Gavin Keeney

Works for Works

Book 2: "No Rights"

WORKS FOR WORKS, BOOK 2

Fig. 1. Detail from Hieronymus Bosch, *Ship of Fools* (1490–1500)

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Contents

Acknowledgments

Dating back as far as the first phases of the research project known as "Lived Law," i.e., late 2017, and just after a one-year teaching fellowship in India, the following "trinitarian analytic" has served as "North Star" for personal and collectivist-based works as diverse as books, journal articles, and performance-based projects.

> *Existential and legal* aspects of representational space (e.g., book, text, artwork) — Moral, institutional, and social economy — Displacements, *diremptions,* syntheses;
>
> *Legal and social* aspects of performance and experimentation (e.g., book, text, artwork) — Moral, existential, institutional economy — Displacements, *diremptions,* syntheses;
>
> *Legal and moral* aspects of dissemination and re-naturalization (e.g., book, text, artwork) — Existential, institutional, and social economy — Displacements, *diremptions,* syntheses.

The analytic is still valid, foremost because things have only gotten worse for authors and artists. It is also deeply "structuralist" (in an Althusserian sense) and "post-structuralist" (in a Derridean and Agambenian sense) in spirit. The displacements in the middle terms, despite their repetition, signal something that

resists categorization. They rearrange themselves according to some ontic/non-ontic order or dialectic embedded in the opening terms. "Book, text, artwork" remains a constant in the mathesis, as does "Displacements, diremptions, syntheses." The impression is that across "Lived Law" (2017-2019) and "Works for Works" (2019-2025), something regarding the law is, indeed, at stake. "Law" appears in three different combinations/instantiations: (1) *Existential and legal;* (2) *Legal and social;* and (3) *Legal and moral.* The origin of this analytical summary thus coincides with first ventures into "Art + Law" (ca. late 2016) — viz., into copyright and intellectual property law. The third instantiation (*"Legal and moral"*) nonetheless seems to be the primary sensibility (nominal address/addressee) at play, through and across the conjoined terms. "Diremption" is a key term here, insofar as much that is sought through "No Rights" requires a forceful separation of ways — between worlds and between modalities — for works and for life-works. In many respects that sundering occurs through works, leading to the life-work. Yet works accede to the life-work, and the revolutionary or ur-revolutionary (often nihilist) ethos of the so-called trials and agonistic rites of singular works leads to the life-work.

Those ventures into "Art + Law," while partly collectivist in spirit, nonetheless almost always circled back to solo ventures and to existential rites of passage for singular works, where the collectivist ethos would often collide with an expressive telos — the latter signaling that quite often the long tail of projects developed through ad hoc and intentionally diffuse collegia would collapse into a form of temporal closure and transformation or transfiguration across intervening and subsequent works, with each such passage marked by the intense need to take stock and responsibility, personally and collectively, for what has transpired. The personal passages were most often temporal crises, wherein works accomplished were assessed for traces of what might be reformulated in subsequent works and duly archived. Re-play, re-performance, and re-editioning became the modus vivendi for the ongoing insurrection. The recourse to personal responsibility (discursive reflection, or *pensamiento* and *medi-*

tación), in turn, generally involved a new entry into an abject apophatic and irreal "crossing" of unforeseen thresholds arguably present in works anyway but only ever recognizable, as such, through crisis. This would also seem to signal the necessity of a cyclical process of engagement, withdrawal, re-engagement, and re-withdrawal, across the arc of such life-works, perhaps also indicating a key element of the communitarian spirit of such endeavors, whereas in the larger field of socio-cultural production, and as relative to the vulgar neoliberalization of academia and the art world, this cycle takes the form of battle, retreat, battle, and retreat.

The necessary recourse to an existentialist remainder across such engagements, personal and collective, is utterly telltale, as it situates the entire this-worldly fracas within an a-historical time-sense (a-theological and theological, at once) that also prevails within and across philosophically inflected works produced under the auspices of Romantic and High Romantic adventure and misadventure. Thus, the spirits of Kant, Hegel, Fichte, Kierkegaard, Feuerbach, Stirner, Schopenhauer, Nietzsche, Artaud, Benjamin, Weil, Camus, and Debord are all present in both obvious and obscure ways in the arguments summarizing a "No Rights" agenda for new works of radical-democratic artistic scholarship. Each one (as author) may be said to have brought the personal into rapport or conflict with the collective, with each more than aware of, in one way or another, the Kantian "Kingdom of Ends" embedded in any and all reflexive investigations of subjective states and their antitheses, with the Kingdom of Ends reducible, ultimately, to the fact that the Categorical Imperative or Moral Law (as formulated by Kant) must be first fully internalized before it can be (re-)externalized or recontextualized. Famously, but also badly maligned, Kant wished to free the subject from externally imposed laws by introducing internally self-imposed laws. His Kingdom of Ends is, thus, a type of coda to his three critiques, which may be said to have demoted rationality by elevating morality, with the third critique (*Critique of Judgement*) making a leap to the moral imagination through the analytic of the Beautiful and the Sublime.

Perhaps in some parallel time-sense, the aleatory and paralogical life-work is secretly, and after all is said and done, a type of memoir (or a hybrid memoir-novella, with "memoir" being anti-novella and "novella" being anti-memoir in the hyper-temporal and conflictual conjugation of the literary-artistic terms). Therefore, the as-yet-unpublished */S/4 — Ego-histoire* (2024). This text (anti-memoir/novella), enscribed across the composition of *Works for Works, Book 2: "No Rights,"* documents the travails of the enscription of the (mis)adventures of the work as life-work, as produced under the spell of "No Rights" and the trinitarian analytic or North Star noted above. It serves as prologue and epilogue, simultaneously, to a novel "No Rights" status for works, while it also re-registers the attendant epistemological (mis)adventures in a form of Benjaminian now-time that supersedes all other time-senses given to the editioning of works of literary-artistic scholarship. That such works tend to write themselves is part of the secret algorithm that authors endure.

Notably, this book was also developed as PhD dissertation through the Postgraduate School at the Research Centre of the Slovenian Academy of Sciences and Arts (ZRC SAZU), Ljubljana, Slovenia, with a successful defense held in May 2024. Situated within the program denoted Comparative Studies of Ideas and Cultures: Transformation of Modern Thought (Philosophy, Psychoanalysis, Culture), it endured and survived all attempts at derailment through circumstances or criticism. Guarded en route to honors status (Summa cum laude) by supervisor Jelica Šumič Riha, the thesis version of *"No Rights"* was effectively an existentially charged defense of literary-artistic scholarship.

That said, the prevailing spirit of the Works for Works agenda, as ongoing project, and via the extant trinitarian analytic, owes its primary coordinates to the attempts at collectivist-based works summoned in response to the various ravages of the neoliberalized knowledge commons and its attendant rites and edicts for and toward the commodification of knowledge at the expense of a liberatory and radical-democratic modality for theoretical praxis in the Arts and Humanities. In many

ways, *"No Rights"* has arrived out of that wreckage, and out of the agonistic path(s) negotiated to find and hold on to a means of exit while the goalposts for post-contemporary scholarship are constantly subject to being moved around the playing field (e.g., the arrival and subsequent corruption of open access publishing), if only to prop up the sinking fortunes of institutions or to keep authors and scholars forever on the proverbial "back foot" (defending themselves and their work or conceding defeat and paying tribute to the gatekeepers in the hope of obtaining privileges associated with paying tribute to Capital).

As treatise, *"No Rights"* is also an homage to the various interlocutors (e.g., via Law, Literature and Humanities Association of Australasia) and colleagues (e.g., via OOI-MTA+++) over the years noted, and to the ever-shifting prospects for works that eschew any relation to Capital (personal capital, collective capital), even as the North Star noted remains at times an apparent lost cause, obscured in mists or occluded by the various crises associated with the existential rites of passage for life-works of aleatory and generative artistic scholarship — first and foremost, works of a sublimely useless character.

Primary research was conducted at the National and University Library, Ljubljana, Slovenia; the Bodleian Libraries, Oxford, England; the Watson Library, Metropolitan Museum of Art, New York, New York; the Clark Art Institute, Williamstown, Massachusetts; and the Cini Foundation, Venice, Italy. The Cini Foundation research on El Greco was funded by a grant from the American Philosophical Association's Berry Fund for Public Humanities and sponsored by the Centre for Comparative Studies of Civilisations and Spiritualities.

The section entitled "Angels + Assisi" in Chapter Two, "The Impoverishment of Works," was first published in *Seminar Magazine* 764 (April 2023). Early versions of the Preface, "Authorship and Nothingness," and Chapter Five, "Useless Collegia," were published as working papers via Zenodo. A version of Chapter Eight, "Illuminated Mirrors" was published as "Illuminated Mirrors and 'No Rights'" in a special issue on "Religion

& Subjectivities" of the *International Journal for the Semiotics of Law* 37, no. 4 (2023).

Nota Bene

This book is intended as a defense of literary-artistic scholarship and, as such, includes metaphorical forms of expression and contrapuntal affects and effects bordering on surrealist montage. Footnotes are intentionally constructed to lead readers down the proverbial rabbit hole to parallel resources that may agree or disagree with arguments made in the main body of the text. Lastly, the Appendices are intended to be semi-hallucinatory, insofar as they represent condensed reports on, one, the absurd history of intellectual property rights, and two, Tolstoy's troubled relationship to intellectual property rights.

For Jelica Šumič Riha

"It is perhaps here, in this one brief moment, that Medusa's head shrivels and the automatons run down? Perhaps, along with the I, estranged and freed here, in this manner, *some other thing is also set free?"*
— Paul Celan

"Reality is a process.… Only this process, not the addition or mosaic of so-called facts, and hence of fixated processual factors, is reality, is represented in truth. Indeed, only this processual reality pushes at any given time toward thought, as it has to supply information regarding men and the rest of reality."
— Ernst Bloch

"So the most beautiful aesthetics — the most desperate, too, since they are generally doomed to stalemate or madness — will be those aesthetics that, in order to open themselves completely to the dimension of the visual, want us to close our eyes before the image, so as no longer see it but only to look at it, and no longer forget what Blanchot called "the other *night," the night of Orpheus. Such aesthetics are always singular, strip themselves bare in not-knowledge, and never hesitate to call vision that which no waking person can see."*
— Georges Didi-Huberman

Authorship + Nothingness

The Abyss of Thought

When does the author disappear other than through works? How can careerist and neo-utilitarian agendas be abandoned other than through the transfer of the moral rights of authors to works? And, what is this resultant "nothingness" (nascent nihilism) embraced by authors in favor of works?

These three questions open onto the well-known "abyss of thought." Far from the abandoning of thought by the author, the existential rites associated with answering these questions introduce the conversation that one "I" (authorial presence) may have with another "I" (non-authorial presence). The pretext is that the split is the rite of passage for authors and for works, across a form of nothingness as escape route — an elective nihilism in search of Utopia. The escape route is the abandoning of authorial privileges on behalf of a form-of-life for works that opens up the possibility for an entirely new class of works (i.e., "life-works") that cannot be detected in advance, or without entering upon such a transitional state, by authors and by works, for authors and for works.

The essential premise of this elective nihilist position is that only by renouncing authorial privileges may other opportunities arise, be recognized, and be honored. The primary concern is an inordinate respect for "prior art" (the so-called land of "things

given" re-introduced to cultural affairs by post-phenomenology) — or, all that precedes bespoke works and is duly embedded in them.[1] A secondary concern is that authors recognize, versus repress, the fact that as bespoke works become life-works, it is the agency of works that is at play, and the author is effectively a shepherd for works, which also suggests the controversial concept that the author should eventually step aside. Such an argument is behind all of the various positions taken by enlightened structuralists (e.g., Barthes and Foucault) that the author does not exist.[2] This posture is, of course, mostly a provocation. But it is also partly true, insofar as works are given their full respect as autonomously prefigured and — often enough — accidentally or intentional assemblages of previously sanctioned works that extend, in reverse, into the "reverse wild blue yonder."

Often troubled as the "transcendental exception" for works, and often reduced by law on behalf of authors to semi-legalist code and/or privilege by power, the status known as moral rights has become, across centuries, the great excuse for the commodification of knowledge. Its double legalistic status as code underwriting copyright law and as insubstantial honor bestowed upon authors has, without notable exception, slowly devolved to the actual loss of moral rights by authors and by works. More or less reducible to the "voice" of works, the origins of non-legal

1 See Jean-Luc Marion, *Being Given: Toward a Phenomenology of Givenness,* trans. Jeffrey L. Kosky (Stanford University Press, 2002).

2 See Haun Saussy, "Review of Dinah Ribard, *1969: Michel Foucault et la question de l'auteur: 'Qu'est-ce qu'un auteur?' Texte, présentation, et commentaire* (Paris: Honoré Champion, 2019)," *Critical Inquiry* 48, no. 2 (2022): 432–33. With reference to the context of the "question" posed by Foucault in 1969 and its supposed non-relation to Roland Barthes' "Death of the Author" (1967), plus diversions via key interlocutors (including Jacques Lacan and Lucien Goldmann) and the subsequent shift by Foucault from problematizing the definition of "author" to problematizing "founders of discursivity," see Michel Foucault, "Qu'est-ce qu'un auteur?," *Bulletin de la Société Française de Philosophie* 63, no. 3 (1969): 73–104, and Roland Barthes, "The Death of the Author," *Aspen* 5–6 (1967), http://www.ubu.com/aspen/aspen5and6/threeEssays.html#barthes.

moral rights include pushing back against censorship.[3] The long march of commodifying anything whatsoever that may be converted to marketable products by Capital has led, in turn, to a very different abyss than that confronted by authors faced with the responsibility for what is irreducibly moral in works — i.e., the presence of prior art and the assimilation of always already given antecedents that under the stresses of spectral commodity status become the foundation for the distressed libidinal excesses of market ideology and the pursuit of either wealth or celebrity. The promise of the artistic exception, for example, has long been foreclosed. Its development, in the Enlightenment, has suffered the consequences of endless reification across a broad spectrum of de-instantiated measures associated with the so-called knowledge commons. That the author effectively has no choice today other than to embrace one or the other form of nothingness is utterly telling, especially given the fact that Capital has long run out of new frontiers to mine and exploit other than the mind and the exploits of the mind and heart. That scholarship and art have fallen prey to law and power is the foremost event of late-capitalist hegemony and its infiltration, by imposition of rules and laws, of what formerly was known as General Intellect — i.e., works at large and circulating beyond the censorial practices of Capital. There is nothing much left at large in excess of these measures that Capital has not decided is not worth pursuing — at least for the moment. What is left unattended to is, effectively, the wreckage, which is generally "re-socialized" according to the processes of abandonment associated with the exploitation and depletion of resources. What transpires in the immaterial commons is not all that different from what transpires in the material commons. The main difference is that the damage wrought on the immaterial commons

3 Regarding the French book trade and the artistic exception, see Chapter Two: The Impoverishment of Works. Notably, moral rights have been blamed for permitting the publishing industries to lock down works. This includes an attack on the concept of the Romantic genius. See Sarah Hook, *Moral Rights, Creativity, and Copyright Law: The Death of the Transformative Author* (Routledge, 2024).

is damage wrought on the human psyche, whereas the damage wrought on the material commons is, arguably, reparable over however many millennia it may take. Whether the damage wrought on the human psyche is reparable over however many millennia it may take is an open question, foremost because it is quite possible that humans will cease to exist, whereas the planet Earth will more than likely survive humans with relative ease.

This summary judgment is the lived experience of any and all authors who have nothing to offer that machinic world of algorithmic malfeasance devised by Capital, to extract tribute or rent, or of those who refuse accommodation with the edicts required for the acquisition of wealth and privilege. The fact that many authors try and fail to meet the machinic edicts of late-Capital lies somewhere in-between these two versions of nothingness, whereas the resultant and always-optional valorization of apparent failure may lead nonetheless toward that abyss of thought that might produce, after all, the long-sought antidote.

Privileging of Works

The privileging of works over authorial presence through the transfer of moral rights to works may only be accomplished experimentally. It will be of no use to return to pre-copyright premises, when the ownership of works was based on the ontic substantiation of and for works. A review of the ravages of the capitalization of the knowledge commons will also do little to alleviate the damages wrought over centuries. What is required is a complete departure from the rules and laws of knowledge production under Capital; what is obvious, for authors and for works, is that the premise of the life-work also holds the promise of escape from all forms of re-accommodation with law and power.

The moral rights of works, if produced across the life-work, will serve as exit strategy. If that process includes trial and error (and if trial often means "trial" by Capital and Law), the primary concern becomes the transitional state denoted in contemporary scholarship as "Art + Law" — a confluence of streams that

produces, by its merger of debauched resources, a productive field of inquiry best left unnamed and untamed.

"Art + Law" is also the locus for the development of forms-of-life for forms of artistic scholarship. They can only be developed as a "new exception," but without the attendant recourse to legalistic maneuvers associated with otherwise well-meaning measures previously enscribed under the rubric of "common law" or "creative commons."[4] Both terms have effectively proven non-resistant to re-colonization and re-appropriation by late-Capital, with the former being a benign form of public domain and the latter echoing that disturbed prospectus through its attempt to categorize new exceptions to proprietary measures associated with the knowledge commons. *Creative commons* has also become a type of catch-all term for the art and academic worlds, insofar as both have succumbed to the disruptive tenets of platform culture and the hyper-commodification of knowledge. Both terms also contain a remainder that preempts the very departure sought. Any concept of a commons that might prove as fertile field for the development of forms-of-life for life-works will also have to deal with the mere fact that most immaterial labor has, irreducibly, an internal battleground within it that plays out across the dialectic of ontic and non-ontic status and rights — i.e., the very ground that Capital exploits to carry out its marauding mission across works in pursuit of "rent." This spectralization of import and intent is the secret minefield constructed to prevent escape from the field of exploitation. The parameters are constantly shifting, intentionally, and it is the constant surveying of that mined and enclosed ground that most summaries conduct, all the while claiming that they are also seeking a way out or a minesweeping operation on behalf of authors and (*sometimes*) works. This often takes the form of disrupting disruption, through neo-avantgarde posturing, even

4 The term *enscribe* is used here intentionally instead of the similar term *inscribe*. Enscribe suggests encircling and enclosing, or even capturing, as works of art and scholarship (and artistic scholarship) are tutelary or salutary vessels for the transcription of a larger process that is generally embodied in such works but more often than not overspills such works.

if it often is re-assimilated to the society of spectacle that late-Capital is constantly re-configuring. In many ways globalized art biennales perpetuate the myth of disruption while actually servicing the machinery of the art world.

