰ McDonnell and Akallo, p.27.

⁴¹ McDonnell and Akallo, p.63.

⁴² McDonnell and Akallo, p.35, italics original.

This creates an effective narrative patterning, which contrasts the horror of waking up to the LRA with her life in her family. But it also continually positions her as surprised and emerging from the vulnerability and disorientation of sleep, to the experience of being shocked.

In the structure of the book historical context and traumatic experience are rigidly separated from each other, ‘in two voices’, as McDonnell writes, and it is the white American writer who voices context.⁴³ Akallo is, through the way the text is organized, separated from the political history of her own country and the history of the rebel group which abducted her. While historical context and explanation do appear in *Girl Soldier*, they appear not through integration but through splitting: Akallo’s narrative recounts ‘the abyss of hopelessness’ where McDonnell’s chapters locate this distress historically.⁴⁴ In *Girl Soldier*, the effect of this is to split Akallo from the political factors underlying the LRA’s insurgency and its place in Uganda’s history.

I argue that this is a crucial way in which *Girl Soldier* distinguishes itself from the conventions of the Bildungsroman. Slaughter suggests that the incorporation of the political identity of citizen into the nation-state is the envisaged conclusion of Bildungsromane. Even when it does not occur, or is problematized, the expectation of this resolution shapes the text. But *Girl Soldier* repeatedly frustrates this envisaged conclusion, even as a possibility. For example, girl soldiers have tended to be represented in child soldier narratives primarily and predominately as the victims of sexual violence, rather than as the victims or the perpetrators of other types of abuse. Myriam Denov argues that girl child soldiers were at first marginal to representations of child soldiers and that ‘when girls with armed groups are discussed [...] there has been a tendency for them to be portrayed predominately as silent victims particularly as “wives”, in tangential supporting roles, and as victims of sexual slavery’.⁴⁵

Throughout *Girl Soldier*, as throughout almost all of the literature on child soldiers, including this quote from Denov, the term ‘wives’ in quotation marks is ubiquitous – it is the conventional way of suggesting the pseudo-family structure of

⁴³ McDonnell and Akallo, p.22.

⁴⁴ McDonnell and Akallo, p.22.

⁴⁵ Myriam Denov, *Child Soldiers: Sierra Leone’s Revolutionary United Front* (Cambridge: Cambridge University Press, 2010), p.13.

organized sexual violence against girls in armies and armed groups. For example, McDonnell writes:

Amnesty International adds that one of the main reasons for which the LRA takes girls is to use them for forced ‘marriage’ to the senior LRA soldiers and commanders. Good soldiers and top leaders are rewarded with ‘wives.’ Amnesty International says that the number of ‘wives’ a rebel has is a source of prestige.⁴⁶

The quotation marks multiply here. They are supposed to indicate the dislocation of the words ‘wife’ and ‘marriage’ from their standard meanings; the children aren’t really wives because they are children, because they have not freely entered into the relationships in question, because to be a wife in this context means simply to be the victim of sexual violence. The persistent use of these words evokes the idea of developed adult life, a life with socially recognized ties, only to deny it by the distancing of the quote marks.

There is not an adequate word in English for what these girls were and are forced to endure. The girl soldier described as a ‘wife’ is placed in the vicinity of a socially recognized adult identity, only to be somehow stranded by the term’s ironic or provisional usage. She is a wife who is not quite a wife, and a soldier who is not quite a soldier and there is therefore a sense of suspension before adult social roles. This is a consequence of the rights violation that she suffers. But this sense of suspension is then repeated in the structure of the text itself, where contextualizing historical information is offered, but is distinguished from the first-person account of suffering.

An explanation for this lies in the symbolic value the child has for human rights discourse, and the meanings the discourse attaches to childhood. R. Charli Carpenter writes that for human rights discourse ‘the symbolic victim must be seen as entirely lacking agency; s/he must be both unable to help her/himself and an unequivocal non-participant in the political events from which his/her misery results [...] the victim must be unambiguously “innocent.”’⁴⁷ Carpenter suggests here that innocence within the human rights frame is seen to be incompatible with participation in political events – it is not merely a more generalized form of passivity or lack of knowledge. Erica

⁴⁶ McDonnell and Akallo, p.132.

⁴⁷ R. Charli Carpenter, “Women, Children and Other Vulnerable Groups”: Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue’, *International Studies Quarterly*, 49.2 (2005), 295-334 (p.316).

Burman argues that children in particular function for human rights discourse ‘as indices of vulnerability and need that *transcend* culture and politics’.⁴⁸ The child, that is, has a symbolic value within the human rights imagination which relies upon her non-politicization.

A clear example of this assumption about childhood can be observed in Els de Temmerman’s book *Aboke Girls*. The text is an account of the same abduction as *Girl Soldier* and is based on interviews with a number of those involved, including the girls themselves, a male child soldier in the LRA at the same time as them, and the teachers at St Mary’s College. The text incorporates the material gathered through these interviews into a novelistic narrative, in which the reader is invited to view events from the characters’ perspectives, and there is no way of determining to what extent de Temmerman has invented or expanded details.

After the girls have been abducted and Sister Rachele has been attempting to raise as much awareness of their situation as possible, she is invited to speak to President Museveni on the phone. She tells him

I have to find a way to get to Kony [...] [m]aybe through his spokesman in Nairobi. I also would like to meet the President of Sudan. There are rumours that our children are being taken to Sudan.⁴⁹

Museveni replies that he will arrange a trip to Nairobi, to meet the head of the International Committee of the Red Cross, who might be able to help her meet Joseph Kony’s representative.

[Sister Rachele] took another breath as she looked at the airport looming in the distance. There was so much she didn’t understand. There were so many actors involved whose motives she didn’t know. But maybe she didn’t need to know them. She was not to play politics or to take sides. Her task was to campaign for the release of her girls and all the abducted children. For there was one thing she knew for sure: it was terribly wrong to involve children in war. Whatever reasons adults might have to fight, children should at all times be left out!⁵⁰

⁴⁸ Erica Burman, ‘Innocents Abroad: Western Fantasies of Childhood and the Iconography of Emergencies’, *Disaster: Journal of Disaster Studies and Management*, 18.3 (1994), 238-253 (p.243), my emphasis.

⁴⁹ de Temmerman, p.41.

⁵⁰ de Temmerman, p.42.

Note the way that children function here as a type of defence against the political. The complexities of international politics – Museveni has just told her that she must meet with the Libyan ambassador because ‘[w]e have no direct relations with the government of Sudan [...] [t]he Libyan envoy is our go-between’⁵¹ – can legitimately be left out of the discussion because of the moral certainty that children should not be involved in war. This is a familiar argument, but it is not necessarily an obvious one: it is conceivable that the horror of forcing children to fight in wars, separating them from their families and from their education, demands – precisely because of its very severity – a more developed understanding of politics. (*Why* is the government of Sudan involved, we might ask).⁵² But the fact that the victims are children is presented here as the reason Sister Rachele may not need to know about the political actors’ motives.

Children are understood to be outside or beyond politics. *Girl Soldier* may certainly be read as an attempt to reify this version of childhood: Akallo’s narrative is interspersed with political detail but the two stories cannot be integrated, and in this way the qualities of innocence – which is constructed as not-knowing as much as not being corrupted by violence – are performed and maintained. Of course, the presentation of Akallo as a child in this sense is based on a contradiction. The definition of childhood in international law is dependent only on age; the Convention on the Rights of the Child says that a child is anyone below the age of eighteen years.⁵³ Meanwhile, the definition of the child soldier from the Paris Principles says that a child soldier is ‘[a]ny person below 18 years of age who is, or has been recruited or used by an armed force or armed group in any capacity’.⁵⁴ That is, a person under the age of eighteen years old who ‘has been’⁵⁵ but is no longer involved in an armed group is still a child soldier, but once older than eighteen years, becomes someone else, undefined. The CRC’s reliance on the age of eighteen as an automatic, fixed dividing line between

⁵¹ de Temmerman, p.41-2.

⁵² On this point, see Mareike Schomerus, ‘The Lord’s Resistance Army in Sudan: A History and Overview’, (Geneva: Small Arms Survey, 2007).

⁵³ CRC, art.1.

⁵⁴ ‘The Paris Principles’, p.7.

⁵⁵ ‘The Paris Principles’, p.7.

childhood and adulthood has been criticized for being mechanistic and Western-oriented,⁵⁶ but it pictures childhood as a state which passes at a certain point in time.

Child soldier narratives draw their particular power and resonance from ideas associated with the condition and experience of childhood but almost all of them are actually written by adults. Michael Freeman says of the Covenant on the Rights of the Child that '[t]here is not a little irony in having a Convention which emphasises participatory rights [...] whilst foreclosing the participation of children in the formulation of the rights to be encoded'; if we wanted to know how children understand their rights, or what a child understood by the notion of rights, then we wouldn't turn to the Convention on the Rights of the Child because it is entirely an adult construction.⁵⁷ There is a similar irony at work in a text like *Girl Soldier*. This is demonstrated rather vividly by the front cover of the book, which has a big picture of a young girl looking scared, but this is not a picture of Grace Akallo (the photo credit simply reads 'cover photo of girl'). Akallo was an adult when she wrote the book, and is pictured, as an adult, (in a much smaller photograph) on the back cover.

Kony 2012

In March 2012 Invisible Children released a thirty-minute film called *Kony 2012* in which its co-founder, Jason Russell, is shown travelling to Uganda to meet a former child soldier called Jacob Acaye.⁵⁸ In response to hearing about the murder of Acaye's brother by the LRA, and about the wider destruction and insecurity caused by the army, Russell pledges to bring Joseph Kony to the attention of the international community and to justice at the International Criminal Court. The ICC had issued a warrant for Kony's arrest in 2005. The dissemination of the film through social media was successful to an unprecedented degree (it had over ninety nine million views on

⁵⁶ Because, as Geraldine Van Bueren writes, 'states with a high infant mortality rate and a low age for life expectancy allow children to participate at a lower age in the performance of duties which help the survival of all members of the family; this is particularly so in rural communities.' Geraldine Van Bueren, *The International Law on the Rights of the Child* (London: Martinus Nijhoff, 1998), p.36. Also note that while 'the Convention establishes 18 as the standard to which State Parties should strive to extend their special protection [...] article 1 allows States Parties which set a lower age for the end of childhood to retain that lower age.' Van Bueren, p.37.

⁵⁷ Michael Freeman, 'The Future of Children's Rights', *Children & Society*, 14 (2000), 277–293 (p.282).

⁵⁸ Invisible Children, *Kony 2012* (2012), available at: <<https://www.youtube.com/watch?v=Y4MnpzG5Sqc>> [accessed 24 August 2014].

YouTube by June 2014) and the film's popularity provoked an equally intense backlash, with numerous journalists and bloggers pointing out the film's inaccuracies (notably, that the LRA had not been active in northern Uganda for six years), simplistic and patronising framing and its focus on the dichotomy between American saviour and African 'bad guy', with comparatively little attention to the victims of the conflict.⁵⁹

The front cover of *Girl Soldier* has 'a girl' standing in for Grace Akallo and in *Kony 2012*, I suggest, the filmmaker Jason Russell's own small son, Gavin, acts as a similar kind of surrogate for the child soldier at the centre of the film, Jacob Acaye. Acaye is shown briefly in the film taking part in Invisible Children's advocacy efforts and in footage from some years earlier, when he was a night commuter (a child who travelled from rural areas into the towns to avoid being abducted by the LRA). He is also shown at a zoo with Russell and being scared by a dolphin, with Russell reassuring him that dolphins 'are different than sharks'. Here, Jacob is in a child's role, being educated by Russell.

However, it is Gavin who is on screen first, and Gavin who features in the film far more prominently. After Gavin – a blonde child who is about four years old – is introduced to the viewer, Russell links Gavin to Jacob by saying that his life had been changed years before by 'another boy' – Jacob – and that if his 'son were kidnapped and forced to kill it would be all over the news.' This establishes them as parallel in some way. But where there is very little information in the film about Jacob's life after his time in the LRA and no details are given about his interests, Russell says that his son 'loves playing the on the trampoline, being a ninja and dancing' and the viewer is shown footage of Gavin doing all of these things. The crucial point of these seemingly irrelevant details seems to be that the activities are quintessentially childish. Gavin is onscreen much more than Jacob – there seems little reason for this, except that he

⁵⁹ See in particular Joshua Keating, 'Joseph Kony is not in Uganda (and other complicated things)',

Foreign Policy (2012)

<http://blog.foreignpolicy.com/posts/2012/03/07/guest_post_joseph_kony_is_not_in_uganda_and_ot_her_complicated_things?wp_login_redirect=0> [accessed 23 August 2014].

Angelo Opi-Aiya Izama, 'Acholi Street. Stop #Kony 2012. Invisible Children's Campaign of Infamy', *Angelo Opi-Aiya Izama* (2012) <<http://angeloizama.com/2012/03/07/acholi-street-stop-kony2012-invisible-childrens-campaign-of-infamy>> [accessed 23 August 2014]. Elliott Ross, 'The Kony 2012 show',

Africa is a Country (2012) <<http://africasacountry.com/phony-2012-risible-children/>> [accessed 23 August 2014].

performs a certain version of childhood sweetness and charm, that he embodies childishness in a way that Jacob cannot as he has, inevitably, grown up.

But in *Kony 2012*, the attempt to suspend or prolong childhood becomes even more pervasive than in *Girl Soldier*; Russell told the *New York Times* that Invisible Children see themselves as ‘the Pixar of human rights stories,’⁶⁰ an analogy which seems, among other things, to position the likely *audience* for its productions as children or as child-like. Correspondingly, there is a suggestion throughout the film that its viewers are, or should want to be like, children – here it is not just the child soldier who is kept in a state of childhood; to engage with the film as a viewer is also to take up this position to some extent. This is another function played by Gavin in the film. Nine minutes in – after upsetting footage of Jacob, the former child soldier, describing his experiences, and crying, Russell says that he is going to explain to his son what his job is. He says: ‘He [Gavin] doesn’t know what the war’s about or who Joseph Kony is, so I’m going to explain it to him for the first time.’ Again, the child soldier’s traumatic experience is presented separately from – and, here, prior to – the explanation of ‘what the war’s about.’ This is one of the only explanations of the conflict in the film and it is very brief and non-specific; the assumption seems to be that an explanation of a protracted conflict suitable for a small child can also function as an explanation for a global audience.

Moreover, Gavin’s way of conceptualizing the conflict ends up shaping the way it is portrayed in the film; Gavin is asked what his Dad does for a living and he replies, ‘you stop the bad guys being mean’. Russell asks who ‘the bad guys’ are and Gavin replies ‘Star Wars people’. Then Russell shows him a picture of Joseph Kony and says ‘*this* is the bad guy’. The childish language Gavin uses – ‘bad guys’ – is taken up and applied to Kony by Russell. Similarly, Luis Moreno Ocampo, the Chief Prosecutor at the International Criminal Court until mid-2012, is shown in the film saying that the way to stop Kony is to have him arrested. The film immediately switches back to Gavin who says that ‘we should stop Kony’. Then photographs of Moreno Ocampo and Gavin are shown next to each other, before the picture moves outwards to show a wall of other photographs. The implication seems to be that the opinions of the child and

⁶⁰ Josh Kron and J. David Goodman, ‘Online, a Distant Conflict Soars to Topic No. 1’, *The New York Times* (8 March 2012) <http://www.nytimes.com/2012/03/09/world/africa/online-joseph-kony-and-a-ugandan-conflict-soar-to-topic-no-1.html?_r=0> [accessed 24 August 2014] (para.15 of 26).

the opinions of the prosecutor are essentially interchangeable. Finally, one of the most oddly troubling things about the film is the parallel it draws between the problem it is setting out to solve – the problem of children affected by conflict – and way it articulates its methods of solving them: it describes its early campaign efforts as ‘funded by an army of young people’. It is ‘youth’ which unites both the child soldiers and those who seek to help them, in the film’s imagery.

Child Soldier Narratives and the Bildungsroman

As Eleni Coundouriotis argues, therefore:

[c]hild soldier narratives are symptomatic of an arrested historicization in part because they become trapped in a rhetorical effort to restore the childhood innocence of their narrator and, as a result, produce a metaphor of African childhood that is politically limiting as a characterization of the historical agency of the continent’s peoples.⁶¹

One of the ways in which these narratives attempt to ‘restore the childhood innocence of their narrator’,⁶² in her account, is through the way they adopt the form of the Bildungsroman.

In child soldier memoirs, she argues, the child soldier initially believes herself to be guilty and irreparably damaged by her role in armed conflict but the plot of the text is the growing realization, facilitated NGOs, teachers and so on, that in fact the child soldier is herself a victim. ‘The recovery narrative sets the stage for the substitution of the perpetrator identity by the victim identity’, Coundouriotis writes, and in this way the ethical problem becomes a motor for the movement of the story and is resolved by it.⁶³

Such narratives allow ‘for the problem of responsibility in the war to be shifted onto the task of recovery itself.’⁶⁴ The memoirs tend, therefore, to be ‘easily assimilable to the novel of education’⁶⁵ because they are structured around the replacement of one identity – perpetrator – with another – victim – where the movement between these identities gives ‘the impression of a linear, progressive narrative’.⁶⁶ The focus of the

⁶¹ Coundouriotis, p.192.

⁶² Coundouriotis, p.192.

⁶³ Coundouriotis, p.194.

⁶⁴ Coundouriotis, p.192.

⁶⁵ Coundouriotis, p.202.

⁶⁶ Coundouriotis, p.194.

memoirs, moreover, is on the drama of the individual's recovery, self-realization and development, and not on the wider social and political forces which create the wars the children participate in.

She argues that the Bildungsroman is put to work for an individualist purpose in the child soldier narrative. The story of an individual's development is brought to the foreground at the expense of social factors. She suggests that:

[f]ramed as a human rights literature, the child soldier narrative is too often sentimentalized and co-opted by ideas of the self that serve its accommodation with a largely first world, distant reader. The complexity of the historical, political, cultural, as well as individual circumstances of child soldiers requires the deployment of a less literal, more ironic and even allegorical method of narrative representation, similar to what we find already in motion in the broader literary convention of the war novel in Africa.⁶⁷

That is, she suggests, when the Bildungsroman form is echoed in the child soldier narrative, it stresses the self, rather than the self's place in the social order. This is, of course, very different to Slaughter's model of the human rights-Bildungsroman model, which links the discourse and the form on the basis of their shared goal of the individual's incorporation into society.

For Slaughter, the reason that human rights and the Bildungsroman can exist in a close relationship is the way in which the Bildungsroman models the relationship between the individual and society. This of course does not mean that Bildungsromane need to include historical detail, only that they are predicated on the idea that the individual's life means more when it is not solely theirs, that an individual should seek to become incorporated into society and to take on a socially significant role. In suggesting that 'arrested historicization'⁶⁸ is performed *through* the memoirs' adoption of the Bildungsroman form, Coundouriotis underlines what unusual Bildungsromane these are.

On the other hand, she argues, novels (rather than memoirs) about child soldiers tend to treat such notions of individualized progressive development ironically. *Allah is Not Obligated*, for example, has a circular narrative: John Walsh has described this

⁶⁷ Coundouriotis, p.203.

⁶⁸ Coundouriotis, p.192

novel as a ‘deformation of the African Bildungsroman in French’⁶⁹ and Coundouriotis argues that:

[i]f the Bildungsroman traditionally ends in compromise and the hero’s acceptance of limits on his nonconformity, it also creates a momentum to move forward, albeit on a conventional path. The obsessive repetition of the story of childhood that Kourouma sets up inhibits such moving forward and performs the arrested historicization of the child soldier narrative, drawing critical attention to it.⁷⁰

This novel is thus able to emphasize the troubling ‘arrested historicization’ which is a feature of child soldier texts.⁷¹

Maureen Moynagh argues that human rights narratives are typically dependent on a clear distinction between victim and perpetrator and pay little attention to potential moral ambiguities. Where sympathy is perceived to be dependent upon the rigorous policing of the division between the good and innocent, and the bad and culpable, the child soldier problematizes the very foundations of the human rights narrative’s conventions because she is at one and the same time a victim who has suffered and an agent of the suffering of others.

Moynagh discusses the way child soldier narratives navigate the division between the victim and the persecutor, the innocent and the guilty; the division which is, as she sees it, the very grounds on which human rights narrative itself is built. She argues that the child soldier narrative complicates the genre of writing it belongs to at the same time as it must reference its tropes and typologies; the child soldier narrative must conform to generic conventions (particularly relating to the presentation of innocence) in order to be recognized as a human rights narrative and to circulate as such, but, at the same time, the figure of the child soldier seems to stretch some of these conventions to breaking point.

For her, it is because the child soldier narrative poses a difficulty to the conventions of writing about human rights issues that the form of the Bildungsroman is subject to being stretched. ‘Given the ways the child-soldier figure tests the limits of human rights discourse, it is not surprising that the memoirs [...] invoke the trope of

⁶⁹ Quoted in Coundouriotis, p.202.

⁷⁰ Coundouriotis, p.203.

⁷¹ Coundouriotis, p.192.

Bildung apparently in order to challenge its forward-looking developmental thrust.⁷² The Bildungsroman is typically concerned with development but, Moynagh argues, “[t]he meaning of these memoirs ultimately centres less on “normal” development than on its “interruption,” that is to say, on the exceptional experience of being a child soldier.⁷³ The experience of being a child soldier represents something which cannot be absorbed into the traditional structures of growing-up narratives and so, she writes:

Bildung in this case is confined to the beginning and the end of the narrative; the considerable narrative durée in between has to be understood, since it can hardly be ignored, as an error, an interruption, an experience to be disavowed so that the process of Bildung can continue apace.⁷⁴

The child soldier narratives engage ambivalently with the conventions of the Bildungsroman, replacing linear development with interruption and suspension. Moynagh suggests that what becomes readable through such ambivalence is the way the figure of the child soldier challenges human rights discourse. Moynagh associates human rights with the Bildungsroman. Therefore, in the differences between the child soldier memoir and the conventions of the Bildungsroman, she suggests that we can read the difficulties human rights discourse has when faced with complex questions of guilt and innocence. She suggests that:

the kinds of wars that produce child soldiers pose a resolute challenge to the impulse toward Bildung in human rights discourse, which depends on relative social stability to confirm childhood innocence [...] The memoirs dwell instead on a kind of arrested development, and make it the basis both of their appeal for justice and a more unsettling account of identity and belonging forged through violence.⁷⁵

Like Moynagh, I understand child soldier narratives to be characterized by an arresting of development. But I read such interruptions differently. Instead of seeing human rights discourse at its limits in the attempt to deal with the problematic agency of the child soldier, I argue that through the child soldier narratives’ use of form we can identify a tension which is integral to the discourse itself. In my account, it is not that

⁷² Moynagh, p.49.

⁷³ Moynagh, pp.49-50.

⁷⁴ Moynagh, p.49.

⁷⁵ Moynagh, p.50.

‘arrested development’⁷⁶ reveals something with which human rights cannot cope. It is that this halting of the Bildungsroman, is produced by human rights discourse itself.

It is of course not surprising that texts centrally concerned with childhood would feature children but what is important is the way ideas to do with childhood are manipulated, and the effects these manipulations have; the narratives’ attempts to maintain and prolong childhood, partially through the distancing of the child from issues of historical and political context or social role. This suspended child-like state is a textually constructed identity, and this is crucial to understanding it. To be a victim of human rights abuse might well result in a purely given existence. But this type of existence is consciously and explicitly maintained in the texts. It could therefore be suggested that the violation the book is written to oppose is actually repeated and re-enacted by the text itself. I argue that this is not incidental, and nor is it a consequence of challenge posed to the simple moral frames of human rights discourse by the wars in which child soldiers fight, as Moynagh argues. Rather, the variations on the form of the Bildungsroman I have been discussing, in which the child is required to remain a child, are the consequence of the way human rights discourse operates. I will make this case through a wider consideration of human rights’ narrative practices.

‘Personal Stories’ and the Human Rights Movement

Amnesty International began as the ‘Appeal for Amnesty’ in 1961. Peter Benenson, a British lawyer, had read a newspaper article about two Portuguese students imprisoned for drinking a toast to freedom in a restaurant. (In line with the general obscurity of human rights’ origins, this newspaper article has never been identified).⁷⁷ In response to this article and to his earlier experience observing trials internationally he organized a campaign to draw public attention to those in prison around the world for their political or religious views alone. On 28th May 1961 the *Observer* published a front-page article called ‘The Forgotten Prisoners’ in which Benenson explained the Appeal:

[o]pen your newspaper any day of the week and you will find a report from somewhere in the world of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his

⁷⁶ Moynagh, p.50.

⁷⁷ See Tom Buchanan, ‘The ‘Truth Will Set You Free’: The Making of Amnesty International’, *Journal of Contemporary History*, 37.4 (2002), 575-597 (p.576, fn 6) for an account of an attempt to locate the article in question.

government. There are several million such people in prison - by no means all of them behind the Iron and Bamboo Curtains - and their numbers are growing. The newspaper reader feels a sickening sense of impotence. Yet if these feelings of disgust all over the world could be united into common action, something effective could be done.⁷⁸

It is ‘feelings of disgust’ which are presented as potential motors of change; if these feelings are united and transformed into ‘common action’, Benenson suggests, ‘something effective could be done’.⁷⁹ This places the emphasis on feelings – rather than, say, clear understanding or analysis.

Benenson went on to note that the UDHR guaranteed the right to freedom of thought, conscience and religion, and the right to freedom of opinion and expression, and announced the founding of an office in London to investigate those individuals the Appeal designated as ‘Prisoners of Conscience’.⁸⁰ A Prisoner of Conscience was to be defined as

[a]ny person who is physically restrained (by imprisonment or otherwise) from expressing (in any form of words or symbols) an opinion which he honestly holds and which does not advocate or condone personal violence.⁸¹

The aim of the campaign was, Benenson wrote, ‘to mobilise public opinion quickly and widely’ because ‘governments are by no means insensitive to the pressure of outside opinion. And when world opinion is concentrated on one weak spot, it can sometimes succeed in making a government relent.’⁸² To this end Benenson announced that: ‘a Penguin Special called *Persecution 1961* will be published as part of our Amnesty Campaign. In it are stories of nine men and women from varying political and religious outlooks, who have been suffering imprisonment for expressing their opinions’⁸³

Benenson suggested that ‘[t]he technique of publicising the personal stories of a number of prisoners of contrasting politics is a new one’ and that it had ‘been adopted

⁷⁸ Peter Benenson, ‘The Forgotten Prisoners’, *The Observer* (28 May 1961, reprinted online 27 May 2001) <<http://www.theguardian.com/theobserver/2001/may/27/life1.lifemagazine5>> [accessed 3 April 2014] (para.1 of 11).

⁷⁹ Benenson, (para.1 of 11)

⁸⁰ UDHR, art.18 and art.19.

⁸¹ Benenson, (para. 4 of 11).

⁸² Benenson, (para.3 of 11).

⁸³ Benenson, (para.5 of 11).

to avoid the fate of previous amnesty campaigns, which so often have become more concerned with publicising the political views of the imprisoned than with humanitarian purposes.⁸⁴ As Slaughter notes, '[i]n Benenson's formulation, the "personal story" of the religious or political "non-conformist" is not itself a political story; that is, the "personal story" is something worth defending in its own right.'⁸⁵

Tom Buchanan argues that in its early days Amnesty was distinctive and attractive because it was able to reframe the public discussion of political prisoners in Britain. He suggests that earlier, in the 1950s, various left-wing organizations had been aware of and interested in individuals imprisoned by right-wing governments. But, he writes,

such campaigns had always been seen as a part of the political struggle – hence, a victory for the campaign in the form of a released prisoner would automatically be seen as a defeat for the regime that had held them.⁸⁶

Consequently, 'British communists refused to acknowledge the existence of political prisoners under Soviet-bloc regimes, and support for prisoners in Eastern Europe was typically left to Catholic or rightwing organizations.'⁸⁷ Amnesty, on the other hand, had a 'simple moral message that offered to transcend the Cold War.'⁸⁸

For Buchanan, the key point is not that Amnesty was able to infuse political debates with moral considerations but rather that it placed the predicament of the unfairly imprisoned within an entirely different and separate narrative from the political. Amnesty's campaigning on behalf of individual prisoners of conscience was not to be based on agreeing with their political views – Benenson's *Observer* article quotes Voltaire: 'I detest your views, but am prepared to die for your right to express them' – but rather on the issue of the imprisonment itself.⁸⁹

⁸⁴ Benenson, (paras. 3 and 7 of 11).

⁸⁵ Joseph Slaughter, 'Rights on Paper', in *Theoretical Perspectives on Human Rights and Literature*, ed. by Elizabeth Swanson Goldberg and Alexandra Shultheis Moore (Abingdon: Routledge, 2012), pp.xi-xiv (p.xi).

⁸⁶ Buchanan, p.579.

⁸⁷ Buchanan, p.579.

⁸⁸ Buchanan, p.595.

⁸⁹ Benenson, (para. 4 of 11).

The new technique Benenson was inaugurating in his *Observer* article implied that the ‘political views’ which had led to imprisonment – and the place these views occupied in the politics of the country in question – could be split off and considered separately from the fact of imprisonment, to be described in a ‘personal story’.⁹⁰ This division of the individual from her context was underlined by the way in which, when Amnesty supporters groups were first formed, all of them were focused on three prisoners each: one prisoner from each of what were then known as the first, second and third worlds.⁹¹ The priority was the reality that the individual was in prison, rather than the competing social forces, movements or events which led to imprisonment in the first place; for this reason very different prisoners holding very different views in different kinds of political situation could be understood as a group with something in common.

‘Personal stories’ have remained of central importance to the work of human rights NGOs; Slaughter writes that ‘[p]ersonal stories are the contemporary currency of human rights projects’.⁹² Such ‘personal stories’ still tend towards an emphasis on the fact of the human rights violation rather than the situation of that violation in its political context. Consider Elaine Scarry’s description of reading a letter from Amnesty International:

Amnesty International’s ability to bring about the cessation of torture depends centrally on its ability to communicate the reality of physical pain to those who are not themselves in pain. When, for example, one receives a letter from Amnesty in the mail, the words of that letter must somehow convey to the reader the abrasiveness being experienced inside the body of someone whose country is far away, whose name can barely be pronounced, and whose ordinary life is unknown except that it is known that ordinary life has ceased to exist.⁹³

Scarry stresses Amnesty’s vivid representation of pain and the way this is thought to spur a certain imaginative response, an imaginative link between two geographically distant people. But victims of torture, the people in pain, are those with difficult to

⁹⁰ Benenson, (paras. 3 and 7 of 11).

⁹¹ This was known as the ‘Threes Network’ – see Egon Larsen, *A Flame in Barbed Wire: The Story of Amnesty International* (London: Frederick Muller, 1978), p.12.

⁹² ‘Rights on Paper’, p.xiii.

⁹³ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985), p.9.

pronounce names who live in far away, undifferentiated countries. The letter as it is recalled here, does not provide any insight into the conditions of existence for the torture victim, their ‘ordinary life’⁹⁴ is unknown, and the difficult-to-pronounce names are an indistinguishable blur – all that need be communicated is the pain.

Theories of Human Rights and Vulnerability

This is not an unconsidered or un-theorized aspect of human rights discourse. As quoted in the Introduction, when Michael Ignatieff summarizes his ideas about human rights he states that:

[w]e may not be able to create democracies or constitutions. Liberal freedom may be some way off. But we could do more than we do to stop unmerited suffering and gross physical cruelty. That I take to be the elemental priority of all human rights activism: to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of ordinary people.⁹⁵

Here the project of human rights is defined negatively, in relation to what it opposes. What become central in this articulation are the crimes which lead to bodily suffering: it is stopping ‘torture, beatings, killings, rape, assault’ which become the focus, and in fact come to define what human rights are all about.⁹⁶

Because Ignatieff refuses to make human rights a maximalist ideology, because it is a “thin” theory of what is right’, his sense of human rights becomes preoccupied not with the development of personality (as in Slaughter’s account) but instead with ‘a definition of the minimum conditions for any kind of life at all.’⁹⁷ ‘[A]ny kind of life at all’⁹⁸ is, of course, a long way from the incorporated human person with a place in society. In its minimalist emphasis on a lowest common denominator human existence, this phrase seems instead to suggest the natural, individual givenness which is both the person’s opposite and its foundation.

Ignatieff makes this more explicit elsewhere in the same book when he argues that it is only the experience of suffering that can provide a sufficiently universal foundation

⁹⁴ Scarry, p.9.

⁹⁵ Ignatieff, p.173.

⁹⁶ Ignatieff, p.173.

⁹⁷ Ignatieff, p.56.

⁹⁸ Ignatieff, p.56.

for human rights, because ‘what is pain and humiliation for you is bound to be pain and humiliation for me.’⁹⁹ Bryan S. Turner goes further, arguing that vulnerability to pain is the irreducible universal core of human nature itself: ‘human happiness is diverse, but misery is common and uniform’.¹⁰⁰ Turner argues that humans are bodily vulnerable (where vulnerability is ‘the condition of sentient, embodied creatures who are open to the dangers of their environment and are conscious of their precarious circumstances’)¹⁰¹ that we depend on each other, that life in society is governed by mutuality and that the institutions which govern social life are fragile.¹⁰² In such a context, the one universal we can identify in human nature, he argues, is the human body’s vulnerability to suffering, the vulnerability that society’s institutions try and sometimes fail to protect, and that makes mutual dependence necessary.¹⁰³ Turner seeks to ground human rights in a theory of the core of human existence. But where for Aristotle in Arendt’s account the human ‘has been defined as a being commanding the power of speech and thought’ and as the ‘political animal’¹⁰⁴ Turner’s definition of human existence puts the emphasis on what Parekh describes as the human’s ‘givenness, her existence as a human being.’¹⁰⁵

Decontextualization

The human rights report is a particular type of NGO writing, typically produced for the UN and other NGOs rather than the general public in which agencies comprehensively document human rights abuses in a particular area or under a specific thematic heading. The anthropologist Richard A. Wilson has argued that these reports are characterized by ‘an unflinching realism which bluntly recounts one fact after

⁹⁹ Ignatieff, p.95.

¹⁰⁰ Bryan S. Turner, *Vulnerability and Human Rights* (University Park: Pennsylvania State University Press, 2006), p.9.

¹⁰¹ Turner, p.28.

¹⁰² See Turner, p.25.

¹⁰³ In a related way, Judith Butler argues in *Precarious Life: the Powers of Mourning and Violence* (London: Verso, 2003) that bodily vulnerability continually risks undermining our sense of our own autonomy; existing corporeally means being vulnerable to the actions of others. For Butler, understanding this might lead to a new conception of the political in which the interdependence created by the body’s vulnerability is central.

¹⁰⁴ *Origins of Totalitarianism*, p.297.

¹⁰⁵ Parekh, pp.25-26.

another in an unmitigated and relentless barrage of short case summaries'; the writing is said to employ no 'tropes, metaphors' or 'figurative elements.'¹⁰⁶

Customarily, the reports do not have an attributed author and Wilson suggests that '[a]uthor-evacuated texts, whether human rights reports, scientific texts or legal contracts, are an established literary strategy to convey value-free information devoid of individuality and opinion.'¹⁰⁷ There is no sense of an implied author in the texts themselves; they appear to have simply emerged – Wilson calls this their 'Olympian view from nowhere'.¹⁰⁸ Where a distinct, particular voice is present (and Wilson argues that this is more common in fundraising documents) emotive, subjective experience is clearly attributed to victims, rather than to the author of the report or to the 'voice' of the NGO.

As I mentioned in the Introduction, the International Commission of Jurists made five submissions on Uganda to the UN between 1974 and 1976. The first of these offers an example of Wilson's argument. Its introduction states:

[i]t is understandable, perhaps, that many of the witnesses, especially among the Ugandan exiles, should seek to place personal responsibility for many of the violations which have occurred upon General Idi Amin. This study is concerned rather with describing the events than with apportioning blame. Clearly, as head of state and as Commander in Chief of the Armed Forces, the ultimate responsibility for any violation of human rights must fall upon General Amin.¹⁰⁹

The introduction thus takes a distancing tone; it presents the communication as a 'study', implying a scholarly rigour, and it presents its task as neutral 'description', explicitly excluding the attribution of personal blame.¹¹⁰ Similarly, the introduction to the first communication, written by Niall MacDermott, Secretary General of the ICJ, states that the ICJ's 'studies have earned it a reputation for objectivity and impartiality.'¹¹¹ However, while the parts of the report written by the ICJ are indeed

¹⁰⁶ Richard A. Wilson, 'Representing Human Rights Violations: Social Contexts and Subjectivities', in *Human Rights: An Anthropological Reader*, ed. by Mark Goodale (Oxford: Blackwell, 2009), pp.209-228 (p.220).

¹⁰⁷ 'Representing Human Rights Violations', pp.221-222.

¹⁰⁸ 'Representing Human Rights Violations', p.222.

¹⁰⁹ International Commission of Jurists, p.5.

¹¹⁰ International Commission of Jurists, p.5.

¹¹¹ International Commission of Jurists, p.vii.

neutral, non-emotive and straight-forwardly descriptive, they are juxtaposed with long passages written by witnesses to atrocities and by members of Amin's government who have defected. These are written in a very different style.

For example, the second report, sent to the UN in June 1976, begins by reproducing a memorandum written by E.B. Rugumayo, whom it describes as:

Minister of Education in Amin's government from soon after the 25th January 1971, coup d'état which deposed President Milton Obote until his resignation in early 1973 [...] one of the able young technocrats introduced to the Cabinet by Amin after the coup d'état.¹¹²

The document had been sent by Mr Rugumayo to 'African Heads of State and Governments in early 1973.'¹¹³ The Report argues that '[a]lthough it covers ground which has been outlined before in previous communications' Rugumayo's communique 'summarises the position with the authority of a signed statement by a prominent Ugandan in a position to know what had been happening in the country.'¹¹⁴

Rugumayo's memorandum states that:

General Amin is an illiterate soldier who is now the President of a modern state of Uganda [...] General Amin is of very low intelligence [...] He is a racist and a fascist; a murderer and a blasphemer; a tribalist and a dictator. [...] General Amin has no principles, no moral standards and scruples. [...] He will kill, or cause to kill, anyone without hesitation as long as it serves his interests [...] He is an incorrigible liar.¹¹⁵

An emotional, subjective response is allowed to those directly affected by Amin's violence, but the ICJ retains for its own account a self-consciously objective, distanced, merely descriptive approach. This works to distance the report's tone from that of the directly-involved witness who is quoted. In contrast to the deep outrage of Rugumayo, the voice of the report is seemingly objective, focused purely on the outline of facts rather than commentary on them.

Wilson argues that the result of these rhetorical moves is a strategy of decontextualisation in which the human rights violation is constructed as a particular instance of a universal injury, removed from contextual and social meanings, and voided

¹¹² International Commission of Jurists, p.106.

¹¹³ International Commission of Jurists, p.106.

¹¹⁴ International Commission of Jurists, p.108.

¹¹⁵ International Commission of Jurists, p.109.

of the doubt, confusion, fear and multiplicity of viewpoints any traumatic event creates. Wilson writes that

[i]f meanings can only be understood in terms of surrounding narratives, then many human rights reports impede the interpretation of meaning by their radical acts of exclusion. Instead of narratives [...] what the reader gets is a pared-down and frozen stream of action.¹¹⁶

The effect of human rights reporting, Wilson argues, is to put the violation front and centre, isolating it from the social currents and meanings which constitute it and producing truncated understandings of the social situations in which violations occur.

Stephen Hopgood has described a contentious and ongoing battle within Amnesty International about this very issue, though in broader terms than the human rights report alone. He details a dispute between a reforming faction within Amnesty International which has called for – amongst other measures – greater context in the reports and documents it produces, to enable it to develop what Hopgood calls political authority. The traditionalists consider the organization to possess ‘moral authority’ and consequently want to preserve reports’ conventional lack of context. Hopgood describes the difference between these types of authority in this way:

[i]f moral authority is enhanced, classically, when the speaker does not possess marks of belonging (he or she is seen as an honest broker who has no interest and therefore acts morally), political authority is only possible when someone possesses those very marks.¹¹⁷

Political authority thus ‘refers to both the right to speak as a legitimate representative of an interest or identity [...] and the competitive process of establishing that right.’¹¹⁸

The traditionalists suggest that the absence of contextual information in NGO publications allows some very particular imaginative work to occur. Think, Hopgood writes, of the famous image from Tiananmen Square – the man standing in front of advancing tanks. If we think about context, if we think about the meaning the photo had for the Chinese government (for whom, he says, it represented the restraint of the military) or if we think about the same image transplanted into another context, we are, he writes,

¹¹⁶ ‘Representing Human Rights Violations’, p.217.

¹¹⁷ Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (London: Cornell University Press, 2006), p.14.

¹¹⁸ Hopgood, p.14.

explaining, categorizing, politicizing. Isn't there a moment before that, perhaps fleeting, but real nonetheless, of recognition [...] The most potent bare facts concern death – its occurrence, imminence, possibility – all without context, and all saturated with the presumption of innocence.¹¹⁹

Here, where 'politicization' explains, context-less depictions of human vulnerability to death and suffering might be able to produce a particular type of reading, in which a shared vulnerable humanness can be felt.

It is only without context, he argues, that we can

hope to make plausible the claim that there is a normative space somehow beyond politics, with all of its conflicts of interest and identity. The bare facts are like fleeting glimpses of this sphere, a place where we see our true vulnerability both as individuals and as a species [...] The more purely descriptive the words, the nearer we approximate pure recognition.¹²⁰

The rationale is that in reading such texts, we can feel or imagine ourselves to be like suffering others. Political context distances readers by reminding us of difference – of religion, of wealth, of lifestyle – but facts about atrocity without context allow us to recognize our own vulnerability to harm in the suffering of others; to feel, even if momentarily, like them.

For Arendt, as I discussed in Chapter One, the 'fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective'.¹²¹ For Slaughter, contemporary human rights law is embarked on the project of developing abstract human personality. But the type of human existence that Hopgood values, and wants human rights

¹¹⁹ Hopgood, p.206.

¹²⁰ Hopgood, p.206. Hopgood's mention of the 'bare facts' recalls Agamben's notion of bare life. With the French Declaration of the Rights of Man and of the Citizen, Agamben argues, biological humanness, *zoē*, (which had always until then been considered entirely outside of the political sphere, even though this was in the form of an inclusion/exclusion) has been invited into political organisation. Consequently, he proposes that 'the modern state in the nineteenth and twentieth centuries' is based not on 'man as a free and conscious political subject but, above all,' on 'man's bare life, the simple birth that as such is, in the passage from subject to citizen, invested with the principle of sovereignty.' (Agamben, p.128). But this interaction between bare human life and the state is a kind of secret: '[r]ights are attributed to man (or originate in him) solely to the extent that man is the immediately vanishing ground (who must never come to light as such) of the citizen.' (Agamben, p.128).

¹²¹ *Origins of Totalitarianism*, p.296.

narratives to create ‘glimpses of’, is a form of human existence distinguished explicitly from the political.¹²² It is a human existence characterized by a shared ‘vulnerability’ and, in particular, vulnerability to death – and it is therefore human existence defined through mere corporeal existence rather than through speech or action.¹²³ The type of human existence brought into being through the ‘bare facts’ is, therefore, akin to Arendt’s notion of given humanness.¹²⁴

Arendt argues that ‘modern practices and forms of government [...] by means of arbitrary terror, liquidate the very possibility of human activity.’¹²⁵ She writes that ‘in the extermination camps Jews were murdered [...] regardless of what they had done or omitted to do, regardless of vice or virtue’ and notes ‘that complete and inhuman innocence which so strikingly characterizes victims of modern terror’.¹²⁶ This is an ‘*inhuman* innocence’¹²⁷ for Arendt in the sense of Aristotle’s definition of what it is to be human; the human defined as a ‘being commanding the power of speech and thought’ and as the “‘political animal,” that is one who by definition lives in a community’,¹²⁸ with ‘a place in the world which makes opinions significant and actions effective’.¹²⁹ The innocence of the death camps’ victims is ‘inhuman’¹³⁰ because it is mere given existence without these features.

Jews in the death camps, like the stateless, had only their humanness to rely on because the indiscriminating slaughter paid no heed to action or speech as it ‘liquidate[d] the very possibility of human activity’.¹³¹ When Hopgood suggests that the bare facts are ‘saturated with the presumption of innocence’¹³² and that effective NGO writing should avoid ‘explaining, categorizing, politicizing’ and instead aim to create a ‘moment [...] of recognition’ based on context-less death, a deeply uncomfortable echo

¹²² Hopgood, p.206.

¹²³ Hopgood, p.206.

¹²⁴ Hopgood, p.206.

¹²⁵ *Origins of Totalitarianism*, p.8.

¹²⁶ *Origins of Totalitarianism*, p.8.

¹²⁷ *Origins of Totalitarianism*, p.8. My emphasis.

¹²⁸ *Origins of Totalitarianism*, p.297.

¹²⁹ *Origins of Totalitarianism*, p.296.

¹³⁰ *Origins of Totalitarianism*, p.8.

¹³¹ *Origins of Totalitarianism*, p.8.

¹³² Hopgood, p.206.

of Arendt's description of the victims of totalitarian terror is suggested. The Jews in the death camps were killed in such a way that nothing they had ever done or said mattered. The bare facts Hopgood describes seek to remove any sense of activity, emphasizing instead 'our true vulnerability'.¹³³

It could very well be argued that the reason Hopgood places so much emphasis on mere human life is that he is concerned with the terrible consequences of rights abuse – that is to say that human rights narratives seek to document the damage that is suffered when a person is reduced to mere givenness. There is an overlap between his discussion and Arendt's because sheer human existence is a consequence of rights abuse, for the victims of the death camps as much as for contemporary victims: if human rights writing presents victims as vulnerable and merely human, this is because they are made vulnerable and merely human by the types of oppression they are faced with. There are two reasons for rejecting this argument. First, it is very clear in Hopgood's account as it is in Wilson's that the representation of contextless human life is not inevitable – instead it is the consequence of decision making about narrative approach. As Brown argues more generally, 'there is no such thing as mere reduction of suffering or protection from abuse, the nature of the reduction or protection is itself productive of political subjects and political possibilities.'¹³⁴ The advocative nature of Hopgood's argument underlines this; he is making a case for writing in certain way in order to produce certain effects, rather than claiming that NGO narratives simply mimetically represent the suffering victim of rights abuse.

Secondly, mere human life does not just characterize the victim of rights abuse, in Hopgood's account. Rather it is thought to be the condition for the creation of a link between the victim and the reader. Just as Ignatieff argues that 'what is pain and humiliation for you is bound to be pain and humiliation for me',¹³⁵ Hopgood suggests that vulnerability might be what unites the victim of human rights abuse depicted in the NGO narrative and the reader of the narrative – it is a type of human existence which both share. In this way, vulnerability is presented not only as the consequence of rights abuse but also as a more generally shared quality, and one which should be emphasized and acknowledged to a greater extent.

¹³³ Hopgood, p.206.

¹³⁴ Brown, p.460.

¹³⁵ Ignatieff, p.95.

The awareness of this mutual mere humanness is understood to be something which can be facilitated by a particular kind of writing: '[t]he more purely descriptive the words, the nearer we approximate pure recognition.'¹³⁶ The NGO narrative is here understood as a mechanism for creating 'pure recognition' through the stripping of context; through its use of 'purely descriptive words' – words which don't 'explain, categorize or politicize' – the narrative binds represented victim and reader together in their shared humanness, a humanness which has nothing to do with speech or activity but rather vulnerability to death and suffering.¹³⁷

The child soldier narrative resembles the Bildungsroman in some ways, but differs from it to the extent that where the Bildungsroman typically builds towards a climax of social integration, in *Girl Soldier* a child-like identity is maintained. In this chapter, I have suggested that this is part of a wider trend in human rights narrative towards the minimization of contextual information in order to emphasize individual vulnerability to harm.

Slaughter argues that human rights are realized through the nation-state and work to replace mere humanness with abstract personality. I suggest however that, in the way child soldier narrative employ the Bildungsroman form, something more troubling can be discerned. These narratives emphasize vulnerability and they make it the basis for identification and involvement. In literary terms, this is manifested as the maintenance of childhood in the place of the coming-of-age narrative. In the tension between the conventions of the literary form and the way it is put to use, we can identify the tension which characterizes human rights discourse: the tension between the human and the citizen, the problem of possession. The child soldier memoir also shows why this tension is a limit-point for the discourse. Suspended development seeks to maintain (rather than picture the development beyond) the idealized, non-political vulnerability of the human rights childhood – and thus it centres and maintains a human figure who resembles Arendt's utterly rightless subject. In the next chapter I will consider why this should be the case.

¹³⁶ Hopgood, p.206.

¹³⁷ Hopgood, p.206.

Chapter Three: The Family in Goretti Kyomuhendo's Bildungsromane

This chapter focuses on three novels and a short story by the Ugandan writer Goretti Kyomuhendo: *The First Daughter* (1996), *Secrets No More* (1999), *Waiting: A Novel of Uganda at War* (2007) and 'Do You Remember?' (2003).¹ All of these texts might be considered 'dissensual' Bildungsromane in Slaughter's terms: they evoke and yet frustrate the conventions of the Bildungsroman.² However, more specifically, it is the language and symbol of the family which disrupts the typical narrative arc of the form in these texts. In a conventional Bildungsroman the protagonist must at a certain point leave the family behind in order to embark on his or her journey towards social incorporation. Kyomuhendo's characters, on the other hand, find themselves unable to escape family life. Either they are drawn back into the family sphere through events in the plot, or the language and imagery associated with the family resurface in unexpected ways.

In the previous chapter we saw that when child soldier narratives deviate from the Bildungsroman form, they do so in such a way as to prolong their protagonists' childhoods and, therefore, their pre-political identities. The family operates in Kyomuhendo's texts in a related, though more ambivalent, way. As feminist critics including Carole Pateman have argued, the family does symbolize extra-political private life in conventional theorizations of the political sphere. However, it is also used to suggest abstract political identity – as, for example, in the notion of fraternity.

¹ Goretti Kyomuhendo, *The First Daughter* (Kampala: Fountain Publishers, 1996), *Secrets No More* (Kampala: FEMRITE, 1999), *Waiting: A Novel of Uganda at War* (New York: Feminist Press, 2007) and 'Do You Remember?' in *Discovering Home: A Selection of Writings from the 2002 Caine Prize for African Writing* (Bellevue: Jacana, 2003), pp. 175-181.

² In Chapter One I critiqued the use of Rancière's term to describe the type of literary texts Slaughter is discussing, because by 'dissensus' Rancière means something sudden, unpredictable and rare that brings into being a collective subject. These objections still stand, but I will adopt Slaughter's term when discussing his argument for the sake of clarity.

For Slaughter the Bildungsroman is a metaphor and ‘cultural surrogate’³ for international human rights law because the form plots the process of social incorporation and, he argues, the task of human rights is to fix the split Arendt identifies between man and citizen. In this chapter I consider what might be suggested about human rights discourse by the way the family operates as a symbol in Kyomuhendo’s Bildungsromane. The conventional Bildungsroman relies on the movement from the family to the political sphere and thus embodies, in literary form, the personality-development model of human rights possession. How, therefore, might the challenge to the Bildungsroman’s conventions represented by the inescapability of family imagery in these texts be interpreted? In particular, what does it suggest about the possession of human rights?

‘Dissensual’ Bildungsromane

To reiterate, for Slaughter the dissensual Bildungsroman, unlike the traditional version of the form, does not portray ‘the imperatives of modernization, socialization, and human personality development [...] as an idealist process of consensual harmonization’.⁴

[B]ut neither does it discount such concordance as an absolute, abstract impossibility [...] it neither accepts the grossly compromised terms of enfranchisement [...] nor rejects them outright; instead, it holds onto the ideal of harmonious integration even as it narrates the unfulfilment of the promises of human rights and the idealist *Bildung*.⁵

For Slaughter this is important because ‘the struggle for human rights occurs in the space between the world that law and discourse (including the idealist *Bildungsroman*) imagine and the one that they address in fact.’⁶ The dissensual Bildungsroman, analogously, creates a contrast between the conventional expectations readers have of the literary form and the way it is put into use in the particular example.

In a congruent way, critics have stressed Kyomuhendo’s texts’ complicated interactions with the Bildungsroman. Andrew H. Armstrong, for example – discussing *Secrets No More* and ‘Do You Remember’ – argues that:

³ *Human Rights, Inc.*, p.29.

⁴ *Human Rights, Inc.*, p.181.

⁵ *Human Rights, Inc.*, p.181.

⁶ *Human Rights, Inc.*, p.178.

[b]y inserting her female protagonists within the decidedly masculinist politics of the Bildungsroman form, with its emphasis on the development of individual consciousness linked to wider socio-political concerns, and then showing the constant disruptions of the young girls' stories (the suspension of the bildung), Kyomuhendo both participates in and writes against the simple novelization of women's lives in situations of extreme violence [...] [she] writes against such simple re-telling of the events through her inclusion of traumatic memory, elliptical re-telling and forgetting.⁷

He describes these texts as 'interrupted or suspended Bildungsromans of [...] young lives in a crisis-filled situation as they attempt to live "normally" or be routine in a situation of crisis.'⁸

Waiting, Kyomuhendo's third novel, was published in 2007 but is set 28 years earlier, in 1979. A note which precedes the novel clearly establishes this setting: '[t]he year is 1979. Ugandan exiles and the Tanzanian army, known simply as "the Liberators," combine to oust Uganda's dictator-ruler, Idi Amin, whose murderous regime has exterminated half a million people through state-sponsored violence.'⁹ This precision about the context into which the novel's events are imagined is continued in the narrative proper. The novel has twenty brief chapters, and in Chapter Two its narrator, a teenage girl called Alinda, says:

[w]e had learned about the details of the war a month before when Father returned from the city where he had worked at the Main Post Office [...] [The Liberators] were advancing quickly, heading for Kampala from the southwestern border that Uganda shared with Tanzania. The districts along that route were already in the hands of the Liberators. Amin's soldiers were looting shops, hospitals, banks and private homes in the city [...] Some were fleeing towards the West Nile and Northern Ugandan regions, their home areas [...] Our district was situated on one of the highways that led, via Lake Albert, to the West Nile and northern regions, and so, Amin's soldiers were using it as their exit route.¹⁰

The novel is thus located precisely in geographical terms and at an important political moment in Uganda's history. As I stated in the Introduction, the Tanzanian invasion forced Amin into exile and began a period of extreme political uncertainty.

⁷ Andrew H. Armstrong, 'Reporting from the Edge of Reality: Writing as Phantom Limb in Goretti Kyomuhendo's Fiction', *Journal of International Women's Studies*, 10.4 (2009), 259-275 (p.261).

⁸ Armstrong, p.264.

⁹ *Waiting*, n.p.

¹⁰ *Waiting*, p.11.

Setting the novel in 1979 locates it an important transitional moment, albeit a transition between two periods of political oppression.

Waiting is therefore specific about its location – temporally, geographically – and about the significance of these factors in the period’s political history. Because of this, it might be expected that one of the things the characters are, in the novel’s title’s word, waiting for, is the arrival of the Liberators. But when the Liberators do arrive at Alinda’s village, this is not described in narrative time, or on the novel’s story level. Two weeks pass between chapters thirteen and fourteen, during which time Alinda is very ill and in bed. Then she says: ‘[t]wo weeks later, I was still bedridden. The Liberators had arrived.’¹¹ A few days later, when she is getting better she asks her sister, Maya, and her best friend, Jungu, where they have been and they say they’ve been to ‘visit our friends’; the friends turn out to be the Liberators.¹² Jungu tells Alinda that:

[w]hen they first arrived, they stayed here, in your compound, for a few days, but your father complained to their commander that they were harassing Maya and me [...] it’s a long story. I tried to explain to your father that this soldier was just my friend, and that his other friend was interested in making Maya his friend. Anyway, your father became very angry and chased them away.¹³

Because the Tanzanian invasion represented a moment of transition on the national political stage, and as the novel’s note so explicitly ties the text to that political situation, the arrival of the Liberators would seem to be one of the events around which *Waiting* is hinged. But, instead, it is missing from the narrative time. Alinda’s brief statement ‘the Liberators had arrived’¹⁴ and Jungu’s précis of the ‘long story’¹⁵ are all the information in the novel about the events surrounding the arrival of the Liberators; after this the arrival of the soldiers into the village is never discussed explicitly again, even though they set up camp nearby for some time. Alinda doesn’t reflect on what she hears, except to say ‘I could not believe I had missed all that.’¹⁶ In this way, the political event which seems as if it will be central in fact forms a conspicuous gap.

M.J. Daymond argues:

¹¹ *Waiting*, p.73.

¹² *Waiting*, p.77.

¹³ *Waiting*, p.79.

¹⁴ *Waiting*, p.73.

¹⁵ *Waiting*, p.79.

¹⁶ *Waiting*, p.78.

one of the most striking features of *Waiting* is that it has no plot in the Aristotelian sense [...] The agent here is war, and what is required of Kyomuhendo's characters, men as well as women, is that they survive as best they can [...] the novel's title and its narrative point of view [...] remind us that it is Alinda's emergence into the adult world that has been halted by the arrival of soldiers in her village. Kyomuhendo's lyrical art is such that we, rather than Alinda, feel this loss or denial at every turn. *Waiting* is thus a bildungsroman that has yet to happen.¹⁷

When Daymond discusses the novel's absence of plot, she means the way in which narrative events in the novel which seem to be significant almost never are. For example, towards the end of the novel, tensions begin to emerge between the Liberators and the villagers because the soldiers eat all of the available food, offering money which is worthless because there's nowhere to buy anything. But before these tensions reach the climax towards which they seem to be building, suddenly, in the middle of the night, the soldiers are gone: Uncle Kembo says '[i]t is astonishing! They must have started packing soon after we went to bed. The whole place is cleared out. Nothing remains, only the empty cans of meat.'¹⁸ Alinda's father replies: 'I still can't believe they could just leave like that'.¹⁹ This sudden, shocking absence in the new order of life in the village also exacts a personal cost, as Alinda's brother Tendo leaves with the soldiers too. Jungu is devastated because her friend, the soldier Bahati, has also left, despite the promises they had made to each other. So the next day, she too leaves in the middle of the night and never returns. Bahati, it is subsequently revealed, had not left at all – he'd wanted to stay with Jungu and had been hiding.

This revelation is followed by a gap of about a month before chapter nineteen. It gradually emerges over the course of this chapter that Bahati had made an attempt to follow Jungu but whilst on a lorry, 'the driver thought he saw soldiers who looked like Amin's. He panicked and jumped out of the running lorry. Bahati managed to escape with minor injuries, but two people died in that accident.'²⁰ Bahati tries to follow the departed Jungu, is thrown off course and thwarted by what turns out to be merely a hallucination or imagined threat, and then returns. But in the next and final chapter, neither Jungu nor Tendo is mentioned and what happens to them is never described; the family unit closes up or is reborn despite the losses it has suffered. Alinda's father goes

¹⁷ M.J Daymond, 'Afterword', in *Waiting: A Novel of Uganda at War*, pp.113-30 (p.129).

¹⁸ *Waiting*, p.96.

¹⁹ *Waiting*, p.96.

²⁰ *Waiting*, p.108.

back to the city and ‘said jokingly to us, “[n]ow, I’m confident that you won’t be washed away by the rains. You have a man who can take of you,” he said, patting Bahati’s shoulder.’²¹ Father says he will return at the beginning of the school term when not only Maya and Alinda, but also Bahati, will be able to return to school.

At the end of the novel, then, Father is preparing to return to the city and he tells the children that they will go back to school, but these interactions, which might suggest the social sphere and the beginning of the Bildungsroman, remain outside the narrated events, only existing as promises for the future. The narrative conventions of the Bildungsroman are therefore problematized through difficulties and suspensions. A final moment of social incorporation – going to school – is promised, but it does not occur in the text. As in Slaughter’s dissensual Bildungsroman concept, this draws attention to the difficulties of individual-social integration which face the central characters as young and economically-disadvantaged citizens of postcolonial nation-states during the crisis of war.

After Tendu and Jungu leave the space of the compound they leave the narrative; similarly, Bahati’s attempt to chase Jungu is not described in the narrative, but recalled later, after it has already failed and he has returned. Although Bahati appears to be incorporated into the reassembled family, as a kind of substitute at the end of the novel, it is worth noting that the relating of the story of his attempt to rescue Jungu comes when, after the Liberators shelters are washed away by the rain, Nyinabaongo remarks that ‘now we have nothing left to remind us of that painful period’, and Alinda’s father remarks ‘[e]xcept Bahati.’²² His status is thus ambiguous: not only is he the reminder, the left-over from what has gone before in the reconstituted group, his presence cannot – mathematically at least – make up for the gap which is left by the two who leave. The solution is lopsided and the book’s ending – with no explanation and very little speculation on what has become of Jungu and Tendu, two of its major characters – abrupt.

In the novel in general, missing events become central to the way the structure works. Throughout, there are gaps in the narrative, in which what seems as if it is going to be important to the plot is dropped out of it almost completely. For example, there

²¹ *Waiting*, p.110.

²² *Waiting*, p.107.

are a number of small discrete stories about people in the village set into the narrative. Alinda finds out that a character referred to only as ‘the old man’ was released from prison in 1971, when Idi Amin released certain prisoners on the condition that they convert to Islam; it is revealed through a conversation late in the novel that he had been in prison for murdering his wife, cutting her into pieces and taking the pieces to her parents’ house in a bag. Before this story is told, the old man has stepped on a landmine and is seriously injured: as she tells the story of the murder of his wife, Nyinabarongo, a woman living in the village, says ‘[n]ow God is punishing him. He will die a terrible death, just like his wife.’²³ But the old man doesn’t die, he makes a good recovery and there is no final, balancing justice for the murder of the wife. The story of the murder is never mentioned again, and the old man goes on living in the village.

A story about Nyinabarongo is also told in the novel; she has a daughter with her, but she had also had a son. Her husband had told her, when she left him, that she could only take the daughter because ‘[h]e believes boys are more important than girls.’²⁴ She had been forced to marry this man when her sister, the husband’s first wife, died very suddenly only a year after her marriage; Nyinabarongo says of her sister’s death ‘[w]e never got to know what really happened.’²⁵ These stories about the past experiences of two of the novel’s characters both take absence, and the missing, as a theme; when the old man steps on a landmine he loses a leg, and thereafter feels phantom pains in the missing foot, there is a missing son, there are parallel dead wives, one unquestionably killed by her husband, the other (especially if these stories are read as commenting on each other) perhaps killed in the same way.

But these narratives have little significance in the plot; they are told, and then they disappear, and what is revealed by them doesn’t shape Alinda’s future reflection on the characters involved, or point towards any future action. What appears to be a case of divine justice for the old man turns out not to be, and although Nyinabarongo ‘always lamented about how much she missed her son, wondering if he was well, or if he had eaten’²⁶ the son is never sought or found and is thus missed (in both senses of the word) in the narrative. In the Bildungsroman, the narrated incidents occur along a progressive

²³ *Waiting*, p.76

²⁴ *Waiting*, p.65

²⁵ *Waiting*, p.65

²⁶ *Waiting*, p.9

path to future self-realization for the central character. By contrast, it is characteristic of *Waiting* includes a number of discrete stories with little significance for the plot.

The Family

However I propose that if, as Slaughter argues, the Bildungsroman is an analogue of, and support to, human rights norms, we need to pay attention not just to the interruption of the Bildungsroman but also to the particular textual features which disrupt and unsettle the form's conventions. In Kyomuhendo's texts, what stops the Bildungsroman from progressing on its traditional path is the inescapability of the family sphere signalled by an excessive and overwhelming familial language and symbol.

The First Daughter

For example, in *The First Daughter* the central character, Kasemiire, is born to a poor family in a rural village. Her father is strict and violent, but despite this and despite the criticisms of his friends ('[a] woman's place is in the kitchen [...] Give them education and they will rebel'²⁷) he sends Kasemiire to secondary school:

[h]e was a man who abided strictly by his principles, one of which was sending all his children to school. It was true that he had a low opinion of women and that he never fussed over his children. If anything, he ruled them with an iron hand, but this could not prevent him from sending his daughters to school.²⁸

When she goes to school Kasemiire moves from her home and from the village and is 'separated from her dear family' for 'the first time in fifteen years.'²⁹ In the new location of the school, she is at first mocked and beaten by the other students and wishes 'she was at home with her family.'³⁰ She also encounters entirely unfamiliar wealth: '[f]rom senior one, Kasemiire had learnt never to associate with the rich girls, for she always felt an inferiority complex with them. She had learnt to find her own level and always stayed with them.'³¹ But her social world then expands as she shares a room with Anita, a rich girl with 'countless pairs of shoes and dresses'³², and as she falls in love with a boy called

²⁷ *The First Daughter*, p.8.

²⁸ *The First Daughter*, p.8.

²⁹ *The First Daughter*, p.29.

³⁰ *The First Daughter*, p.33.

³¹ *The First Daughter*, p.39.

³² *The First Daughter*, p.39.

Steven – ‘a very smart, rich boy in senior four [...] a star in the school football team.’³³ She becomes happy at the school and, in the end, ‘[s]he could not believe that she had spent three months in Duhaga Secondary School. It seemed like a few months ago when she had been a newcomer!’³⁴

But then she becomes pregnant and is (seemingly) abandoned by Steven. The pregnancy ends her formal education – ‘it meant that she would no longer go back to school to sit for her long awaited exams’³⁵ – and it means her return from school to the village. Not only this, but all of her sisters are also removed from education as a result of the pregnancy; her father is so angry that ‘Kenyanje, who was in primary seven, and about to do her exams, was denied the chance, and Katuntu in primary five was also told to stop going to school.’³⁶ The closure of formal education as an option for the girls in the novel is emphatic.

However, when Kasemiire returns to the village her education begins again, but in a different way. During the period she spends at home, she listens to her grandmother’s stories:

‘My husband used to work inside the palace, he was a *murusura*,’

[...]

‘A *murusura*?’

‘Yes, my dear, the king’s soldiers were known as *abarusura*,’ she explained. ‘My husband was one of them; he fought bravely during the Nyangire rebellion.’

It was the topic they had been doing before she left school and so she begged her grandmother to tell her more about it.³⁷

The Nyangire rebellion in 1907 was an uprising of the people of Bunyoro-Kitara, the ethnic group to which Kasemiire belongs, against British colonial rule and its preferential treatment of the Baganda.³⁸ In this way, one of the topics Kasemiire had

³³*The First Daughter*, p.41.

³⁴*The First Daughter*, p.39.

³⁵*The First Daughter*, p.52.

³⁶*The First Daughter*, p.57.

³⁷*The First Daughter*, p.58.

³⁸ GN Uzoigwe writes that ‘Baganda leaders who first came into contact with the British by this period were quick to realize the advantages to be derived by cooperating with the invaders. The British, too, used Baganda chiefs as political agents for administering the conquered kingdoms of southern Uganda [...]’

been learning about at school is picked up again, and her education, interrupted by her pregnancy, continues with her grandmother. This is education of a vastly different kind, though. It is structured by Kasemiire's interventions, her grandmother's angry responses to these, which often have the effect of halting her stories altogether, and by the grandmother's non-standard names and terms.

Her grandmother's narrative is repeatedly described as broken-up in this way. For example:

'I said Msiri and please do not interrupt my narration any more, otherwise I will stop!' Mukaaka was now really angry.

'I know, Msiri, Mukaaka, it is now called Egypt, but the man whom they had sent to persuade Kabalega to accept their protection?'

'Baka' she snapped and looked as if she would hit her. Kasemiire swore not to interrupt her any more.³⁹

A little later, Kasemiire guesses who her grandmother has been referring to: 'Mukaaka had been talking but Kasemiire had not heard a word. She had finally figured out who Baka must have been. Sir Samuel Baker.'⁴⁰ Delays and breaks thus characterize the communication of information.

The history she learns is also shaped by her grandmother's prejudice against the Baganda.

She got up, abruptly ending her narration. Kasemiire knew that it would be useless to plead with her. She was in a bad mood after talking about the hated Baganda [...] But most of what Mukaaka said was, of course, false. It was a mentality held by the elder generation of Banyoro and nothing could change that.⁴¹

Not unnaturally, Buganda's neighbors became jealous of the Baganda and resented particularly the idea of the colonial administration using Baganda chiefs as sub-imperialists. No kingdom was more distressed by this turn of events than Bunyoro-Kitara, the major loser in the struggle for mastery.' GN Uzoigwe, 'Bunyoro-Kitara Revisited: A Reevaluation of the Decline and Diminishment of an African Kingdom', *Journal of Asian and African Studies*, 48 (2012), 16-34 (pp.16-17). For the present-day debates over the position of the Baganda in the Ugandan polity, see Frederick Golooba-Mutebi, 'Settling the Buganda Question: a Peek into the Future', *Transition*, 106 (2011), 10-25.

³⁹*The First Daughter*, p.60.

⁴⁰ *The First Daughter*, p.61.

⁴¹*The First Daughter*, p.63.

When at one point in the story Kasemiire says ‘That is not true Mukaaka, is it?’ Mukaaka responds: ‘[i]f you don’t believe what I’m saying, why do you sit here and listen to me?’⁴²

Kasemiire is learning about history, and this history is clearly established as a continuation of what she had been learning at school, before her pregnancy meant she had to leave. But though the subject is the same, the process by which she learns is depicted as disrupted. A grandparent as the transmitter of knowledge about the community is a common trope, but here the communication of information is not straightforward. Kasemiire has to work some things out for herself (who her grandmother is referring to as ‘Baka’),⁴³ and she has to take into account the distorting effects of her grandmother’s hatred of the Baganda. What is presented as interrupted, therefore, is Kasemiire’s understanding of history.

The beginning of the novel evokes the traditional Bildungsroman: Kasemiire leaves for school, beginning to ‘seek self-realization in a new and often unaccommodating environment’, as in Buckley’s description of the form.⁴⁴ The novel thus establishes certain formal conventions but then frustrates them when Kasemiire has to leave school before both her formal education and her ‘self-realization’ have been completed.⁴⁵ In this way the process of social becoming, central to the Bildungsroman, is interrupted. She then has to return home – back to the village (reversing the symbolic journey of social becoming she has undertaken) – and back to her family. Though her education carries on, it does so through the family: she is taught by her grandmother in an elaborately disrupted and fragmented way.

Secrets No More

Kyomuhendo’s second novel is also reminiscent of the Bildungsroman, and yet, in a slightly different way, the traditional narrative arc of the form is again interrupted by the family. The central character in *Secrets No More* is Marina, a refugee who comes to Uganda from Rwanda after her family are killed, and her mother is raped and killed. The novel’s first major event is the dramatic and terrifying attack on Marina’s house. Then Marina finds her way to an orphanage in Uganda through the intervention of Father

⁴²*The First Daughter*, p.64.

⁴³ *The First Daughter*, p.60.

⁴⁴ Buckley, p.95.

⁴⁵ Buckley, p.95.

Marcel, an Italian priest. At the orphanage Marina is raped by Father Marcel's assistant Matayo and becomes pregnant. When Marina has the baby, Rosaria, she has no maternal feelings for her, so Rosaria stays at the orphanage and Marina moves to the city into the home of a married couple, the Magezis. Here she encounters George, a fraudulent businessman. She and George marry but are unhappy.

However, she then meets George's friend Dee, who first catches her attention because of the passion with which he talks about the failures to stop the Rwandan genocide. Dee is another Rwandan refugee and '[t]he only topic which seemed to stimulate Dee was when the men discussed the Rwandan genocide. Only then would his face show some interest and he would argue vehemently until the other men gave up'.⁴⁶ Dee says of the UN, for example, 'You think it is not aware of the amount of violence taking place? [...] But what are they doing to stop it?'⁴⁷

She and Dee begin an affair but this turns out to be an attempt on Dee's part to avenge the death of his sister Lisa, a former girlfriend of George's who died in mysterious and never fully explained circumstances. Dee plans that when George finds out about the affair he will attack Dee and Dee will be able to kill him in self-defence. However, when George does indeed find out, he crashes his car and is seriously injured. Marina ends her affair with Dee to be with George in hospital. Dee leaves, George dies and so does Mrs Magezi; in the final chapter Marina is happily married to Mr Magezi and reunited with Rosaria.

Marie Kruger writes that '*Secrets No More* [...] recounts the rape of women during the Rwandan genocide and also in the seemingly protected space of domestic relations'.⁴⁸ However, Marina is not raped in her family environment; what Kruger describes as the 'protected space of domestic relations'⁴⁹ is actually the more ambiguous quasi-family sphere of the orphanage. The orphanage adds an extra, uneasy level in the development from home to the social world, as described in the Bildungsroman, because it is like, but never quite, a family.

⁴⁶ *Secrets No More*, p.134.

⁴⁷ *Secrets No More*, p.134.

⁴⁸ Marie Kruger, *Women's Literature in Kenya and Uganda: The Trouble with Modernity* (New York: Palgrave Macmillan, 2011), pp.5-6.

⁴⁹ Kruger, p.6.

What this produces in the novel is, perhaps paradoxically, an overabundance of familial language. For example, Marina acquires two surrogate fathers at the orphanage, explicitly described as such. First is Father Marcel:

[Mrs Magezi] remembered the old nun telling them what Marina had gone through in Rwanda and how Father Marcel had found her and given her a new life at the orphanage. 'He is like a father to all of them, especially Marina, whom he has a special attachment to,' the nun had told them. And now Father Marcel's health was poor, and Marina was going to be deprived of yet another 'father'.⁵⁰

Matayo, too, is described as like a father both before and after he rapes Marina: 'Matayo was a jolly person with a wonderful sense of humour. He treated the girls in the orphanage like his daughters.'⁵¹ After he has raped her, Marina thinks: 'Matayo had betrayed her trust. She had begun to believe in him and confide in him. In a funny way, he had reminded her of her dead father.'⁵²

The orphanage is Catholic and both Matayo and Father Marcel joined the church despite their fathers' opposition. When Father Marcel tries to persuade Matayo to return to his home, the language of the family dizzily multiplies: "'You have to listen to your father, Matayo,'" Father Marcel said quietly [...] "But, Father, I want to go back with you now. I want to learn the catechism."⁵³ Matayo cannot become a priest but he 'could join the vocation of brotherhood since permission from one's parents was not a prerequisite for becoming a brother.'⁵⁴ The nun who runs the orphanage tells Marina 'God is like a parent...he only gives you what he thinks is best for you'.⁵⁵ Within the orphanage, '[b]ig sisters were the bigger girls assigned to the smaller children to look after them until they reached an age when they could be able to look after themselves'⁵⁶ and 'Rosaria was pampered by everyone. The other orphans referred to her as 'our baby'.⁵⁷ However, Rosaria is of course not another orphan – her parents are Matayo and Marina.

⁵⁰ *Secrets No More*, p.79.

⁵¹ *Secrets No More*, p.44.

⁵² *Secrets No More*, p.59.

⁵³ *Secrets No More*, p.30.

⁵⁴ *Secrets No More*, p.34.

⁵⁵ *Secrets No More*, p.75.

⁵⁶ *Secrets No More*, p.119.

⁵⁷ *Secrets No More*, p.119.

Even when Marina moves to the city (and thus, in the terms of the Bildungsroman, towards social, and away from family, identity) the familial language persists. When Sister Bernadette encourages the Magezis to look after Marina, she says: '[a]nd...I didn't mean for Marina to be a housemaid, I would prefer her to be more of a...I mean I want a safe place for her so that she can be given the chance to start life anew,'⁵⁸ and, again: 'she did not want to give Marina away as a housemaid. She needed her to stay with a family which would offer her the security and protection she needed to start a new life.'⁵⁹ When she moves in with the couple Marina wonders 'about their own children. How would they take to another "child" coming to their home. But she had been surprised to find the house devoid of children.'⁶⁰ When George and Marina plan to marry, Mr Magezi thinks: 'His wife was behaving like a typical mother afraid of losing her last born to a man.'⁶¹

Similarly, even at those moments in the text which most strongly suggest adulthood, Marina is frequently described as being childlike. After Rosaria is born, she and Sister Bernadette have a conversation in which the nun encourages her to try to build a new future:

'what matters is that I managed to put the past behind me and start a new life. And that is what you need to do now, start a new life.'

'But I want to be happy,' Marina said, her voice taking on a childish edge.

'I know, Marina, it's very important, but it's more important to put everything behind you,' Sister Bernadette answered, knowing she was talking to the 'child' in Marina.⁶²

Father Marcel sees her in a similar way; when he comes to visit the new mother and her baby he thinks that Rosaria is 'big, far too big to have been delivered by Marina who was just a child herself.'⁶³ And when she first meets George, who she will marry, he

⁵⁸ *Secrets No More*, p.78.

⁵⁹ *Secrets No More*, p.77.

⁶⁰ *Secrets No More*, p.117.

⁶¹ *Secrets No More*, p.129.

⁶² *Secrets No More*, p.76.

⁶³ *Secrets No More*, p.67.

wants to 'know more about this child-woman [...] he knew she was a mere child of less than twenty years.'⁶⁴

'Do You Remember?'

There is a similar multiplication of the language of the family in the short story 'Do You Remember?'. Daymond, as we have seen, argues that '*Waiting* is [...] a bildungsroman that has yet to happen.'⁶⁵ The conventions of the coming of age narrative are disturbed further in 'Do You Remember?': this story is a replacement for a Bildungsroman which *should* have happened. The central character is a teenager called Maliza. When she was a child, during a period of conflict, she was taken away from her home: 'the soldier dug me out from the heaps of dead bodies, flung me on his soldiers, and carried me to his home, which was a military barracks with many children.'⁶⁶ None of the armed forces mentioned in the story are named, and there are no dates. The soldier who takes Maliza away was fighting for the 'rebels'.⁶⁷ These 'rebels' then become the government and a new group of rebels emerges. According to Maliza:

these rebels also raided homes, and took away children who they turned into child-soldiers. And cut off peoples lips and ears, and removed their eyes as punishment for telling on them to the government soldiers [...] they burnt houses and cooked people alive and fed them to the other villagers who had not yet been killed.⁶⁸

In 'Do You Remember?' it is Maliza's ability to narrate her story at all which is drawn into question by her abduction:

[i]f only I could remember everything that happened before the raid, I would say to you today. Now. "Sit down and let me tell you a story." The story of my life. Or, what could have been the story of my life.⁶⁹

The Bildungsroman is the story of an individual's life and development. Here, though Maliza does tell a story, it has the status of a replacement, a grossly insufficient

⁶⁴ *Secrets No More*, p.115.

⁶⁵ Daymond, p.129.

⁶⁶ 'Do You Remember?', p.175.

⁶⁷ 'Do You Remember?', p.176.

⁶⁸ 'Do You Remember?', p.177.