This *sometimes* (i.e., disruption on behalf of works versus authors) signals the fact that the minesweeping operation (such as that conducted by neo-Marxist or neo-avantgarde critique) may include the liberation of works, while it most often favors the liberation of subjects (authors and artists). Yet, as first step, such a counter-proposition has value, even if it does not progress to the full liberation of works. What is mostly a hidden opportunity, within all such surveys and all such ground-clearing efforts, is the bestowing of subject status to works — e.g., through the transfer of moral rights to works, by authors and artists, and through the acknowledgement of the voice of works. The long tail of the long history of authorial presence and privilege, when transferred to works, might, if conducted across works such that works dictate terms, produce an actual escape route versus a clearing and return to grounds that have proven to be inherently re-colonizable by law and power. Indeed, much of that which passes as acts of liberation are actually acts of de-colonization to be followed by re-colonization by other means. These other means are generally reducible to ideological positions taken on behalf of subjects by emergent forms of law and power — e.g., the history of revolution often is also the history of the imposition of new laws by the newly privileged, and always at the cost of subjects and works.

In terms of forms-of-life for life-works, it is insufficient to merely clear the ground. And it goes without saying that the imposition of new laws on behalf of new powers is merely a change of status versus a change of state. The elemental discord remains in place. That "taking-place" for law and power is the return of the theft nominally abrogated by the ground-clearing exercise. Any review of any historical or cultural moment past wherein such efforts served to end one form of exploitation only to install another would and should serve notice on authors and on works that there is something always amiss, and that there is

something always missing when and if one form of colonization is replaced by another.

Academia and the art world, arguably, run the gamut of this perennial process of discord, recovery, re-boot, and re-colonization. Powers succeed powers, and new rules succeed old rules. Fashions displace fashions, and new fashions are assimilated to re-configure the brinksmanship of the operational logics. Careerism and privilege abound. The art world is perhaps the more dynamic of the two, though no less rife with the implicit discord of chronic fatigue followed by nominal revolt and incidental recovery. As a parallel stock market, for investors, the art world (as art market) moves quickly and is informed by the same cycles of speculation as finance capitalism. The history of the arts is the forced march of fashions, to the tune of markets. The implied universality of the university is the subjugation of subjects to the prevailing conventions and biases of the production of scholarly knowledges. Idiomatic in the extreme, both worlds nonetheless converged under late-Capital to produce the spectral market economy denoted "knowledge commons." Any works within either world have little to no chance of staking any claim to the status of life-work due to the parcelization of works as commodity.[5] The life-work at play in both is the architecture of the apparatus. Assimilation to that apparatus is the entire rationale for permission to enter either world, for authors and for works. Yet somewhere amidst the wreckage of the very concept of life-work resides a new exception premised not so much on refusal but on the unhoped-for subjective renewal through works of a form-of-life for life-works that cancels capitalist hegemony once and for all.

5 The term *life-work* connotes all works by an author or artist as one continuous work. This is, in many ways, a second-order level of exception hidden in the existential field of the artistic exception; i.e., it is lived versus post-rationalized through historical or biographical means. As a result, it tends to resist categorization and is generally reduced in the mythic gestures of art history as part and parcel of the fabrication of genius. The life-work in literary-artistic scholarship, and as developed across time and multiple time-senses, becomes a form of time-traveling.

IPR + OA

The overriding premise of Works for Works, as engaged and lived critique, is that Intellectual Property Rights (IPR) are the great elephant in the room of scholarly publishing and that it has a deleterious effect on what, where, and how authors publish.

Arguably, contemporary forms of IPR resemble serfdom, and the transitional states available for works en route to a "No Rights" status (the abolition of IPR) resemble the types of resistance to serfdom that transpired across efforts to abolish serfdom. This includes the current status of academic Open Access (OA) publishing, which closely resembles initial moves to electively abolish serfdom in the nineteenth century. Appropriately, the globalized OA ecosystem resembles the great estates of the nineteenth-century European nobility, where enlightened nobles (e.g., Tolstoy) freed serfs or the enslaved as a gesture of good will toward the eventual abolishment of serfdom, even if those serfs or enslaved thus freed remained on the great estates of the nobility and continued to work for the nobility.

What is needed today, versus the estates of the present-day nobility (e.g., institutional and/or proprietary ecosystems for research and the dissemination or ring-fencing of works) is the equivalent of the Paris Commune of the 1870s or the "convents" of the medieval and late-medieval monastic orders. These often-provisional redoubts have existed in various forms, in the past, and they partly exist today, although they are constantly at threat of being recolonized by Capital. They were also, by default, the temporal location or "home address" of the modernist avant-garde, insofar as the modernist avant-garde was not institutionalized in advance of breaking with historical conventions for the editioning and dissemination of works.

Thus, Works for Works, inclusive of *Works for Works, Book 1: Useless Beauty* (2022), deals creatively but critically with the following set of thematics:

I. The History of Intellectual Property Rights (IPR)
— *Privilegio* and the Early Modern book trade
— Moral rights, IPR, and the artistic exception
— Open Access (OA) protocols, IPR, and publishing

II. The Long Tail of Projects
— Works-based agency and life-works
— Performative and time-based works
— Publication ecosystems and archives
— Platform cultures and IPR
— Metrics, careerism, and the institutionalization of works

III. The Construction of Works
— Research methodologies
— Mapping exercises
— Composition and working papers
— Submissions and peer review
— Editioning strategies
— Dissemination of works
— Luminous and incendiary works

In engaging at this level of detail with the history of IPR and moral rights, it is also important to demonstrate through works the travails of works, as they ply the waters of the present-day ecosystem in search of a new ecosystem — viz., a new wild blue yonder (e.g., the proverbial else-where of all High Romantic quests, the various utopias of avant-gardes past, present, and yet to come, etc.). This process is notably agonistic and proceeds strictly through aleatory and generative means. It is the aleatory and the generative that, in fact, marks the emergence of works-based agency over and, if required, against an author's prejudices. Observing the rite of passage becomes the principal agenda for honoring such works. From there, inter alia, the next step involves the proverbial leap to the life-work, which no author can predict, and which no author may effectively or conclusively ever claim to understand or own.

The Immanentist Paradox

> Saint Michael the Archangel, defend us in battle…[1]
>
> — Franciscan prayer

The Paradox

What if we were to take negative dialectics and the negation of negation away from Adorno, Engels, and Marx, and give it "back" to Hegel? Along the way we might wave to the Young Hegelians — Feuerbach, Stirner, and the Early Marx. And what if we were to then take this tarrying with the negative, as Žižek calls it, away from Hegel and give it back to Spinoza, but only then to take it away again and give it back to theology, where it arguably originates and belongs? What would *this* accomplish? And what if we were to take Franciscanism and the Highest Poverty away "from" Agamben and the discourse of the biopolitical, to return it to its existentialist ground, by way of Kierkegaard, only to then "return" it as well to theology by way of the exception that the six-winged seraph at Mount Alverno spoke of, to

1 Francis of Assisi, "The Exhortation to the Praise of God," in Francis of Assisi and Clare of Assisi, *Francis and Clare: The Complete Works,* trans. Regis J. Armstrong and Ignatius C. Brady (Paulist Press, 1982), 43, from the Liturgy of Saint Michael the Archangel, "celebrated by the friars on May 8 and September 29" (ibid., 43n3).

Francis of Assisi, as imagined by Kazantzakis.[2] What would *this* accomplish?

The unreconstructed Marxists would howl, of course. And the unreconstructed Hegelians, including Žižek. The de-constructed post-neo-Marxist and neo-post-Hegelian academics would mutter amongst themselves and then hold a conference — or seek funding to found a research institute, preferably at New York University, The New School of Social Research, or the London School of Economics. Perhaps they would also seek a co-edited book with Routledge, which by the time it came out would be well past its sell-by date, intellectual fashions having shifted. It would nonetheless be marketed to university libraries for £165.00. The book's true value, however, would lie in Routledge's toll-access digital repository for data- and text-mining, permitting doctoral students in the Digital Humanities to study how many times "Althusser" and "immanentism" occurred in the same sentence. But does not this reversal of the historical-materialist and proto-phenomenological readings of Capital and culture *sublate* the historical-materialist and proto-phenomenological readings of Capital and culture, leaving them as trace? And would not this reversal of fortunes then operate as subtending chord for a new reading of the necessity of universal ethics and a proper orientation to the commons and to social and economic justice in relation to actual subjective states? Is not the weak messianicity of late post-structuralism exactly that?

2 Mount Alverno is generally known as La Verna in Franciscan lore. Regarding this exception (i.e., messianicity), see Nikos Kazantzakis, *God's Pauper: St. Francis of Assisi,* trans. P.A. Bien (Faber & Faber, 1975). "To great dramatic effect, Kazantzakis indulges paradox, repeatedly, to say the same. In the private conversations of Brothers Leo and Francis, and in advance of Francis receiving the Stigmata on Mount Alverno, Kazantzakis dreams up semi-apocalyptic confessions from Francis, told to Leo in confidence, that ultimately presage the exceptional secrets revealed by the six-winged angel on Alverno." These secrets effectively regard martyrdom and sacrifice but also time-senses — i.e., "that the here-and-now is also the as-yet-to-come." Gavin Keeney, "Essay Six: The Great Impasse and the Rule," in Gavin Keeney, *Not-I/Thou: The Other Subject of Art and Architecture* (Cambridge Scholars Publishing, 2014), 115n7, 115.

Derrida and Agamben's arguments about naming the "ban" or the "secret" — i.e., both *naming* the ban and the secret and then alluding to what resides behind the ban and the secret without identifying it — are exactly symptomatic of weak messianicity.[3] It is also possible to see this weak messianicity as a trait of academic left defeatism and post-Marxism — a characteristic that has permitted all manner of compromises with Capital post-1989, including careerist compromises. Is there, then, a Marxist theology — sublated, immanent, or otherwise?

All of this might resemble a thought experiment, and such would not be such a bad thing in this time when the capitalist order is collapsing, and when we can neither individually nor collectively hardly make out the contours of the real crisis. This immanentist paradox was more than accounted for by Althusser and by Wallerstein. The world-system of capitalism has met its match in the neoliberalization of crisis after crisis and the abject status of mere citizens in the age of vast economic injustices perpetrated in the name of expropriational systems run amok. This unsustainable system is its own downfall. In that regard Marx was right. The 2020–2022 crisis of the global pandemic underscores the real significance of the paradox; for the economic crisis is being met with as much or more force than the health crisis, to save capitalism once again from semi-naturally imploding and revealing its substrate of appropriation of commons and citizens as economic factors in a calculus that sweeps the planet and meets little resistance other than the remaining rhetoric of resistance on what's left of the Left. Mammon has become the Yeatsian rough beast of the Apocalypse of the moment. Is it not time to begin re-nationalizing "things taken"? An expansive view of the concept of prior art, as embedded in copyright and patent law, would more than suffice for such an erasure of the enclosure of the commons by Capital. The ensuing bailouts justify re-visiting what was deemed beyond the pale in 2008, most of all because the socializing of debt once again

3 See Gavin Keeney, "Notes on Language and Its Other," in Gavin Keeney, *Works for Works, Book 1: Useless Beauty* (punctum books, 2022), 209–29.

will only precipitate another, more tragic downfall further down the road. We can afford to forgive debt, and perhaps should, but we cannot re-float finance capitalism and corporatism without precipitating an ongoing and escalating set of crises.

Where then is the proper revolution? What is to be done through and for human kindness? The very idea of a spiritual revolution, hidden in the apophatic tradition and animating Hegel's *Phenomenology of Spirit,* concerns righting immemorial wrongs (canceling wrong turns) and overturning forms of false consciousness, but without going backward and without bloody retribution. Walter Benjamin's *Angelus novus,* in "Theses on the Philosophy of History" (1942), stands as a sign of this bizarre retro-avantgardism that is also a form of critical presentism and anti-historicism.[4] Angelus Novus wants to go back into Big History and retrieve moments lost or canceled but is being swept forward by so-called progress. He faces the past as he is swept into the future. The underbelly of capitalism is currently exposed as the titans of injustice seek yet another handout while socializing the damage wrought or re-wrought since 2008. Central banks now rush once again to prop up the system

4 "Theses on the Philosophy of History" was supposedly written in early 1940 — i.e., just before Benjamin's fateful trip to Portbou, Spain. Regarding Walter Benjamin and prior art (and the constructions of history), see the chapter section "Metaphysic of Prior Art," in Keeney, *Works for Works, Book 1: Useless Beauty,* 84–91. Problems with the legend known as "Walter Benjamin," in terms of a study of works-based agency versus authorial presence, include: (1) the peripatetic nature of his writings, especially his journalism, and how his posthumous record was constructed (including by Hannah Arendt) to effectively canonize an author who always worked from the margins and who even kept his distance from the Frankfurt School for reasons that had more to do with his own penchant for dodging the construction of celebrity intellectuals and ideological posturing than it did with Adorno's problems with his Lurianic influences derived in part from his friendship with Gershom Scholem; (2) issues regarding the origin of key texts by Benjamin and the various justifications utilized by those who resurrected them well after his death at Portbou on September 26, 1940; and (3) how his authorial identity today has more or less been re-constructed across a series of posthumous judgments made for reasons that have less to do with Benjamin than they do with those attempting to canonize him.

while citizens struggle to survive. This anti-capitalist moment is rife with terror, for citizens and for the capitalist class. Who will be the last man or woman standing? Will we sacrifice the possible promise of the immanentist paradox we inhabit now to prop up, yet again, a broken global order? Capitalism should — finally — stand down. That it might do so peaceably would be a noteworthy miracle.

The paradox proceeds by an inherent optic that occludes actual vision. Instead, we proceed by sense. Being in the midst of the crisis prevents us from seeing whether the disaster is the leading edge or the following edge of an epochal shift. If it is the leading edge, much might be done. If it is the following edge, there are fewer and fewer options. The difference between wholesale or incremental change is at stake. Regardless, the opportunity for a re-cognition or re-thinking of the commons and of rights of citizens is the fundamental "terrain" on which to proceed with the hoped-for revolution in sentiments.

To sense but not see (know) is the very hallmark of the apophatic tradition. Negation of negation, far from being a mere logical puzzle, is also a "lived reality." Its elective nihilist posture is only a waystation — the negative position taken only in contrast to what is wrong or unwanted and being discarded. In negative dialectics, we cross out one thing after another, until affirmation appears out of nowhere, semi-miraculously — or auto-poetically. We can see this at play in the novels of Gogol, Dostoevsky, and Tolstoy. The immanent critique of forms of false consciousness via psychological clairvoyance in the Russian novel of the nineteenth century is legendary. The story of the Grand Inquisitor in Dostoevsky's *The Brothers Karamazov* is exemplary. It occurs as an outtake but is nonetheless buried in the novel.[5] Curiously, quite often the vanishing point in this optic is subjectivity itself. Husserl vanished into subjectivity, as did Nietzsche and Schopenhauer in their own times and in their

5 This apparent excess (i.e., the presence of "The Grand Inquisitor" as irreducible remainder in the larger apparatus of the novel) permitted Peter Brook to turn it into a play in 2003.

own ways. The trajectory of the negative analytic (phenomenological reduction, genealogy of morals, or semi-tragic vitalist critique) seems to almost demand a return to the question of what constitutes a subject — or, what terms of engagement condition and produce subjects. This can be read cosmologically or sociologically. It hardly makes a difference. The affirmation is, arguably, the sublation of the negative as sign of a mystery that includes the sacrifices incurred to create justice and worlds. Wallerstein's statement, "The search for the true and the search for the good is but a single quest," is of this order.[6] It is, also, almost a Gnostic affirmation of the necessity of passing through world-historical *and* personal crises to reach the True and the Good. Wallerstein, as anti-capitalist, could sense much of what he could not quite see. His analyses of the world-system of capitalism suffered the same blind spots that Derrida and others celebrated as a condition of the systematic reification of terms of engagement for criticism. Yet the time for "all of that" has passed, and the time for an uncompromising resistance to perpetuating strife has arrived.

It is not enough, then, to belabor the paradox and to circle the same conundrum. To exit biopolitical hells is going to require a sustained *lived* resistance to the restoration of the capitalist project. The very idea of ownership will have to be turned toward the collective lived experience of citizens. The very idea of property and intellectual property will have to be abandoned. We may not get Utopia, but we may at least get a sustainable system that does not sacrifice subjects and citizens for profit. A new globalism will have to be ethical and historically and personally justified as anti-capitalist. How many post-capitalisms and fascist interregnums do we need to traverse before we arrive — probably exhausted — at the gates of a very different positive order? If we arrive at all. Does anyone really want to live in a post-capitalist, post-humanist state denoted as "fully automated luxury communism"? In the immanentist paradox

6 Immanuel Wallerstein, "The Development of an Intellectual Position," in Immanuel Wallerstein, *The Essential Wallerstein* (New Press, 2000), xxii.

we are also subject to the most grievous detours imaginable and unimaginable. No doubt the world-system now collapsing has many versions of new hells for citizens in store, awaiting deployment. Many will simply arrive as auto-poetically generated bastard children of a capitalist order caught in its own extended death throes.

Negation of negation implies re-birth. Re-birth of what? The fundamental mystery is that such re-birth does not so much restore as create anew, via subjective states. And there are telltale tautologies that haunt negative dialectics as much as they haunt negative theology. The tautology is the perfect example of the collapse of dialectics. A tautological state is a subjective state. The common ground is the commons. The commons is the commons. Marx famously took Hegel's negation of negation quite literally, and applied it to the restoration of collective ownership, after the intermittent phases of private property and capitalist property had passed away due to inherent contradictions. Engels objected strenuously to this historically determined transposition of the concept of property being "re-theologized" via neo-Hegelianism. For Engels, there could be no "return." Historical materialism was irreducibly and heedlessly diachronic and teleological. Oddly, it had its own religious fervor as a result. Perhaps this refusal on the part of Engels was because Hegel ended up on the side of power — i.e., the Prussian State — when he closed his own self-imposed loop (his dance with the negative). But he left signs that his appropriation of the negation of negation may actually have outmaneuvered him. He may well have derived much of its semi-mystical properties from Advaitic (i.e., Hindu) sources, while only acknowledging those philosophical strains taken from Spinoza or classical philosophy. The "return" indicated by negative dialectics is forward-leaning. It has nothing to do with neo-conservatism or neo-nativism, and it is not nihilist as such. Therefore, it is not such a bad idea to free it from ideological positions and to pose it as a universalist quest that crosses out ideologies, on the Left or on the Right. Ethics is not an ideology. Notably, Gandhi was aware of and embodied this age-old methodology for radical

change, both personal and collective. His philosophy of life and politics was Advaitic.