⁶⁹ 'Do You Remember?', p.175.

replacement, for the story she would have told – ‘what could have been the story of my life’.⁷⁰

Maliza describes the soldier who ‘flung [her] on his soldiers’ as ‘[t]he one who took the place of my real father, Mahoro [...] his wife took the place of my real mother, “wife of Mahoro.”’⁷¹ But even though at the beginning of the story Maliza says that the soldier is not her ‘real father’, as it progresses, she simply refers to him as ‘father’. For example, ‘[w]e left the barracks and went to live in a camp for displaced people because my father said the village was unsafe.’⁷² As in *Secrets No More*, there is a replacement of the original family with a more provisional family.

This might be read as a positive development. Of all the things that could happen to a child abducted by a soldier, the recreation of a family unit seems like one of the most positive. But in the absence of narrated expression of traumatic experience, it is the ambiguity of Maliza’s relationship with her family which tends to indicate the terrible impact of what she has endured. For example, she and her (new) family have to go and live in a camp for displaced people because of the activities of the second group of rebels. In the camp,

[t]he World Food Programme supplied us with food [...] it was easier for girls my age to obtain bigger food rations from the World Food Programme men who gave out food, because they liked to fondle our tits in the process.⁷³

One day when this happens, her ‘brother’ Barnabas intervenes, attacks one of the men and ‘beat him up real bad.’⁷⁴

He was so jealous! I felt good but this meant we did not get any food for that day. Or the next. Barnabas was put in a small room where he was beaten every day, and denied any food or water for a week. Me and mother and the twins were given food only once a day. As a result, one of the twins died. My mother cried a lot.⁷⁵

Here emotion is unsettlingly distributed: Barnabas’ jealousy – which, we might expect, should itself be unsettling, as, in the new family which she has joined, he is her brother

⁷⁰ ‘Do You Remember?’ p.175

⁷¹ ‘Do You Remember?’ p.175.

⁷² ‘Do You Remember?’ p.177.

⁷³ ‘Do You Remember?’ p.177.

⁷⁴ ‘Do You Remember?’ p.177.

⁷⁵ ‘Do You Remember?’ p.177.

– is the only event which provokes the narrator to describe a feeling: ‘I felt good’.⁷⁶ Meanwhile, what the World Food Programme men do to her, and the death of the baby, produce no described emotion.

Though the abduction by the soldier provides her with a new family, this is a problematic and disturbing one. She and her ‘brother’ Barnabas begin a sexual relationship:

I asked Barnabas if we should tell father and mother about the night he came to me. But Barnabas said no. We had to keep it as out secret. Why? Because it was not exactly right. He had done it because of the physical urge.⁷⁷

In the conventional coming-of-age novel, of course, romantic and sexual relationships often symbolize the development into adulthood. Here, despite the fact that Maliza describes being happy – ‘I loved Barnabas very much’⁷⁸ – her sexual experiences become uncomfortably associated with the family; not quite incestuous but almost. As Barnabas tells her, ‘it was not exactly right.’⁷⁹

The story is about a young girl caught up in the terror of war. But though surrounding events are mentioned, for example the rebels who ‘cut off peoples lips and ears, and removed their eyes as punishment for telling on them to the government soldiers’,⁸⁰ it is notable that the trauma of war is registered and represented through the family. When she is abducted, she is absorbed into a surrogate family, and yet this family proves abusive. The coming-of-age tale she would have been able to tell were it not for the war, ‘what could have been the story of my life’,⁸¹ is replaced by one in which the familial language multiplies, as in *Secrets No More*, as she finds a substitute father and mother. Moreover this is one in which the family does not produce safety or security, but rather a new kind of threat. Matayo, who rapes Marina in *Secrets No More* ‘treated the girls in the orphanage like his daughters.’⁸² Barnabas in this text is a kind of brother.

⁷⁶ ‘Do You Remember?’, p.177.

⁷⁷ ‘Do You Remember?’, p.179.

⁷⁸ ‘Do You Remember?’, p.179.

⁷⁹ ‘Do You Remember?’, p.179.

⁸⁰ ‘Do You Remember?’, p.177.

⁸¹ ‘Do You Remember?’, p.175.

⁸² *Secrets No More*, p.44.

Waiting

Finally, we can here return to reconsider *Waiting*. At the beginning of the novel Alina's mother is pregnant and the baby is due imminently. As they wait for the baby to be born, they are also waiting to see if Amin's soldiers will arrive; the soldiers have been looting local villages and terrorizing the inhabitants. In the end, the arrival of the soldiers and the birth of the baby coincide, and Kaaka is killed after beginning to deliver the baby. Then

Father rushed forward into the yard, something like a groan escaping from his lips. Kaaka was covered in blood. He bent over her. I was still clutching the plastic bag that contained the baby's things when I ran inside the house to find Mother.⁸³

This scene has a close parallel later in the novel, after the old man steps on a landmine:

[i]t did not look like a leg at all! From the knee downwards it was just a mass of red meat from which small pieces of white bone protruded [...] Still holding the baby tightly in my arms, I started walking away, placing one foot in front of the other, slowly at first, then more quickly, until I had put a distance between my weary body and the scene of blood.⁸⁴

The murder of Kaaka and the landmine are the two most explicit scenes of political violence in the novel and in both cases, Alinda makes an escape from an overwhelming 'scene of blood'⁸⁵ whilst holding tightly to something – in the first, the baby's things, in the second the baby himself. The baby, or the suggestion of the baby, is present on both occasions.

In fact, the baby's birth itself is another 'scene of blood.'⁸⁶ When Alina rushes to her mother, it is the presence of blood which is emphasized:

I could not see the cord. I feared to look at the jellied blood next to the baby [...] Then I saw something like a fleshy string, coiling out of the bloody mess and winding its way to the baby's stomach.⁸⁷

⁸³ *Waiting*, p.39.

⁸⁴ *Waiting*, p.67-8.

⁸⁵ *Waiting*, p.68.

⁸⁶ *Waiting*, p.68.

⁸⁷ *Waiting*, p.41.

This sense of similarity between childbirth and political violence is also suggested by the fear of blood which Alinda develops: she will not eat meat because she says that it ‘reminds me of blood – Mother’s afterbirth, and the old man’s leg’.⁸⁸ Kaaka is not mentioned; the afterbirth is here equivalent to the landmine. The experience of seeing the afterbirth establishes its own pattern of imagery which repeats through the novel. She says: ‘I tried to get hold of the afterbirth, but it slipped through my fingers and fell back towards the baby. It danced around in the pool of blood seeping from Mother’s womb, swimming like an egg yolk.’⁸⁹ Later, during the rains, she says that:

I dreamed that the roof of our house had flown off, and that water was soaking my bed. I was swimming in a puddle of water, and I was going to drown and die! I woke up in a cold sweat and did not fall asleep again until daybreak.⁹⁰

The dream repeats the language concerning the threat of seeping and of liquidity associated with the afterbirth, and suggests its traumatic impact.

Kaaka’s death is itself linked to maternity. The soldiers kick Kaaka twice in the stomach and then shoot her: ‘he fired again, aiming at her stomach.’⁹¹ Kaaka’s stomach has been, from the beginning of the novel, established as a key aspect of the descriptions of her: ‘[h]er big stomach was visible through the long, loose dress she was wearing, and she seemed to be pushing it in front of her as she walked.’⁹² This isn’t explained until chapter eleven; when she was young she was pregnant without being married, her mother took her to a medicine man to make the pregnancy invisible but

[a]fter about a year of marriage Kaaka came back to tell her mother that she had failed to deliver the baby and that her stomach was still swollen. They went back to the medicine man, but unfortunately, he had long since died. Kaaka’s stomach remained swollen since that time.⁹³

When Kaaka is killed and the mother dies in childbirth there are three graves and ‘[t]he smallest was for the baby that was said to have been discovered in Kaaka’s

⁸⁸ *Waiting*, p.72.

⁸⁹ *Waiting*, pp.41-42.

⁹⁰ *Waiting*, p.106.

⁹¹ *Waiting*, p.38.

⁹² *Waiting*, p.9.

⁹³ *Waiting*, p.61.

stomach.⁹⁴ Where in Mother's pregnancy the child lives but she dies, here the mother lives for years literally carrying around her dead child, until she is shot in her stomach by Amin's soldiers. This, along with the presence of the baby (or the suggestion of the presence of the baby) at scenes of blood, and with the way Alina's fear of blood, and descriptions of blood, are concentrated on her mother's afterbirth much more than on Kaaka's death or the landmine, suggests that political violence is entwined in the novel with a wider, more complicated, more unexpected anxiety.

In part, what Kyomuhendo is doing here is drawing attention to conventional hierarchies of violence, and then upending them. That *Secrets No More* depicts rape during the genocide as well as in during Marina's everyday life illustrates that, for women, and particularly for black, poor women, violence is not an exceptional event, but written into the conditions of normal existence. Similarly in *Waiting*, the political violence and childbirth are characterized similarly, and this links them together, refusing again to characterize the violence visited on the female characters as solely the result of the unstable political situation and rather making what seems unexceptional – the dangers of motherhood, patriarchal social norms, and childbirth – vivid and terrifying. Catherine MacKinnon has asked 'why is torture on the basis of sex – for example, in the form of rape, battering, and pornography – not seen as a violation of human rights?'⁹⁵ She goes on to write that

[w]hen the abuse is sexual and intimate, especially when it is sexual and inflicted by an intimate, it is gendered, hence not considered a human rights violation. Torture is regarded as politically motivated; states are generally required to be involved in it. What needs asking is why the torture of women by men is not seen as torture, specifically why it is not seen as political, and just what the role of the state in it is.⁹⁶

Kyomuhendo's texts ask a similar question, refusing any sense of a boundary between the violence of war and the violence of the everyday experience of women.

At the same time, however, the type of violence with which Kyomuhendo is concerned in these texts also has important symbolic dimensions when thinking about the nation-state. According to Elleke Boehmer, 'it is virtually a literary and socio-political given that mother symbols cement national feeling, and that, worldwide, the

⁹⁴ *Waiting*, p.59.

⁹⁵ MacKinnon, p.21.

⁹⁶ MacKinnon, p.21.

cognate-metaphors of soil, earth, home and family buttress the process of making national claims, or invoking the modern nation into being.⁹⁷ But in Kyomuhendo's fiction, as Kruger writes, this link is made unsettling:

[s]ignifiers for the dystopia of the nation and its patriarchal epistemology, the bodies of women are visibly marked not only by war and displacement but also by the unrelenting violence of human reproduction. Childbirth no longer affirms national and familial continuity, and instead transforms into a site of death, blood, and carnage.⁹⁸

If, as Boehmer suggests 'soil, earth, home and family buttress the process of making national claims',⁹⁹ then the way these symbols turn, in Kruger's words, into 'site[s] of death blood and carnage'¹⁰⁰ can surely be read to indicate a crisis facing the nation. Yet, on the other hand, as we have seen, the Bildungsroman premises its vision of national-individual incorporation on the movement away from the family. Yet Kyomuhendo's texts problematize this too, making the family both corrupted and inescapable. It is this duality of the family's symbolic value in her work which, I suggest, is revealing about a wider ambiguity, and which has consequences for our understanding of human rights.

Human Rights and the Human Family

The first sentence of the Universal Declaration of Human Rights describes humanity as a family: it says that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.'¹⁰¹ The family re-emerges in Article 1 by which time the familial language has become more particular: '[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'¹⁰² As Jacqueline Bhabha has argued, although the Declaration thus 'invokes the family metaphor'¹⁰³, it moves – between the preamble and the first article – from positing humanity as a family to insisting on

⁹⁷ Elleke Boehmer, *Stories of Women: Gender and Narrative in the Postcolonial Nation* (Manchester: Manchester University Press, 2005), p.26.

⁹⁸ Kruger, pp.144-5.

⁹⁹ Boehmer, p.26.

¹⁰⁰ Kruger, p.145.

¹⁰¹ UDHR, preamble.

¹⁰² UDHR, art.1.

¹⁰³ Jacqueline Bhabha, 'The Child – What sort of Human?', *PMLA*, 121.5 (2006), 1526-1535 (p.1526).

(should act)¹⁰⁴ a spirit of *brotherhood*, in particular. Brotherhood is just one specific mode or type of family relation and as Bhabha writes, the Declaration thus presents a ‘disjunction between inclusive membership and partial perspective.’¹⁰⁵

Both the family and the more specific notion of fraternity are long-established ways of understanding the political community of the democratic nation-state. According to Jacques Derrida, ‘[t]he concept of politics rarely announces itself without some sort of adherence of the State to the family.’¹⁰⁶ But this is an intensely complicated relationship. Fraternité is the third term in the French revolutionary slogan – liberté, égalité, fraternité. Feminist political philosopher Carole Pateman argues that though the term fraternity is understood simply as a way of describing political community, this disguises the extent to which that community is based upon the exclusion of women; fraternity, Pateman writes, ‘means exactly what it says: brotherhood’.¹⁰⁷

She argues that traditional patriarchal political theory saw the relationship between the king and his subjects as resembling that of a father and his sons; subordination to the king was understood to be natural, a matter of birth. Social contract theory of the seventeenth and eighteenth centuries, on the other hand, presents the basis for rule as an agreement made between equals who, once the agreement is made, become individuals under the law.

Although, as she writes, ‘Freud’s account of the murder of the primal father by his sons is not usually considered in discussions of the social contract’, Freud’s *Moses and Monotheism* does describe ‘the pact made by the brothers after their dreadful deed as “a sort of social contract.”’¹⁰⁸ *Moses and Monotheism* is useful for her purposes because it makes explicit something which is implicit in other theorizations of social contract, she argues. In Freud’s text, the sons overthrow the exclusive power of the father and create a new order between themselves (just as in traditional social contract theory) but in Freud the reasons for this overthrow are made clear. Pateman writes that:

¹⁰⁴ UDHR, art.1.

¹⁰⁵ Bhabha, p.1526.

¹⁰⁶ Jacques Derrida, *Politics of Friendship*, trans. by George Collins (London: Verso, 1997), p.viii.

¹⁰⁷ Carole Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (Cambridge: Polity Press, 1989), p.40.

¹⁰⁸ *The Disorder of Women*, p.41.

the motive for the brothers' collective act is not merely to claim their natural liberty and right of self-government, but to gain access to women [...] The parricide eliminates the father's political right, and also his exclusive sexual right.¹⁰⁹

In this way she argues that patriarchal rule had two dimensions: one relates to sons and another to wives. Social contract theory changes the first, but leaves the second in place: '[t]he social contract is a modern patriarchal pact that establishes men's sex right over women'.¹¹⁰ 'Fraternity' has an invisibility or naturalness in political discourse; there is, Pateman writes, a 'general acceptance that "fraternity" is no more than a way of talking about the bonds of community.'¹¹¹ Such a neutral reading ignores that fraternity implies a community of men: '[t]he father is dead and the participants in civil society have left kinship behind them, but as civil individuals they still share an ascriptive bond – a bond *as men*.'¹¹²

Traditional patriarchal theory analogizes the family and the polity; there is thought to be a parallel between an effective sovereign and a fair father. But social contract theory opposes them: the fraternal public civil sphere is understood as everything the family is not:

[the] new, modern patriarchal order [...] is presented as divided into two spheres: civil society or the universal sphere of freedom, equality, individualism, reason, contract and impartial law – the realm of men or 'individuals'; and the private world of particularity, natural subjection, ties of blood, emotion, love and sexual passion – the world of women, in which men also rule.¹¹³

This means that '[t]he fundamental distinction between the traditional patriarchy of the father and modern patriarchy is [...] that the latter is created in separation from, and opposition to, the familial sphere.'¹¹⁴ Moreover, 'political life has been conceptualized in opposition to the mundane world of necessity, the body, the sexual passions and birth.'¹¹⁵

¹⁰⁹ *The Disorder of Women*, p.43.

¹¹⁰ *The Disorder of Women*, p.52.

¹¹¹ *The Disorder of Women*, p.40-41.

¹¹² *The Disorder of Women*, p.42.

¹¹³ *The Disorder of Women*, p.43.

¹¹⁴ *The Disorder of Women*, p.42.

¹¹⁵ *The Disorder of Women*, p.45.

The use of the family metaphor that Pateman tracks, however, evinces a peculiar contradiction. On the one hand, the political community brought into being through the social contract is understood as a fraternity; on the other hand the same political community is ‘created in separation from, and opposition to, the familial sphere.’¹¹⁶ Fraternity, a word which means a particular type of family bond, is used in such a way that it symbolizes the opposite of the bonds of family. The equals who make the new social contract are described as brothers, but fraternity is not understood as a familial language. Pateman writes:

as recent accounts of fraternity make clear, the concept covers much more than bonds of kinship. ‘Individuals’ can be part of a fraternity or a brotherhood – a ‘community’ – even though they are not brothers (sons of a father or kin). The father is dead and the participants in civil society have left kinship behind them.¹¹⁷

There is something strange about this: a word which signifies familial bonds, fraternity, comes to characterize political community at the same time as political community is defined against the family and what it signifies.

But if what is being signified is that ‘the participants in civil society have left kinship behind them’,¹¹⁸ why use a word – fraternity – which actually means kinship – that is, which means precisely what it does not mean? Derrida asks this question, drawing attention to the following passage from Jean-Luc Nancy’s *The Experience of Freedom*:

fraternity, aside from every sentimental connotation (but not aside from the possibilities of passion it conceals, from hatred to glory by way of honor, love competition for excellence, etc.), is not the relation of those united by a same family but the relation of those whose *Father*, or common substance, *has disappeared*, delivering them to their freedom and to the equality of this freedom. Such are, in Freud, the sons of the inhuman Father of the horde: becoming brothers in the *sharing* of his *dismembered* body. Fraternity is equality in the sharing of the incommensurable.¹¹⁹

¹¹⁶ *The Disorder of Women*, p.42.

¹¹⁷ *The Disorder of Women*, p.42.

¹¹⁸ *The Disorder of Women*, p.42.

¹¹⁹ Quoted in Jacques Derrida, *Rogues: Two Essays on Reason*, trans.by Pascale-Anne Brault and Michael Naas (Stanford: Stanford University Press, 2005), p.57.

Thus, as I have been arguing, fraternity is understood to mean ‘*not* the relation of those united by a same family’ (my italics) but a ‘freedom’ and ‘equality’ which comes after, and distinguishes itself from, the family.¹²⁰

Derrida asks of Nancy, however,

why not simply *abandon* the word *fraternity as well*, now that it has been stripped of all its recognizable attributes? What does *fraternity* still name when it has no relationship to birth, death, the father, the mother, sons and brothers? If the link to the traditional word and concept is so arbitrary that one can abandon it, then why say nothing of the daughter and the sister – or the wife? Where have they gone?¹²¹

Derrida suggests that the word ‘fraternity’ tends to be used as if does not imply the series of associations the brother customarily carries. But the persistence of the word, its recurrence across so many theorizations of the democratic state, is suggestive. He suggests that in retaining the word fraternity ‘to designate a fraternity beyond fraternity, a fraternity without fraternity (literal, strict, genealogical, masculine, etc.) one never renounces that which one claims to renounce – and which returns in myriad ways, through symptoms and disavowals’.¹²²

In Derrida’s reading what underlies this privileging of the brother, this idea that there can be ‘fraternity without fraternity,’ is the question of sameness and difference in the democratic order:

democracy has always wanted by turns and at the same time two incompatible things: it has wanted, on the one hand, to welcome only men, and on the condition that they be citizens, brothers, and compeers [*semblables*], excluding all the others, in particular bad citizens, rogues, noncitizens, and all sorts of unlike and unrecognizable others, and, on the other hand, at the same time or by turns, it has wanted to open itself up, to offer hospitality, to all those excluded.¹²³

As Derrida points out it ‘was never explained why one wished to hold on to and privilege this figure [of the brother] rather than that of the sister, the female cousin, the daughter, the wife or the stranger, or the figure of anyone or whoever.’¹²⁴ We speak of

¹²⁰ Nancy, quoted in *Rogues*, p.57.

¹²¹ *Rogues*, p.167, emphasis original.

¹²² *Politics of Friendship*, p.237.

¹²³ *Rogues*, p.63.

¹²⁴ *Rogues*, p.58.

the brother because the democratic community has always desired sameness; partly, as Pateman also argues, this is a question of maleness: democracy is figured as masculine. Derrida writes: '[l]et us not forget this overwhelming and therefore terribly blinding fact: the brother of which one speaks is always a man'.¹²⁵

A democratic community based around likeness also suggests the exclusivity of ethno-nationalism. Here we can return to Arendt:

[t]he reason why highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because they indicate all too clearly those spheres where men cannot act and change at will, *i.e.*, the limitations of the human artifice.¹²⁶

Brotherhood indicates likeness, and the drive to 'eliminate [...] differences'¹²⁷ is closely associated with the desire for the community to be based around the similarities of masculinity and ethnic resemblance.

But if the family stands for similarity – and thus for exclusions from the nation-state based on ethnicity and gender – there is also a sense in which the family also, contradictorily, stands for difference. This can be seen through a consideration of the metaphors of birth which abound within the political sphere. Pateman writes:

[t]he social contract is the point of origin, or birth, of civil society, and simultaneously its separation from the (private) sphere of real birth and the disorder of women. The brothers give birth to an artificial body, the body politic of civil society; they create Hobbes's 'Artificial Man, we call a Commonwealth,' or Rousseau's 'artificial and collective body', or the 'one Body' or Locke's 'Body Politick'. The 'birth' of the civil body politic, however, is an act of reason; there is no analogue to a bodily act of procreation.¹²⁸

In the story of the social contract, the participants are thought to make a conscious and free decision to join – this suggests that the links between the members of the community are constructed, invented and brought into being.

¹²⁵ *Rogues*, p.60.

¹²⁶ *Origins of Totalitarianism*, p.301.

¹²⁷ *Origins of Totalitarianism*, p.301.

¹²⁸ *The Disorder of Women*, pp. 45-46.

Physical birth is the opposite of this artificial birth. This is because the artificial political community is based around formal equality, where physical birth is associated with difference – that is, with the bonds which cannot be constructed. As Arendt writes:

mere existence, that is, all that which is mysteriously given us by birth and which includes the shape of our bodies and talents of our minds, can be dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love, which says with Augustine, ‘*Volo ut sis* (I want you to be,’ without being able to give any reason for such supreme and unsurpassable affirmation.¹²⁹

It is because the human who is merely human – and thus removed from political community – is associated with difference that she is so alarming:

[t]he ‘alien’ is a frightening symbol of the fact of difference as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy.¹³⁰

Exactly as the fraternity beyond fraternity is thought to designate relationship outside kinship but uses a term associated with kinship, the metaphor of birth is used to mean what it does not mean. When the metaphor of birth is used within social contract theory, for Pateman, it is used to suggest the artificiality of the political community and its constructed equality. But, to describe the coming into being of such a community, a term – birth – is used, which actually signifies everything to which the artificiality of the political sphere is opposed. Physical birth signals ‘mere existence,’ givenness, ‘difference as such’.¹³¹

Derrida, as I quoted earlier, states that ‘[t]he concept of politics rarely announces itself without some sort of adherence of the State to the family.’¹³² But, as we have seen, this adherence is contradictory. On the one hand fraternity and birth symbolize the formal equality and similarity of the political sphere – and thus the desire for the reduction of difference which can produce exclusions based on gender and race. On the other hand, the family is understood to symbolize the difference of birth, the given identity which the constructed equality of the political sphere opposes itself to, the

¹²⁹ *Origins of Totalitarianism*, p.301.

¹³⁰ *Origins of Totalitarianism*, p.301. .

¹³¹ *Origins of Totalitarianism*, p.301.

¹³² *Politics of Friendship*, p.viii.

‘realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy.’¹³³

Derrida argues that the family stands for democracy’s simultaneous desire for similarity and for difference. This contradiction is an irresolvable one, Derrida argues, integral to democracy itself. So when the conventions of the form of the Bildungsroman are disrupted by the imagery of the family – that is, when the progressive development towards abstract public identity is thrown off course by the bloodiness of birth or the inescapability of family ties – what is manifested in the form of the Bildungsroman is the deep ambivalence of the national-democratic structures with which the literary form is so closely linked.¹³⁴

What, though, does this have to say about human rights? Slaughter draws a link between the Bildungsroman and human rights discourse because both suggest that the development of the personality means incorporation in the nation-state. I have suggested that Kyomuhendo’s Bildungsromane are more complex than the texts he describes as dissensual examples of the genre, because they are characterized not only by interruption but by a specific form of interruption, produced by familial imagery. For Slaughter, human rights discourse proposes that rights are possessed through the development of the personality. This positions citizenship in the nation-state as the solution for the rightlessness associated with merely human identity. But the way these texts insist on familial imagery within the context of the Bildungsroman suggests a problem with this.

Human rights discourse cannot propose that the possession of human rights through the development of abstract personality in the nation-state is the solution for the vulnerability of mere human existence. Mere humanness cannot be transcended by citizenship, because, even in the context of the nation-state, the abstract political identity of the person is haunted by, and difficult to separate convincingly from, mere humanness. Though the fraternal seeks to set itself up in opposition from the merely

¹³³ *Origins of Totalitarianism*, p.301. .

¹³⁴ This might lead, for example, to a consideration of the way the family symbol allows the politics of inclusion and exclusion in the nation-state to be thought in new ways. Kruger argues that *Waiting* ‘locates the crisis of citizenship resulting from the collapse of the territorial state model in the intimate space of family and kin’ (p.129). Through Derrida and Pateman we can see that this is not an incidental link, but rather that the family is integral to conceptualizations of citizenship.

given, it finds itself embroiled in what it had tried to evade. If rights are to be possessed through the development of the personality, and if mere humanness indicates rightlessness, the ambivalence of the family symbol thus suggests the difficulty of ever fully possessing human rights in this sense.

Finally, it is apparent when reading these texts that the familial language they use is excessive. It is the strangeness of the literary – rather than its ability to logically reflect human rights discourse – which I will turn to in the next two chapters I argue that literature’s ambiguities are crucially important for understanding the crisis of possession which characterizes human rights discourse.

Chapter Four: Quasi-Legality, Human Rights and South Africa's TRC

The law is centrally implicated in the crisis of human rights possession I have been discussing over the last three chapters. To reiterate, the human rights theorist Jack Donnelly argues that:

[o]ne can – and usually does – go very far before human rights arguments become necessary. An appeal to human rights usually testifies to the absence of enforceable positive (legal) rights and suggests that everything else has been tried and failed, leaving one with nothing else (except perhaps violence) [...] Legal rights ground legal claims to protect already established legal entitlements. Human rights ground moral claims to strengthen or add to existing legal entitlements. That does not make human rights stronger or weaker, just different. They are human (rather than legal) rights. If they did not function differently, there would be no need for them.¹

It is where human rights are not protected by law that they are most important. When they are protected by law they become less urgent, and the defining characteristic of the human rights claim – its intervention in a situation of extreme vulnerability where all other hope has been lost – becomes less marked.

Consequently, human rights have an ambivalent relationship with the possibility of their legal enforcement. The replacement of a human right by an enforceable legal right is the logical end-point of human rights discourse in two ways: it is what the invocation of human rights talk aims at, but it is also the moment at which the distinctiveness of human rights discourse is least apparent. Costas Douzinas suggests:

[i]n a strange, almost metaphysical way, human rights 'exist', even when they have not been legislated [...] The absence of legislative approval, often the legislator's opposition to the new claims, is their structural characteristic. In this sense, human rights have a certain independence in relation to the context of their appearance. Legal procedures, political traditions and historical contingencies may be part of their constitution, but human rights retain a critical distance from law and stretch its boundaries and limits.²

¹ Donnelly, pp.12-13.

² *The End of Human Rights*, p.344.

In this chapter, I argue that human rights are ambivalent about the law and stand in an ambiguous relationship to it. I demonstrate this through a specific case study: South Africa's transition to democracy. The discourse of human rights was crucial to the transition and it was used in multiple ways for a number of different strategic purposes. On the one hand, human rights were used in fully legal projects such as the drafting of the interim and final Constitutions. In these contexts, international human rights discourse was encoded in national law. For example, the first case that the newly established Constitutional Court heard was on the death penalty. In abolishing capital punishment, the Court explicitly argued that post-apartheid South Africa was supposed to be a nation built upon respect for human rights, as demonstrated in the Constitution's provisions on the right to life. It therefore outlawed the practice. In so doing, it made a binding, legally enforceable principle of national law by arguing that it was responding to the demands of international human rights discourse.

But it is important to note that this is not the only way that human rights discourse featured in the transition. It was also crucial to the Truth and Reconciliation Commission (TRC). The TRC was a nation-building project too, but it had a much more complex relationship with legality: it was a quasi-legal body, both related to and not quite of the law, which used human rights discourse to distinguish itself from fully legal mechanisms and structures. For the TRC, the nature of past human rights violations was thought to require something beyond the law, something the law could not provide. I argue that the uses of human rights discourse in the transition illustrate the complex relationship between the discourse and the law: it was used both to found legal rights in the national context and to theorize a space for justice beyond the law.

The ambivalence of human rights discourse in relation to the law has significant consequences for thinking about the connections between literature and human rights.³

³ My discussion in this chapter intersects with the broader study of literature and the law: there is an extensive body of scholarship which seeks to locate the connections between the two. For a useful summary of the various approaches, see Julie Stone Peters, 'Law, Literature and the Vanishing Real', *PMLA*, 102.2 (2005), 442-453. Of particular relevance to this thesis, see Ravit Reichman, *The Affective Life of Law: Legal Modernism and the Literary Imagination* (Stanford: Stanford University Press, 2009) and Mark Antaki, 'Genre, Critique and Human Rights', *University of Toronto Quarterly*, 82.4 (2013), 974-996. For an interesting counterpoint to debates on legality, literature and the South African Truth and Reconciliation Commission, see Rosanne Kennedy, 'Australian Trials of Trauma: The Stolen Generations in Human Rights, Law and Literature', *Comparative Literature Studies*, 48.3 (2011), 333-355. I will engage primarily with

Though I have drawn attention to this only briefly in the previous chapters, the ambiguity surrounding the legal enforceability of human rights has been implied in the models of literary interpretation I have referred to so far. For Joseph Slaughter, the *Bildungsroman* becomes so important because international law is weak and because there is a mismatch between the goals of the international human rights movement and the rights actually guaranteed by citizenship in the nation-state.

Literature is thought to compensate for the insufficiency of international law and to help to imaginatively translate belonging to the nation-state into possessing human rights, to make them seem equivalent. For Slaughter, it is the *Bildungsroman* which helps to bridge the gap between the legal rights guaranteed by the nation-state and the ambitions of international human rights discourse:

[t]he *Bildungsroman* has acted as a cultural surrogate for the missing executive authority of international human rights law, expanding its purview by projecting the social and cultural conditions out of which human rights might be recognised as commonsensical.⁴

This is to suggest that human rights' ambivalence in relation to the law is a limit ('the missing executive authority of international human rights law'⁵) and to suggest that literature can function in such a way as to compensate for this limit.

What does such a model of reading imply about literary texts? Does it assume that literature operates in the place of the law, taking on some of its roles? If this is the case, what is it about literature which enables it to be law-like? On the other hand, perhaps it is the case that literature is able to do something the law cannot – that it makes up for the limits of the human rights law not by being law-like but by being different from the law. Stated like this, these questions are somewhat abstract. But the South African transition provides a specific example through which they can be posed in a more concrete and practical way: the Foreword to the TRC's *Report*, where Archbishop Desmond Tutu uses a literary text – Ariel Dorfman's play *Death and the*

Mark Sanders' *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford: Stanford University Press, 2007).

⁴ *Human Rights, Inc.*, p.29.

⁵ *Human Rights, Inc.*, p.29.

Maiden – to explain and defend the Commission’s procedures.⁶ In particular, Tutu uses the play to justify the quasi-legality of the Commission.

In an example of its ambivalent relation to the law, the TRC did not put perpetrators of apartheid crimes on trial. Instead, it offered them amnesty if they would tell the truth about their past actions. The concept of truth therefore became crucial to the Commission. Instead of punishment or revenge, what South Africans were offered was truth. In the *Report*, it was the importance of truth, and the Commission’s superior ability to provide access to it, that justified its quasi-legality. The *Report* suggested that in order for individuals and the nation properly to recover after, and move on from, gross violations of human rights, a form of truth was required that the law could not provide. In order to make exactly this point, Tutu turns to a literary text: *Death and the Maiden*. Tutu suggests that the play shows how truth is restorative. Implicitly, then, the play thus becomes associated with the truth which compensates for the law’s inadequacies. This move is an example of a more generalized model of the relationship between literature and the limits of human rights: literature is seen to have special relevance where standard legal practices are insufficient.

Human Rights Discourse and the South African Transition: The Truth and Reconciliation Commission

During the 1990s the phrase ‘transitional justice’ became an increasingly prominent way of describing the particular challenges faced by states in which authoritarian regimes had collapsed, and democracy was to be developed. This was the case, in a relatively short period of time, in, amongst others, Brazil, Chile, the former Soviet Union, and South Africa. While transitional justice means more than simply truth commissions, truth commissions have been a significant focus of academic work on the concept of transitional justice.⁷ One of the first studies on the topic, Ruth G. Teitel’s *Transitional Justice*, argues that

⁶ Ariel Dorfman, *Death and the Maiden*, in Ariel Dorfman, *The Resistance Trilogy* (London: Nick Hern Books, 1998), pp.87-143.

⁷ For an outline of the origins of the concept of transitional justice in the 1990s and an account of its subsequent development, see Naomi Roht-Arriaza, ‘The New Landscape of Transitional Justice’, in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. by Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), pp.1-17.

wherever states made delicate transitions out of brutal military rule and eschewed the prior regime's punishment, the burning question was whether past wrongs would simply be forgotten. The truth commission emerged as impunity's antidote and amnesty's analogue.⁸

South Africa was, therefore, not the only country to have created a truth commission. In her study of the practice, Priscilla B. Hayner counts at least twenty one across the globe between 1974 and 2002.⁹ The South African TRC was the focus of unprecedented national and international attention, however, and was exceptionally well-resourced: Hayner notes that '[w]ith a staff of three hundred, a budget of some \$18 million each year for two-and-a-half years, and four large offices around the country, the commission dwarfed previous truth commissions in its size and reach.'¹⁰ As Melissa S. Williams and Rosemary Nagy observe,

[t]he South African TRC set a new standard for the aspirations of transitional institutions as resources not only for redressing past injustices but also as laying the foundation for forward-looking or restorative justice in a renewed democratic community.¹¹

The Commission was comprised of seventeen commissioners who were nominated by members of the public as well as by groups and organisations. Public hearings at which the nominees were invited to appear were used to create a shortlist,

⁸ Ruth G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), p.79.

⁹ Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (London: Routledge, 2002), p.8. Though numerous critiques of the South African TRC have been made (some of which will be discussed further below) the extent of its success in meeting its objectives, its ability and willingness to strongly critique the ANC, and the financial support it received should be underlined, as these successes have not characterized all truth commissions. For example, there were two truth commissions in Uganda. One was created by Idi Amin in 1974 and focused on disappearances in the period after 1971, when Amin seized power. The second was established by Yoweri Museveni in 1986 and 'was charged with investigating human rights violations by state forces that occurred from Uganda's independence in 1962 up to January 1986, when Museveni came to power (though excluding any abuses by Museveni's rebel force).' (Hayner, p.56). The first was largely forgotten; the second faced repeated funding crises and its report was not made widely available. Hayner discusses these commissions on p.51-2 and 56-7 respectively. See also Joanna Quinn, 'Constraints: The Un-Doing of the Ugandan Truth Commission', *Human Rights Quarterly*, 26.2 (2004), 401-427 and Makau Mutua, 'Beyond Juba: Does Uganda Need a National Truth and Reconciliation Process?', *Buffalo Human Rights Law Review*, 13 (2007), 19-32.

¹⁰ Hayner, p.41.

¹¹ Melissa S. Williams and Rosemary Nagy, 'Introduction' in Melissa S. Williams, Rosemary Nagy, and Jon Elster, *Transitional Justice* (London: New York University Press, 2012), pp.1-30 (p.3).

and President Nelson Mandela picked the seventeen from this list. The Commission was chaired by Archbishop Desmond Tutu, the deputy chair was Dr Alex Boraine, and it was split into three committees – the Human Rights Violations committee, the Reparation and Rehabilitation committee and Amnesty committee.

The Commission collected over 20,000 written statements¹² and held public hearings. There were a number of different types of hearing, including victim hearings, at which selected victims could give testimony about their experiences and event hearings, which focused on “window cases”[...] [which] aimed to provide detailed insights into particular incidents that were representative of broader patterns of abuse¹³, such as the Soweto revolt in 1976 and the Pondoland Rebellion in 1960. There were also Special Hearings focusing on women, children and the issue of compulsory national service, Institutional Hearings focusing on the role of important social institutions in contributing to a society in which extreme human rights violations were on-going, and Political Party hearings, giving the various political groupings an opportunity to outline their perspectives on the past. These hearings were all held by the Human Rights Violations Committee; the Amnesty Committee also held public hearings at which it heard each application for amnesty.

The Quasi-Legality of the TRC

Critical work on truth commissions emphasizes the extent to which human rights violations have lasting effects on victims and victims’ families, damage social bonds and the respect of citizens for the government and the police, and warp the telling of national history if these effects are not acknowledged. These factors are often used to suggest that human rights violations require something the law cannot provide. Consequently, the approach of truth commissions tends to be defined in contrast to that of courts. For example, Hayner states that

partly due to the limited reach of the courts, and partly out of a recognition that even successful prosecutions do not resolve the conflict and pain associated with past abuses [...] transitional

¹² *Truth and Reconciliation Commission of South Africa Report [TRC Report]*, vol.1, available at <<http://www.justice.gov.za/trc/report/>> [accessed 2 September 2014] p.142.

¹³ *TRC Report*, vol.1, p.147.

authorities have increasingly turned to official truth-seeking as a central component in their strategies to respond to past atrocities.¹⁴

According to Catherine M. Cole:

transitional justice departs from international law by suggesting that traditional jurisprudence has limited value when faced with crimes against humanity [...] Resulting from a convergence of the human rights movement and international law, transitional justice not only formulates a relationship between political transition and the law, it also addresses the unique challenges that a history of state-sponsored atrocity presents *to* the law.¹⁵

She goes on to argue that crimes against humanity ‘require new means of redress, a mechanism that records hidden histories of atrocity, didactically promotes collective memory and gives victims a place of respect, dignity, and agency in the process. Such purposes are not well-served by traditional jurisprudence’.¹⁶

The TRC’s *Report* carefully distinguishes the Commission’s own approach to dealing with past crimes to that modelled by the International Military Tribunals at Nuremberg (IMT) – the trial of twenty four prominent Nazis at the end of the Second World War, conducted by the Allies. The *Report* gives a number of reasons for the avoidance of an approach based on Nuremberg including the absence of a military victor in South Africa and the practical implications (‘our country simply could not afford the resources in time, money and personnel that we would have had to invest in such an operation.’)¹⁷ Moreover, the *Report* states,

[t]here is no doubt that members of the security establishment would have scuppered the negotiated settlement had they thought they were going to run the gauntlet of trials for their involvement in past violations. It is certain that we would not, in such circumstances, have experienced a reasonably peaceful transition from repression to democracy.¹⁸

In order to give a full sense of what the TRC was defining itself against, it is necessary to give a brief account of the significance of the IMT.

¹⁴ Hayner, p.14.

¹⁵ Catherine M. Cole, *Performing South Africa’s Truth Commission: Stages of Transition* (Bloomington, IN: Indiana University Press, 2010), p.2.

¹⁶ Cole, p.3.

¹⁷ *TRC Report*, vol. 1, p.5.

¹⁸ *TRC Report*, vol.1, p.5.