Foremost, it is the very idea of "event" and fidelity to event, as delineated by Alain Badiou and others, that signals "return." The return is to first principles, and those first principles are buried in current last principles. The last principles of the moment concern solidarity with citizens, not power. Fidelity to the re-writing of the world will take the form of living that re-formation. Strangely, it all comes down to acknowledging or re-acknowledging what has been discarded in the Hegelian rhetoric — the Platonic idea of World-soul. World-system is the antithesis. World-system is currently (per Wallerstein et al.) the capitalist putsch that we have endured for nearly half a millennium. What is to follow is neither anti-system nor re-tooled versions of rationalist hegemony, most often Western-imposed. Ethics is not a rationalist program. It opens onto a moral ground. The immoral world-system now attempting to re-establish its command of life itself is passing away. The sociologists tell us we have ten years to get our collective house in order — as of the early 2020s. This reading has more to do with climate change than socio-cultural mismanagement of the world, though the latter creates the former. Now we have the double paradox of socio-cultural mismanagement combined with natural calamities, which power would prefer to blame on chance. Denial of responsibility by power is the first gate toward the new hells awaiting citizens. Capitalism is today behaving like the Eschaton (the Antichrist), blocking the Second Coming.

The Apophatic Path

There is something spellbinding in the very history of the apophatic path, and in the philosophically rich tradition of the negation of negation. In many senses it is the implied versus dictated true relation to the Good and the True. Old fashioned terms, yes. These terms do appear and re-appear, however, across the arc of the modern and late-modern deployment of negation as structuralist-inspired critique of hegemony and ideology. Addi-

tionally, both late-modern theology and a-theology have resurrected and forwarded these terms, almost as if a world-historical process is at play — even though we have of late demoted the concept of the world-historical to the episteme (e.g., Foucault) and privileged immanence (otherwise known as eschatology) as radical option to overcome historicity. We are safe within the folds of the a-theological language games — safe as modern intellectuals and mostly safe as post-Marxist theorists. We are safe as artists, and we are safe as academics and scholars. Theology without God is notably non-threatening. What we do not see is that very absence as the premise for our own existence. The ban, the secret, etc. covers this key hyperbolic component of the apophatic path to knowledge. Yet immanence, radical or otherwise, will always play out against transcendence — and not merely rhetorically or in grammatical shifts across disciplines that speak of revolution but then retreat (or hold a conference). These terms, while dialectical according to rules of engagement for disciplines, become something else when actually lived. The existential torsion is emblematic. Immanence is transcendence, at times. Or, tautologically, it is what it is. And the transcendent, through negation of negation, may arrive temporally as "event." And "event" cancels any and all forms of archē-writing. The cancelation or negation of the archē is the event of affirmation that arrives through negation of negation. The effects are Christic (i.e., messianic in an absolutely non-ideological, non-sectarian, and transpersonal sense). Indeed, the negation of negation operative at the world-historical level would, according to perennial philosophy, produce "Christos" (e.g., the Kantian Kingdom of Ends, when all religion becomes internalized and highly moral). Yeats's poem "The Second Coming" *works* from this order — but veers off into horror. "The Second Coming" is the proposed return to the True and the Good. The horror is that the return is blocked. The return is the recovery. The horror is Apocalypse. Apocalypse in the present moment is capitalism refusing to pass away. The recovery, staged historically, is then meta-historical or trans-historical in application, and it plays out in extremis only under duress. Ethics and the

True and the Good are not merely transcendental or contingent terms. They are lived terms of Hegelian Spirit, which was (and is) always reducible to the collective history of citizens.[7]

7 See Gavin Keeney, "Epilogue: Neo-Hegelian Spirit," in Gavin Keeney, *Knowledge, Spirit, Law, Book 2: The Anti-capitalist Sublime* (punctum books, 2017), 119–37.

1

Ideational Franciscanism

Form-of-life + Life-work

> Until a new and coherent ontology of potentiality (beyond the steps that have been made in this direction by Spinoza, Schelling, Nietzsche, and Heidegger) has replaced the ontology founded on the primacy of actuality and its relation to potentiality, a political theory freed from the aporias of sovereignty remains unthinkable.
>
> — Giorgio Agamben[1]

Intellectual and artistic achievements are often a case of covering up an impoverished heart, though they need not be so. Perhaps this is also the reason why early Franciscanism (i.e., Franciscanism while Francis of Assisi was still around) discouraged bookish intentions and "scholarly disquisitions" in the manner of medieval scholastics.[2] Perhaps this is also the reason why the Franciscan Rule (form-of-life) went, over the course of a very few years, from fairly straightforward to florid and then to bare bones, ending with Francis more or less issuing a reduc-

1 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life,* trans. Daniel Heller-Roazen (Stanford University Press, 1998), 44.

2 Bonaventure would later correct this, if only to squelch the schism between the Conventuals and the Spirituals.

tion, on his deathbed, very close to the (in)famous Augustinian proclamation, "Love and do what you will."

Agamben's "aporias of sovereignty" suggest the holes in ideological posturing, through which one might drive a cart full of wares destined not for the markets but for else-where. His hoped-for "ontology of potentiality" without measure (ends) suggests the otherwise suggestive devolution of this-worldly justifications for forms of knowledge that might, under the right conditions, lead to this proverbial else-where. Yet grounding it in the expectation of a "political theory" seems ill-advised. The remnant that he often refers to in his theological and a-theological musings has little to do with socio-political intrigue; and his own position in constructing a response to the "primacy of actuality" seems often based upon far too many actualities in the form of historically determined impositions upon subjects from the empty centers of ideological posturing. His arguments reside in politico-theological territories already overwritten with juridical non-sense and devoid of actual form other than the imposition of empty gestures. That his recourse to Franciscanism sets up and then inverts a celebration of the impoverished heart (bare life) is significant. To his credit, he understands and assiduously maps the aporias of sovereignty, even if he ends up an uncharmed captive of biopolitics in the process.

If there is an elemental datum within ideational Franciscanism, is it also below all ideational prospects — i.e., buried within the very idea of thinking Franciscanism? Is it antecedent to any construction of Franciscanism as form-of-life? The very question suggests its antithesis — i.e., a definitive "No." If it is also an existentialist datum, then it subsists. It is there, but it is also "not of" the maneuvers associated with construction of ideational prospects. This may be the reason the schism between the Conventuals and the Spirituals could only be resolved by burning a few of the Spirituals at the stake, to make a point. When the Church was attempting to discipline the order and bring it into line with other mendicant orders more or less adopted by the Church (many of the more extreme movements of the late medieval period condemned and outlawed as heretical), the

eventual assimilation of the elective poverty of Franciscanism to the wealth of the Church struck many as absurd. The elemental datum then is not quite existentialist, mostly because it operates as a type of register through which some of the more abstruse aspects of Franciscanism are reconciled with the worldly aspirations of an order that seeks, despite its origins, to accommodate itself to the Church. Francis was the architect of this bargain with orthodoxy, even though he too was tempted by theological disquisitions, in his day, while more or less abandoning them as pointless after the event of Mount Alverno.[3] What he nonetheless never abandoned was the defense of the Eucharist, even if he had to accept that its administration was flawed. Perhaps that is the singular "set" that distinguishes the elemental datum needing examination, when and if Franciscanism is not only to be thought but also lived.

Form-of-life covers something. It does so with or without duplicity. What it covers might be called the elemental substrate, but it is more likely that the elemental substrate is a topological mirage — a figment of art-theological imagination and a form of gesturalism without actual address. As figment, it is not reducible to error, as such. As mirage, it is part and parcel of the visionary entelechy of works — form-of-life forming life-work only through the exegetical excesses of attempting to access a territoriality that is effectively other-worldly. It devolves easily. It is also corrupted endlessly. The devolution by corruption is the telltale reduction of means to ends, when the originary vision entailed "no end in sight." This signals the reduction of tutelary forms of art as form-of-life to the status of temporal "something" — i.e., the conversion to whatever means might

3 The major change following the event of Mount Alverno was that Francis more or less abandoned the earlier rules and ended his days with an extremely austere version that canceled many of the theological flourishes of the early and intermediate rules that addressed the form-of-life the Franciscans would *attempt to* abide by. See Gavin Keeney, "Montanism: Insurrection and Resurrection," in Gavin Keeney, *Not-I/Thou: The Other Subject of Art and Architecture* (Cambridge Scholars Publishing, 2014), 99–100.

pay dividends. Franciscanism, in its day, fell prey to a conflict of interests between "no rights" and "rights." The "No Rights" agenda was re-substantiated as right of use, not ownership. That the Church ended up owning what the Franciscans refused to own but used became the foundation for the schism between the Conventuals and the Spirituals. "Use" became an excuse for the acquisition of property (by gift) and the eventual settlement of a mendicant order in established and institutionally complex compounds. The Spirituals were conquered by the Conventuals. The elemental datum was not. It was ideational Franciscanism that survived. Arguably, ideational Franciscanism was the gift offered by Francis of Assisi, and it never actually needed the Church other than as temporal home for what needed to be protected from persecution.

Elemental Datum

The elemental datum in Franciscanism, once freed of orthodoxy (or prior to incorporation into orthodoxy), is an "ontology of potentiality." But it also resists spatialization. It subsists "within" ideational Franciscanism only in terms of its potentiality. It is a type of elective no-where that is also a some-where (and, as potentiality, an else-where). These linguistic gymnastics more than prove the point that most all speculation concerning transcendentals ends up stuck in language games that, in turn, sponsor the return to ground that intellectual and artistic endeavors somehow "naturally" seek. This return to ground is also what permits such works to be re-instrumentalized in service to wholly other means than those that may be said to have sponsored their appearance in the world.

A form-of-life for life-works is of this order. Far from being an evocation of so-called dangerous essentialism, such a construction of semaphores ("form-of-life" + "life-works") establishes the elemental datum that is also the point of departure for life-works. In terms of re-naturalization(s), the temptation is always to return to the marketplace of ideas to attempt to counter the prevailing biases that in most such cases prompted

the search for an escape route on behalf of life-works. The preternatural procedures of disclosure involved include the inassimilable conversations that occur across such works, between subjects and between subjective states. Nominal "subjects" incurred within the rites associated with the appearance of such works include author and life-work.

A proper aleatory return to ground would effectively engender an entirely new ecosystem for such works. This is also the path taken by past artistic and scholarly efforts at insurrection — i.e., at finding an escape route from systemic predation associated with broken or dysfunctional ecosystems constructed upon the architectures of proprietary measures for and toward exploitation of works. Yet, there is always the problem of being placed on the "back foot," for artists and for scholars — a position enforced by broken and dysfunctional orders that, up until a point, benefit from being broken and dysfunctional. The breaking point is most often the moment when the rules and laws associated with regimes of enforcement meet with internal entropy, and the edicts emanating from the empty centers become increasingly shrill siren calls.[4]

Re-naturalization need not take the form of re-accommodation. Re-naturalization may, instead, take the form of hiding in plain sight. The elemental datum haunting ideational Franciscanism suggests that whatever form-of-life is to be created for life-works, it must also — by default — constitute a new ecosystem for life-works. A "No Rights" agenda or idiom does not preclude an abiding interest in rights. Instead, it constitutes the renunciation of one set of rights in order to sponsor an alternative set of rights. That alternative set of rights includes protecting what has been renounced — e.g., by renouncing authorial privilege, and forms of editioning works that fall prey to predatory

4 One of the most well-known sequences of such avant-gardes past (i.e., in modernism) was, of course, Dada to Surrealism to Situationism. Each movement more or less grew out of its predecessor. In the case of these three insurrections, there was also an insistent anti-modernism involved insofar as Modernism as catechism had become a problem — e.g., an *ideological* problem.

Capital, artists and scholars simultaneously establish the means to no ends that protects works from spectral commodification by other means. Far from being circular, this argument is the critical threshold for the required form-of-life for life-works. Its attendant aleatory procedures will include proleptic scriptoria and proleptic collecting societies, or, approximations of the self-same. These will, in turn, be duly spectral in their own right and rite(s). They will contain the necessary gesturalism of the event of the work of artistic scholarship while eschewing formalization along the lines of proprietary scriptoria and collecting societies. For, in order to be able to position works and edition works, according to the precepts of ideational Franciscanism, it will be necessary to outmaneuver all incipient tendencies for devolution to and via stasis, and devolution to and via subjective states consistent with involuntary servitude to any and all self-serving measures re-constituted through the mechanisms of this-worldly endeavors.

"No Rights"

> Fare forward, travellers! not escaping from the past / Into different lives, or into any future; / You are not the same people who left that station […]
>
> — T.S. Eliot[5]

"No Rights" is not an antithetical set of rights, for authors or for works. Foremost, it is not the construction of an alternative set of rights for works that establishes a new datum for the commodification under other auspices of the use-value of works. In many respects, and exiting rationalist dialectics proper, it is the classic empty set: [ ]. But neither is it the mere negation of proprietary rights, as empty set. It is, instead, a proleptic void that establishes (as it has established in the past) a departure(s) gate for a new class of works denoted as life-works.

5 T.S. Eliot, *The Dry Salvages* (Faber and Faber, 1941), 12.

"No Rights" notably departs from any and all considerations of works and for ownership of works, while bracketing the very terms negated, and, through the aleatory means engendered for the editioning of such works, it enters into a type of dialogue with the experimental and dialogical terms of engagement life-works might have with other worlds and/or other sources for the impress (e.g., prior art) that comes to reside in works. This "impress," although generally only qualifiable through exercises in the post-rationalization of works (with such exercises the main event of art-historical and/or art-critical inquiry and exegesis), is, irreducibly, merely suggestive. As impress, it evades through its preternatural status, logical and linguistic categorization — just as it resists assimilation to forms of discourse analysis. Its evasion of and its resistance to categorization and assimilation is its main tenor as subtending chord for life-works.

The various strictures associated with the capitalization of works under the spell of Capital shift accordingly, with the times. While nuances often emerge in older thematics and appear to move the goalposts — i.e., across a spectrum of technically, legally, and intellectually or ideologically crafted fashions (such as non-fungible tokens, or NFTs, in the arts) — they never actually alter the ground upon which the games are fashioned or played out in the first place and in the long run. They tend to be ameliorations of the rules and laws versus the cancelation of the rules and laws. And they alter according to the spent premises and spent promises for the capitalization of works on behalf of Capital versus on behalf of authors and/or works. The shifts from Web 1.0 to Web 2.0 to Web 3.0 are perhaps the best examples in terms of late-capitalist games associated with platform cultures, with Web 3.0 claiming to correct the ravages of Web 2.0 by de-centralizing web-based production.

The analogy or metaphor of a departure(s) gate, insofar as it is a form of territoriality (incipient or full-blown and policed), is insufficient to fully characterize the null set that "No Rights" constitutes. If waiting at a departure(s) gate includes being between two states (between one jurisdiction or form of sovereignty and another, passport in hand), caught between two

legally defined places, the conceptual fold denoted "No Rights" can only be a departure as event for a type of conditionality versus territoriality, even if the sense of inhabiting it for subjects and for works (for authors and for works of artistic scholarship) implies a destination. Perhaps it is similar to Temporary Autonomous Zones,[6] an anarchistic state situated nonetheless within other sovereign states. To fully exit the territories conditioned by Capital's spell (a spell cast as a giant shadow across cultural production) will therefore require an internalizing state that might be best approximated through the term *stateless*. In this sense, then, "No Rights" is a type of white passport for exiles.[7] Where they might be welcome becomes the operative question.

There is also an uncanny sense that as null set, "No Rights" already exists. It need not actually be created so much as be redeemed or rediscovered. Where it is hiding becomes part of the aleatory processes of works produced through its charmed auspices. This appearance of a double spell at play considerably undermines the spell cast by Capital. For an alternative spell to be detected, en route to a land freed of the first spell, also suggests the Weberian judgment visited upon Capitalism — i.e., that it is actually a debauched religion.

If religions were to be considered works of art, whether pernicious, debauched, or liberatory, might then a Franciscan-inspired form-of-life for works of artistic scholarship permit something immemorial and an-archic to appear, something buried within the apparatuses of cultural production, for example, and something redeemable as signature for the event of artistic scholarship? Exiting the departure(s) gate of "No Rights" would then include the interiorizing presentiment (e.g., often the voice of works) required to foreclose on any re-instantiation of rules and laws associated with the commodification of works. A formerly formidable "artwork as religion in the making,"

6 Hakim Bey, *T.A.Z.: The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism* (Autonomedia, 1985).

7 White passports were more or less standard fare in Europe for political exiles from behind the Iron Curtain in the last days of the Cold War and effectively declared their owners "stateless."

now-historical Franciscanism might then be seen as only having parked itself within the Church, as temporal departure(s) gate for something highly and irreducibly a-temporal. Ideational Franciscanism might then be said to require no territoriality proper, and no singular place in which to formulate its apparent other-worldly (ad)ventures.

Ideation is not ideology, even though one may pose as the other — and often enough does so. If religion might be considered in its originating gestures as a work of art, does that then imply that orthodoxy retains the impress of the originating gestures of the work of art? Do sacraments contain that originating impress? Cannot religion become a case of ideological imposture? And, if the originating gestures of religions are artistic and profoundly an-archic, as rebellion, can art in its most consubstantial forms be liberatory as incipient religion? Did Francis of Assisi focus on the Eucharist in an intensely intuitional act of devotion to something that carried with it the "entire weight of the world"? And, if so (if "Yes"), which world?

Perhaps the last useful yet futile battles in art were fought between the formalists and the anti-formalists, in the early to mid-twentieth century — i.e., between the modernists and the anti-modernists. Their battles in many respects created what has come to be called the "artworld" (Arthur Danto's troubled term), with the compression of the term accomplished when the battles were well over.[8] Subsequent excursions into combat by the ideologues of modernism and post-modernism only ever played primarily optical tricks with terms and exchanged spirited volleys across a landscape marked by the pursuit of the artistic commodity, even when its antithesis was the claimed subject (more often object). Subjecthood for art conveys measures that crisscross markets. The empty claims of modernist autonomy,

8 Danto more or less established the term *artworld* to show "the confluence of artists, critics, gallerists, and — presumably — auction houses and hitherto unforeseen versions of the secondary market (including venture capitalists)." Gavin Keeney, *Knowledge, Spirit, Law, Book 2: The Anti-capitalist Sublime* (punctum books, 2017), 96n20. See also Arthur C. Danto, "The Artworld," *Journal of Philosophy* 61, no. 19 (1964): 571–84.

made by both conceptualists and formalists, and the counter-claims made by anti-formalists and surrealists or situationists, failed to escape the battlefield engendered by the formalizations of the art market (as artworld), which notably included critical exegesis and the quibbles that pass as art history. The critical insurrections fell, often upon their own swords, victims to the return of privilege and faux-sovereignty for the inhabitants of the world of art. Names superseded works. In this manner, the artworld worshipped the Name of the Father (as Big Other) as much as other such libidinal economies converted a Celestial Patriarch (nominally "God") to legalistic protectorate for forms of Capital.