Crimes Against Humanity and International Criminal Law

The London Charter, which established the IMT, the Tribunal itself, and the subsequent Nuremberg Principles have come to be seen as the first major stage in the evolution of International Criminal Law (ICL). As a body of law, ICL is distinct from the international law of human rights, though the two areas have significant links: Gerhard Werle writes that '[i]nternational criminal law is, among other things, an instrument to protect human rights'¹⁹ and Antonio Cassese notes that 'ICL is an essentially hybrid branch of law: it is public international law impregnated with notions, principles and legal constructs derived from national criminal law, IHL [international humanitarian law] as well as human rights law.'²⁰ The most important difference between ICL and international human rights law in this context is that that ICL makes individuals criminally liable for certain actions. International human rights law, on the other hand, makes *states* responsible for actions or failures to act which result in violations of rights for those people under their jurisdictions.

Cassese argues that the Nuremberg trials were 'a turning point' because 'until 1945 [...] senior state officials had never been held personally responsible for their wrongdoings', but at the IMT they 'were no longer protected by state sovereignty.'²¹ The Nuremberg judgement stated that '[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.'²²

But it became apparent that the standards which already existed were not sufficient to deal with Nazi crimes. Madoka Futamura states that

[t]raditionally, a state's acts against its own citizens [...] did not constitute war crimes; they had simply been ignored under international law [...] There was a common understanding that the

¹⁹ Gerhard Werle, *Principles of International Criminal Law* (The Hague, the Netherlands: T.M.C Asser Press, 2005), p.40-41.

²⁰ Antonio Cassese, *International Criminal Law*, 2nd edn (Oxford: Oxford University Press, 2008), p.7. International humanitarian law is the law of war; its key instruments are the Geneva Conventions.

²¹ Cassese, p.30-31.

²² 'International Military Tribunal (Nuremberg) Judgement of 1 October 1946', p.55, available at: <http://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf> [accessed 5 September 2014].

crimes committed by the Nazis were unprecedented both in scale and character and thus could not be treated with the then existing law.²³

In order to make such acts criminal under international law, the Allies had to create new categories of prosecutable crime. The existing laws of war did not outlaw some of the Nazi actions which were most morally repugnant, including the mass murder of German Jews. Crimes against humanity thus first appeared in international law as a concept created to fill a gap in existing legal provisions.

Therefore, while the term ‘crimes against humanity’ had been used before 1945,²⁴ it was in that year during the discussions culminating in the drafting of the London Charter that it first entered the international legal lexicon to describe a crime which could realistically be prosecuted. The rather ad hoc development of the concept was troubling for some observers. Hannah Arendt writes that the definitions of crimes against humanity which developed through the Nuremberg tribunals were ‘fumbling’, and that ‘there was no other crime in the face of which the Nuremberg judges felt so uncomfortable, and which they left in a more tantalizing state of ambiguity.’²⁵

The Charter defined crimes against humanity as ‘murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the

²³ Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Abingdon: Routledge, 2008), pp.33-4. This was problematic because it required trying individuals for crimes which were not crimes when they were committed – *ex post facto* law. See Futamura p.32-5.

²⁴ For example, Gerhard Werle writes that the so-called ‘Martens clause’ in the Hague Conventions of 1899 and 1907, which dealt with the conduct of war, ‘obligated the belligerent parties to obey the “laws of humanity.”’ (Werle, pp.288-9.) He also shows that the UK, Russia and France used the phrase ‘crimes against humanity’ to refer to the Armenian genocide in 1915-16, and that ‘[a]fter World War I, there was talk of prosecuting “offences against humanity”, but this was never accomplished.’ (Werle, p.289). Norman Geras has also shown that the phrase ‘crimes against humanity’ can be found in newspaper reports and politicians’ remarks – particularly describing the actions of the Nazis – in the years leading up to 1945. (Norman Geras, *Crimes Against Humanity* (Manchester: Manchester University Press, 2011) pp.1-13.) Although M. Cherif Bassiouni argues that the idea underlying the crimes against humanity concept, and ‘the notion of protecting civilians in times of war’, ‘was not new’, he nonetheless notes that the Charter ‘was the first instance in positive international criminal law in which the specific term “crimes against humanity” was identified and defined.’ (M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd rev’d edn (London: Martinus Nijhoff, 1999), p.1.)

²⁵ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (London: Penguin, 1977), p.257.

Tribunal, whether or not in violation of the domestic law of the country where perpetrated.²⁶

Today the Charter of the International Criminal Court states that crimes against humanity have occurred when any of a list of acts – including murder, rape, deportation, enforced disappearance and apartheid – has been committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.’²⁷ Kriangsak Kittichaisaree writes that:

[a] crime against humanity is a crime against “humaneness” that offends certain principles of law and which becomes the concern of the international community. It has repercussions beyond international frontiers or exceeds in magnitude or savagery any limits tolerated by modern civilisation.²⁸

Apartheid as a Crime Against Humanity

Crimes against humanity, first prosecuted at Nuremberg, are significant for this chapter because in 1966 the General Assembly of the United Nations (GA) declared apartheid to be a crime against humanity for the first time.²⁹ Though such a term seems

²⁶ Charter of the International Military Tribunal (1945), art. 6(c), available at: <<https://www.icrc.org/ihl/INTRO/350?OpenDocument>> [accessed 1 September 2014]. However, while the Charter offered a definition of crimes against humanity for the first time, the definition set out did not have legal force outside of the Tribunal.

²⁷ The full list of acts is ‘(a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender...or other grounds (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.’ Rome Statute of the International Criminal Court, art.7 (adopted 17 July 1998, entered into force 1 July 2002) 2187 UN Treaty Series 90 (Rome Statute), available at: <http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf> [accessed 23 August 2014].

²⁸ Kriangsak Kittichaisaree, *International Criminal Law* (Oxford: Oxford University Press, 2002), p.85.

²⁹ ‘The Policies of Apartheid of the Government of the Republic of South Africa’ (adopted 16 December 1966), UN General Assembly Resolution 2202 A (XXI), available at <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/05/IMG/NR000505.pdf?OpenElement>> [accessed 2 September 2014].

to have an obvious moral weightiness, the legal consequences of its application to the situation in South Africa were not clear-cut. The first reason for this is that resolutions of the GA do not directly create binding international law, even though over time they may contribute to the development of custom or general principles. What is most significant about GA resolutions is that, gradually and in concert, they contribute to shifts in understanding of underlying issues in international law.³⁰

This resolution, together with the focused and sustained attention many UN bodies paid to racial discrimination in South Africa, did contribute to the growing international opprobrium facing the South African government and convey a sense of moral outrage. But in describing apartheid as, specifically, a crime against humanity, the GA was also trying to place it – and, crucially, those individuals who organized and maintained it – within the reach of the nascent framework of ICL and, at the same time, push the development of that framework itself in new directions.

However after the IMT the development of ICL occurred in fits and starts. Gerhard Werle, for example, argues that there have been three significant moments in its evolution. After the writing of the Nuremberg Principles, the next significant events he identifies are the founding of the international criminal tribunals in Yugoslavia (ICTY, created in 1993) and Rwanda (ICTR, created in 1994), and then the establishment of the International Criminal Court by the Rome Statute (ICC, 2002).³¹ There is a long gap in this account between Nuremberg and the ICTY, a gap which encompasses the entire duration of apartheid in South Africa. Cassese argues that even the statutes of the ICTR, ICTY and ICC have ‘not proved sufficient to build a coherent legal system’³² so it is unsurprising then that the UN’s much earlier attempts to use ICL in relation to apartheid were deeply hindered by the lacunae that resulted from this stop-start development; they did not occur against a background of sustained international commitment to the building of international criminal law standards.

When in 1966 the GA declared that apartheid was a crime against humanity it was seeking to extend the definition of the term ‘crimes against humanity’ set out in

³⁰ See Blaine Sloan, ‘General Assembly Resolutions Revisited (Forty Years Later)’, *British Yearbook of International Law*, 58.1 (1987), 39-150

³¹ Werle, p.3.

³² Cassese, p.5.

the London Charter by promoting an understanding of apartheid using the framework that the Allies had used to punish Nazi leaders. Because GA Resolutions do not directly create law, the effects of this were mostly rhetorical. However in 1976 the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid, which made apartheid a crime against humanity with binding legal effect entered into force.³³ The Apartheid Convention sought to criminalize apartheid and make it, in theory, possible for individuals to be prosecuted for committing it. However, one of the

³³ International Convention on the Suppression and Punishment of the Crime of Apartheid, UN General Assembly Resolution 3068 (XXVIII) (adopted 30 November 1973, entered into force 18 July 1976) 1015 UN Treaty Series. 243, available at: <<http://legal.un.org/avl/ha/cspca/cspca.html>> [accessed 2 September 2014].

Defining what the Convention understands by the term apartheid, Article 2 states that ‘for the purpose of the present Convention’ apartheid, ‘which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
 - (i) By murder of members of a racial group or groups;
 - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
 - (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- (d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

distinctive features of the Nuremberg Trials did not obtain in this case: there was no effective court to try alleged offenders. In 1976 no international criminal court yet existed, and so none could try those accused of apartheid. Moreover, no dedicated court (such as at Nuremberg or like the international criminal tribunals for Yugoslavia or Rwanda) was set up, despite discussions of both of these options.³⁴

The mechanism by which perpetrators could potentially be tried was extremely weak and ineffectual; as John Dugard states

it was left to States to enact legislation to enable them to prosecute apartheid criminals on the basis of a form of universal jurisdiction. The Apartheid Convention allows State parties to prosecute non-nationals for a crime committed in the territory of a non-State party where the accused is physically within the jurisdiction of a State party.³⁵

This would require someone accused of the crime of apartheid to travel to the jurisdiction of a state which had both signed the treaty and also established its own, separate domestic legislation to try individuals for the crime of apartheid. Unsurprisingly, no international criminal prosecutions for the crime of apartheid were ever attempted.

Such prosecutions became even less likely because of the lukewarm international reaction to the Apartheid Convention. Cassese observes that ‘the 101 states party to the Convention do not include any western country’ and this means that ‘only two major segments of the international community (developing and eastern European countries) have agreed to label apartheid as an international crime, whereas another grouping, that of western states, has refused to do so.’³⁶ Four states voted against the adoption of the Convention: South Africa, Portugal, the United Kingdom and the United States. The varying global ratification of the Convention has consequences for the legal status of apartheid as international treaties only bind those states which have signed them. International custom, another potential source of international law, can only develop where there has not been consistent opposition to the development of a concept. As so many states have not signed and ratified the Convention making apartheid a crime against humanity, Cassese argues that ‘[t]here is

³⁴ See John Dugard, ‘Introductory Note’, Convention on the Suppression and Punishment of the Crime of Apartheid’, <<http://legal.un.org/avl/ha/cspca/cspca.html>> [accessed 1 September 2014] (para.5 of 7).

³⁵ ‘Introductory Note’, (para.5 of 7).

³⁶ Cassese, p.13.

therefore a case for maintaining that under customary international law apartheid, although probably prohibited as a state delinquency, is not, however, regarded as a crime entailing the criminal liability of individuals.³⁷

By 1984, UK and US opinion on the issue had shifted, and the Security Council issued its own resolution describing apartheid as a crime against humanity.³⁸ In 1998 the Rome Statute, creating the International Criminal Court, also included apartheid in the list of crimes against humanity it has jurisdiction over and Cassese argues that this suggests an international customary prohibition of apartheid as a crime against humanity, entailing individual criminal responsibility, might be developing. However, by 1998, of course, apartheid in South Africa had been dismantled, and the prosecution of individuals for international crimes against humanity played no role at all in its conclusion. The description of apartheid as a crime against humanity was therefore a – completely unsuccessful – attempt to hold individuals legally responsible under the law for the development and maintenance of the apartheid system.

Crimes Against Humanity in the *TRC Report*

The *TRC Report's* use of the description of apartheid as a crime against humanity is a clear example of the ambivalent way in which the Commission relates itself to legal structures and concepts, and of the key role human rights discourse plays in this ambivalence. Tutu writes in his Chairperson's Foreword that

the international community, and not just the Communist bloc, has already declared apartheid to be a crime against humanity. For the international community, indeed, this is no longer a point of debate [...] The world would indeed be surprised if the Commission had not found apartheid to be a crime against humanity.³⁹

He says this in the context of defending the Commission against imagined critics who might, Tutu imagines, 'say "What did we tell you; what did you expect from such a skewed Commission packed with 'struggle' types"'.⁴⁰ That is, Tutu situates the Commission's description of apartheid as a crime against humanity in the context of (what he presents as) international consensus on the matter. The Commission's

³⁷ Cassese, p.13.

³⁸ UN Security Council Resolution 556 (1984), S/RES/55, available at: <http://www.refworld.org/docid/3b00f16b4c.html> [accessed 7 September 2014].

³⁹ *TRC Report*, vol.1, p.15.

⁴⁰ *TRC Report*, vol.1, p.15.

judgement, he argues, cannot be described as politically motivated or biased because the international repugnance at apartheid is such that it has united nations across the conventional political East-West divide. For the international community he argues, the question has been firmly settled – it is ‘no longer a point of debate.’⁴¹

Then, in an appendix to the section of the first volume of the *TRC Report* dealing with the Commission’s mandate, it is again reiterated that ‘there is almost total unanimity within the international community that apartheid as a form of systematic racial discrimination constituted a crime against humanity’⁴² and that ‘the Commission - as part of the international human rights community - affirms [the international community’s] judgement.’⁴³ This ‘recognition of apartheid as a crime against humanity’, the *Report* says ‘remains a fundamental starting point for reconciliation in South Africa.’⁴⁴

However, the appendix then states that

[t]his sharing of the international community’s basic moral and legal position on apartheid should not be understood as a call for international criminal prosecution of those who formulated and implemented apartheid policies. Indeed, such a course would militate against the very principles on which this Commission was established.⁴⁵

International legal standards are evoked, but their relevance for the Commission is downplayed. As Mahmood Mamdani notes, ‘this is the last the Commission *Report* speaks of apartheid as a “crime against humanity,”’.⁴⁶ Despite the way the UN had attempted to understand apartheid as a crime against humanity, the concept does not play much more of a conceptual or analytical role in the *Report*. It is set up as a certain kind of international standard, and yet it is discussed very briefly. The key defining feature of ICL – that it makes the prosecution of individuals possible under international law – is specifically dismissed.

⁴¹ *TRC Report*, vol.1, p.15.

⁴² *TRC Report*, vol. 1, p.94.

⁴³ *TRC Report*, vol.1, p.94.

⁴⁴ *TRC Report*, vol. 1, p.94.

⁴⁵ *TRC Report*, vol.1, p.94.

⁴⁶ Mahmood Mamdani, ‘Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa’, *diacritics*, 32.3–4 (2002), 33–59 (p.42).

There are two reasons for this; the first, as Mamdani points out, is a consequence of the way in which the Commission interprets its mandate and, in particular, how it defines and delimits the type of human rights abuses it is concerned with.⁴⁷ The second has to do with the way the TRC fits into the wider project of national reconciliation, and, most importantly, the amnesty provisions. I will consider these reasons for the invocation and swift disappearance of apartheid as a crime against humanity, in turn. ICL holds individuals legally accountable. By considering the limited way in which crimes against humanity feature as an analytic framework in the *TRC Report*, what becomes apparent is the ambiguous relationship with international legal standards which characterizes the TRC, and the extent to which this is elaborated through human rights discourse.

Defining ‘gross violations of human rights’

The TRC was established by the Promotion of National Unity and Reconciliation Act 34, 1995. The Act uses the concept of ‘gross violations of human rights’ to define what the Commission is tasked to investigate. Summarising that Act, the TRC’s *Report* says that

Briefly stated, the Commission was given four major tasks in order to achieve the overall objectives of promoting national unity and reconciliation. These were:

- a) analysing and describing the ‘causes, nature and extent’ of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;
- b) making recommendations to the President on measures to prevent future violations of human rights;
- c) the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;
- d) granting amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective.⁴⁸

It might seem obvious or natural to characterize some of the horrifying events in South Africa during apartheid as ‘gross violations of human rights’. But there is nothing natural or given about this category, and it is not self-evident; tracing the way

⁴⁷ See ‘Amnesty or Impunity?’, pp.38-39.

⁴⁸ *TRC Report*, vol. 1, p.57.

in which the *Report* used it provides insight into the specificity of the concept. The centring of gross violations of human rights had consequences for the Commission's work and for the way it characterized the history of apartheid. In particular, it led to a focus on egregious acts of violence committed against individuals – the structure of apartheid itself was, crucially, not understood as a gross violation in the Act's terms. In Chapter Two I argued that decontextualization in human rights reports emphasizes individual suffering rather than the wider causes of violations. The *TRC Report* is careful to contextualize the gross violations of human rights it describes. But it nonetheless understands gross violations of human rights as violations of individual persons – apartheid itself is not understood as a gross violation of human rights.

The Promotion of National Unity and Reconciliation Act defines the 'gross violations of human rights' the Commission is to 'analyze and describe', stating that the term means:

the violation of human rights through- (a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was carried out, advised, planned, directed, commanded or ordered, by any person acting with a political motive.⁴⁹

In this way, the Act delimited the scope of the violations of human rights the Commission was investigating in three key ways: it was to focus on 'killing, torture or severe ill-treatment' in a specified time limit⁵⁰ and committed 'with a political motive'.⁵¹

The Act caused a number of difficulties for the Commission. As the *Report* says:

[t]he Act used neutral concepts or terms to describe the various acts that constituted a gross violation of human rights. For example, 'killing' and 'abduction' were used rather than murder or kidnapping. Clearly, the intention was to try to avoid introducing concepts with a particular content in terms of the applicable domestic criminal law. This was to avoid equating what was essentially a commission of enquiry with a court of law. If the full array of legal technicalities and nuances had been

⁴⁹ Promotion of National Unity and Reconciliation Act 34 of 1995, Chapter 1, Section 1, available at: <<http://www.justice.gov.za/legislation/acts/1995-034.pdf>> [accessed 1 September 2014].

⁵⁰ The 'cut-off date' was 10 May 1994. *TRC Report*, vol. 1, p.136.

⁵¹ Promotion of National Unity and Reconciliation Act 34 of 1995, Chapter 1, Section 1.

introduced into the work and decision-making functions of the Commission, its task would have been rendered immensely complex and time-consuming.⁵²

In defining ‘gross violations of human rights’ the Act eschewed legal terms and concepts and instead chose ‘neutral’ ones.⁵³ This introduces a problem which recurs throughout the *Report*. On the one hand the Commission was not a ‘court of law’ and so it had to distinguish its practices and, in this case, terms, from those associated with legal process.⁵⁴ Gross violations of human rights were defined in ‘neutral’ terms, and not in legal ones.⁵⁵ However, the suggestion that the ‘*full* array of legal technicalities and nuances’ (my italics) were not to be ‘introduced’ into the Commission suggests that certain of them had been.⁵⁶ This implies that the Commission was forced to occupy an unusual space outside of the law proper, but in relationship to it.

A particular difficulty arose over the definition of ‘severe ill-treatment’.⁵⁷ The *Report* suggested that killing, abduction and torture are relatively simple to define, but that ‘severe ill-treatment’ is vaguer, potentially encompasses a wide range of violations and ‘is not a term that is recognised either in South African or in international law.’⁵⁸ The *Report* acknowledges that ‘[t]he ordinary meaning of “severe ill treatment” suggests that all those whose rights had been violated during the conflicts of the past were covered by this definition and fell, therefore, within the mandate of the Commission’.⁵⁹ That is, severe ill-treatment on the broader definition might have encompassed the forms and structures of apartheid itself, and the violations of rights that necessarily stemmed from them, just as the Apartheid Convention had defined the structure of apartheid itself as a crime against humanity. The *Report* noted that such a definition of ‘severe ill-treatment’ had in fact been proposed by ‘a number of organisations and groups representing, for example, victims of forced removals and Bantu education.’⁶⁰

⁵² *TRC Report*, vol. 1, pp.70-71.

⁵³ *TRC Report*, vol.1, p.70.

⁵⁴ *TRC Report*, vol.1, p.71.

⁵⁵ *TRC Report*, vol.1, p.70.

⁵⁶ *TRC Report*, vol.1, p.71.

⁵⁷ Promotion of National Unity and Reconciliation Act 34 of 1995, Chapter 1, Section 1.

⁵⁸ *TRC Report*, vol.1, p.79.

⁵⁹ *TRC Report*, vol.1, p.64.

⁶⁰ *TRC Report*, vol. 1, p.64.

The Commission ultimately rejected this wider definition of ‘severe ill-treatment’. Although it ‘recognised that large-scale human rights violations were committed through legislation designed to enforce apartheid, through security legislation designed to criminalise resistance to the state, and through similar legislation passed by governments in the homelands’ it decided that such violations were not what the Act meant by ‘gross violations of human rights.’⁶¹ Instead, ‘the Commission resolved that its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury.’⁶² By this it meant ‘[a]cts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the act or omission and the nature of the victim.’⁶³

The *Report* created an ‘illustrative’⁶⁴ list of such acts, which included rape and sexual assault, ‘physical beating resulting in serious injuries’, ‘mutilation (including amputation of body parts, breaking of bones, pulling out of nails, hair, or teeth or scalping)’, ‘punitive solitary confinement’; shootings and injuries during demonstrations, burnings, ‘injury by poison, drugs or other chemicals’; ‘detention without charge or trial’; ‘banning or banishment’ ‘deliberate withholding of food and water to someone in custody’, ‘deliberate failure to provide medical attention to ill or injured persons in custody and ‘the destruction of a person’s house through arson or other attacks which made it impossible for the person to live there again.’⁶⁵

While the *Report* acknowledged that the system of apartheid itself, the racial discrimination it was based on, and the kinds of deprivation it imposed on black South Africans were violations of human rights, it crucially did not consider these to be the gross violations of human rights it was required to describe and analyse. It focused instead on the extremes of violence committed within and against the apartheid system, not apartheid itself. As Richard Wilson writes, this ‘surprised observers who expected that the *Report* would put “apartheid on trial”’.⁶⁶ As with decontextualization in Chapter Two then, human rights are associated with particular violations committed

⁶¹ *TRC Report*, vol.1, p.65.

⁶² *TRC Report*, vol.1, p.64.

⁶³ *TRC Report*, vol.1, p.80.

⁶⁴ *TRC Report*, vol. 1, p.82.

⁶⁵ *TRC Report*, vo.1, p.81

⁶⁶ *Politics of Truth and Reconciliation in South Africa*, p.51.

against individuals, especially where these are spectacular and extreme, rather than with structural violence.

This is why, Mamdani argues, the concept of apartheid as a crime against humanity has little practical application or use in the TRC *Report*; the focus in the *Report* was not on apartheid itself, but rather on the murders, torture, abductions and severe mental and physical injury which resulted from the attempts to either maintain or destroy the system. It is these and only these which the Commission defines as gross violations of human rights. For the Commission, Mamdani writes, ‘injustice is no longer the injustice of apartheid: forced removals, pass laws, broken families. Instead, the definition of injustice has come to be limited to abuses within the legal framework of apartheid: detention, torture, murder.’⁶⁷ It is not quite accurate to say that this is what the Commission understood by injustice. It clearly acknowledges how unjust the system of apartheid was. What is at stake is not injustice but, instead, the definition of ‘gross violations of human rights: it is human rights which require the ‘neutral’⁶⁸ words, and which are used to avoid defining apartheid as a crime against humanity.

Amnesty and the TRC

In the context of discussing apartheid as a crime against humanity, the *Report* stated:

[the] sharing of the international community’s basic moral and legal position on apartheid should not be understood as a call for international criminal prosecution of those who formulated and implemented apartheid policies. Indeed, such a course would militate against the very principles on which this Commission was established.⁶⁹

Prosecution – national or international – was not at the centre of the national attempts to deal with the past, although some domestic trials did take place. Instead, an amnesty procedure for perpetrators of human rights violations was implemented.

This focus on the part of the TRC on amnesty underlines again its quasi-legality – its ambiguous positioning in relation to full legality. For example, the *Report* states

⁶⁷ Mahmood Mamdani, ‘Reconciliation without Justice’, *South African Review of Books*, 46 (1996), <http://web.uct.ac.za/depts/sarb/X0045_Mamdani.html> [accessed 2 February 2014] (para.32 of 43).

⁶⁸ TRC *Report*, vol. 1, p.70.

⁶⁹ TRC *Report*, vol.1, p.94.

that a ‘middle path was required, something that lay between a Nuremberg option and total amnesia. The choice, ultimately, was for amnesty with a considerable degree of accountability built into it.’⁷⁰ This ‘middle path’,⁷¹ which aimed at the completion of some of the functions normally associated with trials and their legal process, but which was nonetheless distinct in important ways, was associated with and articulated through human rights discourse.

The provisions for amnesty were a significant point of contention during the transition. As Paul van Zyl writes:

amnesty became the final obstacle to transition to democracy: only a few months before the scheduled elections, generals in command of the South African police delivered a veiled warning to the ANC that they would not support or safeguard the electoral process if it led to the establishment of a government that intended to prosecute and imprison members of the police force.⁷²

A measure of the difficulty of coming to an agreement on the question of amnesty is indicated by the fact that, as van Zyl writes, ‘[t]he amnesty agreement occurred so late in the process that it had to be added onto the end of the interim Constitution in the form of a “Postamble”’.⁷³

According to the *TRC Report*, it was ‘settled relatively early’ that ‘there would be no Nuremberg-type trials for the many human rights violations legally committed in the course of implementing apartheid.’⁷⁴ Furthermore, it was agreed that there would be some form of amnesty for politically-motivated offences committed in the past.⁷⁵ But the main source of controversy was the form this amnesty would take. The *TRC Report* states that ‘[t]he government insisted on a form of blanket amnesty, while most other parties demanded that amnesty should be linked to some form of truth commission process.’⁷⁶

⁷⁰ *TRC Report*, vol.1, p.118.

⁷¹ *TRC Report*, vol.1, p.118.

⁷² Paul van Zyl, ‘Dilemmas of Transitional Justice: The Case of South Africa’s Truth and Reconciliation Commission’, *Journal of International Affairs*, 52.2 (1999), 647-667 (p.650).

⁷³ Van Zyl, p.650.

⁷⁴ *TRC Report*, vol.1, p.52.

⁷⁵ *TRC Report*, vol.1, p.52.

⁷⁶ *TRC Report*, vol.1, p.52.

The solution chosen in the end was a process whereby individuals were required to apply for amnesty. This was a unique development, not something which had been previously attempted in other truth commissions; as the *Report* says

[t]he most important difference between the South African Commission and others was that it was the first to be given the power to grant amnesty to individual perpetrators. No other state had combined this quasi-judicial power with the investigative tasks of a truth-seeking body.⁷⁷

As Paul Gready notes ‘amnesty for specific acts was made conditional on full disclosure and political motive’.⁷⁸ The TRC did not provide a general, blanket amnesty; instead, it would consider applications for amnesty for particular individuals in exchange for their telling the truth about their acts, where those acts were committed for a political purpose.

The *Report* acknowledges when it describes the amnesty procedures as ‘quasi-judicial’ that this unprecedented requirement to dispense amnesty for individuals meant that the TRC had to adopt legalistic mechanisms and pay careful attention to due process.⁷⁹ Gready for example argues that when other truth commissions have named perpetrators, the process constituted ‘a finding of moral and political responsibility, not a legal judgement of guilt [...] it is generally agreed that the lesser punishment of naming, possibly bringing with it a degree of public shaming and stigma, requires fewer due process protections.’⁸⁰ However, the TRC’s case was very different; it didn’t just name perpetrators in its *Report*, ‘it combined hearings with both the making of findings in its report and an amnesty process.’⁸¹

Because of this more complicated context for the naming of perpetrators, he argues, ‘the hearings and the final *Report* became bogged down in a hugely time- and resource-intensive exercise of providing those to be named with reasonable prior notice and sufficient information to enable them to make representations and

⁷⁷ *TRC Report*, vol. 1, p.54.

⁷⁸ Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Abingdon: Routledge, 2011), p.4.

⁷⁹ *TRC Report*, vol.1, p.54.

⁸⁰ Gready, p.22.

⁸¹ Gready, p.22.

respond.⁸² Indeed Tutu's foreword discusses the Commission's 'dual responsibility' in these terms: '[i]t had to provide the space within which victims could share the story of their trauma with the nation' but it also 'had to recognise the importance of the due process of law that ensures the rights of alleged perpetrators. Several court rulings emphasised the importance of the latter.'⁸³

Amnesty and its legal consequences thus became entangled with the process of naming perpetrators and bringing to light what happened in the past. For this reason, due process, and other features associated with the legal system became increasingly important. For example, legal scholar Alison Bisset observes that:

the TRC was not a truly non-judicial body. It was involved in legalistic proceedings that gave it a judicial aura. The sole purpose of the high-profile Amnesty Committee was to adjudicate on individual involvement in politically motivated crimes and delicts. Its proceedings followed an adversarial process. Committee members had legal training and panels were chaired by active or retired judges.⁸⁴

Richard A. Wilson has argued that because the TRC was 'required [...] to fill the legal vacuum (for example, in naming perpetrators) left by the amnesty provisions'⁸⁵ it adopted an 'over-legalistic perspective'.⁸⁶ Such an approach, he argues, meant that the TRC 'ended up on the terrain of the courts, not on the terrain of the historians.'⁸⁷

The quasi-legality of the TRC's amnesty procedures was linked with, and articulated through, human rights discourse. For example, the *Report* states that:

[i]n helping reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible, the amnesty process assisted the Commission in compiling as 'complete a picture as possible of the nature, causes and extent' of past gross violations of human rights. The information acquired also helped the Commission in formulating recommendations aimed at the prevention of future human rights violations.⁸⁸

⁸² Gready, p.23.

⁸³ *TRC report*, vol.1, p.2.

⁸⁴ Alison Bisset, *Truth Commissions and Criminal Courts* (Cambridge: Cambridge University Press, 2012), p.83.

⁸⁵ *Politics of Truth and Reconciliation in South Africa*, p.51.

⁸⁶ *Politics of Truth and Reconciliation in South Africa*, p.33.

⁸⁷ *Politics of Truth and Reconciliation in South Africa*, p.51.

⁸⁸ *TRC Report*, vol.1, p.121.

Wilson, a strong critic of South Africa's TRC, also associates human rights and amnesty; in fact, he argues that the 'most damaging outcome of truth commissions is a result of their equating human rights with reconciliation and amnesty' which 'delegitimizes them enormously in relation to popular understandings of justice'.⁸⁹

Truth in the TRC Report

At the same time, although the amnesty procedures introduced what Bisset describes as a 'judicial aura'⁹⁰ to the Commission, the *Report* also explicitly distinguished the Commission's approach from the operations of the law. In so doing, it argued that truth commissions were more effective than trials in one area in particular: in reaching the truth. Tutu's foreword baldly states that

[t]he Malan trials and the Goniwe inquest have [...] shown us that, because such legal proceedings rely on proof beyond reasonable doubt, the criminal justice system is not the best way to arrive at the truth. There is no incentive for perpetrators to tell the truth and often the court must decide between the word of one victim against the evidence of many perpetrators.⁹¹

For the Commission, then, as Alison Bisset writes, 'truth seeking was prioritised over the pursuit of criminal justice' and '[a]mnesty [...] acted as a 'carrot' to encourage former perpetrators to offer testimony to the Commission so that it could fulfil its mandate of establishing the truth about the past and creating a shared understanding from which to move forward.'⁹² Amnesty incentivized truth-telling in a way the *Report* argued that criminal trials could not accomplish; the law, it suggested, is lacking in its ability to access the truth.

As Tutu writes in his foreword, through the amnesty procedures '[f]reedom was granted in exchange for truth'.⁹³ But this of course invites many questions about how truth is to be understood in this context. The *Report* famously distinguishes between four ways of understanding truth: factual or forensic truth; personal or narrative truth; social or 'dialogue' truth and healing and restorative truth.⁹⁴ By factual or forensic

⁸⁹ *Politics of Truth and Reconciliation in South Africa*, p.228.

⁹⁰ Bisset, p.83.

⁹¹ *TRC Report*, vol.1, p.6.

⁹² Bisset, p.77.

⁹³ *TRC Report*, vol.1, p.7.

⁹⁴ *TRC Report*, vol. 1, p.110.

truth, the *Report* meant '[t]he familiar legal or scientific notion of bringing to light factual, corroborated evidence, of obtaining accurate information through reliable (impartial, objective) procedures.'⁹⁵ It was in the service of this kind of truth that the *Report* made findings on individual human rights violations ('what happened to whom, where, when and how, and who was involved?')⁹⁶ and on the trends in and causes of gross violations of human rights. By narrative truth, the Commission referred to the individual perceptions and understandings of particular people; not the official or historical record, but the story as variously understood by the people involved. In this way, the Commission aimed to guarantee that 'the truth about the past included the validation of the individual subjective experiences of people who had previously been silenced or voiceless.'⁹⁷

Social or 'dialogue' truth meant the truth that emerged from a multi-sided consultation process, a truth that was based on the views of as many people as possible; not a partial truth or a victors' truth, but a carefully comprehensive truth, established through consultation. The *Report* states that

not only the actual outcome or findings of an investigation counted. The process whereby the truth was reached was itself important because it was through this process that the essential norms of social relations between people were reflected.⁹⁸

Healing and restorative truth referred to the necessity of hearing and placing on record the suffering that been experienced during apartheid: the kind of truth that would aid the reconciliation of the nation. The *Report* states that '[i]t is not merely the actual knowledge about past human rights violations that counts' because 'often the basic facts about what happened are already known, at least by those who were affected. What is critical is that these facts be fully and publicly acknowledged.'⁹⁹ Truths play social roles and have social meanings, the *Report* argued, and healing truth is 'the kind of truth that places facts and what they mean within the context of human relationships- both amongst citizens and between the state and its citizens.'¹⁰⁰

⁹⁵ *TRC Report*, vol. 1, p.111.

⁹⁶ *TRC Report*, vol. 1, p.111.

⁹⁷ *TRC Report*, vol.1, p.112.

⁹⁸ *TRC Report*, vol.1, p.114.

⁹⁹ *TRC Report*, vol. 1, p.114.

¹⁰⁰ *TRC Report*, vol. 1, p.114.

The *Report's* distinction between different types of truth has been widely debated. Deborah Posel, for example, writes that

[t]his is a very wobbly, poorly constructed conceptual grid. The grounds for differentiating the four types of truth are poorly specified and remain rather opaque. For example, the marker of 'healing truth' (putting truth in the context of human relationships) seems largely to reiterate the criterion for social truth (reflecting the essential norms of social relations).¹⁰¹

Furthermore, she argues,

definitional problems aside, the typology of truths *restates* the original challenge, of how to manage the tensions between competing versions and perspectives on the past. If the 'forensic' version of events is at odds with the 'social' truth in any particular community, on what basis is the conflict to be adjudicated?¹⁰²

Similarly, Wilson writes that 'the plural model of truth is made up of discrete elements, and it is unclear how the elements are meant to relate to one another. The *Report* gives no guidance about the four categories of truth might be connected, integrated and synthesised.'¹⁰³ Moreover, he argues, '[o]nly one of four types – forensic truth – is granted any epistemological value in the process of creating knowledge about the past.'¹⁰⁴ The need to uncover and reveal the truth is presented in the *Report* as the central theoretical reason for the preference for a truth commission methodology over a legal process, though there were of course practical and political reasons too.

As we have seen, the *Report* linked the amnesty process to the demands of human rights:

[i]n helping reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible, the amnesty process assisted the Commission in compiling as 'complete a picture as possible of the nature, causes and extent' of past gross violations of human rights.¹⁰⁵

¹⁰¹ Deborah Posel, 'The TRC Report: What Kind of History, What Kind of Truth?', in *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* ed. by Deborah Posel and Graeme Simpson (Johannesburg: Witwatersrand University Press, 2002), pp.147-172 (p.155).

¹⁰² Posel, p.155.

¹⁰³ *Politics of Truth and Reconciliation in South Africa*, p.37.

¹⁰⁴ *Politics of Truth and Reconciliation in South Africa*, p.37.

¹⁰⁵ *TRC Report*, vol.1, p.121.

In this context, notions of truth became central to the *Report's* articulation of the Commission's task – it was granting 'freedom [...] in exchange for truth'¹⁰⁶ – yet it becomes apparent on reading the *Report* how unwieldy are the understandings of truth which it employs.

Ariel Dorfman's Death and the Maiden

It is here that the place of the literary begins to emerge: it is in order to articulate the value of truth that Desmond Tutu refers to Ariel Dorfman's *Death and the Maiden*. The play is used as a type of evidence for his argument about the importance of bringing the truth to light. South Africa could not have adopted a strategy of forgetting the events of the past in the attempt to move forward, he writes, because

such amnesia would have resulted in further victimisation of victims by denying their awful experiences. In Ariel Dorfmann's play, *Death and the Maiden*, a woman ties up the man who has injured her. She is ready to kill him when he repeats his lie that he did not rape or torture her. It is only when he admits his violations that she lets him go. His admission restores her dignity and her identity. Her experience is confirmed as real and not illusory and her sense of self is affirmed.¹⁰⁷

Here Tutu is using a literary example to make the case that the truth can be healing and restorative. But this description of *Death and the Maiden* is surprising in a number of ways.

First, Tutu fails to mention what the play makes specific about its political context. A reader of the *Report* unfamiliar with the play would have no sense of the extent to which – far from dealing with a universal, archetypal or non-specific woman and man or injury – it is rooted in a particular type of political situation, one of direct relevance to the TRC. The violence committed against 'the woman' is likewise of a specifically delineated type, placed in the context of a wider political system with obvious real-world parallels. *Death and the Maiden* is set during a period of transition to democracy, in a country which is not named, although Dorfman is Chilean and has discussed the way Chile's transition influenced and inspired the play, and the links between the Chilean transition and the South African:

[i]n a transition to democracy as in Chile, Bolivia, South Africa, there are different reasons why people do not want to remember. They say,

¹⁰⁶ TRC Report, vol.1, p.7.

¹⁰⁷ TRC Report, vol.1, p.7.

Look, if we keep on stirring up the past it's going to destroy us. This includes many who were themselves repressed, hurt or part of the resistance. Gerardo in *Death and the Maiden* does that.¹⁰⁸

The play begins with a chance encounter between two men, Roberto and Gerardo, which leads to Gerardo's wife Paulina holding Roberto hostage, believing him to be the 'Doctor Miranda' who had raped and abused her when she was a political prisoner during the previous regime. Gerardo has just been appointed a member of the Commission which is to investigate, he says, 'human rights violations that ended in death or the presumption of death' during that period.¹⁰⁹

Death and the Maiden is thus explicitly concerned with political violence and how past violations can be dealt with in newly democratic countries. This link is not alluded to in the foreword. It could perhaps be argued that the play's popularity allowed Tutu to assume a degree of familiarity with the play on the part of readers (although, surely, not all readers): the play was first performed in its final version at the London International Festival of Theatre at the Royal Court in July 1991. It became enormously popular thereafter, with West End and Broadway runs, and by 1995 it had been staged in 57 countries.¹¹⁰ In 1994, the Roman Polanski-directed film version was released. However in describing the play without explicitly acknowledging the extent to which it deals with transitional justice, the foreword goes against the grain of critical opinion, which has tended to see this as central to its appeal for and resonance with audiences. Robert A. Morace, for example, writes:

Dorfman had been able to take the century's pulse because the changing but still precarious political situation in Chile coincided with equally momentous changes occurring in many of the countries eager to stage his play [...] productions in various countries allow for and adapt to significant differences within the set of seeming similarities both inherent in and evoked by Dorfman's text.¹¹¹

But when the play's explicit engagement with truth commissions is not acknowledged, it can be used almost as objective evidence for the proposition that the

¹⁰⁸ Quoted in Sophia A. McClennen, *Ariel Dorfman: An Aesthetics of Hope* (London: Duke University Press, 2010), p.21. See also the afterword to the play text. Ariel Dorfman, 'Afterword to the Original Stage Play', in *The Resistance Trilogy* (London: Nick Hern Books, 1998), pp.144-148.