In all such cases there is no actual religion, and there is only the pretense of art as rebellion. The tragedy is that the parameters at play mock what is absent — i.e., what ideology *as* ideology (ideology *qua* ideology) makes a travesty of. Thus returns the beauty of the (un)hoped-for departure(s) gate, often a comfortable lounge and at other times an austere and claustrophobic enclosure or aerie poised at the edge of worlds and reached by the very conveyance systems and apparatuses of authorial privilege (escalators, elevators, and people-movers) abandoned and forgotten once there. The white passport required is the as-yet-unwritten book, the as-yet-unpainted painting, or the as-yet-unformed event of exit and escape. The subtending ur-revolutionary premise is that all such works will "write" themselves and the passport holder (author) will merely act as steward for the event of the work of artistic "gift." The abomination of the Big Other (i.e., Mammon and its multiple disguises) will give way to something else — e.g., perhaps what is hidden in plain sight (the proverbial open secret).[9] Mirage may become reality — albeit an alternative reality bestowed with the multiple time-senses that haunt works of art and ur-revolutionary "religious" impulses. Ideational Franciscanism is a bellwether for

9 For example, the implied messianicity of works that break with all conventions.

such extravagances, ironically, through its apparent austerities. "No Rights" is its vocation.

While waiting in the departure(s) gates, an analogy as parody appears, care of Capital and per capita, reaching a type of jingoistic or Adornoistic impasse and existentially fraught *minima moralia.* Under the stars of Mammon, the Big Other becomes *Deus absconditus. Deus absconditus* then becomes Demiurge, and the entire fracas becomes a dark parable suggesting farce. Would this not also be the time to run for cover, such as for the Church? And what "obtains" if, instead, we remain in the open, vulnerable to the wolves and vultures circling in the shadows and skies of the Open? Is everything sayable under such skies a lie? Are we not where Mallarmé was when he challenged the unsayable to speak? And where is that, after all?

It is all a bit like trying to sort out the options for Utopia under Late Capitalism, when everything has been bought and sold so many times that there is nothing (i.e., no place) quite affordable any longer to provide a safe redoubt for the very idea of Utopia (other than, perhaps, an academic conference or yet another co-authored article on Utopia in a high-impact journal). Largesse under such malignant stars requires inventing the equivalent of the Big Other to safeguard the illusion of an escape route. The benefits rebound to the malignant model outlined by the absurdist fracas demoted to fantasy by law and power. The model is self-engendering and produces the appropriate phantasms at the appropriate moments. This is the illusory world of shadows and cryptic forms of doubt associable and attributable to Demiurge. Possible heresy invokes excommunication, or worse. Sacrificial victims abound under Late Capital, and they are legion under the duress inflicted by the collapse of the Big Lie. Fracas becomes diabolical parable and illusion becomes elective *joie de vivre.* As captive celebrants (abject and imprisoned subjects), we become subject to the waiting game of the departing flight, or we turn back. That, at the least, is how doubt inflicts serial composure in the face of farce. And yet, the waiting game is a very different form of turning back, perhaps the turning of the back on the entire edifice of the illusory pursuit

of the games and rewards associated with Mammon as master of artifice.

The apparent religion of art and the art of religion, as expressions of the creative spirit (versus mere *jouissance* or artistic license), have nothing much to do with such machinations, even if they sometimes register at that threshold of "daemonic position" (positionality *qua* conditionality) en route else-where. Is this not the place of erstwhile troubadour Francis of Assisi's songs to Sister Death (the Second Death), who is never to be feared?

Time Zones + Time-senses

Once in the air, intrepid travelers (authors) eventually cross time zones and time-senses. Far below, what once looked large then looks small. (What loomed large notably recedes.) What could not be seen suddenly becomes visible. Landscapes and horizons appear that once were occluded by proximity to particulars, via scale and via the edicts of conditionality imposed — e.g., high Romantic prospects such as the "floating mountains" of the Himalaya or Hindu Kush, or the mesmeric sea and house full of rain of Tarkovsky's *Solaris*. Crossing time zones, time-senses come into play through works that no longer belong to normative time-space. In a sense, they no longer make sense. Exit and flight produce a type of anamorphism that introduces what has been termed in post-contemporary arts and letters "agency" (spectral or otherwise), which then turns normative time-senses on their heads (to heel), inverting what had been inverted, doubling agency and doubling subjective states for life-works. The Levinasian Other (no longer formally hypostatized in systems as Big Other) also appears. Self now includes not-self, through Levinasian ethics versus Lacanian psychopathology.

The life-work contains, through its very construction in and through linguistic territoriality, the impress of a trajectory, even if that trajectory is illusory or *also* conditional. What lies hidden in the landscapes of life-works is the (im)possible (im)possible of linguistic gymnastics proper — but now a deconstructed

form of linguistic gymnastics. Language games give way nonetheless, under categorical duress, through the life-work. The author "stands" in awe astride two worlds, one receding and one approaching. Classic lines of flight produce the phantasmatic figures of speech and thought that haunt the arts and letters under such an elective duress. The history of the arts becomes a history of "flying out of this world" (of defying gravity), while what calls from the (im)possible (im)possible, per Simone Weil and others who have traversed such territories of speech and thought, is a very different, highly charged sensorial *gravitas* for works — i.e., *gravitas* versus mere gravity (the latter often reducible, for subjects, to entropy). *Deus absconditus* becomes Grace, the unhoped-for of post-phenomenology, which, for authors, then becomes the full acknowledgement of the gift of prior art (everything given) and the necessity of abandoning authorial privilege on behalf of life-works. This acknowledgement of the gift is also eminently translatable to an evocation of Benjaminian "Now-time," which cues and queues the extraordinary time-sense known as preposterous presentism in the arts and letters.[10]

Franciscanism + Rights

There is a battle (war) that is being waged; one that reaches backward, across history, and one that might be in certain ways antecedent to what we have come to call "history." It concerns ideational, yet lived precepts, which in some ways makes the battle irreducibly historical and a-historical, at once. For, if on the one hand such a clamor concedes ground in material terms, it is either illusory or it actually takes place immaterially — viz., its address in or across history through materiality eventually discloses its inherent metaphysical and/or theological condi-

10 Benjamin's "now-time" (*Jetztzeit*) was an eschatological irruption and signaled a form of revolutionary messianicity buried in time. The term occurs in his "Theses on the Philosophy of History" (written ca. 1940) and has Lurianic connotations. See Walter Benjamin, "Theses on the Philosophy of History," in Walter Benjamin, *Illuminations,* ed. Hannah Arendt, trans. Harry Zohn (Harcourt, Brace & World, 1968).

tionality as inescapable remainder. On the other hand, if the *battle royale* concedes ground on ideational terms, it is one of those fungible tokens of the Real that, out of a very this-worldly plenitude, requires constant re-negotiation to merely preserve any sense of serviceability to socio-cultural affairs. This possible double-bind tends to confirm that transcendentals or universals are never quite what they are made out to be by metaphysicians or moralists, and that there is good reason to err on the side of caution and treat transcendentals or universals as radically contingent affairs of individual consciousness. In this manner, the transcendental remainder becomes an existential remainder.

This war (battle) is currently played out as Capital's ongoing and historically determined attempt at the conquest or capture of knowledge, and its attendant wholesale monetization through unholy means. The campaign to commodify otherwise immaterial aspects of life itself (life proper) proceeds through intellectual property rights law and copyright. For authors it generally concerns: (1) bespoke ownership; (2) abject careerism; and (3) the worship of money. All three elements connote one form or another of the pursuit of personal power and privilege (whether enforced or not); and all three elements of the greater campaign, as orchestrated by Capital, are intertwined: they circle identity, more or less collapsing into recurrent problems of subjectivity (e.g., individual choice and its nightmares) when placed under duress. Capital pretends to protect individual rights (e.g., the rights of authors) while actually performing, through its command of intellectual property rights, direct and indirect acts of appropriation and theft. It is, nonetheless, the status of individual lives and collectivity that is at stake — viz., the *actual* relation of the individual to the collective (and vice versa) *is* the real battleground.

Water, mountain, and sky. The so-called peak of modernity (a type of socio-cultural mountain that emerged from the sea between the Renaissance and the Enlightenment) is, arguably, *when* both copyright and the moral rights of authors were inscribed in history, through an exacting, excruciating, and tortuous leveraging of both tangible and ethereal *corporeal* rights.

(Ethereal corporeal rights are, precisely, the equivalent of subjective states.) Yet above both copyright and moral rights is, and always has been, the sky. The sky, here, is a figure of the metaphysic of conditionality, of circumstance, a "behind which" and a "through which" social orders might emerge "below." Such a sky in poststructuralist nomenclature would be denoted /sky/: the sky itself. A type of "outside" to socio-cultural matters per se, this sky is also greatly contested by those very powers and interests who would prefer it to remain mythical (and of no real consequence).[11] To such interests there is also no outside (no transcendental anything). Everything is inside, imbricated, knotted, congealed, and entangled. Thickness prevails for very good reason. The thin is not quite as useful in concealing the games of co-optation. It is the new realism that always returns when the old romanticism has once again collapsed from exhaustion with battle.[12] The spatial metaphors are also conditions: they change in terms of relation, re-mixed ceaselessly, with each position or each station of the cross altering the terms of engagement for both the individual and for the collective. "Behind, through, and below" (as set) is, therefore, relative. Or, the inherent relativity of orders is nonetheless permeated by immemorial (nominally transcendental) concerns. Relativity is rendered relative.

Rousseau's social contract appears and then disappears. It was, after all, highly Romantic. Utilitarianism and Marxian critique appear, disappear, and re-appear. They are, paradoxically, riven *with* and *by* hidden transcendentals. And prior to "all of that," as if the perennial and preternatural "as if" cannot ever quite be erased, is the intellectually suspect terrain of prior art,

11 See, as an analogue, Hubert Damisch's superb privileging of the sky in painting: Hubert Damisch, *A Theory of /Cloud/: Toward a History of Painting,* trans. Janet Lloyd (Stanford University Press, 2002).

12 See Kwame Anthony Appiah, "Symphilosophizing in Jena," *New York Review of Books* 69, no. 16 (2022): 29–32, a review of Andrea Wulf, *Magnificent Rebels: The First Romantics and the Invention of the Self* (Knopf, 2022), and Peter Neumann, *Jena 1800: The Republic of Free Spirits,* trans. Shelley Frisch (Farrar, Straus and Giroux, 2022).

which is only suspect because it is submerged (subsumed) by forces relative to the emergence of the mountain from the sea and the serial conquests of Capital in the name of Capital.

Thus Franciscanism, plus the many other mendicant orders that emerged in the late medieval period in the West. Thus, too, the transitional storm of such semi-heretical orders that emerged at a time when the real emergence of Capital can be detected in games and wars associated with the consolidation of wealth and power.[13] And thus Renaissance humanism, and its attempt to square the circle, by drawing forward proverbial archives of history — systems repressed, lost and/or forgotten (e.g., Hermeticism), while below and above it all, the sea and the sky.

The abdication of the right to the ownership of property is the great Franciscan gift, *ne plus ultra* — yet only to recover and re-discover other repressed, lost and/or forgotten rights. What are these other repressed, lost and/or forgotten rights? Is not one such set of rights reclaimed *by and through* the abdication of the ownership of private property — i.e., collective rights? And is not the expressive plurality of this term (*collective rights*) also ultra-indicative of the overturned applecart of individual rights and prerogatives, and not merely a convenient antithesis to be erased through subsequent synthesis? Paradoxically, this reclamation or affirmation of collective rights requires an absolute and inviolable form of individual liberty, but without the angst associated with the pursuit of personal and private advantage. The rite of passage, in an ethical and non-moralistic manner of

13 The emergence of these austere orders, as antithesis to (or in tension with) the emergence of Renaissance humanism, may be detected in various readings of the emergence of modernism and capitalism, e.g., in Karl Marx, via the emergence of global trade and mercantilism; in Antonio Gramsci, through the problems of a middle class that wavered politically depending on where the spoils might be found; and in Michael Baxandall, as reaction to the supposed benevolence of the newly monied classes ("dancing merchant savants"), who more or less enslaved the poor while funding spectacle.

speaking, is absolute freedom of choice.[14] To "turn and to leave," if one so wishes. To turn one's back on what is no longer of value or interest, or never *was* of value or interest. To abandon the clamor for privileges that are hollow and mostly chimerical anyway. To walk the path by becoming the path.

This point of departure also signals what appears to be "new" in cultural and in knowledge systems. The appearance of the new is almost always driven by lived experience or existential passages, and what is claimed to be new is actually only *nearly new* in the sense that it contains prior art (prior lived experience and prior existential passages, in the latter case, for authors and for works).[15] The erasure of the past is a long-standing game in

14 In High Romanticism, see Fichte and Stirner. See also Marx's rhetorical and ideological battles with both Stirner and Feuerbach. See Appiah, "Symphilosophizing in Jena," for a summary of Fichte's unique position regarding subjective states and their relationship to worlds. "When did things turn Romantic? In one version of the story, the crucial addition was the philosopher Johann Gottlieb Fichte, perhaps the greatest of the German idealists […]. Fichte's grand project was a systematic account of human knowledge, what he called *Wissenschaftslehre* […]. For Fichte, everything started with a transcendental, freely self-positing Ich, or 'I' — taking the 'I' more as an activity than an entity — which in turn posited a 'Not-I,' the limited physical world, which provided a check on the activities of that I" (ibid., 29). "The question arises, then, of whether the crucial fuel for Romanticism was Fichte's *Ich* or [Friedrich] Schelling's *Natur* — whether the crucial move was the centering or the decentering of the self" (ibid., 30). In the case of Schelling (who arrived in Jena in 1798, four years after Fichte), Fichte's *Wissenschaftslehre* was countered by a system denoted *Naturphilosophie*. "To paint in the broadest of strokes, Fichte wanted to show how the mind generated the natural world; Schelling wanted to show how the natural world generated the mind" (ibid.). Regarding Stirner as Marx's *bête noire,* see Jacques Derrida, *Archive Fever: A Freudian Impression,* trans. Eric Prenowitz (University of Chicago Press, 1995). Regarding Feuerbach, see Karl Marx, "Theses on Feuerbach" (1888), written in 1845. Generally speaking, the time of Early Marx is also the time of the Young Hegelians, most of whom Marx would later break with in pursuit of dialectical materialism and a full-blown critique of Capital.

15 Jena ca. 1800 is an excellent example of how a convergence of forces produces collectivist-based works that are then spun off as bespoke, "authorized" works (i.e., collectively produced works that are published or commodified as singular works assembled under the name of an "author"). "The cult of individuality was born amid a melding of minds. Meldings

the claims of the new. In the construction of intellectual and other forms of property it is more or less axiomatic that the algorithms contain prior art, hidden or otherwise.

Authorial Absence(s)

> For some scholars the mural cycle depicting the legend of St. Francis in the Upper Church of San Francesco [of Assisi] is the crucial accomplishment of Giotto's early career; for others the cycle has no direct connection with the master. Despite the often ingenious and informed arguments on both sides

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must be preceded by meetings, of course, and the meetings took place in Jena, a university town in the German duchy of Saxe-Weimar with a population of 4,500 or so. If Jena was small, the minds gathered there in the last years of the eighteenth century were large, and included the most consequential poets, critics, and philosophers of the era. The sparks they threw out electrified the world" (ibid., 29). See Wulf, *Magnificent Rebels,* for the reasons why Jena became a center for such a "meeting" of minds. The primary force-field was Johann Wolfgang von Goethe, who also had considerable influence in making university appointments in Jena, as a "cherished advisor to the Duke of Saxe-Weimar" (ibid.). Notably, Jena's university "fell under the governance of four different Saxon dukes, which impeded orderly, top-down rule and allowed its faculty a fair amount of freedom" (ibid.). In accordance with this highly temporal confluence of interests, the two long shadows falling across Jena and High Romanticism ca. 1800 were known as "Napoleon" and "Hegel" and both would upend the "school" — Hegel by outmaneuvering Fichte in terms of constructing a philosophical system, and Napoleon through the sacking of Jena. As Wulf writes, "Hegel decamped from Jena in early 1807 [prior to the appearance of his *Phenomenology of Spirit*…]. Already Jena was known less as a hive of high theory than as the site of a battle a few months earlier in which Napoleon's army overwhelmed a last-ditch effort by Prussian and Saxon forces to fend it off. The fact that the town's intellectuals were mainly supporters of Napoleon — Hegel saw him as a 'world soul,' scrubbing away the vestiges of feudalism and expanding human freedom — didn't stop the emperor's soldiers from pillaging their residences or using their books for kindling […] Jena Romanticism had seen its day" (ibid., 32).