¹⁰⁹ *Death and the Maiden*, p.94.

¹¹⁰ Robert A. Morace, 'The Life and Times of *Death and the Maiden*', *Texas Studies in Literature and Language*, 42.2 (2000), 135-153 (p.139).

¹¹¹ Morace, p.141.

recognition of the truth about the past allows for a movement beyond victim status. This is one of the assumptions on which the TRC was based. Claire Moon writes that the ‘discourse of healing the individual, social, and political body became the hallmark of the TRC’:

providing the language through which the effects of violent conflict in South Africa were understood and responses to it devised. Truth-telling was the key ‘therapy’ by which the TRC sought to address national and individual trauma [...] [this] model is grounded in a grammar of trauma and suffering underpinned by claims that repressed memory causes untold and ongoing psychological problems; that ‘revealing’ or truth-telling leads to healing; and that ‘closure’ on the past must be reached in order for the present to be lived and the future to be faced.¹¹²

The TRC did not and, because of the unprecedented size and public nature of what it was attempting, could not provide much empirical evidence for the therapeutic assumptions it employed. But by divorcing *Death and the Maiden* from the context in which it was written, the foreword can invoke it as a more general lesson about dealing with the past, one which seems independent from the logic of truth commissions and their place in human rights discourse; the play seems to speak with a universal meaning. In this way Tutu’s reference to the play resembles a pattern I have noted throughout this thesis in relation to human rights discourse, in which the fact of injury tends to take rhetorical precedence over its social rootedness.

But it is not merely the case that the play explicitly engages with truth commissions – it does so critically. Central to *Death and the Maiden* is an interrogation of the assumptions which underlie the institutional formation of the truth commission. In the play, getting to the truth is an intrinsically complex and never fully resolved process, even on the relatively mundane and small-scale personal level. At the very beginning, Gerardo claims that he has come home to ask his wife about her opinion of his serving on the Commission. But then Paulina, says: ‘[y]ou already said yes to the president, didn’t you? The truth, Gerardo. Or are you going to start your work on The Commission with a lie?’¹¹³ She has to ask again – ‘You told the president you accepted, didn’t you? Before you asked me? Didn’t you? I need the truth’ – before he reveals that

¹¹² Claire Moon, ‘Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions’, *Journal of Human Rights*, 8.1 (2009) 71-91, p.79.

¹¹³ *Death and the Maiden*, p.96.

she is right.¹¹⁴ Before the truth is revealed – and on a fairly insignificant matter, between only two people – there is, as Paulina says, a lie, and this works to problematize, from the play’s outset, the difficulties likely to be faced in dealing with the truth about ‘human rights violations that ended in death or the presumption of death’ on the national level.¹¹⁵ Even Gerardo has certain doubts about the Commission’s work: ‘[w]hat this country needs is justice, but if we can determine at least part of the truth...’¹¹⁶ Within the play, justice as the refused alternative to the truth commission is explicitly acknowledged.

Furthermore, when she takes Roberto hostage, Paulina is attempting a kind of revenge, vigilante justice which is explicitly contrasted with what the text’s truth commission will be able to accomplish, and the comparison between the two methods of dealing with the past is never settled emphatically in favour of truth commissions. When he is trying to persuade her to let Roberto go, Gerardo says

[i]magine what would happen if everyone acted like you did. You satisfy your own personal passion, you punish on your own, while the other people in this country with scores of other problems who finally have a chance to solve some of them, those people can just go screw themselves – the whole return to democracy can go screw itself –¹¹⁷

He tells her to ‘[[l]et him go [...] For the good of the country, for our own good.’¹¹⁸ If she kills Roberto, she might put the whole commission in jeopardy: ‘[m]y Commission? What Commission? Thanks to you, we may not even be able to investigate all the other crimes that – and I’m going to have to resign.’¹¹⁹ For her part, Paulina questions the commission’s ability to bring about acceptable solutions: ‘[t]he Commission can investigate the crimes but nobody is punished for them.’¹²⁰

Moreover, even if we accept as the foreword does that Roberto ‘admits his violations’¹²¹ (and this is also questionable, as I’ll discuss below) he does so at gunpoint, fearing that he is about to be killed. If ‘[h]is admission restores her dignity and her

¹¹⁴ *Death and the Maiden*, p.97.

¹¹⁵ *Death and the Maiden*, p.94.

¹¹⁶ *Death and the Maiden*, p.100.

¹¹⁷ *Death and the Maiden*, p.119.

¹¹⁸ *Death and the Maiden*, p.120.

¹¹⁹ *Death and the Maiden*, p.117.

¹²⁰ *Death and the Maiden*, p.120.

¹²¹ *TRC Report*, vol.1, p.7.

identity¹²² as the foreword states, then it is the hearing of an admission which is entirely tangled up with the reversal of power and with the holding of complete control over somebody who has gravely injured her. In the play, Paulina does not just hear a (questionable) account of what was done to her, she is also able to point a gun at the person she believes to be responsible; she is able to make him feel afraid. Whatever ‘dignity’ and ‘identity’¹²³ is restored to her – and this, again, is debateable; there is very little evidence for the foreword’s argument about this in the play at all – it seems to have been restored not by the admission, but the opportunity to take revenge. The play holds out the possibility that truth commissions may not be the kind of solution to past injustices that victims desire, or need, in order to begin the process of recovery.

On the one hand, then, Tutu does not mention the specifically located aspects of the play. However, on the other, the foreword interprets *Death and the Maiden*’s ending in such a way as to disregard central, crucial ambiguities. The foreword states that Paulina ‘is ready to kill him when he repeats his lie that he did not rape or torture her. It is only when he admits his violations that she lets him go.’¹²⁴ Even critics such as Adam Geary, who is explicitly discussing the literariness of the foreword, have tended to read *Death and the Maiden* according to Tutu’s interpretation. Geary writes that ‘Dorfman’s play presents the torturer who takes responsibility for his acts, and, in so doing, allows the person who he has tortured to recover a sense of self.’¹²⁵ However, the status of Roberto’s admission is ambiguous. Paulina has never fully told her husband Gerardo about what happened to her when she was in jail. When she does so, he repeats the story to Roberto, so that Roberto can tell it back to Paulina, so that, having heard him finally confess his guilt, she will let him go. Paulina hears the confession, but then says ‘[y]ou know the only thing that’s missing now, Doctor, the one thing I need to make this day really truly perfect? [...] To kill you.’¹²⁶ With the gun pointed at him, Roberto then reveals to Paulina Gerardo’s help in constructing the

¹²² TRC Report, vol.1, p.7.

¹²³ TRC Report, vol.1, p.7.

¹²⁴ TRC Report, vol.1, p.7.

¹²⁵ Adam Geary, “‘Tell all the Truth but Tell it Slant’: A Poetics of Truth and Reconciliation”, *Journal of Law and Society*, 31.1 (2004), 38-59 (p.57).

¹²⁶ *Death and the Maiden*, p.139.

admission of guilt, claiming once again to be innocent: '[t]hat confession, ma'am ... It's false. [...] Your husband told me what to write.'¹²⁷

She has predicted this, and tells Roberto that she changed several small details in the story when telling it to Gerardo, anticipating that if he really was the Doctor who abused her, he will correct them to ensure total accuracy in the interest of sparing his life. She says:

[i]t turned out just as I planned. You were so scared that if you didn't get it right...But I'm not going to kill you because you're guilty, Doctor, but because you haven't repented at all. I can only forgive someone who really repents.¹²⁸

In the penultimate scene Roberto is on his knees in front of Paulina as she points a gun at him, before a giant mirror descends, forcing the audience to look at themselves. Although she says that she will not kill him if he repents, at no point does Roberto confess to being the Doctor. Paulina believes that she has caught him out, and this is a persuasive reading, but he does not 'admit'; whether or not he is the person who tortured her is a question the play leaves open.

Moreover, it is not clear that she 'lets him go'.¹²⁹ In the final scene, Gerardo and Paulina are at a concert hall when Roberto 'enters under a light which has a faint phantasmagoric moonlight quality. He could be real or he could be an illusion in PAULINA's head.'¹³⁰ Gerardo is the only character to talk in this scene - a monologue in which he talks about the conclusion of the commission's work, and the production of its final report. Because he has argued earlier that he would be unable to take part in the commission if Paulina kills Roberto, we might assume that, given his evident participation in it, she let Roberto live. On the other hand, the music that is played at the very end of the play, the music the characters are listening to at the concert, is Schubert's *Death and the Maiden*.¹³¹ The Doctor had played Schubert when torturing prisoners, and Paulina has previously linked her future ability to be able to listen to the piece, which had been one of her favourites, to the killing of Roberto:

¹²⁷ *Death and the Maiden*, p.139.

¹²⁸ *Death and the Maiden*, p.140.

¹²⁹ *TRC Report*, vol.1, p.7.

¹³⁰ *Death and the Maiden*, p.143.

¹³¹ *Death and the Maiden*, p.143.

[y]ou know the only thing that's missing now, Doctor, the one thing I need to make this day really truly perfect? [...] To kill you. So I can listen to my Schubert without thinking that you'll also be listening to it, soiling my day and my Schubert and my country and my husband. That's what I need...¹³²

Similarly, when she has first tied him to the chair, she says 'now I'll be able to listen to my Schubert again, even go to a concert like we used to.'¹³³ This ambiguity here is crucial. Watching the play, the audience is supposed to be unsure whether or not Paulina has killed Roberto or let him go, a question the foreword settles. In her critical study of Dorfman's work, Sophia McClennen notes that '[c]ritics are as divided on what to make of the ending as they are on whether or not Miranda is guilty.'¹³⁴

Finally, the mention of the play in the *Report* is interesting because *Death and the Maiden* also includes what might be read as a cautionary note about a certain vulnerability which, it implies, is inherent in works of art. Describing what she had suffered, Paulina says, speaking of the Doctor,

[a]t first, I thought he would save me. He was so soft, so – nice, after what the others had done to me. And then, all of a sudden, I heard a Schubert quartet. There is no way of describing what it means to hear that wonderful music in the darkness, when you haven't eaten for the last three days, when your body is falling apart, when ...¹³⁵

This is the moment at which the speaker shifts and Roberto begins to narrate the story. He says:

I would put on the music because it helped me in my role, the role of good guy, as they call it, I would put on Schubert because it was a way of gaining prisoners' trust. But I also knew it was a way of alleviating their suffering. You've got to believe it was a way of alleviating their suffering.¹³⁶

Because the 'wonderful music' is so associated with the torture she endured, Paulina is unable to listen to it from then on:

[o]ne night we were dining with – they were extremely important people, and our hostess happened to put Schubert on, a piano sonata, and I

¹³² *Death and the Maiden*, p.139.

¹³³ *Death and the Maiden*, p.106.

¹³⁴ McClennen, p.173.

¹³⁵ *Death and the Maiden*, p.134.

¹³⁶ *Death and the Maiden*, pp.134-135.

thought, do I switch it off or do I leave, but my body decided for me, I felt extremely ill right then and there.¹³⁷

Schubert's music is at once very important to the play's characters, and shown to be vulnerable to co-option. Paulina's love for the music cannot survive what the music has been the background to in her life. There is of course no parallel at all between the use of a piece of music in the context of torture and the reference to a play in a truth and reconciliation report. But what the play suggests through its references to Schubert is that in a certain way art does not hold its form; it is contingent, its meanings shaped by circumstance. This acts as a note of caution, at least, concerning the extent to which art can be vulnerable in relation to the context of its invocation. The way *Death and the Maiden* is itself invoked in the TRC Report shows Tutu turning to literary writing in order to defend the Commission's quasi-legality, underlining the problematic association of literature with the truth.

Truth and the Literary

Literary theorist Mark Sanders has argued that the TRC's hearings displayed an openness to the literary. He defines this openness as the ability to operate within, and make meaning through, a space beyond the opposition of truth and falsehood. Nonetheless, as we have seen, when the *Report* tried to express and describe this aspect of the hearings they did so using the term 'narrative truth'.¹³⁸ Sanders argues that this is to reintroduce the legalistic conception of truth that the hearings themselves were able to transcend. To this extent, his argument develops some of the issues that are at stake in Tutu's reference to *Death and the Maiden*.

Narrative truth is, Sanders writes, 'never quite defined'¹³⁹ in the *Report*, but it tends to be described using the phrase story-telling. For example, the *Report* states:

[b]y telling their stories, both victims and perpetrators gave meaning to the multi-layered experiences of the South African story [...] The stories told to the Commission were not presented as arguments or claims in a court of law. Rather, they provided unique insights into the pain of South Africa's past.¹⁴⁰

¹³⁷ *Death and the Maiden*, p.106.

¹³⁸ *TRC Report*, vol.1, p.112.

¹³⁹ Sanders, p.151.

¹⁴⁰ *TRC Report*, vol.1, p.112. Quoted in Sanders, p.152.

However, for Sanders it is problematic to understand such storytelling through the notion of narrative *truth*. Ambiguity is central to the meaning of the literary; literature does not make a truth claim or tell lies, it is outside or beyond the dichotomy of truth/falsehood. What was crucial about the space the hearings opened, he argues, was that it allowed victims to tell the kind of stories that did not have to be judged to be true or false.

The *Report* acknowledges this literariness, as it seeks to define exactly what the stories that were told at the hearing were, through distinguishing them from ‘arguments or claims in a court of law’.¹⁴¹ But by then inserting such stories into a framework centrally concerned with truth, Sanders suggests, something essential and unique to literariness, and, crucially, what was literary about the hearings, might be lost. ‘Truth’ introduces a return to the evidentiary, legalistic logic the *Report* ostensibly distances itself from:

[b]y putting them under the heading of ‘narrative truth,’ the report runs the risk of exposing literature and orature to procedures of verification and falsification that have a limited bearing on what it is to tell a story and [...] to ask a question, which, for the presiding commissioner, as for anyone else, is to call forth, and even propose a shape to, a story.¹⁴²

In the process of speaking and listening, of collaboratively bringing a story into being through questions and answers – as we do in ordinary life all the time, and which took on a unique and powerful purpose in the hearings – the concern is not primarily with obtaining and describing the truth but with something else.¹⁴³ This something else is an essentially literary quality, because it can also be located in literary texts and the type of relationship they imply between reader and writer.

¹⁴¹ *TRC Report*, vol. 1, p.112.

¹⁴² Sanders, p.154.

¹⁴³ Sanders argues that this is something Antjie Krog’s account of the Commission, *Country of My Skull*, mirrors in its own form (Antjie Krog, *Country of My Skull* (London: Vintage, 1999)). In the book, Krog introduces the character of her lover who is, Sanders writes, ‘explicitly linked to storytelling and how [it] relates to truth’ (Sanders, p.160). In the narrative, a colleague asks her if the story of the affair is true, and Krog responds ‘No, but I had to bring a relationship into the story so that I could verbalize certain personal reactions to the hearings’ (quoted Sanders, p.160). Sanders argues that the figure of the lover temporarily replaces the figure of Krog’s husband and in this way dramatizes, within the text, the replacement of the perpetrator with the representatives of the Commission, the way that a certain kind of listener enables a certain kind of story to be told and thus the value of a space beyond truth/falsehood binaries.

Moreover, as Sanders points out, processes of questioning and answering inevitably involve the counterfactual: '[a] question to an other presupposes foreignness, or dissimulated foreignness, and thus the projection of a possible world, either of the other, or of an alternative to that of the other.'¹⁴⁴ When asking questions, the questioner allows for the existence of what happened and, crucially, what could have happened, of alternatives, of different versions of the story. Questions and answers assume and, crucially, invoke the possibility that things could have happened differently. Just as in Socratic dialogues, in which one party will sometimes espouse positions which are not actually believed in, evoking imaginative but to-be-disavowed possibilities in order to produce certain kinds of responses or to direct the conversation in a particular way, at the TRC, the questioners, in order to ask their questions, would feign a kind of ignorance. Sometimes the witnesses would do this too, as they asked counter-questions.¹⁴⁵ In this way, through this adopting of positions and a particular kind of pretending, Sanders suggests, something occurred at the TRC which was 'in the realm of fable and fictionality.'¹⁴⁶

Sanders' argument helps to elucidate what happens when Tutu reads *Death and the Maiden*. Sanders suggests that the literary can be identified where what is at stake is neither truth nor falsity and I have been arguing that this is precisely the aspect of the play that Tutu does not acknowledge. The play's meaning resides in the way we can never fully know whether or not the Doctor 'admits his violation' or what effect such

¹⁴⁴ Sanders, p.167.

¹⁴⁵ Particularly important here is the testimony of one witness, Lekotse, as described in *Country of My Skull*. When he is asked whether he reported the abuse he suffered at the hands of the police, he responds 'how can you report policemen to policemen?' (*Country of My Skull*, p.326). For Sanders, 'Lekotse's "counter-questions" challenge the facts (or world) that [the Commission representative's] questions appear to imply' (Sanders, p.167). During Lekotse's testimony, as Krog relates it, there is laughter from the audience. Rosemary Jolly states that this 'edgy laughter [...] exposes, if briefly, any assumptions the TRC may have held that it, in a sense, "knew" the victims-survivors' stories already'. (Rosemary Jolly, *Cultured Violence: Narrative, Social Suffering, and Engendering Human Rights in Contemporary South Africa* (Liverpool: Liverpool University Press, 2010), p.26.) This anticipates a theme to which I will return in Chapter Five in relation to Krog's later text, *Begging to Be Black*: the formal means through which literary texts enable otherness to be felt and experienced within the text, rather than collapsing diverse experiences into a simply imagined empathetic identification.

¹⁴⁶ Sanders, p.167.

an ‘admission’ would have on Paulina.¹⁴⁷ The play opens a number of possibilities open to the audience, but never fully resolves them.

Tutu refers to *Death and the Maiden* to argue that it demonstrates the restorative capabilities of truth. The literary text is thus evoked precisely at the moment of most tension for the quasi-legal: it is supposed to show what truth can do that the law cannot, and in this way the literary takes on an association with the category of truth. My argument is that this brief moment has a wider significance. In the first part of this chapter I argued that the TRC was a quasi-legal body which was related to but not quite of the law, and I showed how human rights discourse was crucial for the description and justification of the Commission’s quasi-legality.

For example, crimes against humanity require the prosecution of individual perpetrators. But the concept of gross violations of human rights allowed an alternative quasi-legal framework to be articulated which did not necessitate such prosecutions. As we saw, that was why, in defining gross violations of human rights, the TRC’s constitutive act used the terms “killing” and “abduction” [...] rather than murder or kidnapping. [...] to try to avoid introducing concepts with a particular content in terms of the applicable domestic criminal law.¹⁴⁸ The quasi-judiciality of the amnesty procedure and its ‘judicial aura’¹⁴⁹ was also explained and, crucially, justified through reference to the concept of gross violations of human rights: the amnesty process is said to ‘reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible.’¹⁵⁰ Human rights discourse thus provides the rationale for the Commission’s quasi-legality. It was because of the Commission’s quasi-legality that the concept of truth became so important, and so fraught, for the *Report*. When Tutu reads *Death and the Maiden* he does so in such a way as to suggest that the play reveals what is lacking in the law – the law’s failure to access truth in its fullest sense. The play is therefore used to suggest the benefits of quasi-legality.

This has similarities with a model of reading we have encountered before. Slaughter argues that the Bildungsroman is important for human rights discourse

¹⁴⁷ *TRC Report*, vol.1, p.7.

¹⁴⁸ *TRC Report*, vol.1, pp.70-71.

¹⁴⁹ Bisset, p.83.

¹⁵⁰ *TRC Report*, vol.1, p.121.

because international law is weak and so the novel can take on some of its functions. There is a parallel here – in both cases, literature is turned to when the law fails to match up to the purposes of human rights. Tutu’s reading of *Death and the Maiden* indicates some of the problems with this move: the play’s ambiguities have no place in such a reading. Consequently, in the final part of this chapter and in the next, I ask whether there are any alternatives to a model of the relationship between literature and human rights which understands literature to compensate for human rights’ quasi-legality.

The Interim Constitution

Aside from the TRC, human rights discourse also played a crucial role in another area of South Africa’s transition: the drafting of the interim Constitution. In 1990, Nelson Mandela was released from prison, and the major opposition movements – the African National Congress (ANC) the Pan-African Congress (PAC) and the South African Communist Party (SACP) – were unbanned. The ruling National Party (NP), led by F.W. de Klerk, then began to repeal apartheid legislation. In February 1992, formal talks on the future governance of South Africa began. In their book on the new Constitution eventually produced by these talks, Lauren Segal and Sharon Cort explain that:

[t]here would be a two-stage transition. During the first stage, an unrepresentative body, initially called Codesa and then the Multi-party Negotiating Forum, would negotiate an interim constitution that would contain a set of Constitutional Principles. In the second stage, a new democratic parliament would double as a Constitutional Assembly and would be responsible for writing the final constitution. The new text had to comply with the Constitutional Principles entrenched in the first stage.¹⁵¹

It is worth underlining how much was at stake in the negotiation process. The negotiations were accompanied by violence, and though the transition ultimately led to free and fair election and produced a progressive, rights-respecting Constitution, this was by no means a given from the outset. As Richard Wilson notes

[d]uring the negotiations, the NP was forced into significant concessions, notably to shift its position away from group rights to individual rights. Until late 1993, the NP had clung to an ideology of

¹⁵¹ Lauren Segal and Sharon Cort, *One Law, One Nation: The Making of the South African Constitution* (Sunnyside, Auckland Park: Jacana, 2012), p.57.

consociationalism which would entrench ‘minority rights’ through compulsory coalition government.¹⁵²

Legal theorist Martin Channock observes that before the elections in 1994 brought the interim constitution into effect, the South African state was ‘bifurcated [...] it essentially began with and continued to refine two constitutional orders – one democratic and one authoritarian’.¹⁵³ It was, of course, race which determined which constitutional order an individual belonged to. As Channock writes, ‘[f]or the enfranchised there was, there had to be, constitutionalism: for those without the vote there did not’.¹⁵⁴

Wilson argues that it is in response to such racialized models of citizenship that an association between human rights and constitutionalism has developed:

[s]ince 1990, nearly all transitions from authoritarian rule have adopted the language of human rights and the political model of constitutionalism, especially in Latin America and the new states of Eastern Europe. [...] All converge on the view that nations must not be constituted on the basis of race, ethnicity, language or religion, but should be founded instead on a ‘community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values’ (Ignatieff 1993:3–4). In this formulation, human rights are portrayed as the antithesis of nationalist modes of nationbuilding.¹⁵⁵

In South Africa, the principle of parliamentary sovereignty played a crucial role in the apartheid legal order. John Dugard argues that ‘loyalty to this principle has, more than any other legal factor, brought about the debasement of the South African legal system’.¹⁵⁶ It meant that the courts had extremely limited powers of judicial review, and the will of the legislature was able to direct the development of legislation with very little hindrance. By contrast, the interim Constitution of 1993 introduced a bill of rights and it also created a Constitutional Court, able to use the bill of rights to rule on whether or not laws are constitutional.

¹⁵² *Politics of Truth and Reconciliation in South Africa*, p.6.

¹⁵³ Martin Channock, *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001), p.41.

¹⁵⁴ Channock, p.41.

¹⁵⁵ *Politics of Truth and Reconciliation in South Africa*, p.1.

¹⁵⁶ John Dugard, *Human Rights and the South African Legal Order* (Princeton: Princeton UP, 1978), p.36.

I have suggested that where human rights become legal rights, they lose something of their distinctiveness. My argument here is that the ambiguity of human rights' relation to the law is exemplified by the two key ways in which human rights were employed during the transition: on the one hand, the quasi-legality of the TRC, on the other the new model of constitutionalism. Together, these suggest the ways in which law is crucial for human rights discourse, but also the ways in which human rights discourse is always, in Costas Douzinas' words 'stretch[ing] [the law's] boundaries and limits.'¹⁵⁷

Human rights discourse was crucial to the development of a constitutional legal tradition to replace that of the English parliamentary sovereignty model. For example, the first case heard by the Constitutional Court was on the abolition of the death penalty. According to Sangmin Bae, '[t]he court, actively looking up international and foreign law precedents and quoting the worldwide campaign against the death penalty, made it clear that to repeal capital punishment was to join the international human rights movement.'¹⁵⁸ Indeed, in the judgement the Judge President, Arthur Chaskalson, made this explicit, stating:

[t]he rights to life and dignity are the most important of all human rights, and the source of all other personal rights in Chapter Three. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby.¹⁵⁹

The House Gun

Discussing Nadine Gordimer's 1998 novel *The House Gun* alongside other South African texts published at around the same time, Brenna M. Munro writes that '[i]f we read these novels with the constitution in mind, it becomes clear that it is part of their

¹⁵⁷ Douzinas, p.344.

¹⁵⁸ Sangmin Bae, *When the State No Longer Kills: International Human Rights Norms and the Abolition of Capital Punishment* (Albany: State University of New York Press, 2007), p.112.

¹⁵⁹ State v Makwanyane and Another (6 June 1995), available at: <<http://www.saflii.org/za/cases/ZACC/1995/3.html>> [accessed 1 September 2014], section 44.

very fabric.¹⁶⁰ The central characters in *The House Gun* are a white middle class couple, Harald and Claudia Lindgard. She is a doctor; he works in insurance. At the beginning of the novel they find out that their son Duncan has shot and killed Carl Jespersen, his friend and former lover. The night before the murder, Duncan had found Carl having sex with Duncan's girlfriend, Natalie. The novel focuses on the ways in which Harald and Claudia try to cope with the murder, and then on Duncan's trial. In the text, the death penalty hearings happen while Duncan is still awaiting trial, and so this significant constitutional event is deeply personally affecting for the characters: before it is declared unconstitutional, Duncan's parents fear that this is the punishment he will face.

The novel is therefore set in the immediate post-apartheid period, against the backdrop of the constitutional changes I have just been discussing. It represents the new constitutional order as a decisive, admirable break with the past. It is also, in part, through their interactions with this legal system that the novel's white middle class characters are forced to face their own complicity with apartheid and the extent to which it benefitted them even as they were unaware of these benefits and considered themselves to be opposed to the system.

Munro has in mind a particular example when she discusses the novels embeddedness in the context of the development of the Constitution. South Africa's Constitution was the first in the world to outlaw discrimination on the basis of sexual orientation. This was not a universally popular constitutional provision. In the period immediately following the first democratic elections there seemed to be a sense in which 'the figure of the gay person' functioned 'as a symbol of democratic modernity within this new national culture.'¹⁶¹ But there was also, she suggests, a risk that when hopes for the new South Africa were disappointed, the symbolic association of gay identity with 'democratic modernity' could position gay and lesbian South Africans as targets for dissatisfaction with the new political order itself.¹⁶²

¹⁶⁰ Brenna M. Munro, 'Queer Family Romance: Writing the "New" South Africa in the 1990s', *GLQ: A Journal of Lesbian and Gay Studies*, 15.3 (2009) 397-439, (p.411). The other novels she is referring to are J.M. Coetzee's *Disgrace* (London: Vintage, 1999) and Gordimer's *None to Accompany Me* (London: Bloomsbury, 1994).

¹⁶¹ Munro, p.398.

¹⁶² Munro, p.398.

There was, therefore, a gap between the progressive values of the new Constitution and some public opinion in this case. Munro argues that

[w]hile literature doesn't have the direct power of the law or the wide audience of popular culture, novels can help make legal recognition into shared structures of feeling about the nation and people's place in it. The pleasures of reading realist fiction, of identifying with some characters and judging others, and of vividly imagining a recognizable world make it a powerful medium for shaping subjectivities and producing the 'imagined community' of nation.¹⁶³

For example, in *The House Gun*, Duncan, Carl and Natalie had lived with what Munro describes as 'a loose group of friends, gay and straight, black and white'.¹⁶⁴ David Medalie argues that this

seems to be a new kind of family unit [...] enacting, in a microcosmic way, the society which the new South African constitution is making possible, one in which there is no discrimination on the basis of race, gender or sexual preference.¹⁶⁵

Because of the association of the nation with the family, Munro argues, the new kind of family structure represented by Duncan's friends works as a symbol of the new inclusivity of the nation itself. But, crucially, it is not just a symbol for her. She suggests that though they lack 'the direct power of the law [...] novels can help make legal recognition into shared structures of feeling'.¹⁶⁶ She therefore sees the text as a support to the new constitutional provisions.

This is obviously somewhat problematic, in a way that both Munro and Medalie acknowledge. It is difficult, for example, to fit the murder of Carl into this model. If the friendship group in the text works to make the new inclusivity of the constitutional order imaginatively accessible, the murder appears as a warning about its sustainability. Moreover, as I argued through an analysis of Derrida in Chapter Three, any place at which the inclusivity of the nation-state is figured through the metaphor of the family is risky, because the family is the always-ambivalent sign of the two desires of democracy: the desire to welcome difference, and the desire to constitute political community on the basis of resemblance. The family image encodes within it the suggestion that

¹⁶³ Munro, p.399.

¹⁶⁴ Munro, p.412.

¹⁶⁵ David Medalie, 'The Context of the Awful Event': Nadine Gordimer's *The House Gun*, *Journal of Southern African Studies*, 25.4 (1999), 633-644 (p.638), quoted Munro, p.412.

¹⁶⁶ Munro, p.399.

national political community is always poised on a knife-edge between the welcoming and the exclusionary.

But the part of her argument I will focus on here is her suggestion that ‘the pleasures of realist fiction’ work to produce individual, affective realization of constitutional provisions.¹⁶⁷ I suggest that *The House Gun* is a difficult novel to make this argument about, because there is within it a conceptualization of justice which is explicitly contrasted with that of the new Constitutional Court, and it is one which can be traced through the way Gordimer depicts the reading of novels. As we have seen, the Constitutional Court made the case for the abolition of the death penalty on the basis of human rights norms. In *The House Gun*, while the Constitutional Court is celebrated, the characters’ readings of Dostoevsky and, in particular, Thomas Mann, are used to set up an alternative way of thinking about the crime of murder and its punishment, one which sees the death penalty as logical, sensible or necessary. The ideas about justice derived from reading literary texts in this novel are therefore shown to exist in disjunctive relation to those of the human rights-respecting legal order. They exist in a rigorous independence from the legal system. By examining how the novel describes the new constitutional order we will be able to see how the reading of literary texts sets up a conceptualization of justice that is explicitly distinguished from that order.

The House Gun was only the second novel Gordimer published after the end of apartheid. Given her reputation as a writer intensely sensitive to changing political contexts and their complex effects on individual subjectivities, the nature of the crime which is at the centre of the novel has been considered somewhat surprising. As Stephen Clingman writes, ‘this must be the first time a trial in a Gordimer novel is not a political trial.’¹⁶⁸ For David Medalie the murder ‘has no particularly South African dimension to it in that, from what we can gauge, it seems to be motivated by complex feelings of resentment and sexual jealousy’.¹⁶⁹ Moreover, it

cannot be designated the direct result of an unwanted bequest from the old South Africa. It does not proceed from a struggle for political

¹⁶⁷ Munro, p.399.

¹⁶⁸ Stephen Clingman, ‘Surviving Murder: Oscillation and Triangulation in Nadine Gordimer’s *The House Gun*’, *MFS Modern Fiction Studies*, 46.1 (2000), 139-158 (p.152).

¹⁶⁹ Medalie, p.638.

power; there is no economic element; it is not something which spills over from the 'random violence of night streets.'¹⁷⁰

But, at the same time, he writes, 'the South African context is invoked, both by the narrator and during Duncan's trial, so that it cannot be ignored.'¹⁷¹

The judge's summing up at the end of Duncan's trial is one of the ways in which this context – and more particularly, the context of the years immediately following the first democratic elections – is invoked. The judge says that one of the 'mitigating factors'¹⁷² in the case is that 'the gun *happened to be there*'.¹⁷³ This, he argues,

is the tragedy of our present time, a tragedy repeated daily, nightly, in this city, in our country. Part of the furnishings in homes, carried in pockets along with car keys, even in the school-bags of children, constantly ready to hand in situations which lead to tragedy, the guns *happen to be there*.¹⁷⁴

As Anthony O'Brien has argued, in the novel 'Gordimer takes the South African furor over violence and crime since 1994 and displaces it: instead of crimes by the black and poor [...] in the foreground of the plot there is a bourgeois murder'.¹⁷⁵ While the murder itself is not political, O'Brien describes the book as an 'an exercise in white conscientization, in paying back the wages of whiteness'.¹⁷⁶

I particularly want to emphasize the role that the law plays in this process of 'white conscientization'.¹⁷⁷ The murder brings Harald and Claudia into direct contact with the legal system, and it is this which forces them to reconsider the unacknowledged extent to which apartheid has benefitted their lives. For example, even though '[s]he's not one of those doctors who touch black skin indiscriminately along with white, in their work, but retain liberal prejudices against the intellectual capacities of blacks'¹⁷⁸,

¹⁷⁰ Medalie, p.639.

¹⁷¹ Medalie, p.638.

¹⁷² *The House Gun*, p.266.

¹⁷³ *The House Gun*, p.267.

¹⁷⁴ *The House Gun*, p.267.

¹⁷⁵ Anthony O'Brien, *Against Normalization: Writing Radical Democracy in South Africa*, (London: Duke University Press, 2001), p.258.

¹⁷⁶ O'Brien, p.258.

¹⁷⁷ O'Brien, p.258.

¹⁷⁸ *The House Gun*, p.33. As Jacqueline Rose notes, this sentence is extraordinarily ambivalent in a way which crystallizes the book's points of tension 'into the syntax of a single sentence': '[s]top at the first

when it comes to her son's defence, Claudia (and Harald) find that 'many compromises with stereotype attitudes easily rejected in their old safe life were coming about now that the other values of that time had been broken with.'¹⁷⁹ Their anti-racism had been possible where their safety was protected, but when they find themselves faced with danger, it becomes a luxury.

This is a prominent theme in Gordimer's work. For example, her 1981 novel *July's People* imagines a revolutionary future in which South Africa is in the grip of civil war as black political movements try to seize power from the intransigent white government. The middle-class white Smales family are forced to flee Johannesburg. Their long-term servant July, as he is known to Maureen and Bam Smales – Mwawate is the name by which his family and friends know him – offers them refuge in his village, with his family. As Bam and Maureen live in the village, the novel depicts the destruction of their sense of their relationship with July. Maureen and Bam are well-intentioned liberals who are concerned to distinguish themselves from the white South Africans who actively support apartheid.

However, in the context of the village they are forced to recognize the limits to their understanding, the extent to which they have been deluding themselves about their insight into July's life. For example, Maureen has to reconsider her view of July's relationship with his 'town woman':

[w]e (Maureen sometimes harked back) understand the sacred power and rights of sexual love as formulated in master bedrooms, and motels with false names in the register [...] The *absolute nature* she and her kind were scrupulously just in granting to everybody was no more than the price of the master bedroom and the clandestine hotel tariff.¹⁸⁰

Moreover, as Sophie Harrison notes, the sudden way in which the white couple in *July's People* find themselves confronted with an entirely unfamiliar set of

comma, and Claudia Lingard is not a doctor who touches black skin; read on, and she is not one of those whites who refuse to accept blacks as real equals *even though* they are all too happy to touch black bodies, in a purely professional capacity of course. It is a split second of self-incrimination.' Jacqueline Rose, *The Last Resistance* (London: Verso, 2007), p.176.

¹⁷⁹ *The House Gun*, p.145.

¹⁸⁰ Nadine Gordimer, *July's People* (London: Bloomsbury, 1981), p.79.

circumstances and are forced to rely on a black man to help them strongly resembles the plot of the later novel *The House Gun*.¹⁸¹

In *The House Gun*:

Claudia is not the only woman with a son in prison. Since this afternoon she has understood that. She is no longer the one who doles out the comfort of its placebos for others' disasters, herself safe, untouchable, in another class. And it's not just laws that have brought about this form of equality; something quite other.¹⁸²

But although it is 'not just laws that have brought about this form of equality', I suggest that part of what enables her to move from her 'untouchable' class into a fellow-feeling with other South Africans is produced by her sudden catapulting into familiarity with the legal system.¹⁸³ In particular, although the lawyer Duncan has hired is a black man, Hamilton Motsamai, Claudia wonders whether he will have the 'wiliness' necessary: 'a special kind of shrewd ability [...] that people whose generalized prejudices they used find distasteful attributed to lawyers who belonged to certain races. Jewish or Indian'.¹⁸⁴ But, as their relationship with Motsamai deepens and develops over the course of the narrative, it to come to be represented as something more symbolically resonant, as something which represents broader, changing dynamics:

there is awareness that the position that was entrenched from the earliest days of their being is reversed: one of those kept-apart strangers from the Other Side has come across and they are dependent on him. The black man will act, speak for them. They have become those who cannot speak, act, for themselves.¹⁸⁵

Later in the novel, Harald attends the hearings on the abolition of the death penalty at the Constitutional Court. Where, for everyone else, the hearings are on a 'higher plane of abstract justice'¹⁸⁶ and '[n]othing personal'¹⁸⁷ he is 'intensely aware of the extraordinary presence he is, in his reason, unbeknown to all these people, for being among them.'¹⁸⁸ For Harald, the hearings are directly, immediately and terrifyingly

¹⁸¹ Sophie Harrison, 'Nothing Terrible Happened', *London Review of Books*, 24.2 (2002), 28-29.

¹⁸² *The House Gun*, p.17.

¹⁸³ *The House Gun*, p.17.

¹⁸⁴ *The House Gun*, p.144.

¹⁸⁵ *The House Gun*, p.89.

¹⁸⁶ *The House Gun*, p.136.

¹⁸⁷ *The House Gun*, p.138.

¹⁸⁸ *The House Gun*, p.134.

relevant. In his isolation at the Court, it is only the parents of the murderers appealing the legality of the death penalty he can relate to:

[t]he only people with whom he would have common cause would be the parents of whoever Themba Makwanyane and Mvuso Mchunu might be, those to whom what is the subject of learned argument is not an issue but at home with them, forced entry there by sons who murdered four people, and by the son who put a bullet into the head of the man on the sofa. It was unlikely these parents would be among the crowd in court, almost certainly they are poor and illiterate, afraid to think of exposing themselves to authority in a process incomprehensible any other way than as whether or not a son was going to be hanged one daybreak in Pretoria.¹⁸⁹

The crime, the trial, above all the fear of the death penalty – these force Harald and Claudia into a resemblance to the black poor. There is nothing straightforward about this. It is an entirely theoretical resemblance: Harald doesn't know the parents of 'whoever Themba Makwanyane and Mvuso Mchunu might be'¹⁹⁰ and he assumes that he is distanced from them by income and by education. All of this is focalized through Harald's perspective, which adds an additional layer of difficulty as they may not be who he imagines at all. Nonetheless, he feels that he is united with them in his incomprehension at the Court.