> of the question, the authorship and dating of this work elude consensus.
>
> — Andrew Ladis[16]

The various positions in favor of Giotto's actual versus virtual presence (by influence, etc.) at the Upper Church at Assisi rely primarily upon conventions of the day (i.e., the retrospective gaze of art history across five centuries) concerning authorial presence(s) — viz., identifiable "names" attached to bespoke works (fresco cycles and altars pieces included). Whether Giotto had a hand in the paintings at Assisi attributed to him since at least the Renaissance remains uncertain, insofar as the stylistic and iconographic analyses applied by art historians tend to require that the majesty of the Arena Chapel (1304–1306) in Padua, his first acknowledged "mature" work, is not matched by the somewhat uneven qualities of the fresco cycle at the Upper Church at Assisi (1296–1304, according to Vasari, but later or much later according to others). The simultaneity of the two projects holds the higher ground, in the structuralist sense, insofar as if Giotto was working at Padua and that work was leak-

16 Andrew Ladis, "Introduction," in Andrew Ladis, ed., *Franciscanism, the Papacy, and Art in the Age of Giotto* (Garland, 1998), xi. Vol. 4 in Andrew Ladis, ed., *Giotto and the World of Early Italian Art: An Anthology of Literature,* 4 vols. (Garland, 1998); with reference to problems of classification, workshop practices, narrativity, and social and artistic context. The *battle royale* regarding Giotto and the identity of The St. Francis Master, otherwise known as "the Assisi problem," began in earnest with a 1937 exhibition in Florence, Italy. See Richard Offner, "Giotto, Non-Giotto," in Ladis, ed., *Franciscanism, the Papacy, and Art in the Age of Giotto,* 33–42, and "Giotto, Non-Giotto — II," in ibid., 43–52. Modern claims for the attribution of the Upper Church cycle to Giotto rest upon the authority of Riccobaldo da Farara, and a chronicle running from ca. 1305 to 1313, which claims Giotto painted in "Ecclesiis Minorum Assisi"; with reference to Ghiberti speaking of the two churches as one (ca. 1450), conferring some ambiguity as to which frescoes at Assisi were by Giotto proper; literary scholarship, etc. (from Pius II and Vasari forward) assumes Giotto painted the Upper Church cycle. See Offner, "Giotto, Non-Giotto," 33n3. Vasari, in the second edition of the *Lives* (1568), dates the Upper Church cycle to 1296–1304. Offner, "Giotto, Non-Giotto," 33n3.

ing its way toward Assisi and influencing the artists engaged in the painting of *The Legend of Saint Francis,* many of the problems of attribution might be resolved.[17]

If the issues of narrativity and stylistics (including iconographic innovation) are set aside, the main question concerning who painted *The Legend of Saint Francis* at the Upper Church at Assisi tends to then circle issues of provenance (not quite reducible to date), yet in terms of multiple authorial presences (i.e., the presence of "workshops" or schools led by acknowledged masters, all no doubt watching each other closely from near or afar). "Social and artistic context," always in part red herring when discussing art, nonetheless also helps to establish a datum toward discerning "what" means are at hand to sort out "whose" hand was behind such decorative programs associated with the emergent leading orders of the Church of the times in question. Indeed, 1300 is a watershed. Earlier relatively poor mendicant orders have finally settled down, for the most part, and have also acquired wealth and privilege from the papacy in concert with local magnates (the emergent merchant classes as much as the old aristocracy).[18] This is also why Marx and Gramsci often

17 See, for example, John White, "The Date of 'The Legend of St. Francis' at Assisi," in Ladis, ed., *Franciscanism, the Papacy, and Art in the Age of Giotto,* 70–77. White favors 1307 (at the latest) for the Upper Church cycle; analysis rests upon a study of the stigmatization of Saint Francis across works by Giotto and others (e.g., Giuliano da Rimini) and alterations in the depiction of the seraphic Christ (the six-winged angel) and Francis, plus presence or absence of the emanation (rays), disposition of the cross, position of the angel's wings, etc., and he includes Giotto's depiction of the stigmatization at the Bardi Chapel, Santa Croce, Florence as the "most important and most original version of the subject" (ibid., 73). Da Rimini's altarpiece, now at the Gardner Museum (Boston, Massachusetts), is utilized as primary factor in the claim for 1307, i.e., as the latest date possible, if the Upper Church stigmatization influenced the altarpiece by da Rimini ("signed and dated 1307"). This would help with the date, but not necessarily the attribution (i.e., it is always possible that the *Bardi fresco* influenced both the Upper Church fresco and the altarpiece).

18 See Julia Isabel Miller, *From Giotto to Botticelli: The Artistic Patronage of the Humiliati in Florence* (Pennsylvania State University Press, 2015). The Humiliati entered Florence in 1239 and built the Chiesa di Ognissanti in the 1250s. Their wealth came primarily from cloth-making, but they also

reached back into the late medieval and early Renaissance to discern the origin of many of the socio-economic plagues of the nineteenth and twentieth centuries — patronage and hegemony going hand-in-hand.

The problem of the St. Cecilia Master at Assisi seems to introduce an escape route, whether he was subservient to Giotto, or whether Giotto was "never there" and the St. Cecilia Master is the resident genius organizing the cycle and then handing it off to his workshop (inclusive of the St. Francis Master). Here we have two or more hands involved, with one or the other of the acknowledged masters taking the lead. Alastair Smart's two "prejudices," as blind spots for scholars of either persuasion (pro Giotto attribution or contra), circle and/or *enscribe* and thereby

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became landowners and served as tax collectors for the state as of ca. 1259. Julia Isabel Miller, "The Origins of the Humiliati and their Early History in Florence," in ibid., 19–20. The year 1300 marked the peak of their prosperity, influence, and engagement in political intrigue. This high point also coincides with the appearance of Humiliati art and as they begin to disengage from manual labor while reaping large sums from rent paid on urban and rural land holdings. Julia Isabel Miller, "The Beginnings of Humiliati Art in Florence," in ibid., 25. This is not unique to Florence ca. 1300. Expensive altar pieces begin to appear ca. 1300–1310 in various churches (e.g., Pistoia and Pisa) and the lavish expenses at Ognissanti mirror those of other mendicant-controlled churches. Giotto painted *Ognissanti Madonna* ca. 1310, i.e., at the peak of his renown. The Humiliati bought the artist as much as the artwork. The order emerged in north Italy in the late twelfth century, from dissident roots, as did many other such orders of the time. The early Humiliati were lay men and women from all walks of life, e.g., scholars, nobility, and the working poor (Miller, "The Origins of the Humiliati," 10). They were influenced by the Cistercians and accused of heresy by Pope Lucius III in 1184. This was the period when north Italy and especially Milan was considered a hotbed of heretics, inclusive of Waldensians and Cathars. The new religious groups were an expression of reaction against the abuses of the church hierarchy of the time. With the accession of Innocent III, many of the new orders were officially recognized and incorporated into the Church. This included the Franciscans and the Dominicans. The Humiliati were recognized in 1201. Heresy in most cases involved unauthorized preaching, foremost on theological matters. Many of the orders remained true to their humble origins, however, while others became wealthy and politically engaged (Miller, "The Origins of the Humiliati," 9–11).

provide a temporal halo to the primary concern that the cycle should have, *for whatever reason and if at all possible,* a single author (despite the presence of assistants via "School" or workshop, and the likelihood of a then-modern version of prior art, otherwise known as emulation and/or authorial homage).[19] The additional problem of works by the Isaac Master (i.e., precursor works at Assisi to *The Legend*) further roils the waters; for if he is also Giotto (as some wish to think), then the later Up-

19 Alastair Smart, "The St. Cecilia Master and his School at Assisi — I," in Ladis, *Franciscanism, the Papacy, and Art in the Age of Giotto,* 107–15, and Alastair Smart, "The St. Cecilia Master and his School at Assisi — II," in ibid., 116–22. "All these comparisons [arguments] contain the problem of the authorship of the Assisi frescoes in a nutshell; for it is impossible to conceive of the figures painted by the St. Francis Master [Giotto or Not-Giotto] as the prototypes of those of the St. Cecilia Master [Giotto's successor or not]: but to accept them as clumsy derivatives from an extremely personal idiom which exists unvaried in the Uffizi panel [St. Cecilia and eight stories from her life; see ibid., 107n4] and in the *S. Margherita* panel at Montici [both presumed to be works of the St. Cecilia Master] is quite another matter. The St. Cecilia Master appears in the Upper Church as a mature artist whose style is formed, and the serene beauty of his art invests his frescoes at Assisi with a quality which the other scenes but dimly reflect. All the more absurd to think of this great artist as the inferior continuer of 'Giotto's' masterwork!" (Smart, "The St. Cecilia Master and his School at Assisi — I," 115). See Richard Offner, "The School of the Santa Cecilia Master," in *A Critical and Historical Corpus of Florentine Painting: The Fourteenth Century,* ed. Richard Offner, sec. III, vol. I (The Institute of Fine Arts, New York University, 1931), xixff, 24ff. Thus, the St. Cecilia Master gets the same "get out of jail free card" as Giotto does, i.e., the larger corpus is not from his hand because it diverges from "the hand" art historians privilege as "his." Artistic presence, in such cases, eliminates any works not consistent with that defined by the authors of the canonical qualities of that specific instance of artistic presence; it is unclear if Smart is suggesting that the St. Cecilia Master had nothing to do with the "middle section" of the cycle; the nod to "serenity" again is a coded term denoting unrepentant connoisseurship (of the Berenson type), while at the same time it is a painterly quality or typology that carries a religious aura and its presence in the chapels of wealthy patrons would not be unexpected. Smart does, nonetheless, accept the work of the St. Francis Master as "clumsy derivations" by an apprentice painter (school of whomever) and probably influenced by both Giotto's Arena Chapel and the earlier works at Assisi by the Isaac Master (perhaps also Giotto).

per Church cycle begins to take on an eerie and preternatural aura wherein, across however many years, Giotto is becoming the "first modernist."[20] This argument betrays all of the art-historical biases for (1) authorial presence, and (2) art-teleological sweep (vouchsafing the entire apparatus of Renaissance literary historiography in the process). The fact that much of the earliest *art-historical* argumentation for attribution of *The Legend* to Giotto originates in the Renaissance (Vasari, Billi, et al.) suggests that multiple authorial presences are, indeed, being supplanted by a very early version of *authorial privilege* via censorial fiat.[21] The artistic exception is also the myth of artistic genius.…Benevolent Florence under the dictatorship of the Medici is also, therefore, secure in the annals of art-historical whitewash.

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20 See Millard Meiss, "Excerpt from *Giotto and Assisi,"* in Ladis, *Franciscanism, the Papacy, and Art in the Age of Giotto,* 79–106, first published in Millard Meiss, *Giotto and Assisi* (New York University Press, 1960), 1–28. The problem of "The Isaac Master" concerns questions regarding earlier frescoes in the Upper Church often attributed to Giotto (see Meiss, "Excerpt from *Giotto and Assisi,"* 89–103), and the apparent "modernity" invoked in these paintings, with aspects of earlier art transposed (inclusive of Cavallini and Cimabue). The Isaac scenes are earlier than *The Legend* (Upper Church proper), and could be the work by Giotto conducted "in the church of S. Francesco at Assisi" as mentioned by da Ferrara's chronicle, plus confirmation that Giotto actually got his *start* at S. Francesco, Assisi (see Antonio Billi, 1510), ibid., 102. The main event is the intensification of glances, which then is said to have influenced the St. Francis Master's work in *The Legend.* The Isaac paintings include: *Pentecost, Ascension,* both on the entrance wall; *Lamentation* and *Resurrection,* on the south wall of the first or entrance bay; two scenes of Joseph in the first bay and two scenes of Isaac in the second bay, on either side of the window; and the Four Doctors of the Church, in the vault over the first bay. Ibid., 89.

21 According to Billi (ca. 1510), Giotto's works progressed in the following order: Giotto and Assisi; *then* Rimini, *then* Padua. Smart, "The St. Cecilia Master and his School at Assisi — II," 121, with reference to C. Frey, ed., *Il Libro di Antonio Billi* (G. Grote, 1892), 6. Thus, according to Smart, the Isaac Master may well be Early Giotto (working under the influence of Cimabue at Assisi on the biblical series; i.e., thirty-four large frescoes). "If these conclusions are correct, Giotto would probably have worked on his Assisi frescoes about 1297–1299," i.e., when he was roughly twenty years old. Ten years later came the Arena Chapel. Smart, "The St. Cecilia Master and his School at Assisi — II," 121–22.

The modernist naysayers (Rintelen at al., 1912–1939), in particular, seem to want to push the entire argument down the road by a few decades to escape the orbit of the Arena Chapel and similar works of the early 1300s that are considered Giotto's crowning achievements — i.e., when he emerged as a renowned "master."[22] This frees them from having to deal with multiple authorial presences. This also (sort of) sets up the valorization of the Assisi cycle as a "modernist" breakthrough, for whomever painted it. What is botched according to some, is a breakthrough according to others. One version of this reads: serenity is eclipsed by anxiety. This "leap" primarily takes place in the eyes and in the faces of the protagonists of the various tales (legends) portrayed. The shift is unnerving, and if it is Giotto, it is Giotto being Not-Giotto. That is part of the immense swerve or arc of judgements passed in this longstanding, art-historical argument. That there is also an "Italians against the Americans" game being played out (with the American obsession with Florence representing a very peculiar example of sleight of art-historical hand), tends to underscore a faint remainder of con-

22 The modern version of the attribution problem: It is the fruit of Friedrich Rintelen and Richard Offner (Meiss, "Excerpt from *Giotto and Assisi*," 80). Rintelen claims that "the frescoes were painted after the Arena Chapel, anywhere up to 1320 or even 1350" (ibid., 81); that the Bardi Chapel was "broad and serene" compared to the Arena Chapel; and that Venetian touches were evident "through luminous cloth and the purplish-brown flesh of the blackamoors beneath shining white turbans" (ibid., 87, with reference to *St. Francis before the Sultan*). Further, "Such qualities are announced, however, in the frescoes in the Arena Chapel [1304–1306], and the Bardi frescoes [1325–1328] remain indissociable from them" (ibid.). There is a possibility of lacunae (missing intermediate paintings), and a suggestion of "modernist" tendencies to justify shifts from Arena Chapel forward to Upper Church — viz., if the Arena Chapel and the Bardi Chapel bracket Giotto's "mature" work, the Assisi cycle would not fit into this period with its distinctive (disjunctive, discordant) anomalies. The scandal according to Smart was that attribution to Giotto was first seriously challenged at "the beginning of the nineteenth century" (Smart, "The St. Cecilia Master and his School at Assisi — I," 107). See also ibid., 107n2, for a "who's who" of scholars in support of attribution, and ibid., 107n1, for scholars opposed, including the earliest (e.g., K. Witte, 1821, C.F. von Rumohr, 1827, and Rintelen et al., 1912–1939).

noisseurship at war with modern art criticism via iconographic and iconological forensics — the latter also marked with streaks of structuralist critique and, in rare cases, Gramscian and Marxian forms of early deconstruction. The more radical positions tend to be those that want to wish away the artistic exception entirely, tracking its dubious origins to the Enlightenment and/or to the Renaissance. Some scholars say it cannot be both; choose one or the other. But actually, it can be both — and it most likely *is* both, primarily because the artistic exception is one of those metaphysically charged affairs that registers non-rationally and semi-ahistorically across epochs and only gets named, when it touches ground, such that it can become a socio-political or socio-economic weapon. It is rarely used as a bludgeon, though it has come close, such as in pre-Revolution France; i.e., in the last years of the French monarchy, when it was played every which way to either protect monopolies (publishing houses and booksellers) or serve as de facto means of royal censorship. To find this same problem quite literally *in situ* at Assisi is a marvel to behold. The fresco cycle begs far larger questions than who painted it.

Where does "Franciscanism" enter into this picture of "the Assisi problem"? Is it perhaps to be found in the expressive gesturalism, including the invention of new iconographic conventions (e.g., the stigmatization scenes of Giotto and their subsequent influence on other painters)? It would be hard to accept simple narrativity or that halo of serenity extolled for centuries, for any artist could undertake that to greater or lesser effect. Why Giotto is considered a Franciscan painter (along with Cimabue, and later, El Greco) must have a greater depth and breadth to it, as argument, if it is to escape the usual stylistic, iconographic, and otherwise art-historical biases of the analysis versus the reading of art. Much of the analysis often seems Freudian, with the artwork on the couch. The required reading of the work cuts against such a bias, sometimes sundering preconceptions in the process. Rather than looking back, and analyzing symptoms, a reading in search of the author would address the agency of the work. The agency of the work would

include the so-called struggle of the author, but it would not be reducible to a simple matheme of an art-historical genre inclusive of "name" and "date." Both name and date would be antecedent to any such reading, anyway. Best to dispense with "all of that" and enter into the work's generative mysterium — its actual *iterativity* serving as icon, serene or otherwise.

The issues regarding Giotto and Franciscanism seem to be less about "content" (narrative) than "style" (expression).[23] And it all leads to El Greco, who passed through Venice en route to Spain. El Greco probably picked up some clues from Venice, which affected his own manner of painting. There's something

23 There is, indeed, something to be said for the shift in intensity of gaze that occurs with the Isaac Master and then with the St. Francis Master. See Smart, "The St. Cecilia Master and his School at Assisi — I," for a comparison of "heads and eyes by the St. Cecilia Master and the St. Francis Master" (ibid.; see also 109, figs. 27–34). Smart uses these differences to demote the quality of work by the latter and make him an inept apprentice of the former. In this case, the intensity of the gaze has a negative reading; whereas if the St. Francis Master was influenced by the Isaac Master (possibly Giotto), he was not so much the tool of the St. Cecilia Master that Smart wants to make him. Yet Smart hedges his bets: the St. Francis Master was working within the orbit of the St. Cecilia Master, but "gravitating" towards the "orbit of Giotto." Or, Giotto is directly influencing the St. Cecilia Master (who is then influencing the St. Francis Master). See R. van Marle, *The Development of the Italian Schools of Painting,* vol. 3 (Martin Nijhoff, 1923); Smart, "The St. Cecilia Master and his School at Assisi — II," 120, 120n7; and also Offner, *A Critical and Historical Corpus of Florentine Painting,* xxiv–xxv. "Everything points to the probability that work on *The Legend of St. Francis* at Assisi was proceeding at exactly the same time that Giotto was decorating the Arena Chapel [1304–1306]; and there are a number of indications that Giotto's work at Padua was known at Assisi and that certain elements were taken over from it and incorporated in the St. Francis cycle." Smart, "The St. Cecilia Master and his School at Assisi — II," 120, with reference to Giotto's *Entry into Jerusalem,* at Padua (i.e., the Arena Chapel), and *St. Francis Mourned by St. Clare,* at Assisi (i.e., Upper Church, "Scene Twenty-three") (see 119, figs. 26 and 23, respectively). Both paintings notably include "boy climbing a tree" (a motif with a long pedigree in Christian art), but in more or less the exact same place in the paintings (in terms of the relationship of background to the primary activity or narrative content of the foreground), plus in disposition (back turned, right arm extended). See M.R. Fisher, "Assisi, Padua, and the Boy in the Tree," *The Art Bulletin* XXXVIII (1956): 47 ff.

here that eludes direct capture (perception). The arguments about who painted *The Legend of Saint Francis* at Assisi do have a role to play though, because whoever painted them was influenced by what came before (Cimabue and the Isaac Master) and what came after or at the same time (Giotto and the Arena Chapel). This telltale dislocation of specificity (before, after, the same time) acts to destabilize the sought-after "hand," which then begs the date and signature that would become the very mark of authorial presence. The slippage is telltale because it actually verifies the presence of multiple hands, and signals the approach of the leaking boat that art-historical narrativity eventually became with the need to prove points and score victories. The victory here is that Giotto sits at a threshold, mostly unperturbed. The construction of artistic identity in the modern sense has not quite taken root, or it has only registered in vague ways in the annals and histories of the time as recorded by chroniclers working for dynasties. What is missing is not the hand so much as the operative mystery of the agency of the work in/for itself. That Hegelian remainder is what truly reveals the "provenance" of works, insofar as it also lets works speak for themselves through the enhanced generative gesturalism of the passing moment and its analogues in versions or variations of a time-space continuum built expressly for the arts.

The reason why Cimabue, Giotto, and El Greco are considered Franciscan artists must, therefore, have much more to do with "internalizing reasons" than anything strictly iconographical or art-historically determined. Art-historical determinism is not that much different than socio-economic determinism — e.g., placing art in the basket of forces that determine an age and making it subservient to other interests. The dancing merchant savants of Michael Baxandall do, however, explain many of the origins of Renaissance patronage, and the mercantile mischief or malfeasance of Marx's signature analysis of Renaissance political economy explains how much of the art of the period was actually produced at a time when great wealth was being generated via newly expansive urban centers, through manufacturing and through globalizing trade. Yet these tenets disclose only

the substrata of an order of "depiction." The crosscurrents that produced Franciscan art are of another order. Surely, they are strata in a type of distant versus near sky that is distinctly ideational versus ideological. That distinction suggests that what is common to Cimabue, Giotto, and El Greco is a sub-liminal trajectory. If so, a developmental edge will be evident within the crosscurrents as an emergent subtending chord for works. On the surface all other idioms play out, including iconography. It is exceedingly strange, then, that the older connoisseurship of art-historical gamesmanship has been pilloried and dismissed by modernist art and cultural historians. Figures such as Bernard Berenson sensed something the Annales School could never accept. What was it? His reading of "tactile values" in Giotto's *Ognissanti Madonna* (ca. 1310), plus its sculptural character, begins an approach to this masterpiece that leaves off where most art history has drawn a red line.[24]

24 Miller, "The Beginnings of Humiliati Art in Florence," 27.

2

The Impoverishment of Works

Cimabue + Bonaventure

Cimabue and Bonaventure may be said to have collaborated on the construction and consolidation of the Franciscan legend in the late 1200s, prior to the arrival on the scene of Giotto. A summary of key dates includes: the death of Francis in 1226; the laying of the foundation stone for the basilica at Assisi in 1228; the transfer of Francis's remains to the church at Assisi in 1230; the papal bull *Quo elongati,* issued in 1230, and elaborated upon in 1245; the completion of the structure of the basilica at Assisi in 1253; Bonaventure's role as Minister General of the Order, from 1257 until his death in 1274; the Narbonne Chapter meeting in 1260, at which rules for the building and the decoration of Franciscan churches were first established; and Cimabue's frescoes at the basilica in Assisi, dated by art historians to ca. 1277–1280.[1] This period notably included the schism within the Order between Conventuals and Spirituals, the latter objecting

1 See Holly Flora, "Introduction: Intersecting Histories," in Holly Flora, *Cimabue and the Franciscans* (Harvey Miller/Brepols, 2018), 7–23. Flora establishes Cimabue as the "evolutionary link between the traditionally conceived 'Middle Ages' and 'Renaissance'," with reference to "Vasari and others" and Cimabue's relationship to Giotto, plus his penchant for the revival (*renovatio*) of "Greek and Roman visual forms and a new interest in naturalism born in Florence in the late thirteenth century" (ibid., 7).

to the rapid expansion of the order and its increasing wealth and involvement in the Church hierarchy.[2]

Thus, from 1226 to 1280 the corporate identity of the Franciscans was created by both the Church and the Order, with Bonaventure (ca. 1217–1274) and Cimabue (ca. 1240–1302) working hand in hand in the early 1270s to create the legend and establish the principal "visual decorum" for the observation of Franciscan rites. The Church led the way with defining the terms of engagement and by establishing what can only be called an ideological program that included the basilica at Assisi.[3] "Francis himself" was thus duly buried, both *literally and figuratively,* in the

2 See ibid., 15–16, with reference to David Burr, *The Spiritual Franciscans: From Protest to Persecution in the Century after St. Francis* (Pennsylvania State University Press, 2001), 43–66, and "the conflicts within the Order at the time of Cimabue's work for the Franciscans" (Flora, "Introduction," 16n47). This conflict extended beyond the order itself, with the Franciscans under attack for both the vow of poverty and the acquisition of wealth via proxy; i.e., in the latter case, through the creation of proctors (intermediaries), both within the Church and within the Order, and "appointed by the Holy See or the cardinal protector of the Order" (ibid., 15). The Order had grown quite extensive by the mid-thirteenth century, becoming "a large international religious and political machine, with members playing key roles in the universities and in Church hierarchies" (ibid.). Regarding proctors, see Louise Bourdua, *The Franciscans and Art Patronage in Late Medieval Italy* (Cambridge University Press, 2004), 19–20, and regarding the exponential growth of the Order, John Moorman, *A History of the Franciscan Order from its Origins to the Year 1517* (Oxford University Press, 1968), 123–39. It was the papal bull *Quo elongati* of 1230 that permitted the Franciscans the use but not ownership of property. *Quo elongati* was issued by Pope Gregory IX. It was followed by Pope Innocent IV's proclamation of 1245, which clarified Church possession of all property used by the Franciscans.

3 This re-branding program has been deemed propaganda by some historians. See, for example, Dieter Blume, *Wandmalerei als Ordenspropaganda: Bildprogramme im Chorberich franziskanischer Konvente Italiens bis zur Mitte des 14. Jahrhunderts* (Auflage, 1983). This "new history of Francis" and of the Order closely followed the development of the Franciscan liturgy. Yet it is also cited as one of the chief means by which Bonaventure sought to defuse tensions within the order. See Bonaventure, *St. Bonaventure's Writings Concerning the Franciscan Order,* ed. and trans. Dominic Monti (Franciscan Institute/St. Bonaventure University, 1994). Regarding the Narbonne constitutions and statutes, see ibid., 71–144. For a commen-

church at Assisi. Bonaventure, as Minister General, wrote the catechism, which included the official biography of Francis (a classic hagiography) and other key texts defining the Franciscan worldview, inclusive of a major emphasis on the Christic aspects of Francis' life and life-work.[4] These became the subject of "de-

tary on Narbonne, see Bourdua, *The Franciscans and Art Patronage in Late Medieval Italy,* 23–24.

4 *Legenda maior, Itinerarium mentis in Deum* and *Apologia pauperum. Itinerarium mentis in Deum* was based on Augustine's *De Genesi ad literaram* and signals the Franciscan default position to Augustinianism in intellectual and/or theological disputes. *Itinerarium mentis in Deum* focused on affective devotional practices and would inform iconographic issues in the decorative programs of Franciscan churches. See Holly Flora, *Devout Belief of the Imagination: The Paris Meditationes Vitae Christi and Female Franciscan Spirituality in Trecento Italy* (Brepols, 2009). Regarding Augustine's theories of vision, see Sixten Ringbom, "Devotional Images and Imaginative Devotions: Notes on the Place of Art in Late Medieval Private Piety," *Gazette des Beaux-Arts* 73 (1969): 162–63. In the Augustinian system, there are three primary steps: (1) corporeal vision; (2) mind's eye; and (3) intellectual vision (Flora, "Introduction," 18). Flora thus sees Cimabue's frescoes as requiring both the agency of the viewer and the agency of the works (or what she calls *somaesthetics*) in terms of the affective meditation they are meant to support. In Franciscanism, this affective meditation primarily turned upon the life of Christ, and often enough upon the life of Saint Francis, yet as a re-embodiment of the life of Christ (Flora, *Devout Belief of the Imagination*). Thus, ideational aspects in art are also quite often expansive or existentially charged affective regimes, whereas ideological or propagandistic aspects are quite often effectively reducible to iconographical and iconological regimes. In Franciscanism, the latter is the catechism that leads beyond the visual to a proverbial and generally indefinable "else-where." The recourse to Augustinianism by the Order was on full display in the debates between Bonaventure and Thomas Aquinas regarding Agent Intellect. See Gavin Keeney, "Agent Intellect and Black Zones," in Gavin Keeney, *Works for Works, Book 1: Useless Beauty* (punctum books, 2022), 167–82. The debate primarily concerned issues that might then be held in tension in representational fields through recourse to efficacy and translation of time-senses, with the Eternal and the transient demarcated through expressivity, as found in Cimabue and Giotto, in a generative and emergent sense, whereas conventional iconicity up until the late 1200s and early 1300s revolved around distanced reflection versus naturalism as (un)timely evocation of the "here and now" and the preposterous presentism of the modernist challenge to traditional iconicity and iconology. See David Summers, *The Judgment of Sense:*

piction" by Cimabue at Assisi, a process that also held "corporate" intent, insofar as he conferred with Church and Order in the creation of his frescoes and their relation to Bonaventure's rewrite of the Franciscan order's history, import, and relation to the Church Triumphant. Yet the mysterium buried there eludes capture. It exceeds all representational fields employed by Church and Order. The celebration of the Church Triumphant at Assisi was only its outward expression.

The idea that the Franciscans are, across the *lived expanse* of the thirteenth century, the true "harbingers" of the Renaissance rests upon arguments that the "groundbreaking works" of Cimabue and Giotto are irreducibly Franciscan in spirit as well as depiction, and that the agency of the works, drawn from the Franciscan form-of-life, is defined by a theologically attuned naturalism and emergent presentism in turn derived from Francis of Assisi's life-work. This is not an easy argument to parse, as it turns on issues that defy art-historical analysis, and it borders on a semi-heretical embrace of the millennialist angst given to the period — viz., an at-large anxiety regarding the imminence of The End Times, and an apocalyptic presentiment that was also played out and/or co-opted at the basilica of Assisi in some of the more strenuous iconographical-ideological gestures im-

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Renaissance Naturalism and the Rise of Aesthetics (Cambridge University Press, 1987). This half-historicist, half-pictorialist swerve carried out by Cimabue, on behalf of Franciscanism, is on full display in Assisi in the mural cycles of the Upper Church transepts with a focus on "compositional and iconographic innovations," plus somaesthetics — i.e., "the means by which art engages spectators on multiple levels via an awareness of space and the body" (Flora, "Introduction," 21, and "Sensory Engagement and Contemplative Transformation: The Assisi Transepts," 53–95). This all tends to come to a crashing crescendo in Cimabue's rendering of The Apocalypse of St. John with its intimate connections to the Franciscan liturgy and eschatology (Flora, "Sensory Engagement and Contemplative Transformation," 86–95). On the mendicants and The Apocalypse, see David Burr, "Franciscan Exegesis and Francis as Apocalyptic Figure," *Sewanee Medieval Studies* 4 (1989): 51–62.

posed by the Church, through which it sought to dictate its own terms of engagement with Franciscanism.[5]

Regardless of ideological impositions, either from the Order (as ruled by Bonaventure) or from the Church (as supra-corporate "owner" of the Order), Cimabue and Giotto were painting an ideal (but an ideal brought down to earth by the Franciscan legend). This is the ideational content, as opposed to or in excess of the ideological content.[6] The mysterium is the ideal, and the ideal is the Real of the Real, i.e., in the Hegelian sense of otherwise abstruse particulars, it is a doubling of the Real in and/or of (of and for) the Real — or, in and/or *across* the Real.[7] It is meant to be lived by those who choose to do so. It is also often an ordeal, as Francis of Assisi taught by embodying it. The argu-

5 See Flora, "Introduction," 7, with reference to Henry Thode et al., 7n5. Thode is generally credited with making the Franciscans the primary agents of change in the transition in art from the late Medieval period to the Renaissance via an emphasis on naturalism and perspective. See Henry Thode, *Franz von Assisi und die Anfänge der Kunst der Renaissance in Italien* (Grote, 1885). See also Arpad Szakolczai, *Sociology, Religion, and Grace: A Quest for the Renaissance* (Routledge, 2007), especially part 2 (wherein he makes similar claims to Thode) and chapter 6 (regarding Cimabue and Bonaventure).

6 This is also, arguably, the subtending chord in the schism between the Spirituals and the Conventuals.

7 See Jean-Luc Marion, *The Crossing of the Visible,* trans. James K.A. Smith (Stanford University Press, 2004): "The invisible gives relief to the visible as one gives a title and a fief — in order to ennoble. From this the first paradox of perspective must be considered before every painting: the visible increases in direct proportion to the invisible. The more the invisible is increased, the more the visible is deepened" (5). These metaphysically charged distinctions are not privileges as such; viz., to "ennoble," in such cases, as metaphor for intensification, imparts a new normativity or neutrality across works and life-works. Such phenomena are superadded and hold no special merit other than that they upturn the proverbial apple cart of prevailing representational orders. That they often also impart subjective states to works is part of the mysterium of the ideal as it becomes transposed in and through knowledge systems. The myths of artistic genius and authorial privileges are, as they were in the Renaissance and in the Enlightenment, created atop this otherwise semi-anonymous and de-centered engagement with forms of prior art. Prior art in this instance is the field in which this intensification of affect occurs.

ments regarding the event of the Stigmata are therefore instructive. How, when, and where can such an event occur, if it can occur? Is it part of the construction of the hagiography of saints and thus suspect? What does such an event portend for all who might consider it one of those immanent (im)possibilities of a life lived on the edge — intentionally?

Ironically, it is also possible to relativize such events, as if they are, in fact, part of everyday existence:

> Many apologists delight in showing that the unheard of, the inexplicable, are met with all through life. They are right and I agree with them, on condition that they do not at the close of their explanation replace this new notion of the supernatural by the former one.
>
> It is thus that I have come to conclude the reality of the stigmata. They may have been a unique fact without being more miraculous than other phenomena; for example, the mathematical powers or the musical ability of an infant prodigy.
>
> There are in the human creature almost indefinite powers, marvellous energies; in the great majority of men these lie in torpid slumber; but awaking to life in a few, they make of them prophets, men of genius, and saints who show humanity its true nature.[8]

The a-historical, existentialist spirit of Spirit (theological and a-theological, at once) is what is to be found, arguably, in works of ideational Franciscanism, such as the proto- or ur-humanist frescoes of Cimabue and Giotto, and, later, in the post-humanist, Mannerist paintings of El Greco. This spirit is, irreducibly, the privileging of the individual, but without imparting worldly privileges as such. To some, "it" (the spirit of Spirit) plays with individuals and then discards them. That is also the vitalist or

8 Paul Sabatier, "Appendix: Critical Study of the Stigmata and the Indulgence of August 2," in Paul Sabatier, *Life of St. Francis of Assisi,* trans. Louise Seymour Houghton (Charles Scribner's Sons, 1894), 434.

proto-nihilist version of Spirit at play in the world, which is also an essentially anti-humanist sensibility played at and with by artists and authors. Art quite often plays with forms of vitalism, if only to awaken the individual, accidentally or otherwise, to the brutal reality of forms of indoctrination to be suffered without instantiation of an antithetical reflexive consciousness to counter such forces, and without some attempt at rebellion against enforced conventions. The combined corporate identity of the Franciscan Order and the Roman Church as of the late-thirteenth century was either a then-historical necessity or a then-historical irony. Or, perhaps, it was both an ironic necessity and necessary irony.

The collectivist spirit of that moment was nonetheless a means toward preserving the higher rights of the individual to direct, firsthand experience of what Francis of Assisi unearthed, and to what he subsequently "buried" in the Roman Church through the creation of the Franciscan Order. Corporate identities are almost always constructions of a force-field that, in turn, intentionally or by happenstance, erases subjective agency in favor of historical (and statist) agency. In German Idealism, Fichte's Romantic revolutionary "I" (*Ich*) was the turning point (the proverbial fulcrum) of his proposed totalizing foundational system for knowledge production, which he failed to complete.[9] Yet, it is very likely that Hegel's system was built atop that proposed (failed) system, with the relentless teleological thrust of Hegelian World Spirit obliterating individuals en route to pleroma (a secular type of Second Coming). Marx would then take He-

9 See Friedrich Schlegel's caustic reduction of Fichte's maneuvers as ultimately amounting to a drunk climbing on to a horse only to then fall off the other side. Schlegel, a notable hothead of the Romantic circle at Jena, and perhaps the "author" of the legend of Jena, was at first a devotee of Fichte, only to turn on him when his system failed to produce the destination it preordained. See Kwame Anthony Appiah, "Symphilosophizing in Jena," *New York Review of Books* 69, no. 16 (2022): 30. On the other hand, per Appiah: "Perhaps the Romantic achievement was to see how the natural world wasn't merely a projection of the mind; that the mind was, in important respects, at play in the natural world, where it could be startled by things it neither expects nor fully grasps" (ibid., 31).

gel to task, and so on. Fichte's system, then, was always already a *futile* attempt to outmaneuver, a priori, Hegel's subsequent, all-encompassing system, which favored the determinist "We" over the proto-anarchic "I" (a pseudo-collectivist imposture and ruse visited upon the Fichtean transcendental, self-positing "I") — i.e., a world-building system that generally, or most often, ends up devolving to statist prerogatives to save itself from implosion. The fact that Fichte's system pre-dated Hegel's is circumstantial, because both are actually implicit to the dance of a-historicity and history, of self and thing-in-itself, and to regimes of power and resistance to regimes of power. Despite the various ideational or ideological putsches involved in building forms of corporate suzerainty, collective identity may be utilized, with care, to preserve and to protect higher individual rights versus to subsume or convert them back to proprietary rights — even if it rarely does so for fairly obvious reasons. Identity and subjective agency are chimerical under the auspices of statist prerogatives and biases. "Here" the religion of Capital is fully exposed, per Marx and per Max Weber. The emergence of the modernist individual is, therefore, but one of several spectral scenes that may be said to reside in *The Legend of Saint Francis.* The literal and metaphorical distance between the Portiuncula and the Papal Basilica at Assisi, ca. 1300, symbolized this emergent discord of Self versus Big Other.[10]

10 See Sabatier regarding the Spirituals, or what he semi-affectionately calls "the zealots of poverty," versus the Conventuals at Assisi, with the former declaring that even if the Papal Basilica at Assisi had Francis's *physical* remains (i.e., his body), the nearby Portiuncula sheltered his heart (i.e., his *non-physical* remains). Sabatier, "Appendix: Critical Study of the Stigmata," 447. "Even to-day it is the same. The Franciscans of the Strict Observance occupy Portiuncula, while the Basilica of Assisi is in the hands of the Conventuals (Large Observance), who have adopted all the interpretations and mitigations of the Rules; they are worthy folk, who live upon their dividends. By a phenomenon, unique, I think, in the annals of the Church, they have pushed the freedom of their infidelity to the point of casting off the habit, the popular brown cassock. Dressed all in black, shod and hatted, nothing distinguishes them from the secular clergy except a modest little cord" (ibid., 447–48). Santa Maria degli Angeli (a.k.a. Portiuncula) was ceded to the Franciscans in perpetuity by the abbot of the Benedic-

Three Principles

Other motives thus emerge. Franciscanism appears to be push back against repressive and unwanted socio-cultural determinants even as it is essentially an existential rite of passage to the proverbial else-where:

> It is easy to see that Franciscan poverty is neither to be confounded with the unfeeling pride of the stoic, nor with the stupid horror of all joy felt by certain devotees; St. Francis renounced everything only that he might the better possess everything. The lives of the immense majority of our contemporaries are ruled by the fatal error that the more one possesses the more one enjoys. Our exterior, civil liberties continually increase, but at the same time our inward freedom is taking flight; how many are there among us who are literally possessed by what they possess?[11]

Thus, renunciation in Franciscanism is an opening on to the wild blue yonder:

> Property is the cage with gilded wires, to which the poor larks are sometimes so thoroughly accustomed that they no longer even think of getting away in order to soar up into the blue.[12]

If there is a threshold in ideational Franciscanism at which the early Order stood, as established by the life-work of Francis of Assisi, and which one might inhabit and/or cross, it was defined by three main principles: itinerancy, poverty, and works. Having settled at the Portiuncula as the Order grew in size and popularity, many of the monks, including Francis, continued to wander,

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tines of Mount Subasio, ca. 1211 — it was the first Franciscan convent (Sabatier, "Portiuncula," in ibid., 120). The Benedictines of Mount Subasio would also cede to the Order the chapel of San Damian, where Sister Clara would take up residence. See Sabatier, "Santa Clara," in ibid., 154–55.