One significant difference between the death penalty hearings depicted in the text and those held by the actual Constitutional Court concerns the location of the Court. In the novel, it is located in Johannesburg's former Fever Hospital. In reality, the Court did not have a permanent location until 2004. The location at which the Court building was eventually constructed was the site of a former prison – the Old Fort in Johannesburg. According to Mark Gevisser, for black South Africans the site was

this place of darkness in the middle of the city to which they'd be taken if their passes were out of order, or they had broken the curfew regulations, or any one of a number of other petty apartheid laws that criminalized their very existence. Given that all pass offenders in Johannesburg were brought here, there's barely a black family in the city that doesn't have some memory of what it was like inside. In black popular culture, the Old Fort is still known as Number Four

¹⁸⁹ *The House Gun*, pp.138-9.

¹⁹⁰ *The House Gun*, p.138.

because the black male section was ‘section four,’ and those two words still send shivers down people’s spines.¹⁹¹

Gevisser argues that locating the court on the site of the Old Fort was an act of reclamation, but one which linked the past and future together. The intention was not to erase the memories of ‘section four’ but instead to ‘put the Constitution into a historical context, to show that it was a consequence of a long and difficult struggle.’¹⁹²

The site Gordimer chooses for the Court in *The House Gun* is also symbolic:

[i]t is the old Fever Hospital façade [Harald is] looking along as he approaches but it is no longer a place of isolation for those who might spread disease down there among the population [...] It will house the antithesis of the confusion and disorientation of the fevered mind: it is to be the venue of the furthest extension of measured justice that exists anywhere, a court where any citizen may bring any law that affects him or her to be tested against individual rights as entrenched in the new Constitution.¹⁹³

Gordimer’s biographer Ronald Suresh Roberts suggests that ‘Gordimer treats [the Constitutional Court] with undisguised reverence’, but choosing the Fever Hospital as the imagined location for the Court focuses this ‘reverence’ in particular ways.¹⁹⁴ For example, it stresses that the Constitutional Court is one of the ways in which the apartheid past has been emphatically broken with. It is ‘not incongruous to Harald’ that the Fever Hospital has become the Court because ‘[e]verything has changed.’¹⁹⁵ The building itself is ‘red-faced as the imperialist fathers who had constructed it’, but this serves to emphasize the change that has occurred.¹⁹⁶ The new use of the building is the ‘antithesis’ of what happened before.¹⁹⁷ This is a different way of thinking about the redevelopment of an old building to the one the Constitutional Court would actually adopt. When the actual Constitutional Court was built, a link to the past sacrifices made in the struggle against apartheid was recognized in addition to the attempt to decisively

¹⁹¹ Mark Gevisser and Sarah Nuttall, ‘From the Ruins: The Constitution Hill Project’, *Public Culture*, 16.3 (2004), 507-519 (p.509).

¹⁹² Gevisser and Nuttall, p.511.

¹⁹³ *The House Gun*, p.131.

¹⁹⁴ Ronald Suresh Roberts, *No Cold Kitchen: A Biography of Nadine Gordimer* (Johannesburg: STE Publishers, 2005), p.543.

¹⁹⁵ *The House Gun*, p.131.

¹⁹⁶ *The House Gun*, p.131.

¹⁹⁷ *The House Gun*, p.131.

mark a break with the past. The Fever Hospital building in the novel instead symbolizes ‘antithesis’.¹⁹⁸

The text also describes the judges at the Constitutional Court. The ‘swarthy man (Italian or Jew?) with a scarred grin, and eyes, one dark-brilliant, one blurred blind, from whom radiant vitality comes impudently since he gesticulating with a stump in place of one arm’¹⁹⁹ is clearly Albie Sachs, though he is not named. The narrator observes:

[t]he judges interrupt, cross question wittily, and expound their own views; the case for retention of the Death Penalty seems to come up against the unanswerable when the judge who has lost an arm and an eye by an agent of the previous regime’s attempt to murder him does not support an arm for an arm, an eye for an eye; does not express any wish to see the man hanged.²⁰⁰

The President of the Constitutional Court is not named either. However, he is described: ‘[h]e does not smile but his eyes behind their panes have that expression, and further, a compassion- but perhaps it’s the distancing of the thick glasses that gives Harald the idea that this is there, and touches him’.²⁰¹ The first President of the Constitutional Court in reality was Arthur Chaskalson, and the reference to the ‘thick glasses’²⁰² seems to suggest that this is who Gordimer is describing, too. Gordimer emphasizes Sachs’ extraordinary forgiveness, his lack of desire for retribution, as well as his ‘radiant vitality’ and Chaskalson’s ‘compassion’.²⁰³ By the end of the text, the death penalty hearings have concluded:

[t]he Last Judgement of the Constitutional Court has declared the Death Penalty unconstitutional. The firm and gentle tone of the Judge President has the confidence of a man who while he is conveying the ruling arrived at after several months of weighing scrupulously the findings of a bench of independent thinkers, himself has been given grace. There is serenity in justice.²⁰⁴

¹⁹⁸ *The House Gun*, p.131.

¹⁹⁹ *The House Gun*, p.135.

²⁰⁰ *The House Gun*, pp.136-7.

²⁰¹ *The House Gun*, p.135.

²⁰² *The House Gun*, p.135.

²⁰³ *The House Gun*, p.135.

²⁰⁴ *The House Gun*, p.284.

However, despite all of this celebration of the new constitutional order as ‘serenity in justice’,²⁰⁵ there is way of thinking about justice in the novel which is contrasted with that of the Constitutional Court, and it is articulated through literature. In Gordimer’s novel, Harald and his son share a deep interest in literature and ‘have a need to read’ books ‘that are dangerous and indispensable, revealing to you what you are.’²⁰⁶ When Harald goes to Duncan’s cottage after the murder he discovers a notebook:

scrawled on the last page to have been used there was a passage copied from somewhere – Harald’s love of reading had been passed on when the boy was still a child. Harald recognized with the first few words, Dostoevsky, yes, Rogozhin speaking of Nastasya Filippovna. ‘She would have drowned herself long ago if she had not had me; that’s the truth. She doesn’t do that because, perhaps, I am more dreadful than the water.’²⁰⁷

For his part, in the aftermath of the murder, ‘Harald’s dependence on books became exactly that, in the pathological sense’.²⁰⁸ There are two slightly different things he seeks in literature. On the one hand there is absorption:

the substance of writers’ imaginative explanations of human mystery made it possible for him, reading late into the night, to get up in the morning and present himself to the Board Room. He turned to old books, re-read them; the *mise en scène* would remove him from the present in which his son was awaiting trial for murder.²⁰⁹

But reading also has perhaps less pleasant consequences, or at least consequences which are less under his control: ‘like his son, he came upon his own passages, to be omnipresent in him if not to be copied out alongside the others in the notebook locked up in his office.’²¹⁰

One of these is a conversation from Thomas Mann’s novel *The Magic Mountain*:

“...the man is as he has wished to be, and as, until his last breath, he has never ceased to wish to be. He has revelled in slaying and does not pay too dear in being slain. Let him die, then, for he has gratified his heart’s deepest desire.’

²⁰⁵ *The House Gun*, p.284.

²⁰⁶ *The House Gun*, p.292.

²⁰⁷ *The House Gun*, pp.46-7.

²⁰⁸ *The House Gun*, p.71.

²⁰⁹ *The House Gun*, p.71.

²¹⁰ *The House Gun*, p.71.

‘Deepest desire?’

‘Deepest desire.’

‘It is absurd for the murderer to outlive the murdered. They two, alone together – as two beings are together in only one other human relationship, the one acting, the other suffering him – share a secret that binds them forever together. They belong to each other.’²¹¹

For Harald, the quotations from Mann and from Dostoevsky become intertwined, and then become tools through which he attempts to understand his son and his actions:

in what is fearful, surely there is always one who menaces and one who fears. How can menace be equalled? In deadlock; and that is exactly what it will be, deadly; so if it had been Natalie/Nastasya his son had killed there would have been an answer: they belong to each other. The reverse side of the conception of sexual love that romantically defines it as the blissful state of union, to which that good old-style marriage ceremony gives God’s blessing as one flesh.²¹²

As presented in *The House Gun*, one of the unnamed speakers suggests that there is a parallel between the relationship between the murderer and the murdered and ‘only one other human relationship, the one acting, the other suffering him’.²¹³ By this, Harald understands that the murderer and the murdered, in their connectedness, are the ‘reverse side of the conception of sexual love that romantically defines it as the blissful state of union’.²¹⁴ But this does not provide the answer he is looking for, because his son did not kill Natalie.

An answer, however, is provided later in the text, in a section narrated from Duncan’s first person perspective:

[h]e brought me a book when I was awaiting trial, I think it was when he was so angry, so horrified that *he* wanted to accuse, punish me, but there was something in it he didn’t, doesn’t, never can know. The passage about the one who did it and the one to whom it was done.²¹⁵

²¹¹ *The House Gun*, p.71-2.

²¹² *The House Gun*, p.72.

²¹³ *The House Gun*, p.72.

²¹⁴ *The House Gun*, p.72.

²¹⁵ *The House Gun*, pp.281-2.

Duncan then quotes exactly the quotation from *The Magic Mountain* that has obsessed Harald (beginning '[i]t is absurd for the murderer to outlive the murdered').²¹⁶ Even though Duncan doesn't believe his father has noticed this passage in particular, it is precisely the same section of text that Harald has used to think about his son, and to try and understand his actions. It becomes tremendously significant for Duncan:

[w]riters are dangerous people. How is it that a writer knows these things [...] I've copied that quotation again and again, I don't know how many times, in the middle of the night from memory I've written it on a scrap of paper the way she used to scribble a line for a poem.²¹⁷

But there is a crucial difference in Duncan's own case:

this time it is the three of us, alone together. In the 'human relationship' – love-making and all the rest – Carl acted, I suffered him, I acted, Natalie suffered me, and that night on the sofa they acted and I suffered them both. We belong to each other.²¹⁸

Harald's comprehension fails because it was Carl and not Natalie who became Duncan's victim. He thinks that Natalie and Duncan 'belong[ed] to each other'.²¹⁹ His interpretation of the Mann quotation is that this kind of symbiotic, overwhelming relationship is the 'reverse side' of the irrevocable connection between the murderer and the murdered.²²⁰ Duncan agrees with this, but for him there were not just two people connected in this way but three: 'he's dead, and he and she and I share a secret that binds us forever together.'²²¹

When Claudia hears that the death penalty has been abolished 'the news sets her visibly trembling [...] while it still existed it would always have been what, for their son's act one Friday night, could have been exacted'.²²² Duncan's response is, however, very different. Crucially, it is also articulated through the literary quotation: 'I have this life, in here. I didn't give it for his. I'll even get out of here with it, some year or other. The

²¹⁶ *The House Gun*, p.282.

²¹⁷ *The House Gun*, p.282.

²¹⁸ *The House Gun*, p.282.

²¹⁹ *The House Gun*, p.72.

²²⁰ *The House Gun*, p.72.

²²¹ *The House Gun*, p.282.

²²² *The House Gun*, p.284.

murderer has not been murdered. My luck, this was abolished in my time.’²²³ The text is not, I think, suggesting that Duncan wishes that he could be killed by the state, but rather that the decision on the death penalty has upset an alternative conception of justice which the quotation from *The Magic Mountain* helps him to articulate.

Ronald Suresh Roberts writes that during the constitutional court hearings on the abolition of the death penalty:

Gordimer faxed an excerpt from *The Magic Mountain* to George Bizos at the Johannesburg Legal Resources Centre as he prepared to argue against the death penalty. The excerpt, she explained, pitted Settembrini, ‘the humanist democrat’ against Naphta, ‘the pre-fascist ideologue’. It was a slightly longer version of the quotation which she weaves through *The House Gun*.²²⁴

As Roberts notes, ‘[t]his cannot have helped Bizos in the abolitionist cause.’²²⁵ But the fact that the quotation is so unlikely, so apparently unhelpful for the lawyer in the death penalty hearings, indicates something of the way it is working in the text. It sets up a way of thinking about crime and its punishment which is not subsumed under legal categories. In the text, the quotation is what Duncan is left with, to think over and through and with, in his cell, as he tries to re-imagine his life.

Moreover, it is not the only literary text which functions in this way. At the end of the novel, Duncan is reading *The Odyssey*. It, too, is interpreted in terms of its comments on justice. Duncan wants to understand what Odysseus feels about his killing. At the end of the text he is still waiting to find this out: ‘I haven’t come to the end of the book, I don’t know how Odysseus reconstructed what he did, what way he

²²³ *The House Gun*, p.294.

²²⁴ ‘Naphta starts, with Gordimer’s emphasis:

“He has revelled in slaying and does not pay too dearly in being slain.

Let him die, then, for he has gratified his heart’s deepest desire.”

“Deepest desire?”

“Deepest desire”

...Settembrini shrewdly remarked: “There is a kind of generalisation that has a distinctly personal cast. Have you ever had a desire to commit a murder?”

“That is no concern of yours. But if I had, I should laugh in the face of any ignorant humanitarianism that tried to feed me on skilly till I died a natural death. It is absurd for the murderer to outlive the murdered...They belong to each other.” Roberts, p.540.

²²⁵ Roberts, p.540.

found for himself. Put out your eyes. Turn the gun on your own head.²²⁶ What is important here is how the text is thus associated with punishment, and, in particular, with violent, self-inflicted punishment. While *The House Gun* is celebratory about the new Constitution and the new human rights-respecting legal order symbolized by the abolition of the death penalty, there is nonetheless something which escapes or cannot be incorporated within it, or within the way it is represented in the text. This way of thinking about murder and its consequences, which is established in opposition to that of the Constitutional Court, is represented by literature.

In this chapter I have shown that human rights discourse has an ambivalent relationship with legality. In the context of the South African transition to democracy, it was used both to found the Constitution and, in the TRC, to distinguish the demands of justice from the demands of the law. What I suggest about *The House Gun* is that it emphatically distinguishes literature from the law. Where for critics like Munro and Slaughter human rights' quasi-legality might enable or encourage literature to take on some of law's roles, in this text literature and legality are separated. This is to say that human rights, as I have described them in this chapter, and literature as it functions in *The House Gun* share something. In the next chapter I will go on to discuss the ways in which literary distance from legality might illuminate that of human rights discourse.

²²⁶ *The House Gun*, p.294.

Chapter Five: Literature and the Ambivalent Legality of Human Rights Discourse

The ambivalence of human rights' relationship with legality has sometimes invited critics to focus on ways in which literature might do some of the work the law cannot. As we have seen, Brenda Munro argued that:

[w]hile literature doesn't have the direct power of the law or the wide audience of popular culture, novels can help make legal recognition into shared structures of feeling about the nation and people's place in it. The pleasures of reading realist fiction, of identifying with some characters and judging others, and of vividly imagining a recognizable world make it a powerful medium for shaping subjectivities and producing the 'imagined community' of nation.¹

This link between literature and human rights law centres on a certain kind of literary text – 'realist fiction'² – which encourages identification and vivid imagination and provokes recognition. Munro is not the only critic to make such a link. According to Hephzibah Roskelly, Slaughter's model of the human rights-literature relationship does not pay specific attention to traditionally marginalized subject-positions. The figure of the person around which his theory of human rights is hinged bears a strong similarity to the abstract individuals who populate liberal political theory – as many feminist critics have pointed out, such abstract individuals tend to take white masculinity as the neutral model for human existence. But for Roskelly, even where she expands the remit to include women, the basic literary paradigm of identification remains the same:

[a]s readers read more coming of age stories that take a variety of paths, that do more than comment on the stereotypical western male one, but remake it in another image, female ones as well as male, they learn to symbolize and imagine ways to see humans that include human women more explicitly.³

¹ Munro, p.399.

² Munro, p.399.

³ Hephzibah Roskelly, 'Imagining Women as Human', in *Theoretical Perspectives on Human Rights and Literature*, ed. by Elizabeth Swanson Goldberg and Alexandra Schultheis Moore (Abingdon: Routledge, 2012), pp.215-230 (p.228).

Again, it is a certain type of literary writing which is being discussed here. She argues that ‘reading narrative carries powerful persuasive force for its ability to foster imaginative possibilities in the minds of readers.’⁴ As in Munro’s argument, literary texts are thought to inspire imagination for the purposes of creating recognition and familiarity:

[t]he literary text creates symbolic dimensions of everyday life that invite readers to draw connections to lived experience; to locate differences and make them familiar; to interpret fairly and with empathy.⁵

Underlying both of these arguments, I suggest, is an impulse towards the resolution of what Rancière terms dissensus. On the one hand, there is the imagined universality of human rights, and on the other there is the reality of existence in which, clearly, we do not all enjoy the rights we are supposed to possess. Roskelly, Munro and Slaughter all suggest that literature can work to reduce or, at least, minimize this gap. I suggest however that this gap is integral to what human rights are and how they work – in particular, for the purposes of this chapter, human rights claims have most meaning when they are made in the absence of legal protection.

We have observed one consequence of human rights’ ambivalence about legality in the context of South Africa’s transition to democracy: even though there was an explicit attempt to build the new South African polity around respect for individual human rights, this was only partially accomplished through the law. In the context of the TRC, for example, human rights discourse was used to defend and justify a quasi-legal methodology which at once evoked and insisted on its distinction from full legality. Thus, even where there was an attempt to ensure respect for human rights, this was not accomplished exclusively through the law, but rather through a more ambiguous quasi-legality.

Having considered the ambivalence of human rights’ relation to the law from one perspective – the attempt to bring about full rights protection – in this chapter I consider the other side of the possession paradox. That is, the question of rights from the perspective of those who are lacking fundamental rights and have no recourse to the

⁴ Roskelly, p.226.

⁵ Roskelly, p.216.

law to enact them. This was the case in South Africa during apartheid: legal scholar David Dyzenhaus argues that

the exceptional nature of apartheid was not the human rights violations which it perpetrated. Other regimes in Africa and elsewhere have matched or even outdone the white governments of South Africa in this regard [...] what made apartheid exceptional was that it was implemented and sustained through law.⁶

The paradigmatic situation for the making of a human rights claim is one in which the law cannot be relied on to protect rights. This is where human rights as a discourse has most meaning – yet this is always (and must always be) an uneasy and perilous situation. South Africa is a particularly extreme example of this.

Both texts I consider in this chapter are concerned with situations in which the possibility of legal recognition of human rights is remote – situations, in fact, where the law is actively hostile to human rights claims. Antjie Krog's *Begging to Be Black* begins in 1992, in the dying days of white rule, and deals with a murder trial in which Krog becomes involved. As the text progresses, the extent to which the security forces and legal system are implicated in the murder and in the context in which it occurred becomes apparent. Nadine Gordimer's novel *Burger's Daughter* is set in the 1970s. I will focus on the way the novel depicts a political trial and the aftermath of the Soweto uprising. This began on 16 June 1976 as a protest against the compulsory use of Afrikaans as the language in which teaching was conducted in schools, and the police responded to it with extreme violence, shooting and killing hundreds of protestors.

Given the interpretative frames I have discussed so far, it might be expected that where the law cannot be relied upon to respect rights, literature might work in such a way as to, textually at least, resolve the problem. This is what Slaughter suggests about the *Bildungsroman*:

[t]he *Bildungsroman* has acted as a cultural surrogate for the missing executive authority of international human rights law, expanding its purview by projecting the social and cultural conditions out of which human rights might be recognised as commonsensical.⁷

⁶ David Dyzenhaus, *Judging the Judges, Judging Ourselves: Truth, Reconciliation, and the Apartheid Legal Order* (Oxford: Hart Publishing, 2003), p.149.

⁷ *Human Rights, Inc.*, p.29.

According to Rosekelly and Munro, similarly, literature might be expected to forge imaginative connections which bring rights to life, even as the rights are not effectively possessed in the law. Or, as we saw with Tutu's reference to *Death and the Maiden*, literature might be associated with truth, and might thus be able to compensate for the law's inadequacies.

But, in contrast to the literary works discussed by Slaughter, Roskelly and Munro, both *Begging to be Black* and *Burger's Daughter* refuse to work in this way. Krog's text is preoccupied by the limits of imagination, while the restless mobility of the narrative perspective in *Burger's Daughter* continually draws attention to its own inability to provide access to an unmediated truth, and to its own contingency. But because of their own performed failures and insufficiencies, I argue, they allow a closer understanding of the impossibility of possession which is central to my account of human rights.

My suggestion is that *Begging to Be Black* and *Burger's Daughter* establish and maintain their own irreducibility to law. Here I am returning to a question I first raised in Chapter One: how might literary texts be able to stage, and thus move us closer to understanding, the difficulties of possessing human rights? In Chapter One I argued that the texts Slaughter describes as dissensual Bildungsroman cannot do this because they do not fully get to grips with the crisis at the centre of human rights – the fact that such rights always exist most fully in their non-possession. Instead, through positing the experimental Bildungsroman as the human rights-analogue, he suggests that non-possession is simply what happens when rights cannot be fully realized, instead of a condition of the only realization which is possible for them. The form of the Bildungsroman is dependent on the idea of progression towards social incorporation, even where neither is fully realized in textual terms. But I have suggested that human rights cannot be absorbed into a developmental model. As Rancière suggests, they become fully possessed not at the end of a teleological process, but only when they enter into crisis.

There is a rupture at the heart of human rights, the rupture which means that it is almost impossible for human rights to be fully possessed. It is the extent to which literature is able to express that rupture by precisely breaking the processes of imagination and familiarity which interests me here. Literature may be law-like as it facilitates feelings of national belonging in a realist mode. But I suggest that these

literary texts might have something to say about human rights discourse's ambiguities of possession precisely in so far as they problematize the relationship between 'vividly imagining' and 'a recognizable world.'⁸ In this way, they throw into question the relationship between literature and the category of truth – the link that Tutu made in the context of defending the TRC's quasi-legality.

Petrus's Story

Begging to Be Black is composed of a number of different strands woven together. It is a non-fictional work, but as I will argue below, the meaning and purpose of fiction are central to its purposes. Opening the book is an account of Krog's involvement in a murder case. The murder is committed in 1992, when Krog is working as a teacher and living with her architect husband, J., in Kroonstad, in the Free State. Krog is an active member of the ANC and '[d]uring the height of apartheid', she and her husband had 'consciously decided to live among poor people and bought a house near the railway line.'⁹ On 25th February 1992, Wheetie, the leader of the Three Million gang, 'which rules with a reign open terror in Kroonstad', is shot on the street.¹⁰ The killer is a member of Umkhonto we Sizwe (MK), the armed wing of the ANC. He is driven to and from the scene by Denzil Hendricks, the deputy headteacher of the school at which Krog teaches. With them are two other MK men and ANC activist Reggie Baartman.

Later that evening, Reggie arrives at Krog's house with three men she has never seen before. He asks her to give them all a lift in her car, and to dispose of a red t-shirt. The t-shirt is the murderer's, and the murder weapon has been left in a plant pot on her property. Later, when she realizes what has happened, she takes the t-shirt to a member of the security police who she and her husband went to school with. Reggie and the three MK operatives – Jantjie Petrus, Hankan Petrus and Dudu Mofokeng – are arrested and then released. Two days later, Hankan Petrus is shot and killed.

This second murder causes the students at Krog's school to protest:

[o]ne of our students maintains that in the chaos of running away he saw the maths teacher, who plays in a soccer team funded by Wheetie's Three Million Gang, bent over the dead body before he too ran away. The student body says pupils will only take classes after all staff

⁸ Munro, p.399.

⁹ Antjie Krog, *Begging to Be Black* (Cape Town: Random House, 2009), p.4.

¹⁰ *Begging to Be Black*, p.8.

members who play soccer with the Three Million have left the school grounds.¹¹

For Krog, this is intensely troubling: 'I find myself wondering how the students argue in favour of one murderer over the other. Is there such a thing as a bad murderer and a good murderer?'¹² Then a 'declaration that killing is wrong comes from an unexpected source':

[a]s head of the school committee, Reggie leads a protest against the teacher who allegedly ran away from the murdered body of the accused Hankan Petrus. In the meeting he declares that the teacher must be fired immediately, because he, Reggie, does not want murderers, people without respect for the lives of others, to be teaching his children. I sit there too astonished to utter a word.¹³

When the case comes to court, Krog is a state witness, though she is deeply uncomfortable and conflicted about this. At the end of the trial:

Reggie was found guilty of defeating the ends of justice and fined, Jantjie guilty of murder and, with mitigating circumstances, sentenced to fourteen years in jail [...] Dudu Mofokeng was found not guilty. The newspaper reports that the judge has credited me and the other white state witness for the successful solving of the case. Therefore officially, in black and white, in legal language, I am partly responsible for the fact that a young man is sitting in jail and that Reggie's political career has been destroyed by a criminal sentence.¹⁴

Krog has a sense that the murderers of the Wheetie were operating in accordance with a moral system she does not understand, one which does not value the life of the individual above all other considerations, and she thinks that this other value system might be a specifically black South African philosophy of interconnectedness and community. The murder and its aftermath lead Krog to ask questions about moral judgement in South Africa and about whether the fracturing of society through colonialism and apartheid has produced incommensurable value systems.¹⁵ She says to

¹¹ *Begging to Be Black*, p.45.

¹² *Begging to Be Black*, p.45.

¹³ *Begging to Be Black*, p.46.

¹⁴ *Begging to Be Black*, p.170.

¹⁵ Similar questions are posed in *Country of My Skull*. In one example, Krog asks her colleague Mondli Shabalala '[w]hy would Mandela write in his biography about the cattle he and his cousin stole from his uncle? Do we understand the same thing when we talk about stealing?' (*Country of My Skull*, p.19). He replies: 'I don't know. But what I do know is that I grew up with the notion that stealing from whites is not actually stealing. Way back, Africans had no concept of stealing other than taking cattle as a means of

J.: '[m]aybe there's something important that I'm missing here. Maybe there's a way to look at this murder that would turn it into an understandable moral act.'¹⁶ The book is presented – until, I will suggest, a particular turning point – as an attempt to understand what such a philosophy means and how it operates. Consequently, it is organized not as a discussion of a set of theories or ideas but as a textual re-enactment of precisely the *attempt* to understand, structured by the detours, dead ends and re-thinking which tend to characterize the process of beginning to think about a complex and politically freighted topic.

This questioning takes many different forms, and the book operates through the interaction of its various strands. As well as the discussion of the murder and the subsequent trial, sections of the text describe the leadership of King Moshoeshoe, king of the Basotho, and his interactions with French missionaries, beginning in 1833. The other major thread concerns a fellowship Krog undertook in Berlin in 2007. Within the Berlin sections are sections from a diary, letters to her mother, and numbered conversations with a philosophy professor about topics including Giles Deleuze, African philosophies of interconnectedness and J.M Coetzee's novel *Disgrace*. Chapters One to Six of the book alternate between describing the murder and the period before the trial, and describing the interactions between Moshoeshoe and the missionaries. Chapter Seven is about the fellowship in Berlin. This has the effect of presenting the Berlin conversations – which take literature as one of their central subjects – as a direct response to what troubles Krog about the murder, and as an attempt to think through its complexities.

The text as a whole can be read as a literary representation of thought as it develops – it progresses towards its ideas, rather than presenting them to the reader fully-formed. In particular, I will focus on three key moments in the work which present different ideas about fiction and how it operates. The first is a reading of Coetzee's *Disgrace*, in which one of its characters, Petrus, is read as a symbol of a specifically African model of communitarian ethics. Second is a subsequent rejection of fiction on the basis that imagination is insufficient to South Africa's reality of segregation, in which the other is physically and perhaps then ultimately imaginatively inaccessible. This

contesting power. But you whiteys came and accused us of stealing – while at that very same minute you were stealing everything from us!' (*Country of My Skull*, p.19).

¹⁶ *Begging to Be Black*, p.69.

argument works to undermine or problematize the argument made about *Disgrace*. Thirdly, there is a final moment of small-scale reconciliation between a black man and a white, Afrikaner woman facilitated by Marlene van Niekerk's novel *Agaat*. These moments are disjunctive, and they do not necessarily fit into a cogent theory about the role of literature. This is, I suggest, precisely their point.

During her fellowship in Berlin, Krog has a series of discussions with a philosopher who is unnamed in the body of the text.¹⁷ Krog chooses him as her interlocutor because she has 'read a provocative paper he wrote on the concept of becoming-animal in J.M. Coetzee's novel *Disgrace*.'¹⁸ Krog is not interested in 'becoming-animal or becoming-woman as in Coetzee's book, but becoming-black'¹⁹. *Disgrace* is the main topic of conversation two, and recurs again in conversation three. Krog says:

[g]oing back to *Disgrace*. I am reminded of those haunting sentences by Lurie about Petrus's side of the story. 'Doubtless Petrus has been through a lot, doubtless he has a story to tell. He would not mind hearing Petrus's story one day. But preferably not reduced to English. More and more he is convinced that English is an unfit medium for the truth of South Africa.'²⁰

The philosopher asks 'So what is Petrus's story?' and she replies

I hear Petrus saying: I function within an ethic that is communal to the core. The benefit to the community, whether they are the living, the living-dead or the still-to-come, is what determines whether something is good or bad. The deed is not per se good or bad – it depends on who the community is and what and for whom the benefits are.²¹

Disgrace seems to work here as a tool to enable Krog to understand the murder and the questions it prompts. The novel, or rather Petrus' role in it, is understood to articulate a community-oriented vision, in which the moral justification for particular actions is not understood through isolating individual acts or behaviours but rather by understanding what the acts or behaviours mean and achieve in the life of a group. This reading of *Disgrace* is linked explicitly to the questions Krog asks in the aftermath of the

¹⁷ He is named in the acknowledgements as Paul Patton. See Paul Patton, 'Becoming-Animal and Pure Life in Coetzee's *Disgrace*', *Ariel: A Review of International English Literature*, 35.1-2 (2004), 101-119.

¹⁸ *Begging to Be Black*, p.92.

¹⁹ *Begging to Be Black*, p.92.

²⁰ *Disgrace*, p.117. Quoted *Begging to Be Black*, p.101.

²¹ *Begging to Be Black*, p.102.

shootings of the Wheetie and of Hankan Petrus. It is after these murders that Krog reflects ‘I find myself wondering how the students argue in favour of one murderer over the other. Is there such a thing as a bad murderer and a good murderer?’²² Petrus, in the interpretation Krog puts forward in this section, can be read in order to provide an answer to exactly this question: ‘[t]he deed is not per se good or bad’ and what matters is ‘who the community is and what and for whom the benefits are.’²³ Coetzee’s novel is read in such a way here as to make the murder of the Wheetie comprehensible, by suggesting a moral framework in which it can be understood.

However, I suggest that the reading of *Disgrace* proposed in *Begging to Be Black* – in which Petrus’ silence is read by Krog in order to explain an ethics of communality – is set up in the text to be, at least partly, critiqued and shown to be inadequate. That is, the reader is invited to be suspicious of the work *Disgrace* is performing for *Begging to Be Black*, or, at least, to approach it with certain reservations. One of the reasons that the reading of Petrus should not be taken at face value is that Krog enters into to the discussions because she wants to understand ‘becoming-black’.²⁴ But she acknowledges that the philosopher ‘has many things in my eyes that should disqualify him as a possible discourse partner (white, male, teaching Western philosophy in Australia)’.²⁵ The professor will himself caution Krog to ‘be careful not to let blackness become a voiceless group that you privately observe and define, instead of a varied, multiple people with which you should have multiple-way conversations.’²⁶ That is, he says, ‘don’t keep on talking to whites about blacks. Talk and listen to blacks.’²⁷

But if what Krog wants to understand is the process of ‘becoming-black’,²⁸ the list of putative disqualifications (‘white, male, teaching Western philosophy in Australia’)²⁹ seems slyly to imply before the discussion of Petrus even begins that, if the professor is not the ideal interlocutor, neither is *Disgrace* a perfect starting point. Petrus is a fictional construct of Coetzee’s; Coetzee is of course white, male and, since 2002,

²² *Begging to Be Black*, p.45.

²³ *Begging to Be Black*, p.102.

²⁴ *Begging to Be Black*, p.92.

²⁵ *Begging to Be Black*, p.92.

²⁶ *Begging to Be Black*, p.122-123.

²⁷ *Begging to Be Black*, p.123.

²⁸ *Begging to Be Black*, p.92.

²⁹ *Begging to Be Black*, p.92.

teaching in Australia (though not teaching philosophy).³⁰ More importantly, whiteness, maleness and their imbrications with teaching the Western canon (though, again, not philosophy but literature) are central concerns of *Disgrace* itself.

Neither the plot of *Disgrace* and nor the context of the quotation Krog is interested in are explicitly discussed in *Begging to Be Black*. It has been widely argued that *Disgrace* places too much of the burden of sacrifice for the new South Africa on women: that it seems willing to compromise women's rights and lives in its vision of the pursuit of national reconciliation.³¹ As a consequence, there is something uncomfortable about the way Krog invokes *Disgrace*. Petrus shelters a rapist as a member of his family: is this really the fictional character we should take as emblematic of South African philosophies of interconnectedness? Petrus is not just associated with violence, but specifically with sexual violence against women, and this is not acknowledged or discussed in *Begging to be Black*.

But I suggest that a certain amount of discomfort about the way Krog refers to *Disgrace* is a useful strategy for reading the text. Coetzee's novel does not quite fit her purposes. For example, in something like a hall of mirrors effect, the question of the function of literature in the new South Africa is tightly interwoven in *Disgrace* with the issue of translation and translatability, the ability to hear and communicate with the other. So though Krog is using a novel to think about the question of communication across South African cultures, the novel she refers to itself questions the role literature can play in facilitating intercultural understanding. The way in which Krog seems to read *Disgrace* in order to understand something about black South African morality is implicitly problematized, for those who know Coetzee's text – and among Krog's readers, this seems likely to be a significant proportion³² – by the relationship literature has with cross-racial understanding in South Africa in *Disgrace*.

³⁰ See J.C. Kannemeyer, *J.M. Coetzee: A Life in Writing* (London: Scribe Publications, 2013), p.535.

³¹ On the problematic role gender plays in *Disgrace* see Elleke Boehmer, 'Sorry, Sorrier, Sorriest: The Gendering of Contrition in J.M. Coetzee's *Disgrace*', in *J.M. Coetzee and the Idea of the Public Intellectual*, ed. by Jane Poyner (Athens, OH: Ohio University Press, 2006), pp.134-147. Carine M. Mardrossian, 'Rape and the Violence of Representation in J.M. Coetzee's *Disgrace*', *Research in African Literatures*, 42.4 (2011), 72-83.

³² Andrew van der Vlies describes *Disgrace* as 'one of the most widely read novels by a South African-born writer, and one of the later twentieth century's most critically acclaimed novels in any language.' Andrew van der Vlies, *J.M. Coetzee's Disgrace: A Reader's Guide* (London: Continuum, 2010), p.x. See also his chapter on 'The Novel's Reception' (pp.71-80), including the controversy which arose when the text was 'cited in

In *Disgrace*, Lurie's refusal to engage sincerely with the investigative inquiry, set up to hear the complaint of sexual harassment made about him by a student, Melanie Isaacs, means that he loses his job as a lecturer. If 'English is an unfit medium for the truth of South Africa',³³ it might be thought to be a positive sign that his former head of department then tells him that he has been replaced by a specialist in '[a]ppplied language studies. He is in language learning.'³⁴

But though the statement that 'English is an unfit medium for the truth of South Africa'³⁵ seems to be suggesting that an ability to hear and understand a language other than English might be a step towards that truth, it is also conspicuous that 'language learning'³⁶ is depicted as directly replacing the study of literature in Lurie's former university. Lurie thinks '[s]o much for the poets, so much for the dead masters. Who have not, he must say, guided him well. *Aliter*, to whom he has not listened well.'³⁷ Language learning is at once, in Lurie's view, the possible route to the 'truth of South Africa'³⁸ and what edges out the poets. There is in *Disgrace* an opposition, and one which is not fully resolved by the text, between the communicative possibility symbolized by language learning and 'the poets'.³⁹

'Imagination for me is Overrated'

But what suggests more forcefully that Krog's initial reading of *Disgrace* is not to be taken at face value is a discussion of the role of fiction in South Africa which occurs later in the text. This discussion takes up some of the key terms from the earlier conversation but offers a fundamentally different argument. In this sense, Krog's initial interpretation of *Disgrace* forms something of a false start or dead end in the text; what she argues about it initially – that it can help to explain a black South African value system – is undermined or at least problematized by textually subsequent events.

a submission made to the ANC Human Rights Commission of Inquiry into racism in the media in South Africa, in April 2000, as evidence of persisting racist attitudes among white South Africans'(van der Vlies, p.78).

³³ *Disgrace*, p.117.

³⁴ *Disgrace*, p.179.

³⁵ *Disgrace*, p.117.

³⁶ *Disgrace*, p.179.

³⁷ *Disgrace*, p.179.

³⁸ *Disgrace*, p.117.

³⁹ *Disgrace*, p.179.

(Importantly, these events are not *chronologically* subsequent). There is a turning point very near the end of the text, in chapter twenty three of twenty four, when the central role the security forces played in creating the tension which led to the murder in the first place is revealed at a TRC amnesty hearing.

According to Mr Nelson Ngo, called as an expert, the 'Three Million Gang was created and supported by the Security Branch on instruction from the highest regional level, as part of its counter-insurgency strategy to neutralize and undermine UDF- and ANC-aligned activism in the mid-1980s [...] The strategy was supported right to the top. Justice officials, including magistrates and prosecutors, worked to undermine criminal prosecutions against these gang members.⁴⁰

This revelation changes the way Krog understands the murder; it shows that the killing was a direct consequence of the attempts to maintain the apartheid system, even as that system appeared to be crumbling. When she realizes the extent of the security forces' involvement with the 'Three Million, and the lengths to which the white government was willing to go to damage the ANC even after the release of Mandela and the talk of democratic elections, Krog fundamentally reassesses her role in the trial:

I made a triple mistake: what I did was politically naïve, legally uninformed and morally wrong. Although I myself typed all those names of people accusing the Three Million of terrorizing them, I refused to believe that the white government was behind it and would go to the trouble of actively putting structures up in a tiny town like Kroonstad in order for black people to kill each other.⁴¹

She says this in conversation with her husband, J., and he offers an alternative perspective:

You're again missing the point here: what exactly was offered to kill another black person? What would make you kill a person who's fighting for your political freedom? What kind of person does that? This collaboration between the police and the gangs was so deeply cynical and degenerate that I would say thank God that we didn't have the capacity to imagine such a pact.⁴²

The revelation gives a new complexion to the questions she has been asking about South Africa's moral systems – in a sense, the text implies, she has been asking

⁴⁰ *Begging to Be Black*, p.256. For the *TRC Report's* discussion of the special character of violence between 1990 and 1994, including the escalation of violent incidents and discussion of the third force, see *TRC Report*, vol.2, chapter 7, p.583-613. See also Stephen Ellis, 'The Historical Significance of South Africa's Third Force', *Journal of Southern African Studies*, 24.2 (1998), 261-299.

⁴¹ *Begging to Be Black*, p.259.

⁴² *Begging to Be Black*, p.259.

the wrong questions. Perhaps the issue is not whether she, a white woman, can understand African philosophies of community and interconnectedness, or whether the individuals involved in the murder felt that the right to life could be subordinated to the will of the community. Instead, perhaps the question which should be asked is: what chance – historically and in the present – do African lives and the philosophies of the community which have been embodied in them stand against the abuses of power characteristic of white rule in South Africa? This I take to be one of the meanings of the narratives about Moshoeshe in the text: these sections present an extraordinarily successful ruler but, ultimately, Krog writes,

it seems that most of what Moshoeshe had been saying was misunderstood within the framework of French missionary beliefs, British imperialism and Afrikaner land hunger. He was unable to convince any foreign power that the diversity he had accommodated in his nation was extended to them (at least initially) and that goodness could come into a society when its interconnected humanness was prioritized.⁴³

Moshoeshe's ideas about the connections between all people and about the power of community could not exert significant influence on any of the various iterations of white power he came into contact with.