11 Sabatier, "Portiuncula," 126.

12 Sabatier, "Santa Clara," 156–57.

and their wandering had to do with what the Order undertook as works — i.e., various forms of service. Mendicancy was at the center of the profession of the form-of-life, even if the Order had also established a community through the gift of the Portiuncula and San Damian. The more severe of the three principles, however, remained the vow of poverty, and it was this particular positionality (a form of Kantian purposeless purposivity), as established against the ownership of anything (and the corruption that might ensue by an embrace of money), that brought them into more or less constant conflict with the Church.

Transcribing these three principles to forms of radical-democratic artistic scholarship, insofar as the present-day circumstances for living at such a threshold are defined in the extreme by the antithetical religion of Capital, is one means of extracting what was always at play in the presentational field of Franciscanism, inclusive of its various travails across the subsequent centuries following the death of Francis. This is also why Giorgio Agamben would, in a key outtake of his Homo Sacer project, focus on the concept of "the highest poverty" in his ongoing transpositions of the terms of engagement for subjects with power by way of what he called *bare life.* Agamben's appropriation is mostly aleatory, since he quickly recalibrates the figure of bare life to fold it into his critique of biopolitics, an elaboration of Foucault's analytic of power and processes of subjectification — i.e., the production and policing of subjects by power.

The tales (or the legend) of Saint Francis as depicted in the arts, and as embedded in the numerous "biographies" of Francis that would emerge (inclusive of some novelistic treatments that, given the excesses of Bonaventure's official biography, have a tendency to restore what was obscured by hagiography), all circle the problem of that threshold. The underlying premise of the life-work and the form-of-life established by Francis of Assisi is that it is possible to approach something of exceptional value through the renunciation of normative privileges — the latter defined by the prevailing (and enforced) conventions of the day. What this suggests is a lived, radically situational rapport with what can only be called "prior art," or what has also

been called the immemorial. The transactional nerve network for that exchange is the existential datum of the form-of-life, via the individual but also via the collective, as proscribed field for works as life-works, with the life-work as exemplary datum built across works.

If this reduction (as outlined above) is to be valid, then it remains to describe, transpose, and exemplify, via the idiomatic structure of works for works, what ideational Franciscanism discloses — then and now, plus for futurity proper. If Franciscan idealism is also a unique form of Romantic idealism, at least in retrospect, that is part and parcel of the mysterium of the form-of-life established by Francis of Assisi that permits a close rapport with prior art and the immemorial; i.e., the very principles at play in ideational Franciscanism that permit a renunciation of the edicts of Capital, now and then, for and toward a wholly new definition of life-works and form-of-life. It becomes necessary, then, to declare Franciscanism both Romantic and Existentialist in spirit, no matter how provisional such a declaration may sound. This is its essential ideality as lived rite. And this essential ideality is the opposite of ideology and of ideological imposture. The problems of Big History and the problems of the Church across Big History, while appearing overwhelmingly insurmountable, are a smokescreen behind which the elusive aleatory non-privileges of life-works reside. Any totalizing system will merely obscure them, even if such systems seek to exterminate them once and for all. That is the Romantic-Idealist worldview in/for itself. It refuses accommodation with power as much as it eludes by existentialist-idealist principles the edicts of power and enforced subjectification. That is the first impress, i.e., the evasion. The second impress is the return. Thus, works for works first evade capture, and then return to alter the field of play itself. The Romantic-Idealist quest is ur-revolutionary.

The way in which Francis of Assisi hid or buried his life-work within the Church was one of his most brilliant maneuvers, on behalf of his life-work, especially when other similar orders of the day were being suppressed and/or quite literally exterminated, due primarily to their implied or outright criticism of

the Church. The Friars Minor did not retreat from the world; they remained in the world to change the world. They did retreat from the privileges of the world, and it is with great irony that one of the major battles Francis and Clare had to fight over the years of their residency at the Portiuncula and San Damian was the Church's repeated attempts to impose privileges. Both pushed back against the Church up until their dying day. The subsequent conquest of the Order by the Church was primarily a political affair. It barely altered the underlying ethos of the Order, even if it did alter the role the Order would play in the post-Medieval world. Perhaps the most powerful example of Francis and Clare's fidelity to the Romantic-Idealist quest was their defense of the Eucharist and its presentational modality. This signaled in precise physical and immaterial practice the preservation of the underlying mystery of their combined faith in "holy communion" — evocation and annunciation, at once, of the ethos and telos of Christos. Atop that, or combined with that, was the Mariology and the Angelology of the Order. Both are extraordinary evocations of prior art personified. The mysterium extends into subjective states and crosses back and forth between materiality and immateriality.

The notion that the Franciscans are the true harbingers of the Renaissance is, therefore, slightly misleading, especially if that is co-determined by an imminent humanism combined with an imminent naturalism. The former is relative to what constitutes subjective conditions at a given time for the self-positing "I." The latter is conditional on what naturalism imparts. In the case of Franciscanism, it appears to impart a closer rapport with the natural world through a lived versus representational rapport with the natural world. But it also involves an engagement with supra-natural relations that inhabit and quite often overshadow the natural world. These lived particulars were evident in the simplicity of their order and in its home-base in semi-wild environs. It was additionally amplified by the tales of Francis's wanderings, where, given the super-charged categorical imperative of living on the edge, he would seek guidance from that supra-natural largesse the natural world came to embody for him. This

is brought into stark relief with the episode of the Stigmata, the most contentious of all the tales buried in *The Legend of Saint Francis*. The wilds of Mount Alverno are not simply a stage set or backdrop. They are also that event's place of taking-place. It is a phenomenologically elevated engagement with the world and the implication of worlds within worlds. This mise-en-abyme quality is present in all renderings of the event. The "naturalism" of the emergent Renaissance worldview is one of those historically established red herrings that mislead the pursuing dogs. The prey almost always escapes such reductionist readings. The emergent humanism of the early Franciscan worldview is similar. Both are notably colored by subsequent representation, in the same way that authorial presences would be defined, in part, retrospectively by Renaissance humanists and apologists. The errors are category errors. The nomenclature may be correct, but the terms of engagement are situated in the wrong places and, as a result, they distort as much as they clarify, depending on where they are placed. "Naturalism" thus belongs not in the then-emergent representational systems (including perspective) but in the ideational systems that informed representational systems. Both Naturalism and Humanism, as category experiences, have latent symbolic structures. Aristotelianism versus Platonism is also a false battlefield. In many ways the historical readings of these various supposed skirmishes invoke passing fashions versus anything substantial or epochal. They are phantasmatic.

The three principles noted above (itinerancy, poverty, and works) are antecedent to any performative analysis of what ideational Franciscanism was, is, or might be. There is no "ought to be" here, especially if these three principles are not taken in any specific, time-based, locational, canonical, or deterministic manner. Any "ought to be" would reduce the mysterium of the resultant life-work to yet another depiction or cataloging of a catechism. Perhaps here we begin to see the early Franciscan disinterest in scholarship, subsequently overturned by Bonaventure as the Friars Minor also became Schoolmen. That disinterest would not be properly seen if it was considered categorical.

It was situational. Francis drew upon many sources for his life-work, inclusive of theological and scholarly sources. His admonitions against bookishness had more to do with the rewards of itinerancy, poverty, and works. These are the "higher rights" invoked in/through the "highest poverty." It might be said that his apparent anti-intellectualism was simply due to the fact that his existentialist-idealist agenda was the Book of the World. *Canticle of the Sun* (*Laudes Creaturarum*), said to have been prepared and written with Clare, is thus considered his greatest literary achievement. Transcribing that agenda back into forms of artistic scholarship is, therefore, one way of honoring that quizzical animosity toward the classical hairsplitting and theological disputation of the Late Medieval Schoolmen. The common ground to be found in all such life-works is, after all, *theories of knowledge* and *self-knowledge.*

The transference, then, of these three principles of ideational Franciscanism to a works-for-works modality for new forms of artistic scholarship involves a transposition of the terms of engagement to the ecosystem of contemporary knowledge production — i.e., the so-called knowledge commons. First, "Itinerancy" invokes an aleatory, generative, and experimental methodology for the development of the life-work, all through lived engagement across works — e.g., by actually embodying the principles under study versus simply talking about them. Second, "Poverty" invokes a "No Rights" status for such works, and an elective or voluntary abolition of intellectual property rights, with IPR reduced, *inter alia,* to a form of theft of agency. And third, "Works" invokes the life-work proper as non-proprietary, collectivist, and ameliorative in terms of its inherent revolutionary ethos in opposition to the agendas of the capitalist exploitation of knowledge and of subjects. From this transpositional outlay of inherent principles, the countering of the ideological biases of the religion of Capital as found in academia and in the cultural industries may progress through works and life-work. Artist-scholars in pursuit of such works will also, out of necessity, maintain a vigil at the threshold demarcated by the Franciscan representational field of illuminated particulars, or that which

haunts the absolute embrace of prior art as justification for the renunciation of authorial privilege and intellectual property.

Authorial privilege is thus distinct from authorial presence. They only became one thing when the latter became entangled in the emergent *commercium* of capitalist production in the Renaissance and the Enlightenment. Authorial presence is, without doubt, an aspect of the agency of works and it has a much more archaic provenance than authorial privilege. It has duly suffered across centuries since becoming entangled in capitalist production, becoming in the present-day, neo-determinist agendas of knowledge production a classic empty signifier — i.e., an empty gesture by Capital to authors, while it also underwrites the legalistic codes of IPR that permit the theft of intellectual property by Capital. Yet, it endures. It is the transcendental "I" writ large in that wild blue yonder that ideational Franciscanism sought to access. It is a very different kind of privilege, and one that generally vanishes into abject inoperativity when converted to an empty signifier underwriting the commodification of life.

The Impoverishment of Works

The proleptic set (itinerancy, poverty, and works) becomes the operative field for works for works and for an attendant generative, iterative, and experimental engagement with works-based agency. Most critically, the author steps away, and disappears as such. This is tied to the elective renunciation of rights for and toward other rights. Within the field thus defined (not created, as all elements have existed before), the three principles connote the form-of-life and the life-work, distinct yet related precepts held in tension within the proleptic set, which seeks through its own agency and merit to permit a so-called rule to emerge across works, but by blocking any form of the reification of privileges. This is not the rebirth of the "death of the author," per Roland Barthes or Michel Foucault, but it does engage with aspects of what Barthes and Foucault were unearthing in their own times

and works.[13] Their agendas had more to do with ideological, early post-structuralist critiques than ideational critiques, i.e., they were historically positioned, and both sought in many respects to nominally "insult" authors of the day who were still hanging on to outmoded concepts of authorial agency. The effective reduction, both here (now) and there (then), was that works exceed any intentionality of authors, and that authors might actually engage with the agency of works without claiming authorial privileges. Yet the intention here and now is to remove works from the force-field of capitalist production and simply see what might emerge as a result. The author is free to come and go. To lock the author up in the model would amount to the re-invention of exactly what the model seeks to escape — e.g., enforced precarity and the machinations of a faux-collectivist ethos that only ever materializes through bespoke works versus life-works, the former commodified across an ever-expanding field of exploitational systems defaulting in most cases to the ever-shifting problems of symbolic capital linked with careerism and celebrity cultures. There are significant paradoxes involved, and any clearly defined game plan would engage with these paradoxes, becoming as a result an endlessly provisional game plan. One key operative principle within the set, however, is sacrosanct. That sub-principle is that the author transfers authorial privileges to works before stepping away. Yet that transfer, while it erases copyright and intellectual property rights as such, includes the re-privileging of moral rights, except *for works* versus *for authors.* Without this measure in place, the model would collapse into either a locked archive or a platform-culture-based free-for-all. The types of works sought through the model is, as noted through the origin of the model being ideational Franciscanism, an engagement with the illuminated tableaux of lived cultural production — a falling into and through works, so to speak, by which an embrace of prior art and immemoriality as

13 See Keeney, "Appendix B: Notes on Language and Its Other," in Keeney, *Works for Works, Book 1: Useless Beauty,* 209–29.

ethos for such works comes into expression across the life-work. Ultimately, the life-work remains and the author disappears.

The Highest Poverty becomes The Impoverishment of Works, e.g., through the stripping away of false economy and the unnecessary construction of the *commercium* attached to cultural production. In fact, production remains, but from an entirely different motive. That motive is not new, but the number one enemy of preserving the essential uselessness (purposive purposelessness and preposterous presentism) of such works is the penchant for co-optation and theft. The free-for-all noted above must be avoided. For the life-work to emerge as free expression of true communitarian values and the value of free subjects, both the subject and the object within the model for the production of artistic scholarship beholden to no false idols must remain free. By separating the two (e.g., the author stepping away), the two states no longer are engaged in spectral battle for supremacy. Additionally, subject-object relations dissolve further through the elevation of the work across works to life-work and through the transfer of moral rights from authors to works. Works emerge as "authors" in their own right and through their own rites. That, too, is nothing new. It is the foundation stone, perhaps, for centuries of battles over the agency of authors and the agency of works. The unholy fusion accomplished through ongoing capitalist reification only tends to serve notice on the broken premises of the relatively recent amelioration accomplished through IPR law.[14] Freeing both subject (author) and object (work), and flipping the terms, should, therefore, be sufficient to scramble the circuits of Capital for the near future.

In this process of dynamic transpositions, across terms and across fields, the proleptic set denoted "(itinerancy, poverty, works)" becomes impress of the life-work itself — i.e., it is operative and/or emergent (detectable and at play) before, *en*

14 These include, but are not limited to, versions of Open Access (OA) and Creative Commons (CC) licensing. What is required to test works-based agency and the transfer of moral rights to works is a step beyond IPR. There is, after all, a repressed history of publication that includes anonymously and collectively produced works that were never commodified.

route, and after the appearance of the life-work across works.[15] The various red herrings to be found amidst the topologies and across the transpositions are telltale. They inhabit a classic Lucretian swerve. Who throws down the challenge, to mislead, to set the chase in motion, to give the prey a chance? It appears that chance occurrence is at play and the hunt and the hunted change places, or occupy unstable positions within the unfolding topological map. Constellations appear and dis-appear. The map gets re-folded, torn, turned this way and then that way. Where is "North"? This is the vitalist remainder that inhabits the terms of engagement.

The key term *poverty* must be defined downwards toward works, or it becomes yet another reification full of latent pretensions for subjects.[16] Across works, "poverty" operates in the ontic/non-ontic modality of rights and "no rights." It serves notice on privileges associated with all that corrupts the path of life-works. Moral rights re-appear as no longer simply empty gestures (empty promises) — yet they are empty of reified privileges. Such rights have been abandoned at one level to be reclaimed at another through transfer to life-works. They inhabit and protect works across the arc of works en route to life-works. The author (artist-scholar) is alternately present and not-present (absent or observing from a distance). Eventually the life-work is all that remains, and it becomes part of (returns to) the illuminated field or tableau of prior art.

Terms such as *genius, saint,* or *immortal* may return in the posthumous records of artist-scholars and authors.[17] In some

15 There is a curious resemblance here to the conundrum of Nietzsche's "Too soon, too late," wherein something long awaited appears, but by the time it is acknowledged it has also *apparently* passed by.

16 Could this have been Saint Paul's point with his highly gnomic statements, in Romans, regarding Works and Grace? Regarding Saint Paul's Romans, see the section "Archē-mēde" in chapter 3 of this volume.

17 See, for example, how the works of Chris Marker and Guy Debord were assimilated to official French patrimony through fiat and how both, as critics of statist hegemony, were converted to "national treasures." Regarding Marker and his somewhat shady assimilation to the archives of the Cinémathèque Française following his death in July 2012, see Gavin

ways it is yet another joke perpetrated by the *commercium* of (socio-)cultural production combined with statism that favors privileges of one order or another. All the better, of course, if the authors and the works declared immortal can be re-commodified through this elevation of the record. All points scored effectively constituting victory of one kind or another, even if it is only symbolic capital that returns with the final departure of the author and the attendant apotheoses via canonization, the life-work in and for itself has once again vanished. And rightly so.

Thus, works never quite return to the unprivileged position of prior art (roughly the foundational condition for the more slippery term *public domain*). And with advances in IPR law, it becomes possible to lock down works "into perpetuity" (or, for however long they have any value to Capital). Whether by estate, State, or by conversion to spectral commodity embedded in the digital commons, works for works continue to suffer the approbation of the Big Other behind the ongoing theft of knowledge as such.

Le Chapelier's 1791 challenge to Diderot and his Republic of Letters is, therefore, a curious anomaly in the development of the historical justification for moral rights as embedded in intellectual property rights law.[18] Le Chapelier favored the Republic (the State), whereas Diderot favored Letters (Arts and Letters). The latter was also dancing with censorship, while the former was dancing with the so-called public good. In both cases, the two near-simultaneous acknowledgments of moral rights squared a circle for authors and for works, establishing a well-worn threshold that oddly holds to this day, though it is very easy to trip over it and smash one's head on the door frame, on your way in or on your way out. Diderot fell into his own defense of the artistic exception somewhat haphazardly in defending the French book trade and himself against both royal privilege

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Keeney, "Marker's Archive," in Gavin Keeney, *Knowledge, Spirit, Law, Book 2: The Anti-capitalist Sublime* (punctum books, 2017), 35–77.