What is revealed by the TRC changes the way she thinks about the trial and her participation in it, but it also changes what she thinks about literature, in a way which undermines or at least draws into question the earlier reading of *Disgrace*. Krog's final conversation with the philosopher is presented after the full story about the Three Million has been revealed at the TRC hearings. He asks her what she plans to do with their talks; '[a]re you writing a novel?'⁴⁴:

'No, I can't. I don't *want* to write novels.'

'Why not? With novels you can explore the inner psyche of characters; you can imagine, for example, being black. So what is it about non-fiction that you don't want to give up?'

'The strangeness. Whatever novelistic elements I may use in my non-fiction work, the strangeness is not invented. The strangeness is real, and the fact that I cannot ever really enter the psyche of somebody

⁴³ *Begging to Be Black*, p.227.

⁴⁴ *Begging to Be Black*, p.267.

else, somebody black. The terror and loneliness of that inability is what I don't want to give up on.⁴⁵

Her changing perception of the role of fiction is linked to what she understands to be the limit of imagination. She goes on to say that 'I want to suggest that at this stage imagination for me is overrated.'⁴⁶ The philosopher replies 'That's a terrible statement!' and Krog responds by saying 'I know, so let me not generalize and stick to the pronoun "I"'.⁴⁷ But this pronoun is soon discarded, and Krog says:

I think I am saying that in a country where we have come from different civilisations, then lived apart in unequal and distorted relationships that formed generations of us, our imagination is simply not capable of imagining a reality as – or with – the other.⁴⁸

The text suggests that this new way of thinking about fiction is prompted by the revelations of the TRC. It does so through the use of the words 'imagination' and 'imagining'.⁴⁹ When, after the Amnesty Hearing, she and J are discussing her involvement in the original trial, J says '[t]his collaboration between the police and the gangs was so deeply cynical and degenerate that I would say thank God that we didn't

⁴⁵ *Begging to Be Black*, p.267. In the section of *Country of My Skull* dealing with the evidence given by the shepherd Lekotse, Krog writes that in 'a desperate attempt to understand the behaviour of others, Lekotse imaginatively transplants himself into several other positions. The farmer. How could a farmer give permission for this kind of action? The police. They must be hungry if they are carrying on like this – and he offers them food and drink' (*Country of My Skull*, p.331). But though he, the victim of human rights abuse, is able to make such moves, they are shown to be one-sided: Krog writes that 'what makes his story all the more poignant is the fact that he can imagine himself in the other characters' positions, but no one seems able to empathize with his own' (*Country of My Skull*, p.331). But then only two pages later, the positions seem to be reversed: '[a]lthough the police penetrate his world, they refuse him access to theirs, and even to their intentions'. (*Country of My Skull*, p.333). This amplifies the danger of the kind of empathetic identification with which Krog is engaged in *Begging to Be Black*. In *Country of My Skull*, it is shown always to be one-sided – either a desperate appeal to the other which goes unacknowledged, or experienced as a violation.

⁴⁶ *Begging to Be Black*, p.268.

⁴⁷ *Begging to Be Black*, p.268. Recall in Gordimer's novel *July's People*, as in *Begging to Be Black*, the attempt to evade the pronoun 'we' and its seeming inescapability: '[w]e (Maureen sometimes harked back) understand the sacred power and rights of sexual love as formulated in master bedrooms, and motels with false names in the register [...] The *absolute nature* she and her kind were scrupulously just in granting to everybody was no more than the price of the master bedroom and the clandestine hotel tariff' (*July's People*, p.79).

⁴⁸ *Begging to Be Black*, p.268.

⁴⁹ *Begging to Be Black*, p.268.

have the capacity to imagine such a pact'.⁵⁰ When Krog later describes the reason that she doesn't want to write novels, she uses exactly the same phrase: 'our imagination is simply not capable of imagining a reality as – or with – the other.'⁵¹

She has been told about the 'Three Million: she 'typed all those names of people accusing the 'Three Million of terrorizing them' but 'refused to believe that the white government was behind it and would go to the trouble of actively putting structures up in a tiny town like Kroonstad in order for black people to kill each other.'⁵² This is a very clear illustration of the limits of 'imagination'⁵³ – she had significant information at her disposal, and yet she could not make the leap required. Where fiction might provide the illusion of understanding, what has to be faced, Krog suggests, are precisely imagination's limits, like the failure of imagination which would not allow her to believe in the white government's duplicity. What nonfiction is able to preserve that fiction cannot is 'the fact that I cannot ever really enter the psyche of somebody else, somebody black. The terror and loneliness of that inability.'⁵⁴

This is a new way of thinking about fictionality in the text, and one which directly contrasts with the arguments advanced earlier about *Disgrace*. She had previously used *Disgrace* to understand becoming-black: the philosopher proposes that '[w]ith novels you can explore the inner psyche of characters; you can imagine, for example, being black.'⁵⁵ So when she then rejects this way of thinking about fiction, arguing that 'our imagination is simply not capable of imagining a reality as – or with – the other' what she is questioning or undermining is the original reason that she turned to *Disgrace*, and the way she understood that text.⁵⁶

This is concern which does not just reverberate through Krog's writing, as we have seen in *Country of My Skull*, but also has profound links with Gordimer's work. I have already mentioned *July's People*, and Gordimer's earlier short story 'Which New Era

⁵⁰ *Begging to Be Black*, p.259.

⁵¹ *Begging to Be Black*, p.268.

⁵² *Begging to Be Black*, p.259.

⁵³ *Begging to Be Black*, p.268.

⁵⁴ *Begging to Be Black*, p.267.

⁵⁵ *Begging to Be Black*, p.267.

⁵⁶ *Begging to Be Black*, p.268.

Would That Be' takes on related questions.⁵⁷ As the story begins, Jake Alexander – 'a big, fat coloured man, half Scottish, half African' – is cooking bacon for a group of his friends in the back room of his printing shop in Johannesburg.⁵⁸ Then he is visited by a white couple. Jake recognizes the woman's 'type', the type of 'white women' who 'felt as *you* did.'⁵⁹

They were sure of it [...] breathless with stout sensitivity, they insisted on walking the whole teeter-totter of the colour line. There was no escaping their understanding. They even insisted on feeling the resentment you must feel at their identifying themselves with your feelings.⁶⁰

As Jacqueline Rose suggests, '[t]he story is an allegory of white writing. Its genius is the way it portrays the complete breakdown of understanding between black and white [...] even as Gordimer goes inside the thoughts of the black characters to make her point.'⁶¹ That is, an impossibility is being enacted here: in order to represent Jake's cynicism about these utterly understanding white women, Gordimer has to take on their position precisely: she has to identify with 'the resentment you must feel at their identifying themselves with your feelings'.⁶² Dorothy Driver argues that Jake 'holds on to the world from which [the woman] wish[es] to embark in [her] desire to establish common ground.'⁶³ But it is also the case that his suspicion, his feeling that there are forms of empathy or identification which are intrusive and excessive, is justified: here indeed is the white woman *writer*, insisting on imagining not only his feelings but his resentment at that identification.

'Kindred Reading Spirits'

Nonetheless, the question of fiction in *Begging to Be Black* is not left there. There is a third moment in the text which, yet again, complicates the text's discussion of the value of fiction. Presented immediately after the conversation with the philosopher, in

⁵⁷ Nadine Gordimer, 'Which New Era Would That Be?', in Nadine Gordimer, *Selected Stories* (London: Penguin, 1975), pp.81-95.

⁵⁸ 'Which New Era', p.81.

⁵⁹ 'Which New Era', p.82.

⁶⁰ 'Which New Era', p.82-3.

⁶¹ Rose, pp.179-180.

⁶² 'Which New Era Would That Be?', p.83.

⁶³ Dorothy Driver, 'Nadine Gordimer: The Politicisation of Women', *English in Africa*, 10.2 (1983), 29-54 (p.48).

the same chapter section, separated only by a horizontal line on the page, is a description of a visit Krog makes to Denzil. Denzil is now in prison as a result of a separate matter: '[a]fter our murder case, nothing wanted to work out in his life.'⁶⁴ She brings with her a novel, Marlene van Niekerk's *Agaat*, which has been given to her by her mother for this purpose:

I give him the book. He looks astounded. 'Can you believe it?' he says, his voice breaking like a teenager's. 'I've heard about this book! Can you believe this...?' He weighs it in one hand, instinctively looking around for somebody to show what he has just found, but, like my mother earlier that morning, knowing the futility of looking for kindred reading spirits.⁶⁵

When she leaves, 'Denzil, who wrote literary reviews for the book page I ran in Cape Town, presses *Agaat* like a treasure or a shield to his chest when we say goodbye.'⁶⁶

Krog describes Denzil as 'knowing the futility of looking for kindred reading spirits'.⁶⁷ But she also describes him as 'like my mother earlier that morning', which implies a tenuous and uncertain kind of connection between the two, based around the novel.⁶⁸ Though Denzil will not find 'kindred reading spirits' in the prison, and though Krog's mother hands her the book saying that she has 'two copies, and know[s] no one to whom I can give it'⁶⁹, the value *Agaat* has for them links them, even as this link is at a distance and through an intermediary. The connection is symbolic: Krog's mother is in the text closely associated with Afrikaner identity and tradition. Krog remembers her teaching her about *beskuit*, made from 'my mother's bread-yeast plant that she got from her mother, who got it in turn from her mother, and so forth, back to the Anglo-Boer War'.⁷⁰

Her mother is also associated with the apartheid system. When she is in Berlin, Krog goes to hear Daniel Barenboim conduct *Tristan and Isolde*. Presented in the text as one of the letters to her mother, Krog writes

⁶⁴ *Begging to Be Black*, p.275.

⁶⁵ *Begging to Be Black*, p.271.

⁶⁶ *Begging to Be Black*, p.272.

⁶⁷ *Begging to Be Black*, p.271.

⁶⁸ *Begging to Be Black*, p.271.

⁶⁹ *Begging to Be Black*, p.269.

⁷⁰ *Begging to Be Black*, p.47.

[e]ven on the train I see long dresses, capes, scarves and coats – everyone with the glow of pleasure on their faces. An evening like this one does not forget. And I write this to you, lieve Ma, because it started with you, many years ago, buying the LP record of *Tristan and Isolde* from the Jewish-owned record shop in Kroonstad. As you listened to it, it rubbed off on me. Now I wonder whether you were aware how deeply racialized this simple act was, of selling music, claimed by the Nazis, to you a supporter of apartheid.⁷¹

Agaat was published in 2004 and is, like *Disgrace*, a post-apartheid novel which has often been read in allegorical terms.⁷² Unlike Coetzee's text, it was written in Afrikaans. It concerns the relationship between an Afrikaner woman and her black maid and carer. When *Agaat* enables a connection between Krog's mother and Denzil, therefore, the reconciliatory potential of this moment is heightened by *Agaat's* own subject-matter.

Across *Begging to Be Black* there are various positions presented about the role of fiction. There is an attempt to read *Disgrace* as an attempt to understand something about black South African understandings of community, followed by a reconsideration of the extent to which the imaginative leaps into what feels like the consciousness of another are useful in a society in which people have been separated from each other to such a significant extent. But this is itself followed by a moment of connection between Denzil and Krog's mother, facilitated through a novel, which seems to draw into question the earlier rejection of fiction.

Krog turns to literature because the law seems to her a blunt instrument that cannot take into account the complexities of South Africa's history. After the trial, she writes

[t]he only scale used was the law. Because you broke the law against murder, you did wrong. It feels as if the sentence is suggesting that to kill or to steal or to lie is not wrong because it harms others per se, but wrong because it is against the law – as if to confirm that in this country laws mostly do not develop from moral beliefs. So it became possible that an activist like Reggie could decide that, because he was fighting against those who initially *made* the unjust laws that took away his freedom and trampled his human rights, he could despise those laws and function outside them.⁷³

⁷¹ *Begging to Be Black*, p.244.

⁷² Marlene van Niekerk, *Agaat* (Portland: Tin House Books, 2010). It was published in the UK under the title *The Way of the Women* (London: Abacus, 2008).

⁷³ *Begging to Be Black*, p.171.

Disgrace seems initially to function as an alternative scale to the law, and this is a move I have drawn attention to before: it is what happens in Slaughter's account of the Bildungsroman and in Tutu's reading of *Death and the Maiden*. In all three cases, though in different ways, literature is invoked where the law is insufficient to the demands of human rights.

However, *Begging to Be Black* ends ambiguously. A rejection of fiction's possibilities is followed by a moment of fleeting distanced connection facilitated by a fictional text. Here, then, where law is unreliable or uncertain, where it is unable and unwilling to protect human rights, we do not find literature functioning as a replacement for the law. It does not 'invite readers to draw connections to lived experience; to locate differences and make them familiar; to interpret fairly and with empathy' as in Roskelly's description of women's adaptations of the Bildungsroman.⁷⁴ Instead *Begging to Be Black* suggests that there are some differences that cannot be made familiar, and that the 'connections' drawn to 'lived experience' may completely miss the point.⁷⁵ Here, where the law cannot achieve the aims of human rights – where it is uncertain and in abeyance – we also find literature at its own limit-point. This is something which can be explored further through *Burger's Daughter*.

Burger's Daughter

The central character in *Burger's Daughter* is Rosa Burger, the daughter of Lionel Burger, a prominent figure in the struggle against apartheid. Burger is closely modelled on Bram Fischer, a South African lawyer, anti-apartheid activist and Communist Party leader who was imprisoned for life in 1966 under the Suppression of Communism Act and died under house arrest in 1975. Early in the novel Burger is arrested for his political activities, tried, and imprisoned. This causes Rosa to consider her own political commitment, and the extent to which she is prepared to sacrifice her own life for the sake of the country. She leaves South Africa for a non-political life in France. When she returns, she joins her father's old comrades, as well as working in a hospital in Johannesburg where she treats the children and young people who have been injured in the Soweto uprising.

⁷⁴ Roskelly, p.216.

⁷⁵ Roskelly, p.216.

As Saul Dubow has shown, opposition to apartheid in South Africa itself in the 1970s did not tend to be framed through the language of human rights; the novel does not itself therefore comment on, nor is it imbricated in, human rights discourse – the discourse itself was not significant enough at the time of its publication for the novel to be read in these terms.⁷⁶ However, as we have seen so far, the inadequacy of the law is at the heart of the possession paradox; that is, on the one hand the legal protection of rights is not enough, and human rights discourse requires a more ambivalent sense of legality – as in the TRC – and on the other human rights are most important where their protection is not forthcoming. This is both what gives human rights discourse its distinctiveness (it is evoked where the law is weak, or unjust, or insufficient) and what I suggest opens a particular opportunity for literature.

For this reason, even though human rights discourse was not a contextual influence on the novel itself, the particular characteristics of the text's engagement with the immorality of apartheid law have significant relevance for thinking about the relationship between contemporary human rights discourse and literature. In her 1976 'Letter From Johannesburg', Nadine Gordimer explained the stark way in which Soweto drew the legitimacy of the law into question. White South Africans, she writes:

knew how to feel outrage or pity when we saw newspaper photographs of the first corpses of children caught by the horrible surprise of a death nobody believed, even in South Africa, would be meted out by the police [...] We whites do not know how to deal with the fact of this death when children, in full knowledge of what can happen to them, continue to go out to meet it at the hands of the law,

⁷⁶ Dubow, p.14. See, however, Samuel Moyn, who argues that events in Soweto did contribute to the development of international human rights discourse (as opposed to that within South Africa), even though it was an exceptional case: '[in] the rise of human rights in the 1970s, human rights did not mean the campaign for collective liberation against racial inequality or colonial legacies, at home or abroad (except for the escalating engagement with South Africa, especially after the Soweto uprising in 1976). (*Last Utopia*, p.106). Moreover, in retrospect the events at Soweto have been viewed in human rights terms. The TRC, for example, described the state and police responses as gross human rights violations, stating: '[t]he police adopted a shoot-to-kill policy and [...] Captain Swanepoel and the Deputy Commissioner Wandrag of riot control were responsible for the excessive use of force which led to the death of more than 575 students, most of them under 25 years of age. During this period, 2380 people were wounded. The Commission finds the former state, the then Prime Minister and the Ministers of Education and Police responsible and directly accountable for gross human rights violations. (*TRC Report*, vol.3, p.570).

for which we are solely responsible, whether we support white supremacy or, opposing, have failed to unseat it.⁷⁷

Discussing a white woman she knows who has had her husband buy a gun, Gordimer observes:

[s]he needn't have felt so ashamed. We are all afraid. How will the rest of us end up? Here is the conflict of whites who hate apartheid and have worked in 'constitutional' ways to get rid of it. The quotes are there because there's not much law-abiding virtue in sticking to a constitution like the South African one, in which only the rights of a white minority are guaranteed.⁷⁸

Gordimer is discussing constitutional, rather than human, rights here. But her literary response to the utter injustice of the law, its partiality and its violence, enables a reflection on the modes of connecting human rights and literature we have considered so far.

Perspective

Burger's Daughter begins with a distanced, third person perspective:

[a]mong the group of people waiting at the fortress was a schoolgirl in a brown and yellow uniform holding a green eiderdown quilt and, by the loop at its neck, a red hot-water bottle. Certain buses used to pass that way then and passengers looking out will have noticed a schoolgirl. Imagine, a schoolgirl: she must have somebody inside. Who are all those people anyway?⁷⁹

There appears to be a traditional third person narrator here, but, without yet breaking from this mode, attention is being drawn from the second sentence to the question of perspective – the location from which the scene is being viewed. If Gordimer had written '[c]ertain buses used to pass that way then and passengers looking out noticed a schoolgirl', the effect of '[i]magine, a schoolgirl...' would be quite different.⁸⁰ It would be read as the thoughts of the passengers on the bus, the omniscient narrator having moved seamlessly into their position.

⁷⁷ Nadine Gordimer, 'Letter from Johannesburg, 1976', in *The Essential Gesture: Writing, Politics and Places*, ed. by Stephen Clingman (London: Penguin, 1988), pp.118-132 (p.121).

⁷⁸ 'Letter from Johannesburg, 1976', p.122.

⁷⁹ Nadine Gordimer, *Burger's Daughter* (London: Penguin, 1979) p.9.

⁸⁰ *Burger's Daughter*, p.9.

But the use of ‘will’ – ‘passengers looking out *will* have noticed a schoolgirl’ (my italics) – introduces a slight doubt, drawing attention to the dubious mechanics of the section’s description of the passengers’ thoughts.⁸¹ It suggests that an assumption is being made by the narrator and in this way it changes the final sentence from a description of what particular passengers did think, to something more like a speculation about what such passengers would have been likely to think. From the novel’s opening sentences the reader’s sense of perspective is slightly unsettled and this becomes progressively more complex over the first pages.

For the first three paragraphs of the novel the distanced narrative position is maintained; none of ‘the group of people waiting at the fortress’ is named.⁸² Instead ‘the schoolgirl’ is joined by ‘an old man with a thrust-back head of white floss’, ‘several young men’ and ‘a tall blonde woman’.⁸³ These characters are simply sketched in on the basis of appearance; all that is known of them is what can be seen from the outside. But then, in the fourth and fifth paragraphs, more detail about ‘the schoolgirl’ is provided, and her significance for the narrative (given the novel’s title) is revealed:

[t]he schoolgirl was urged on, given way to by others; Lionel Burger’s daughter was among them that day, fourteen years old, bringing an eiderdown quilt and a hot-water bottle for her mother.

Rosa Burger, about fourteen years old at the time, waiting at the prison in a brown gymfrock over a yellow shirt and brown pullover with yellow stripes outlining the V-neck, was small for her age, slightly bottle-legged (1st hockey team) and with a tiny waist. Her hair was not freshly washed and the cartilage of her ear-tips broke the dark lank, suggesting that the ears were prominent though hidden.⁸⁴

The identity of the schoolgirl is revealed here, but not straightforwardly. As Louise Yelin notes,

[t]he three ways that Rosa Burger is designated in this sequence seem initially to be synonymous or complementary ways of describing the same person, but the three designations – schoolgirl, Lionel Burger’s daughter, Rosa Burger – actually represent the relationship of a perceiver or narrator

⁸¹ *Burger’s Daughter*, p.9.

⁸² *Burger’s Daughter*, p.9.

⁸³ *Burger’s Daughter*, p.9.

⁸⁴ *Burger’s Daughter*, p.10.

and the person/things described: How Rosa is seen depends on who is seeing her and from where.⁸⁵

A slight shift in narrating voice between these two paragraphs is also signalled by the reference to Rosa's age. In the fourth paragraph she is 'fourteen years old'.⁸⁶ This is stated as fact, without equivocation. In the next, though, a note of uncertainty is introduced: she is 'about fourteen years old at the time'.⁸⁷ The narrator might be reconsidering; on the other, hand there might be two (or more) slightly different narrators. Either way, what is important about this is that it creates a slight shift or jolt in the narration.

Moreover, where so far in the text we have only been given the barest indications of who the characters are, here the narrator from paragraph five onwards suddenly possesses quite a lot of knowledge of Rosa's life – that's she's in the hockey first team, for example.⁸⁸ But, alongside such details which are known by the narrator but cannot be directly observed in the scene – Rosa is also in the second swimming team, the narrative says – there is an uncertainty about certain physical details because of the particular physical arrangement of that moment in time.⁸⁹ 'Her hair was not freshly washed and the cartilage of her ear-tips broke the dark lank, suggesting that the ears were prominent though hidden.'⁹⁰ The perspective in this sentence is spectatorial, the narrative observing Rosa very closely but nonetheless limited by what can be directly observed; the prominence of the ears is only 'suggested'.⁹¹ In this way, the narrative's vantage point shifts subtly around and there is a wavering between facts from outside of this scene which are known by the narrator, and details which can only be assumed because of the limits of a particular viewpoint at a specific moment in time.

Another description of the same scene follows. This account is presented in italics and quotation marks, which work to distinguish it from the rest of the text and suggest that it has some kind of different status – it seems to be a quotation from something else, though this is not explicitly confirmed:

⁸⁵ Yelin, pp.220-221.

⁸⁶ *Burger's Daughter*, p.10.

⁸⁷ *Burger's Daughter*, p.10.

⁸⁸ *Burger's Daughter*, p.10.

⁸⁹ *Burger's Daughter*, p.10.

⁹⁰ *Burger's Daughter*, p.10.

⁹¹ *Burger's Daughter*, p.10.

[a]mong us was a girl of thirteen or fourteen, a schoolgirl still in her gym, the daughter of Lionel Burger. It was a bitter winter day. She was carrying blankets and even a hot-water bottle for her mother. The relatives of the people detained in a brutal dawn swoop had been told they could bring clothing etc. to the prison. We were not allowed to bring books or food. Little Rosa Burger knew her mother, that courageous and warm-hearted woman, was under doctor's orders.⁹²

Here, replacing the speculations of those passengers who 'will' have been on a passing bus, are the memories of someone who was in the group outside the prison.⁹³ Where the passengers on the bus might, the first narrator imagines, ask '[w]ho are all those people anyway', the second narrator is one of them.⁹⁴ The two accounts are similar, but though both list the objects the schoolgirl is carrying, only the second offers an explanation of these items.

The next page is blank except for a single sentence, also in italics but not in quotation marks, which says: '[w]hen they saw me outside the prison, what did they see?'⁹⁵ As Brian Macaskill writes '[t]he way this sentence is placed – isolated from its neighbours and set apart by italics – emphasizes that its origin is curiously obscure.'⁹⁶ Who is asking this question? The following chapter is from Rosa's first person perspective, and begins – as if in answer to the question 'When they saw me outside the prison, what did they see?'⁹⁷ – 'I shall never know. It's all concocted'.⁹⁸ But if both the question and the chapter following it are from Rosa's own perspective, why set the question off from the subsequent chapter in this way? Macaskill writes that '[the question's] origin':

is not the same as that of the response immediately presented – both right away and with less mediation – over the page: 'I shall never know' (unequivocally attributable to Rosa). Nor yet does this sentence originate from the authority that picks up the narrative three pages later with the utterance, 'After the death of her father...' Instead, it comes from some other place.⁹⁹

⁹² *Burger's Daughter*, p.12 (italics original).

⁹³ *Burger's Daughter*, p.9.

⁹⁴ *Burger's Daughter*, p.9.

⁹⁵ *Burger's Daughter*, p.13.

⁹⁶ Brian Macaskill, 'Placing Spaces: Style and Ideology in Gordimer's Later Fiction', in *The Later Fiction of Nadine Gordimer*, ed. by Bruce King (Houndmills: Macmillan, 1993), 59-73 (p.64).

⁹⁷ *Burger's Daughter*, p.13.

⁹⁸ *Burger's Daughter*, p.14.

⁹⁹ Macaskill, p.64. Citation omitted.

This question – ‘When they saw me outside the prison, what did they see?’ – presented starkly by itself on the page, also encourages a different kind of reading of what has preceded it.¹⁰⁰ One interpretation of the novel so far, with its two different versions of the scene outside the prison, is that it has been Rosa’s attempt to see herself from the outside, to understand what ‘they’ saw.

As Macaskill states, the text then switches to Rosa’s first person account, and the moment outside the prison is worked over again. This first person section in Rosa’s voice goes back over some of the perspectives on the scene outside the prison already included in the narrative:

I understand the bland heroics of badly-written memoirs by the faithful – good people in spite of the sanctimony. I suppose I was aware that ordinary people might look down from a bus and see us. Some with wonder, knowing whose relatives and friends we must be – even somebody’s daughter, look, a kid in a gym.¹⁰¹

It seems likely that the ‘badly-written memoirs by the faithful’¹⁰² refers to the section presented in quotations and italics, beginning ‘[a]mong us’.¹⁰³

However the sentence immediately afterwards in Rosa’s narration, ‘I suppose I was aware that ordinary people might look down from a bus and see us’, suggests a dialogue with – or an attempt to present her own perspective on – not the italicized section, but the opening of the novel.¹⁰⁴ This, to repeat, says:

[a]mong the group of people waiting at the fortress was a schoolgirl in a brown and yellow uniform holding a green eiderdown quilt and, by the loop at its neck, a red hot-water bottle. Certain buses used to pass that way then and passengers looking out will have noticed a schoolgirl. Imagine, a schoolgirl: she must have somebody inside. Who are all those people anyway?¹⁰⁵

As I have suggested, there are a number of similarities between this opening section and the passage distinguished from the body of the novel through italics and quotation

¹⁰⁰ *Burger’s Daughter*, p.13.

¹⁰¹ *Burger’s Daughter*, p.14.

¹⁰² *Burger’s Daughter*, p.14.

¹⁰³ *Burger’s Daughter*, p.12.

¹⁰⁴ *Burger’s Daughter*, p.14.

¹⁰⁵ *Burger’s Daughter*, p.9.

marks, which clearly seems to be one of the ‘badly-written memoirs’.¹⁰⁶ For example, ‘[a]mong the group of people waiting at the fortress was a schoolgirl brown and yellow uniform’¹⁰⁷ is replaced by ‘[a]mong us was a girl of thirteen or fourteen, a schoolgirl still in her gym, the daughter of Lionel Burger.’¹⁰⁸ This creates a doubt about whether the opening of the novel, the only place in the narrative so far that the hypothetical passengers on the bus have been mentioned, might also be one of the sanctimonious texts by the faithful.

I don’t think that the opening is necessarily supposed to be read as one of the memoirs. But Rosa’s first person section creates at least the suggestion that it might be, through the placing next to each other of a criticism of the faithful’s memoirs and a reference to the bus passengers described only in the novel’s opening. In order to make a decision one way or the other, the reader is encouraged to judge whether or not the novel’s first paragraphs are ‘badly-written’, and if such criteria have to be used to separate out the voices mingling in the text, attention is drawn to the existence of these voices and, crucially, to their writtenness, their status as narrative.¹⁰⁹

In Rosa’s narration, it becomes apparent that some of the assumptions of the second narrator are wrong. The hot water bottle is not demonstration of ‘Little’ Rosa’s consideration for her mother’s health: instead it is demonstration of Rosa’s sophisticated understanding of the conditions of clandestine anti-apartheid activity.¹¹⁰ Hidden inside is a note to Rosa’s mother mentioning Rosa’s father: ‘[s]he would know at once I was telling her my father had not been taken since she had gone.’¹¹¹ From the third person narrator and the imagined perspectives of the passengers on the bus, to the perspective of someone in the group, to Rosa’s account, which corrects the version of the story which precedes it: there is a sense, in these repeated retellings, that the reader might be moving closer and closer towards the centre, towards the truth of what is going on. For example, where in the opening account there is ‘an old man with a thrust-back head of white floss’,¹¹² in Rosa’s account there is ‘Wally Atkinson who had no one

¹⁰⁶ *Burger’s Daughter*, p.14.

¹⁰⁷ *Burger’s Daughter*, p.9.

¹⁰⁸ *Burger’s Daughter*, p.12.

¹⁰⁹ *Burger’s Daughter*, p.14.

¹¹⁰ *Burger’s Daughter*, p.12.

¹¹¹ *Burger’s Daughter*, p.16.

¹¹² *Burger’s Daughter*, p.9.

inside but had been in many times himself, and came to fly the standard of his white hair among us'.¹¹³

This sense is deepened when there is yet another account of the same scene outside the prison, this time from Rosa's own first person perspective and in the present tense:

I am aware of the moulded rubber loop by which the hot-water bottle hangs from my finger, and the eiderdown I hold against my belly is my old green taffeta one Granny Burger gave me when I was not old enough to remember her; my father thought my mother's double-bed one was too big and too beautiful to get spoilt in prison.¹¹⁴

Here the way Rosa experienced the scene physically is stressed – the feeling of the 'moulded rubber loop'¹¹⁵ on her finger – as is the family meaning of the objects. The blanket is not just a blanket, it is an object embedded in the lives of those who have owned it, with its own family history.

Moreover, what Rosa's first person account adds, that could not be observed from the outside, is that she is 'alternately submerged below and thrust over the threshold of pain'¹¹⁶ and though she is looking at the prison door:

real awareness is all focused in the lower part of my pelvis, in the leaden, dragging, wringing pain there. Can anyone describe the peculiar fierce concentration of the body's forces in the menstruation of early puberty? The bleeding began just after my father had made me go back to bed after my mother had been taken away. No pain; just wetness that I tested with my finger, turned on the light to verify: yes, blood. But outside the prison the internal landscape of my mysterious body turns me inside out, so that in that public place on that public occasion (all the arrests of the dawn swoop have been in the newspapers, a special edition is on sale, with names of those known to be detained, including that of my mother) I am within that monthly crisis of destruction, the purging, tearing, draining of my own structure. I am my womb and a year ago I wasn't aware – physically – I had one.¹¹⁷

¹¹³ *Burger's Daughter*, p.14.

¹¹⁴ *Burger's Daughter*, p.16.

¹¹⁵ *Burger's Daughter*, p.16.

¹¹⁶ *Burger's Daughter*, p.16.

¹¹⁷ *Burger's Daughter*, pp.15-16.

The sense of moving closer, of getting at the truth, is emphasized by the intimate, bodily detail of Rosa's account, in which the experience of her physicality is vividly, viscerally described. There is a sense here that bodily life is overflowing its bounds: 'the internal landscape of my mysterious body turns me inside out' in 'that public place on that public occasion'.¹¹⁸ The distinction between the public and private breaks down, and it is menstruation which absorbs all of Rosa's attention, however dramatic the political context.

As Daphne Read points out, '[t]his discussion of menstruation in conjunction with the arrest of her mother highlights Rosa's entry into adulthood, both as a woman and a political being'.¹¹⁹ We have considered narratives of female coming of age at length in Chapter Three, but here, crucially, the sense of moving towards the truth of the story – a vivid female corporeality which reaches a culmination in the intimacy of the description of the 'fierce concentration of the body's forces'¹²⁰ – is itself then undercut as we read in Rosa's narration:

[m]y version and theirs. And if this were being written down, both would seem equally concocted when read over. And if I were really telling, instead of talking to you in my mind the way I find I do... One is never talking to oneself, always one is addressed to someone. Suddenly, without knowing the reason, at different stages in one's life, one is addressing this person or that all the time, even dreams are performed before an audience.¹²¹

Instead of the sense that the narrative is moving closer to the full story, here the alternate versions are reduced to an equivalence – 'my version and theirs'.¹²² What is more, a distrust of the ability of written texts themselves to approach the reality of lived experience is expressed – both the stories 'would seem equally concocted when read over'.¹²³ But this suspicion of the concocted nature of written narrative is something the reader is invited to share with Rosa. Her narration suggests that reading a text creates a sense of its having been concocted. We might take to mean that written narrative loses something of the way experience feels, that it tends towards structure and pattern,

¹¹⁸ *Burger's Daughter*, pp.15-16.

¹¹⁹ Daphne Read, 'The Politics of Place in *Burger's Daughter*', in *The Later Fiction of Nadine Gordimer*, pp.121-139 (p.121).

¹²⁰ *Burger's Daughter*, p.15.

¹²¹ *Burger's Daughter*, p.16.

¹²² *Burger's Daughter*, p.16.

¹²³ *Burger's Daughter*, p.16.

where experience is unpredictable. But, of course, though Rosa says that this is what would happen ‘if’ these ‘versions’ were written down, of course they *have* been written down – that is, as they appear in the novel.¹²⁴ This is, itself, a concocted realization of narrative’s concocted nature.

As the overwhelming ‘destruction’¹²⁵ of the body takes over the political scene, and as the reader only learns of the extreme pain Rosa is in after having moved from observing her from the imagined perspective of the bus, to the view of the others in the crowd and only then into her own first-person narration, there seems to be a sense that the truth of the body – her body – is the truth. But immediately it becomes clear that written narration does not work perfectly in this way; it cannot provide perfect access to a truth which exists corporeally. Here, the sense that the reader is being provided with progressively more insight into the scene outside the prison reaches a crisis-point.

What the story would be like if it were being truly told to the audience Rosa imagines is unpredictable, as the ellipsis indicates (‘if I were really telling, instead of talking to you in my mind the way I find I do...’).¹²⁶ The narrative suggests that it represents a progressive movement towards a closer understanding of the scene. But just when it seems as if the reader has reached the most intimate understanding possible, everything breaks down. All of the narrative perspectives are shown to be ‘concocted’ and none of them has a superior claim to the truth of the scene. These are the novel’s opening pages. I suggest that the mode of narrative established here has important consequences for the rest of novel.

The Censoring of Burger’s Daughter

After its publication in London, *Burger’s Daughter* was imported into South Africa, where it was embargoed and then, on 11th July 1979, banned.¹²⁷ The structure of censorship operating in 1979 had been brought into being by the new publications Act of 1974, which inaugurated what Peter McDonald has described as ‘the most repressive

¹²⁴ *Burger’s Daughter*, p.16.

¹²⁵ *Burger’s Daughter*, p.16.

¹²⁶ *Burger’s Daughter*, p.16.

¹²⁷ Unsurprisingly, the issue of censorship is one of the areas at which the links between literature and human rights have been articulated. See Rachel Potter, ‘Modernist Rights: International PEN, 1921-1936’, *Critical Quarterly*, 55.2 (2013), 66-80.

era in the history of the system.¹²⁸ Under this Act, the censorship system consisted of a central Directorate of Publications in Cape Town overseeing censorship committees (intended to be located around the country), which would make decisions on whether or not to ban particular texts, and a Publications Appeal Board (PAB).

In the wake of the controversy over Etienne Leroux's novel *Magersfontein*, *O Magersfontein*, published in 1976, some amendments to the 1974 law were introduced, which became significant in the case of *Burger's Daughter*. Indeed, according to J.M. Coetzee, the *Magersfontein* incident 'can in retrospect be seen as a minor watershed in the history of censorship in South Africa.'¹²⁹ Leroux's novel had been examined by a committee and passed for publication. Then in 1977 a religious-based Afrikaner group succeeded in campaigning for an intervention by the Minister of the Interior, causing the Appeal Board to ban the book.

In 'siding with the moral pressure groups, the Church, and the politicians,' McDonald writes, 'the Appeal Board [...] alienated a wide spectrum of Afrikaans literary intellectuals',¹³⁰ and the government changed tack after it won that year's general election, 'switching allegiance, once again, though this time in favour of the literary elite.'¹³¹ In 1978 it 'introduced various amendments intended to protect literature without granting it full exemption'¹³² and in particular, and most relevantly in

¹²⁸ Peter McDonald, *The Literature Police: Apartheid Censorship and its Cultural Consequences* (Oxford: Oxford University Press, 2009), p.61.

¹²⁹ J.M Coetzee, 'Censorship in South Africa 1990', *Doubling the Point: Essays and Interviews*, ed. by David Attwell (London: Harvard University Press, 1992), pp.315-332 (p.317).

¹³⁰ McDonald, p.271.

¹³¹ McDonald, p.72-73. Leroux was an experimental Afrikaans writer. Peter McDonald writes that *Magersfontein* 'which has an explicitly metafictional quality, centres on [an] endeavour to represent [a] famous Boer war battle' in a film 'on a site in the small town of Magersfontein' (McDonald, p.268) and describes it as a 'wide-ranging satire' which takes aim at the 'political leaders of the *volk* in the 1970s who were doing the most damage to the honourable aspects of Afrikaner history' (McDonald, p.272). However it was not banned because of its political content but because of the involvement of the 'pressure group linked to the leading Afrikaner churches' and 'on the grounds of obscenity and blasphemy' (McDonald, p.271). This was despite the fact that the literary committee which first examined the book 'acknowledged that there was much that might be considered "undesirable"' in precisely these terms but that 'these features were acceptable either because they were not described in any explicit detail or because they were in some sense functional' (McDonald, p.270).

¹³² McDonald, p.73.

the case of *Burger's Daughter*, it allowed that, as John Dugard writes, '[i]n appropriate cases the PAB may be advised by a committee of experts comprising persons with both the necessary educational qualifications and a special knowledge of art, language or literature.'¹³³

Therefore when *Burger's Daughter* entered South Africa it was first sent by the head of the Directorate of Publications to a reader who produced a report recommending its banning.¹³⁴ This report was adapted and developed by a committee of 'security censors', and the book was then banned.¹³⁵ This decision was appealed by the Directorate of Publications on 1st August, although as McDonald has shown, the Director was, as the appeal was ongoing, dismissing the novel to various correspondents via the unlikely tactic of pointing to a critical review written by Auberon Waugh in London's Evening Standard.¹³⁶ Following the new procedures in the wake of the *Magersfontein* controversy, the PAB was assisted in its decision by a committee of literary experts. The committee recommended the novel's unbanning, and the Publications Appeal Board duly unbanned it, after also taking advice from a security expert who judged the book to pose little danger to security.

The Words of Others

In support of his suggestion that '[t]he authoress uses Rosa's story as a pad from which to launch a blistering and full-scale attack on the Republic of South Africa' the first censor argued that she 'often adopts the literary technique of presenting what are in truth expressions of personal opinion as statements of fact. To this end, she uses what is said during (imaginary) court trials and in political group-discussions.'¹³⁷ As McDonald argues,

[w]hat he appeared to mean by this was that she 'uses what is said during (imaginary) court trials and in political group-discussions' to promulgate her own political views. Like all the censors, he did not recognize that

¹³³ John Dugard, 'Censorship in South Africa: The Legal Framework', in Nadine Gordimer et al, *What Happened to Burger's Daughter or How South African Censorship Works* (Johannesburg: Taurus, 1980), pp.67-73 (p.70).

¹³⁴ See McDonald, p.232-233.

¹³⁵ McDonald, p.233.

¹³⁶ McDonald, p.233.

¹³⁷ *What Happened to Burger's Daughter*, p.7.

some of the dialogue in the ‘court trials’ was based upon actual testimony Bram Fischer gave during his own trial for sedition in the 1960s.¹³⁸

Whatever the parenthetical ‘imaginary’ is supposed to indicate, McDonald suggests, it is not wholly accurate, as the testimony Burger gives at his trial has a real-life model, and what Gordimer is doing in the court scenes is related to this interaction of fictional and actual speech.

Bram Fischer was imprisoned for life in 1966 under the Suppression of Communism Act.¹³⁹ Gordimer attended his trial and in one of the essays she wrote about it, she says:

[f]rom 1958 to 1961 [Fischer] devoted himself to the defence of Nelson Mandela, the African National Congress leader, and twenty-nine other accused in the first mass political trial that, because it represented so many shades – both skin and ideological – of political thought, became known as ‘the Opposition on trial’. In 1964 Fischer was leading defence counsel at the trial of the ‘High Command’ of combined liberation movements, which had been based at Rivonia, north of Johannesburg.¹⁴⁰

In acting for the defence in the Rivonia trial, Fischer took a great personal risk as he himself had been a frequent presence at Lilliesleaf Farm, the headquarters of the underground movement in Rivonia.

In 1964 Fischer was arrested for the first time. He was granted bail and travelled to London, to continue his work as a lawyer. He then returned to South Africa, despite the charges he faced. On 25th January 1965 he vanished ‘leaving a letter to the court’, Gordimer writes, ‘saying that he was aware that his eventual punishment would be increased by his action, but that he believed it was his duty both to remain in South Africa and to continue to oppose apartheid’.¹⁴¹ While in prison he became terminally ill, and he was eventually, briefly, released into house arrest before he died in May 1975. It is clear from the essays that Gordimer believed Fischer and his family to be exemplars of an extraordinary bravery and moral virtue:

¹³⁸ McDonald, p.233.

¹³⁹ Suppression of Communism Act 44 of 1950, available at:

<http://www.artsrn.ualberta.ca/amcdouga/Hist446_2011/readings/suppression_communism_act_1950.pdf> [accessed 2 September 2014].

¹⁴⁰ Nadine Gordimer, ‘Why did Bram Fischer choose jail’ [1966], in *Telling Tales: Writing and Living 1950-2008* (London: Bloomsbury, 2010), 157-167 (p.163).

¹⁴¹ ‘Why did Bram Fischer choose jail’, p.164.

there has been, about Abram Fischer and his wife and children, the particular magnetism of deeply honest lives. Paradoxically, the pull is strong in a country where so many compromises with conscience are made by so many decent citizens.¹⁴²

McDonald states that ‘the dialogue in the “court trials” was based upon actual testimony Bram Fischer gave during his own trial’.¹⁴³ However, Burger gives a speech – he does not engage in dialogue. Bram Fischer was not cross-examined at his trial because he did not want to incriminate his comrades. Instead he gave an address from the dock, and it is for the same reason that, in the novel, Lionel Burger gives a speech before his sentencing. The novel makes it very clear that Burger’s speech is not a dialogue in the sense of a conversation or interaction. Gordimer repeatedly stresses that the speech Burger gives is very long; the sections of it in the novel are presented as excerpts, with ellipses. She also emphasizes that he is speaking without interruption or interaction with anyone else: ‘[a]n hour and a half. Nobody would dare stop him...Not the squat stern pantomime dame in a curly grey wig up on the bench: nobody dared silence him...One hour and forty-seven minutes.’¹⁴⁴

But perhaps what McDonald means is that the speech is, as Louise Yelin has suggested, dialogic in Bakhtin’s sense.¹⁴⁵ For Bakhtin, the ‘author is not to be found in the language of the narrator, not in the normal literary language to which the story opposes itself; instead:

the author utilizes now one language, now another, in order to avoid giving himself up wholly to either of them; he makes use of this verbal give-and-take, this dialogue of languages at every point in his work, in order that he himself might remain as it were neutral with regard to language, a third party in a quarrel between two people (although he might be a biased third party.)¹⁴⁶

Dialogue in Bakhtin’s sense refers not to the representation of conversation but rather to the way that literary writing can incorporate within itself, and mediate between, different voices.

¹⁴² ‘Why did Bram Fischer choose jail’ p.163.

¹⁴³ McDonald, p.233.

¹⁴⁴ *Burger’s Daughter*, p.26-7.

¹⁴⁵ Yelin, p.222.

¹⁴⁶ M.M. Bakhtin, *The Dialogic Imagination: Four Essays*, ed. by Michael Holquist, trans. by Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), p.314.

In this sense, Burger's address is certainly a dialogue. First, as McDonald states, it incorporates material based on Fischer's address to the court. Fischer's speech begins by describing the parts of his own biography that led him to his beliefs, then he discusses elements of Marxist theory which relate to the South African situation, before reiterating the moral necessity of the struggle, and Gordimer adopts this structure.¹⁴⁷

In the novel, Burger says, in a passage whose beginning is deliberately elided in the text:

‘...stand before this court accused of acts calculated to overthrow the State and establish a dictatorship of the proletariat in this country. But what we Communists black and white working in harmony with others who do not share our political philosophy have set our sights on is the national liberation of the African people, and thus the abolishment of discrimination and extension of political rights to all the peoples of this country’¹⁴⁸

This adapts and borrows from a longer section of Fischer's statement in which he too first recounts what he is charged with and then describes how that differs from his aims and the aims of those he works with. The whole of the section is not directly quoted; specific phrases are echoed, as is the overall sentiment. Both speeches deny that their speakers are working towards a ‘dictatorship of the proletariat’¹⁴⁹, instead arguing that their aim is ‘national liberation.’¹⁵⁰ Burger described ‘the abolishment of discrimination’, Fischer ‘abolishing discrimination’, Burger the ‘extension of political rights’, Fischer ‘extending political rights’.¹⁵¹

There are other examples which follow the same pattern. Fischer describes whites he met in the Communist party ‘who could have obtained lucrative employment and social position, but who instead were prepared for the sake of their consciences, to perform the most menial and unpopular work at little or sometimes no remuneration.’¹⁵² Burger saw that ‘white Marxists worked side by side with blacks in an equality that meant taking on the meanest of tasks – tasks that incurred loss of income

¹⁴⁷ *The Sun Will Rise: Statements From the Dock By Southern African Political Prisoners*, rev'd edn, ed. by Mary Benson (London: International Defence and Aid Fund for Southern Africa, 1981), pp.35-50.

¹⁴⁸ *Burger's Daughter*, p.26.

¹⁴⁹ *The Sun Will Rise*, p.41

¹⁵⁰ *The Sun Will Rise*, p.41.

¹⁵¹ *The Sun Will Rise*, p.41.

¹⁵² *The Sun Will Rise*, p.38.

and social prestige and the risk or arrest and imprisonment – as well as sharing policy-making and leadership.¹⁵³ There is no direct quotation at all here, but a similar idea.

Another novel from the period, André Brink's *Rumours of Rain*, published in 1978, makes use of exactly the same material, and comparing it with *Burger's Daughter* illuminates Gordimer's method. In Brink's novel, Fischer's words are put into the mouth of a character called Bernard Franken, who resembles Fischer closely in a number of ways (his initials included). Franken is a lawyer, like Fischer (Gordimer's Burger is a doctor) and he had represented seven defendants in 'the so-called "Terrorism Trial"'.¹⁵⁴ Brink writes that 'the full irony of that trial wasn't grasped by anyone apart from Bernard himself [...] Bernard was not only their counsel in the case but their accomplice. More than that, he was their leader.'¹⁵⁵ When Bernard is arrested, he escapes – as Fischer did – and 'it took no less than thirteen months before Bernard was arrested again [...] In the interim, it was revealed later, he'd even spent a few months abroad.'¹⁵⁶ This shocks the novel's narrator, Bernard's childhood friend Martin Mynhardt: '[i]f a man wants to get out of the country, let him. It's bad enough. But then to return knowing he's bound to be arrested, is quite beyond me. It just makes no sense at all. It's madness.'¹⁵⁷

In *Rumours of Rain's* depiction of Bernard's speech, unlike in *Burger's Daughter*, large sections of Fischer's testimony are repeated verbatim. For example, at his trial Fischer said:

when I was driving an old ANC leader to his house far out to the west of Johannesburg [...] I propounded to him the well-worn theory that if you separate races you diminish the points at which friction between them may occur and hence ensure good relations. His answer was the essence of simplicity. If you place the races of one country into two camps, said he, and cut off contact between them, those in each camp begin to forget that those in the other are ordinary human beings, that each lives and laughs in the same way, that each experience joy and sorrow, pride or humiliation for the same reasons. Hereby each becomes suspicious of the

¹⁵³ *Burger's Daughter*, p.25

¹⁵⁴ André Brink, *Rumours of Rain* (London: W.H. Allen, 1978) p.113.

¹⁵⁵ Brink, p.114.

¹⁵⁶ Brink, p.115.

¹⁵⁷ Brink, p.115.

other and each eventually fears the other, which is the basis of all racialism.¹⁵⁸

In Brink's novel, this whole section is included. It is very lightly edited; Franken says '[a]t the end of an exhausting court case in Johannesburg I drove an old ANC leader to his house in Alexandria one night', and Fischer says 'basis of all racialism' where Franken says 'racism.'¹⁵⁹ But apart from these very minor changes, the whole section is simply reproduced in the novel.

But in *Burger's Daughter*, the material based on Fischer's address is intermingled with a number of other voices. Before Burger's speech, the text states that Rosa knew 'what [Lionel Burger] was going to say because the lawyers had worked with him on the material and she herself had gone to the library to check a certain quotation he wanted.'¹⁶⁰ Gordimer here establishes the textuality, the constructedness, of Burger's speech and draws attention to the fact that it incorporates the words of others. This is something the reader is consequently likely to bear in mind when reading his speech. There are a number of sentences and phrases which appear in quotation marks in the text of the speech which are possible candidates for the quotation Rosa has looked up. There is an attributed quotation from Martin Luther: 'I say with Luther: Here I stand. Ich kann nicht anders.'¹⁶¹ There are also unattributed quotations in quotation marks – for example, a reference to William Blake: 'the "dark Satanic mills" of the industry that brought [black South Africans] labour cheap'.¹⁶²

Burger also says:

[f]or as a great African leader who was not a Communist has since said: 'The white man's moral standards in this country can

¹⁵⁸ *The Sun Will Rise*, pp.49-50.

¹⁵⁹ Brink, p.110.

¹⁶⁰ *Burger's Daughter*, p.24.

¹⁶¹ *Burger's Daughter*, p.26.

¹⁶² *Burger's Daughter*, p.25. Additionally, as Clingman notes, '[i]n one elaboration of the novel's quotational gymnastics, a statement by Marx, given in a footnote by Slovo, appears in unattributed quotation marks as a central sentiment in Lionel Burger's speech from the dock.' Stephen Clingman, *The Novels of Nadine Gordimer: History from the Inside* (London: Bloomsbury, 1993), p.187.

only be judged by the extent to which he has condemned the majority of its population to serfdom and inferiority.¹⁶³

The ‘great African leader’ is unnamed, but is Nelson Mandela; the quotation comes from his application for the recusal of Magistrate WA Van Helsdingen at his 1962 trial.¹⁶⁴ As well as the quotation from Mandela’s courtroom speech presented in quotation marks, there is also an echo of another part of his testimony which is not identified as such. Mandela said at the same trial ‘[w]hy is it that no African in the history of this country has ever had the honour of being tried by his own kith and kin, by his own flesh and blood?’¹⁶⁵ Burger says ‘why is it no black man has ever had the right of answering, before a black prosecutor, a black judge, to laws in whose drafting and promulgation his own people, the blacks, have had a say?’¹⁶⁶ This is not the only place in the novel to make use of other people’s words: Stephen Clingman has argued that ‘*Burger’s Daughter* is full of quotation’,¹⁶⁷ and forms something like a ‘textual collage.’¹⁶⁸ He notes that at various points in the novel Gordimer also incorporates quotations from a wide range of sources – including Steve Biko, Joe Slovo and Lenin.

Where Brink incorporates Fischer’s speech, he does so verbatim. But Gordimer weaves sections from it in with a range of other quotations, and she announces this in the text before the speech begins: Rosa ‘had gone to the library to check a certain quotation he wanted.’¹⁶⁹ I suggest that this contributes to *Burger’s Daughter’s* shifting and unstable surface. As we have seen, at the beginning of the novel, Gordimer takes a simple scene – a group of people waiting outside a prison – and then works it over, switching from perspective to perspective. There is initially a sense that the reader might be moving closer to the truth of the scene, as several small details from the earlier narratives are corrected when Rosa’s first person narrative begins. But then this is undermined.

¹⁶³ *Burger’s Daughter*, p.25.

¹⁶⁴ Nelson Mandela, “Black Man in a White Court” – first court statement 1962’, in Nelson Mandela, *The Struggle is My Life: His Speeches and Writings Brought Together With Historical Documents and Accounts of Mandela in Prison By Fellow Prisoners* (London: IDAF Publications, 1990), pp.133-160. The above quotation with a minor difference (‘must be’ instead of Burger’s ‘can only be’) is on p.138.

¹⁶⁵ Mandela, p.135.

¹⁶⁶ *Burger’s Daughter*, p.27.

¹⁶⁷ *The Novels of Nadine Gordimer*, p.186.

¹⁶⁸ *The Novels of Nadine Gordimer*, p.187.

¹⁶⁹ *Burger’s Daughter*, p.24.

This, I suggest, should be connected with what happens during the court scene. Where in the opening pages it is perspective which roves around, in Burger's speech we do not just hear the voice of an imaginary character and nor do we even merely hear the voice of Bram Fischer, as in *Rumours of Rain*. What the speech is, instead, is a textured combination of the words of a number of speakers. At the opening of the novel, attention is drawn to narrative's 'concocted' nature.¹⁷⁰ In the scene at the courtroom, the speech is a melange of different speakers, intermingled. The origins of the quotations can be identified, as I have done with some of them here, but what is more important in the reading of the text is the way they become mixed up in the speech. In the courtroom speech it becomes impossible to securely locate or identify one speaker, or one source of ideas.

'Enormous Lies Incarcerating Enormous Truths'

In a letter to the publisher of *Burger's Daughter*, the Director of Publications set out the reasons for the initial banning of the novel. Reason number three is that '[t]he standpoint of an unlawful organisation, the "Sowete [sic] Students' Representative Council" is propagated...through the document published on pages 346 and 347.'¹⁷¹ The letter states that '[t]his pamphlet (P77/6/208) was declared to be undesirable [...] on 6 July 1977 [...] Possession was also prohibited [...] and the prohibition was confirmed by the Appeal Board'.¹⁷² Moreover, '[o]n 19 October 1977 the SSRC was declared to be an unlawful organisation in terms of section 2 of the Internal Security Act, 1950 (Act 44 of 1950)'.¹⁷³

This 'undesirable'¹⁷⁴ pamphlet is indeed included in *Burger's Daughter*. It is not run into the text of the novel or enclosed in a chapter, and no character in the novel is explicitly pictured reading it – it forms its own separated section. As Stephen Clingman writes

[c]onsidered solely within the text there is no way of telling whether the pamphlet is a reproduction of an actual one or has merely been

¹⁷⁰ *Burger's Daughter*, p.14.

¹⁷¹ *What Happened to Burger's Daughter*, p.11.

¹⁷² *What Happened to Burger's Daughter*, p.11.

¹⁷³ *What Happened to Burger's Daughter*, p.11.

¹⁷⁴ *What Happened to Burger's Daughter*, p.11.

‘simulated’ by Gordimer, but in fact this pamphlet did appear on the streets of Soweto during the Revolt, and has simply been inserted in full into the text.¹⁷⁵

In his comments on the inclusion of the pamphlet, one of the literary experts who advised the PAB, Professor PJH Titlestad, disavowed any responsibility for the legal issues at stake (‘I have not checked that this is in fact the genuine pamphlet that is banned. This had better be ascertained. The interpretation of the legal situation must be left to the lawyers.’¹⁷⁶) However, he argued that there were important questions of literary interpretation which had been left unaddressed: ‘[w]hat the committee does not do, and what needs doing, is adequately discuss the function of this pamphlet in the novel.’¹⁷⁷

Titlestad argues that the reproduction of the document cannot be understood as the censor understood it as ‘propagation’ of the SSCRC’s views:

[w]hile [Gordimer’s] attitude is one of compassion there is no indication that the rather pathetic rhetoric has her total assent [...] The whole structure of the novel, the arranging and presenting of the debate which it contains, gets involved in the discussion of any one particular point.¹⁷⁸

Commenting on the censor’s response to this aspect of the novel, Gordimer later wrote:

I reproduced this document because my stylistic integrity as a writer demanded it: it is a necessary part of the book as a whole. I reproduced it because it is sometimes essential, for the total concept of a work of fiction, to incorporate blunt documentary evidence in contrast to the fuller, fictive version of events. Rosa says of the document (speaking to her dead father), ‘The kind of education the children’ve rebelled against is evident enough; they can’t spell and they can’t formulate their elation and anguish. But they know why they’re dying.’

I reproduced the document exactly as it was, in all its naïveté, leaving spelling mistakes and grammatical errors uncorrected, because I felt it expressed, more eloquently and honestly than any pamphlet I could have invented, the spirit of the young people who wrote it.¹⁷⁹

¹⁷⁵ *The Novels of Nadine Gordimer*, p.186.

¹⁷⁶ *What Happened to Burger’s Daughter*, p.45.

¹⁷⁷ *What Happened to Burger’s Daughter*, p.45

¹⁷⁸ *What Happened to Burger’s Daughter*, p.45.

¹⁷⁹ *What Happened to Burger’s Daughter*, p.30.

The uprising was a transformative moment in South Africa's history. The TRC Report: notes that '1976 has frequently been described as a turning point in South Africa's political history.'¹⁸⁰ As David Black suggests, '[t]he events sparked by Soweto both graphically illustrated and deepened the apartheid regime's growing domestic and international vulnerability. They eventually prompted the NP government to undertake significant tactical concessions.'¹⁸¹ He argues that because 'the government was unprepared for the repercussions of these concessions' it then 'overestimated its ability to control the tempo and direction of change.'¹⁸²

Gordimer situates Rosa's fictional political commitment in relation to the wider real-life context of the pamphlet's production; the resistance that sprung from the massacre at Soweto on 16 June 1976 is presented as a crucial turning point for Rosa's perception of the struggle against apartheid. *Burger's Daughter* describes the extensive bannings and mass arrests which took place on 19 October 1977, as the government attempted to finally put down the resistance, and places Rosa's arrest on that date. At the end of the novel, it is not clear what charges Rosa will face, but her lawyer knows that it's likely that they 'would allege incitement, and aiding and abetting of the students' and schoolchildren's revolt.'¹⁸³

What both Gordimer and Titlestad note about the pamphlet is its language. Titlestad describes its 'pathetic rhetoric';¹⁸⁴ Gordimer mentions its 'spelling mistakes and grammatical errors'.¹⁸⁵ I suggest that the relationship Gordimer establishes between the actions of the children of Soweto and language is important. The novel itself notes the rhetorical value of children for political purposes: '[c]hildren and children's children. The catchphrase of every reactionary politician and every revolutionary, and every revolutionary come to power as a politician. Everything is done in the name of future generations.'¹⁸⁶

¹⁸⁰ *TRC Report*, vol.3, p.555.

¹⁸¹ David Black, 'The Long and Winding Road: International Norms and Domestic Political Change in South Africa', in *The Power of Human Rights: International Norms and Domestic Change*, ed. by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), pp.78-108 (p.89).

¹⁸² Black, p.89.

¹⁸³ *Burger's Daughter*, p.356.

¹⁸⁴ *What Happened to Burger's Daughter*, p.45.

¹⁸⁵ *Burger's Daughter*, p.35.

¹⁸⁶ *Burger's Daughter*, p.328.

As we have seen, at the beginning of the novel the narration, from Rosa's first-person perspective, states 'I understand the bland heroics of badly-written memoirs by the faithful – good people in spite of the sanctimony.'¹⁸⁷ Later in the text, a connected idea appears:

I've heard all the black clichés before. I am aware that, like the ones the faithful use, they are an attempt to habituate ordinary communication to overwhelming meanings in human existence. They rap out the mechanical chunter of a telex; the message has to be picked up and read. They become enormous lies incarcerating enormous truths, still extant, somewhere.¹⁸⁸

What is being drawn into question here is the ability of language to access truth. Rosa suggests language becomes trapped in cliché and fails before the 'overwhelming meanings in human existence'.¹⁸⁹

The children of Soweto are crucially important in relation to this idea about language's failures. In her 'Letter From Johannesburg', Gordimer drew attention to the shock of observing the children's actions: '[w]e whites do not know how to deal with the fact of this death when children, in full knowledge of what can happen to them, continue to go out to meet it at the hands of the law'.¹⁹⁰ In the novel, the political change they instigate is articulated through the way it shows up language, the way it reveals the emptiness of cliché and repetitious political verbiage. Gordimer writes:

[y]ou knew it couldn't be: *a change in the objective conditions of the struggle sensed sooner than the leaders did*. Lenin knew; the way it happened after the 1905 revolution: *as is always the case, practice marched ahead of theory*. The old phrases crack and meaning shakes out wet and new. They seem to know what is to be done. They don't go to school any more and they are being 'constantly re-educated by their political activity'.¹⁹¹

The 'you' here is her father, and she is quoting the address he made in court – he, in turn, is quoting Gramsci. But what the children do means that the 'old phrases crack and meaning shakes out wet and new'.¹⁹² Clichés, Rosa thinks, 'become enormous lies

¹⁸⁷ *Burger's Daughter*, p.14.

¹⁸⁸ *Burger's Daughter*, p.348.

¹⁸⁹ *Burger's Daughter*, p.328.

¹⁹⁰ 'Letter from Johannesburg, 1976', p.121.

¹⁹¹ *Burger's Daughter*, p.328.

¹⁹² *Burger's Daughter*, p.348.

incarcerating enormous truths, still extant, somewhere.’¹⁹³ But, for a moment, the children’s actions are able to change this, to make language come alive again, to bring it closer to accessing the truth that cliché normally imprisons.

But this is only momentary. Cliché retains its hold and soon slips into the narrative voice again. The children are “‘constantly being re-educated by their political activity’”, and their parents:

people who were Uncle Toms, steering clear of the Mofutsanyanas, Kotanes, Luthulis, Mandelas, Kgosanas, Sobukwes who went to jail for the ANC and PAC have begun to see themselves at last as they are; as their children see them. They have been radicalized – as the faithful would say – by their children.¹⁹⁴

The quotation marks and the ‘as the faithful would say’¹⁹⁵ indicate the persistence of the ‘enormous lies’ which incarcerate ‘enormous truths.’¹⁹⁶ But there is, nonetheless, just a moment where the children cause the ‘old phrases’ to ‘crack’.¹⁹⁷

In light of the arguments I have made throughout this thesis, I suggest two things about this elusive moment in *Burger’s Daughter*. On the one hand, in Chapter Two I argued that the presentation of child soldiers in human rights discourse exemplifies the problems and limits of the discourse. Children are depicted as apolitical, innocent and continually vulnerable to harm. For this reason, I suggested that they are symbols of the version of human rights discourse which would locate possession of rights in mere humanness. In Chapter Three I showed that the lingering on the imagery of childbirth and the family in Kyomuhendo’s *Bildungsromane* can be read as the haunting of the citizenship model of rights by the merely human version – that it is the ambivalent sign of the inseparability of the possession and the non-possession of human rights. As they are represented in *Burger’s Daughter*, the children of Soweto stand in clear critique of the limits of the way human rights discourse understand and depict the child. It is the children who lead from the front, who are willing to be killed: ‘[t]hey seem to know what is to be done.’¹⁹⁸

¹⁹³ *Burger’s Daughter*, p.348.

¹⁹⁴ *Burger’s Daughter*, p.348.

¹⁹⁵ *Burger’s Daughter*, p.348.

¹⁹⁶ *Burger’s Daughter*, p.328.

¹⁹⁷ *Burger’s Daughter*, p.328.

¹⁹⁸ *Burger’s Daughter*, p.348.

And yet, what is important is the way this is realized in the text: it is a fleeting moment. For a moment, the ‘old phrases crack and meaning shakes out wet and new’.¹⁹⁹ But then, only two sentences later, the clichés re-emerge and begin to shape the narrative voice. It is as if the narrative cannot hold on to the children’s accomplishment. There is no suggestion here that literature can function as truth – throughout the novel, I’ve suggested, its voice and perspective are shown to be unstable. They ask to be interrogated rather than trusted unquestioningly. Instead, the children of Soweto have a sudden, faltering, enervating impact on language – ‘meaning shakes out wet and new’,²⁰⁰ but the ‘enormous lies’²⁰¹ emerge again, while truth is ‘still extant, somewhere.’²⁰²

I have argued that human rights are ambivalent about their own relationship to law. Where there is an attempt to protect rights, this is manifested in quasi-legality, as we have seen in the TRC. Furthermore, it is where human rights are not guaranteed through the law, or where the law appears actively to crush human rights, that a human rights claim seems to have most value: Antjie Krog writes of ‘the unjust laws that took away [Reggie’s] freedom and trampled his human rights’.²⁰³ In the shifting perspectives of *Burger’s Daughter’s* opening scene, set outside the prison in which political activists are incarcerated, in the intermingled voices of the political trial and, finally, in the difficulty of expressing what it is that the children of Soweto have accomplished without falling into cliché, literature finds itself at its own breaking point, unable to fully capture – let alone transform – the painful realities of the failure of the law. In this way it brings us closer to understanding – rather than seeking to compensate for – the flickering and uncertain possession of human rights.

¹⁹⁹ *Burger’s Daughter*, p.348.

²⁰⁰ *Burger’s Daughter*, p.348.

²⁰¹ *Burger’s Daughter*, p.328.

²⁰² *Burger’s Daughter*, p.328.

²⁰³ *Begging to Be Black*, p.171.

Conclusion

I have made two main arguments in this thesis. First, human rights discourse is troubled by a contradiction concerning the possibility of possessing human rights. I have not merely suggested that human rights possession is sometimes incomplete or difficult to realize. Rather I have sought to show that the discourse is fundamentally conflicted and ambiguous in such a way as to make the full possession of human rights appear as an impossibility. Consequently I have argued secondly that it is literature's ability to sustain complexity and ambiguity, notably in texts which address situations where rights are precarious, threatened or missing, which makes it particularly apt for illuminating the limit-points inherent to the discourse of human rights. In writing engaged with a world of absent rights or systematic suspension of rights, there are moments at which literature's own conditions of possibility are also drawn into question – even in solidly realist texts like *Burger's Daughter*.

In Chapter One I made the case that there is a tension in human rights discourse between the idea that rights are possessed on the basis of citizenship and the idea that it is humanness alone which grounds them. We saw through Hannah Arendt, however, that merely human identity has traditionally tended to be constructed as the opposite of the abstract, formally equal individual. Consequently, the idea of simply *human* rights risks a dangerous conflation of rights possession with those characteristics which have typically been thought to suggest rightlessness – vulnerability, innocence and isolation. This is why, as we saw in Chapter Two, the Ugandan child soldier narrative *Girl Soldier* seems to re-entrench the consequences of rights abuse in the process of trying to campaign against it. Mere humanness is thought to be the only grounds on which empathy and imaginative connection can be forged. But analyzing the way Grace Akallo's vulnerability to suffering was textually prolonged made clear the extent to which this emphasis on innocent passivity is a limiting representation of those who have experienced rights violation.

The tendency towards passive representations of victims in human rights narratives has been widely noted. I have argued that it should be understood as a consequence of a fundamental and unresolved tension in the discourse. It is this central

contradiction which became visible in Chapter Three through the uses to which Goretti Kyomuhendo's texts put the Bildungsroman and, in particular, through their insistence on the inescapability of the family. Of course, this is partly a textual recognition and representation of the fact that, for many young women in particular, familial life is restrictive, that education and social mobility are inaccessible, and that the home can be a location of profound oppression. However I also interpreted the texts' obsessive repetition of familial imagery as a type of experimentation with the form of the Bildungsroman which brought to light the limit-point of human rights examined here.

For Slaughter, the Bildungsroman is intricately entwined with human rights discourse because both aim towards the incorporation of the individual into the society of the nation-state. This is symbolized in the traditional plot of the Bildungsroman by the way the protagonist leaves his or her home and family, and develops towards some form of social role. The Bildungsroman thus reflects conventional theorizations of democratic politics: as Carole Pateman argued, the family has tended to be understood as the antithesis of the political sphere. But, crucially, the family is not *consistently* the antithesis of the political sphere: for Derrida, indeed, it represents a fundamental contradiction in articulations of democratic politics. The political sphere, composed of abstractly equal citizens, the sphere which is defined in opposition to the family, is described through terms like fraternity and birth. That is, it is described through familial terms. The family at once symbolizes political belonging and, at the same time, stands for its opposite.

In this framework, Kyomuhendo's versions of the Bildungsroman offer key insights into the contradictions of the discourse of human rights. Familial concepts such as fraternity and – in particular in Kyomuhendo's texts, birth – symbolize at one and the same time the difference of pre-political, merely human, identity and the sameness of formal equality which describes the political sphere. Slaughter proposes that the Bildungsroman is implicated in human rights discourse – it is both a way of disseminating its norms and a way of understanding what those norms are. Read in these terms, the repetition of familial imagery in Kyomuhendo's Bildungsromane is suggestive of precisely the tension I have described: it signifies the contradiction between the idea that human rights are the rights of abstract persons and the idea that they are the rights of humans defined solely through their humanness.

In this the language of literary writing is key. There is something excessive about the familial language which is used in Kyomuhendo's texts. Like the liquidity which so preoccupies *Waiting*, the imagery of childbirth, daughters, sons, blood overflows, turns up in unexpected places. The language is too much. These novels suggested to me that the relationship between literature and human rights cannot be one in which literature simply adopts and then makes comprehensible the logic underlying human rights ideas. There is always something stranger than this going on in literary texts. In Chapters Four and Five I suggested that this kind of strangeness in the literary text is illuminating for the points of tension that reside at the heart of human rights discourse.

One of the consequences of the difficulty over the possession of rights is that the possibility of legal enforceability of human rights is drawn into question. Either rights are fully possessed through the law and yet lose their identity as simply human rights, or they are possessed in their absence, particularly where the law is disinterested in, or hostile to, human rights claims. Where there is an attempt to protect and guarantee human rights – as in post-apartheid South Africa – there is nonetheless a sense in which human rights discourse requires something the law cannot provide. This was exemplified by the TRC's quasi-legality, which, as we saw, was explained through the language of human rights. Human rights discourse is thus associated with the insufficiency of the law.

My question then became what particular opportunities do these points of contradiction and tension open up for literature. Desmond Tutu used *Death and the Maiden* rhetorically to defend the Commission's quasi-legality. For Tutu, the quasi-legal can provide a form of truth which the fully legal cannot, and its value is indicated straightforwardly by *Death and the Maiden*. But when he employed the play in this way, its key ambiguities were flattened as it became associated with truth as category. This led me to ask whether there is another way of thinking about the relationship between literature and the ambivalent legality of human rights discourse. For Tutu literature became associated with truth in the context of the TRC, where the law could not be appealed to. For *Slaughter*, meanwhile, literature was appealed to as compensatory where international human rights law was weak. In both cases, literature filled in for what is missing from the law.

Here I turned to texts which engage with the other dimension of the ambivalent legality of human rights discourse – the fact that, where rights are not possessed by the

law, the discourse of human rights becomes most meaningful. I examined two texts concerned with the absence of legally-recognized rights – *Burger's Daughter* and *Begging to Be Black*. In both texts the law cannot – in fact, will not – meet the demands of human rights. But here literature neither offers a compensation for that failing nor does it perform a version of truth. Instead, it shows a profound tension between truth and narrative; in *Burger's Daughter*, language attempts to hold on to (but cannot quite grasp) a truth which is 'still extant, somewhere.'¹

In *Country of My Skull*, Krog writes: '[t]he word Truth makes me uncomfortable [...] [e]ven when I type it, it ends up as either turth or trth.'² The difficulty of writing the truth is also central to *Begging to Black*. At first it seems as if a literary text – *Disgrace* – is being used to provide access to the truth about a black South African communitarian ethic. However, as the text progresses, this is drawn into question until it is not the truth of the other's experience, but rather the impossibility of ever fully imaginatively accessing it, which is associated with the literary:

[w]hatever novelistic elements I may use in my non-fiction work, the strangeness is not invented. The strangeness is real, and the fact that I cannot ever really enter the psyche of somebody else, somebody black. The terror and loneliness of that inability is what I don't want to give up on.³

If we position literature as that which can make up for the limits of human rights discourse's legal enforceability, as Tutu and Slaughter do in different ways, those limits disappear from critical scrutiny, they seem to become less urgent. Notably, because they refuse to associate themselves fully with the category of truth, both *Begging to Black* and *Burger's Daughter* are difficult to incorporate into those models of reading which would use literature to make up for the ambivalences of human rights discourse's relation to the law. These literary texts cannot provide the truth where the law is weak or unavailable, because truth in both texts is difficult to grasp and to hold. Thus, in their attentiveness to strangeness rather than to familiarity, the texts I have discussed do not compensate for the limits of human rights discourse, but allow those limits to be thought.

¹ *Burger's Daughter*, p.328.

² *Country of My Skull*, pp.53-54.

³ *Begging to Be Black*, p.267.

There remain many aspects of the crisis of human rights possession which still invite consideration. For example, I have discussed the ambivalence of human rights discourse regarding the law and the nation-state at length. However, Derrida argues that the foundation of law in a nation-state always depends on violence: ‘no matter how democratic it is, and even if it seems to conform to the principle of the equality of all before the law, the absolute inauguration of a state cannot presuppose the previously *legitimized* existence of a national entity.’⁴ For this reason

[a] ‘successful’ revolution, the ‘successful foundation of a state’ [...] will produce *après coup* what it was destined in advance to produce, namely, proper interpretative models to read in return, to give sense, necessity and above all legitimacy to the violence that has produced, among others, the interpretative model in question, that is, the discourse of its self-legitimation.⁵

The particular problems raised by this issue can be seen in the case of South Africa. From the moment of the Union in 1910, as Heinz Klug writes, there was ‘a bifurcated state [...] the Union Constitution granted parliamentary democracy to the white minority [...] [but] it subjugated the majority of black South Africans to autocratic administrative rule.’⁶ However Derrida argues that what distinguishes the South African nation-state is not the original violence per se, because this characterizes all states:

[i]n the case of South Africa, certain ‘conventions’ were not respected, the violence was too great, *visibly too great*, at a moment when this visibility extended to a new international scene, and so on. The white community was *too* much in the minority, the disproportion of wealth *too* flagrant. From then on this violence remains at once excessive and powerless, insufficient in its result, lost in its own contradiction. It cannot manage to have itself forgotten, as in the case of states founded on a genocide or a quasi-extermination. Here, the violence of the origin must repeat itself indefinitely and act out its rightfulness in a legislative apparatus whose monstrosity fails to pay back: a pathological proliferation of juridical prostheses (laws, acts, amendments) destined to legalize to the slightest detail the effects of

⁴ Jacques Derrida, ‘The Laws of Reflection: Nelson Mandela, in Admiration’, in *For Nelson Mandela* ed. by Jacques Derrida and Mustapha Tlili (New York: Seaver Books, 1987), pp.11-42 (p.20), emphasis original.

⁵ Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’, in *Deconstruction and the Possibility of Justice*, ed. by Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (London: Routledge, 1992), pp.3-67 (p.36).

⁶ Heinz Klug, *The Constitution of South Africa: A Contextual Analysis* (Oxford: Hart Publishing, 2010) p.8.

fundamental racism, of a state racism, the unique and last in the world.⁷

Violence is not antithetical to the law of the nation-state, even the democratic nation-state – it must necessarily precede it.

Here we see yet another reason why human rights discourse might be ambivalent about rights protection effected through the law of the nation-state. Is it possible for the nation-state to be at once originally violent, even genocidal, and also a protector of rights? I have proposed in this thesis that literature can illuminate the tensions and difficulties of human rights discourse. The question of the entanglement of the locations of rights protection with the forms of violence opposed by human rights discourse is a further contradiction which might be able to be discussed through the particular qualities of literary writing.

Because my focus in this study has been on the way literature might illuminate the limits of human rights discourse and, in particular the problem of possession, I have not attempted to suggest ways in which the discourse might become more theoretically coherent. Nonetheless, further work on literature and human rights might engage with the attempts to think of human rights outside of the notion of possession. In the Introduction, I mentioned de Bolla's suggestion that human rights can be understood as aspirations for humanity as a group rather than possessions of individuals. Douzinas proposes a related argument: that we can understand human rights as mediators in the process of recognition. He writes:

[f]rom a Hegelian perspective, the main function of rights is to help establish the recognition necessary for the constitution of a full personality. Subjectivity passes through the mutual recognition by the other and rights are a necessary intermediary, an indispensable tool in this process.⁸

What is important for Douzinas about the Hegelian analysis is that, in its account of self-consciousness as an intersubjective phenomenon, it points to the deep connections between self and other which maintain the subject.

Rights, in this sense, do not protect the lone individual against the whims of the larger social group but nor do they demarcate the boundaries of the isolated person.

⁷ 'The Laws of Reflection', p.18.

⁸ *The End of Human Rights*, p.274.

Instead, they are markers of the development of the subject through the relationship between the self and the other. Douzinas argues that

[r]ights do not find their limit in others and community, as liberal theory claims. On the contrary, if the function of rights is to give rise to reciprocal recognition, they presuppose the existence of others and of community, and they express the identity-forming contribution of others.⁹

Rights are the signs which show that one is a subject and thus allow recognition by the community; '[h]aving rights', Douzinas argues, 'is nothing more than the symbolic expression that one is equal in his freedom with everyone else or, what amounts to the same thing, that one is a legal subject.'¹⁰ Human rights always presume and depend upon the construction of the legal subject through the mediation of the other.

This is a useful corrective to the idea of rights as based on possession. I have been considering the limits of a version of rights which is conflicted as to whether they belong to a merely human subject or to an incorporated citizen. But Douzinas' version of human rights shows that rights do not have to be thought of as the property of an individual. Instead they can be understood as a way of constructing community.

Further work in this area might also consider the distinctions – as well as the similarities – between various forms of literary writing, as they are related to human rights discourse. In this study I have considered Dorfman's play, Bildungsromane, Krog's non-fictional writing, child soldier narratives and realist novels by Gordimer. I have sought to show how these different types of literary text relate to the discourse of human rights and, thus, how reading them together allows for an elucidation of the discourse. However, there are other literary forms whose particularities surely have distinctive contributions to make to the discussion of human rights and literature. For example, in his foreword to the TRC *Report*, Tutu writes:

[a] Dutch visitor to the Commission observed that the Truth and Reconciliation Commission must fail. Its task is simply too demanding. Yet, she argued, 'even as it fails, it has already succeeded beyond any rational expectations'. She quoted Emily Dickinson: 'the truth must dazzle gradually [...] or all the world would be blind'.¹¹

⁹ *The End of Human Rights*, p.287.

¹⁰ *The End of Human Rights*, p.276.

¹¹ TRC *Report*, vol.1, p.4.

I have discussed the category of truth in the context of the quasi-legal TRC through *Death and the Maiden*, the fiction of Nadine Gordimer and *Begging to Be Black* but Antjie Krog is also a poet. The distinctiveness of poetry's engagements with truth in this context would be a path for the future development of this thesis.

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