18 Regarding this tussle and its relation to works-based agency, see Gavin Keeney, "The Editioning of Works," in Keeney, *Works for Works, Book 1: Useless Beauty,* 46–55.

and an unruly illegal book trade operating at the fringes of the Paris-based monopoly. Le Chapelier fell into his defense of the artistic exception by wresting ultimate rights from both author and trade (industry) on behalf of the public and the State (public as State). Both missed the point of the "honors" they sought to protect insofar as both erred on the side of favoring an ameliorative discord that constitutes the tug of war between subjects and states, authors and works, poverty and law, privilege and liberty. The life-work is not actually to be found amidst the clamor but is already, in such circumstances, on its way to becoming a token, fungible or otherwise, for socio-political intrigue. The battle lost once again, the tokenism returns with a vengeance, wreaking further havoc on any concept of a commons without gatekeepers and paymasters.

All of this tends to suggest that the life-work is, irreducibly, a Romantic-Idealist quest and that it should remain so. It is to be found by being lived *across works* and only comes to reside in the life-work as the spirit of the work and as expression of the vitality and liberatory potential of works of artistic scholarship. In this manner, artistic scholarship tends to drift toward literary-artistic potentialities that only ever come into play as direct engagement by authors with forms of non-authorial agency. It is all curiously utopian and preternaturally heterodox. The communitarian ethos registers ultra-temporally against the diktat of the reduction of works to commodity status.

The stultifying, often-hideous excrescences of the present-day industrialized knowledge commons cannot be challenged directly.[19] These excrescences are imposing abnormalities that

19 Primary examples include: (1) the arrival of data-mining and data cartels in and across the digital commons, foremost via the salvaging of forms of social media and platform cultures (via, e.g., the legalized theft of identity); (2) the arrival of imposed research metrics in academia via the administrative regimes of the neoliberalized university (via, e.g., the globalization of the production of degrees and the policing of research); and (3) the arrival of the curatorial class in the globalized art world via the proliferation of biennales, triennales, and art tourism (via, e.g., the careerism of a cadre of gatekeepers and cashiers beholden to institutional and statist prerogatives). In terms of academia, there are also the issues of the

defy direct challenge. They constitute a socio-cultural disease. There is, therefore, a need to "turn and walk away" at times, "to walk away from illness" ("to pick up thy bed and walk"), even if it is simply a maneuver to outmaneuver the impositions of the disfigured ecosystem. Literary-artistic insurrections have almost always proceeded without direct regard for prevailing conventions, or, at the least such forms of knowledge have most often engaged with conventions only when those prevailing conditions might concede ground. Open battle, today, is not quite an option. The defense of subjects through works is of another order. Authors will change with and through "it," or they will not.[20]

Angels + Assisi

Time, earthquakes, and the vagaries of fresco have all more or less combined forces to slowly erase the ideological program installed atop the iconographical program at the Basilica of San

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invasion of universities by industry, at the behest of governments (states), and the imposition of market ideology on most all disciplines including the Humanities, with the marginalization, de-funding, and elimination of unprofitable or non-utilitarian programs. In terms of publishing ecosystems, there is the pushback against the non-profit, publicly-funded OA movement by for-profit publishers through the creation of the author-pays model for OA, always in collusion with the metricization of "impact," and an obvious attempt to take back from the imposed version of the OA model (tied to research funding mechanisms) what has been gained by university bureaucracies through the collusion of academia and industry. The imposition of these external funding mechanisms, in turn, increases pressure on scholars to commodify their work and/or customize their work according to the shifting biases of industry and to publish their work only with high-impact journals and presses. This race for attention also devalues the monograph within the university, insofar as journal metrics show up faster and increase the likelihood of PR value for the university in its ongoing competition with other universities through competitive global rankings. The cycle is run on a two- or three-year basis, with states measuring outputs in a type of sweepstakes that confers upon schools either opprobrium or "excellence."

20 This stepping away is effectively a means of exiting *culturally imposed* authorial privileges. While the worst ravages of the socio-culturally constructed artistic ego are abandoned, something of the author's agency nonetheless remains *with the work*.

Francesco of Assisi, built by the Roman Church, in Assisi, Italy, from 1228 to 1253, and following closely upon the death of Francis of Assisi in 1226. Cimabue et al. may have implemented the iconographical program for the Upper Church, but it came from multiple sources, and it acquired its own agency over time and has confounded scholars ever since.[21]

It is the Angelology and the Mariology of the Upper Church sanctuary that constitute the primary thematics of ideational (existential) Franciscanism, while it is the disposition of the iconographic program within the structural field of the sanctuary that is ideological (political). They part company only if the viewer wishes so. This is an elective possibility, for the viewer, because some of the structural effects actually contain an excess that overflows and/or cancels some of the more-inept attempts at converting the architectural and artistic affect to propaganda.[22] To hold on to the Angelology and the Mariology while bracketing or disposing of the Roman imprimatur is an affective decision. The three altars of the sanctuary (i.e., Saint Michael altar, High altar, and Apostles' altar) all have their own visual programs, with the high altar on axis with the papal throne and

21 See angelic presences, by Cimabue, ca. 1277–1280, tafel 30 (a-b)-31, left (south) transept, west triforium, Upper Church, Assisi, in Hans Belting, *Die Oberkirche von San Francesco in Assisi: Ihre Dekoration als Aufgabe und die Genese einer neuen Wandmalerie* (Gebrüder Mann Verlag, 1977). Belting's attributions for the north wall of the transept, in textabb. 13, are "Isaias" and "David." His attributions for the west wall of the south transept are Fall of Babylon and John at Patmos, six angels (in triforium), and Saint Michael and the Dragon. His attributions for the mirroring east wall of the south transept are Crucifixion, six angels (in triforium), and Seraphim and Cherubim. See Belting, "Die drei 'Kapellenräum': des Sanktuariums: Apostelkirche, Engelkirche, Triumphierende kirche," in ibid., 55 (textabb. 13 — Oberkirche, Sanktuarium. Freskenplan), for a plan-elevation showing the layout of the iconographic program of the sanctuary of the Upper Church, with angels dominating the south transept, four apostles occupying the center of the crossing (Matthew, Mark, Luke, and John), as well as apostolic thematics, Old Testament prophets, and the Church (Christ) Triumphant holding the north transept (Peter, Paul, plus Isaiah, David, Simon Magus).

22 Blume, *Wandmalerei als Ordenspropaganda*.

the nave. The papal throne (flanked by wooden choir stalls) and the high altar (demarcating the transition from the nave to the sanctuary) are the main impositions in the architectural and iconographic program. The frescoes of *The Legend of Saint Francis* dominate the opposing walls of the nave. They are primarily pietistic and counter the strenuous nature of the visual program of the sanctuary.[23]

The imposed ideological program nonetheless falls apart under duress — and it is re-written across centuries in an attempt to prop it up and/or soften its heavy-handedness. This includes the somewhat disturbing games played with Francis's mortal remains across almost nine centuries.[24] What is left, regardless of all games played (well-meaning or otherwise), is the imposture of the imposition — i.e., the collision of the glorious Gothic architectural heavy-handedness and the relative (mostly un-

23 See Donal Cooper and Janet Robson, *The Making of Assisi: The Pope, the Franciscans and the Painting of the Basilica* (Yale University Press, 2013), especially "The Upper Church in 1288," 55–87. Figure 85, in ibid., 85, is tafel 31 in Belting.

24 See Isidoro Gatti, *La tomba di S. Francesco neo secoli* (Casa Editrice Francescana, 1983). Francis's remains were first discovered in 1818 at the Lower Church. They had been hidden in an underground passage since ca. 1230. In 1822–1824, a new crypt was created in the neoclassical style of the time. See ibid., plate 31, "Pianta della cripta neo-classica modificata dal Belli, approvata il 19 agosto 1822 (realizzata)." The tomb was subsequently remodeled in 1932 and given a Romanesque ambiance, which was in part an homage to the intentions of the early order for a simple and austere crypt. See ibid., plates 45–57, for a sequence of images relating to the exhumation, examination, and display of the mortal remains (bones) of Francis in 1978 and subsequent reinterment in a metal casket in a travertine sarcophagus. Francis's remains were originally installed in a crypt at the church of San Giorgio, Assisi. They were generally hidden below the church due to the practice of relics being stolen, given their rumored potential for producing miracles. The transfer of the remains from San Giorgio to the Lower Church at Assisi in 1230 followed closely upon the canonization of Francis by Pope Gregory IX in 1228 at San Giorgio, with the numerous miracles associated with the remains held at San Giorgio adding gravitas to the campaign for canonization. See ibid., 17–46, 46–55. This timeframe also includes the first commissioned biography (hagiography) of Francis, *Vita Beati Francisci,* written by the Franciscan friar Tommaso da Celano, later superseded by Bonaventure's subsequent biography (hagiography) of 1263.

necessary) iconographic program or catechism imposed from Rome. The architectural connection to Rome and the Sancta Sanctorum (private papal chapel, Lateran Palace) falls apart as well — i.e., it too slowly dissolves across time with the ideological program.[25] It is primarily a case of imposition by category. Someone decided early on that the form prevailed over the function. Yet it was all part of the Church's then-rapid conquest of Franciscanism.

The significance of the Angelology cannot be easily dismissed as an imposition of an apocalyptic flair to the sanctuary's high paternalism and Church Triumphant ideology. Ideology in this case falls flat. It is a shrill whistle in a dark forest. The life-work of Saint Francis of Assisi is marked by angelic interventions, and the visit to Mount Alverno and the event of the Stigmata is but a high threshold crossed. The various biographies of Francis claim that it was a trip undertaken to engage with the affective register Francis had developed for his own conversations with, or meditations concerning, Angelology and Mariology. The six-winged seraph of Mount Alverno is, in many respects, Archangel Saint Michael. That we find Saint Michael in the south transept of the Upper Church is both evocation and acknowledgment. The time-sense of the portrayal is always as "now," and Cimabue doubled that time-sense with the mirror-like east and west walls of the south transept, which have three levels, the west wall culminating in Saint Michael and two other archangels slaying a dragon, and the east wall crowned with seraphim and cherubim (and Christ in glory).[26] Here is the battle

25 Regarding Sancta Sanctorum, see tafel 98 in Belting, *Die Oberkirche von San Francesco in Assisi,* for fearsome symmetries plus iconographic emblems, and see tafel 99 (a-b), for antecedents to Assisi. See also Donal Cooper, "'In loco tuttissimo et firmissimo': The Tomb of St. Francis in History, Legend and Art," in William R. Cook, *The Art of the Franciscan Order in Italy* (Brill, 2005), 1–37. See ibid., 6–9, regarding the "translation of remains" to the Basilica.

26 "The triforium passageways were populated and surmounted by ranks of angels. One of the lunettes [west wall] depicted Saint Michael and two other angels overcoming the dragon and other demonic creatures. Colossal standing angels, now almost entirely lost, flanked the window on the

the Franciscans engaged each September 29, a date now known as Michaelmas. Here in these pictorial registers is a mounting challenge Cimabue acquired from somewhere. Midway in each case, in this tripartite schema, and in the form of a Gothic triforium (an arched and recessed passageway within the wall), are more angels. They peer from the elevated and shadowy passageway, no longer on the planar surface of the west and east walls as such. They inhabit the shadows, "watching and waiting." The architecture has accidentally (or perhaps knowingly) presented the classic punctum of the "now" (a very untimely timeliness that inhabits the rarified and specular reaches of art, literature, and architecture). The punctum is a type of echo. It awakens the subject to the subjective field of the gaze and the returned gaze.[27] It is all classic somaesthetics in a sense, and it all suggests the not-so-deeply-buried Byzantine influences of (and in) thirteenth-century fresco, where the painterly conventions may have changed dramatically, but the internalizing agency of the iconological gesturalism still holds sway.[28]

It is all more or less a case of mnemonics, or that which, in part, is also embedded in Bonaventure's Augustinian theory of vision and its three registers: corporeal vision (the eyes); spiritual vision (the mind's eye); and image-less vision (intellectual

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end wall of the south transept." Cooper and Robson, "The Upper Church in 1288," in Cooper and Robson, *The Making of Assisi: The Pope, the Franciscans and the Painting of the Basilica,* 84–85, with reference to the three altars and their dedication.

27 See Roland Barthes, *Camera Lucida: Reflections on Photography,* trans. Richard Howard (Hill and Wang, 1981). The punctured, or perforated, wall in this case *is* the punctum. There is also the peculiar fact that a tour of the Upper Church, as detailed and sketched in a guidebook from 2000, begins more or less at the Saint Michael altar in the south transept. See Ferruccio Canali, *The Basilica of San Francesco in Assisi: A Complete Guide to the Upper and Lower Churches* (Bonechi, 2000), 134–35.

28 See Flora, "Sensory Engagement and Contemplative Transformation," 62, with reference to the so-called "sensory turn" in art-historical studies. See also Richard Shusterman, "Somaesthetics: A Disciplinary Proposal," *Journal of Aesthetics and Art Criticism* 57 (1999): 299–313, and Erin Benay and Lisa Rafanelli, *Faith, Gender and the Senses in Italian Renaissance and Baroque Art* (Ashgate, 2015).

illumination). Bonaventure (ca. 1217–1274) and Cimabue (ca. 1240–1302) were, in many respects, the main two protagonists for the painted *itinerarium mentis* of the Upper Church at Assisi. Bonaventure's *Legenda maior* (1266) and *Itinerarium mentis in Deum* (1259) both helped cement the "corporate identity" of the Order. The south transept was painted ca. 1277–1280.

Rites of Passage + Mirrors

The idea or sense (i.e., suspicion) that Francis of Assisi buried something within the Roman Church, when he established the Franciscan Order *within the Church,* suggests that what was buried there can be duly extracted and/or excavated and released. The precarity or fragility of the early Order and the bombast of the ideological conquest of the Order by the Roman Church are relative to what was at play in the ideational rites of passage of Franciscanism, foremost across the thirteenth century, when it was highly popular and also highly criticized.[29]

Thus, the set denoted "itinerancy, poverty, works," plus the affective regimes of Angelology and Mariology, or the electrifying embrace of an order of existential privileges deemed, by Augustine and by Bonaventure, as an illuminated tableau accessible through adherence to "itinerancy, poverty, works." In terms of works, the tableau is, effectively, a visionary world that one chooses to inhabit and report on. It is entirely elective.

Notably, in the annals of art-historical disputation, Cimabue leads to Giotto, and Giotto leads — however slowly — to El Greco. El Greco brought Byzantine iconology into Renaissance iconography (illusionism, humanist speculation, and syncre-

29 The Order was controversial both at home and abroad. The schoolmen of Paris (e.g., theologians such as William of St. Amours), in particular, found the Franciscan worldview, and medieval fraternalism in general, anathema. See "Part Three: Franciscan Critics and Critics of the Franciscans," in Michael F. Cusato and Guy Geltner, eds., *Defenders and Critics of Franciscan Life: Essays in Honor of John V. Fleming* (Brill, 2009), with reference to William of St. Amours, *De periculis novissimorum temporum* (*On the Dangers of the Last Times*), written in 1256.

tism), picked up preposterous presentism (most likely in Venice, from Titian, Tintoretto, and Veronese), and then acquired Mannerist sensibilities (forms of re-subjectivized perspectivalism) and counter- and/or post-humanist rites of passage in visual exegesis (a de-centering and re-calibration of humanist hubris via an embrace of anxiety) from Rome and his critique of and engagement with Late Michelangelo.[30] In Spain, as last rites for this transmission of Byzantine iconological values in art, El Greco became the consummate "Franciscan" artist and, perhaps, the first Expressionist.[31]

In many respects, it is a case of "isolating the mirror" (or, sets that mirror sets), and in the case of the Upper Church at Assisi, it was Cimabue who first pulled it off, accidentally, incidentally, or otherwise, in the sanctuary, with his evocation of Franciscan affectivity in the revelatory twin apotheoses of the east and west walls of the south transept. To isolate that particular mirror is only to emphasize what otherwise gets lost in any attempt to account for the entire, somewhat disparate iconographic program of the Upper Church, inclusive of the mostly pointless arguments about who painted *The Legend of Saint Francis*. The Franciscan worldview on view is irreducibly ideational. "Itinerancy, poverty, works" and the affective regimes of Angelology and Mariology, once extracted from the avalanche of impositions on the early Order, are more than adequate to signal what was buried in the Order when the Order was subsumed by the Church — i.e., when the founding principles of the Order were re-written and forced to conform to patriarchal and patrimonial concerns that are the perfect match for how Capital and capitalist production control and distort any lived rites for works of a similar spirit today. Indeed, Capital was already at play in the thirteenth century, via the manipulation of rent and surplus value, and the ideologies of the day have only been accentuated

30 El Greco left Rome in 1576, in part, because he had the temerity to criticize Michelangelo and thus fell out of favor with the authorities.

31 "Expressionist" in the modernist art-historical sense versus the generic, dictionary sense.

across centuries and secularized whenever or wherever they might have originally had a religious taint, which was, in the thirteenth century, quite often.[32] These ideologies (both nascent and long-established) were well met by Franciscanism, which was, situationally, an exercise in opting out, and then became a matter of semi-heretical resistance that was ultimately disciplined through the canonization of Francis and the ring-fencing of the Order. The metaphor of a commons is certainly valid, and the metaphor of the enclosure of a commons is equally appropriate. The primitive physical commons established by Francis (at Portiuncula and San Damian) was dangerous on one level, insofar as it was proto-utopian. But the metaphysical commons established through the elective privations and privileges, and arguably opening onto a visionary universe, was utterly *revolutionary.*

Three Admonitions

Any provisional, yet intended *performative* translation and renewal of ideational Franciscanism, such as new forms of radical-democratic artistic scholarship, inclusive of a disavowal of authorial rights and privileges, involves stepping into this mirror. This moment (the illuminated tableau) is an arbitrary and subjective (non-objective) reading. It is the translation, however, that registers with the affective orders of the early Franciscan Order, justifying, in the process, the erasure of the imposed orders — viz., producing, inter alia, a retrospective gesturalism via two-way gaze that is also futural. It is not merely a formal operation of the intellect. Conventional rationality collapses, or drops away. It is an exception to rationality, as such, and — effectively — surrational.[33] The formal element is mnemonics writ large (the memory theater engaged).

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32 This is no doubt one of the main reasons why Francis refused to touch money, i.e., he *could not* touch money and actually feared it.

33 Notably, various literary-artistic endeavors of the twentieth century have attempted to access this register through an a-theological creative praxis, with Surrealism and Magical Realism being the two most obvious

Speaking from his final resting place, the neo-Romanesque crypt two levels below the Upper Church, Francis seems to be saying, through this retrospective-futural gestalt, *"Kneel* with me at the altar of Saint Michael and look within and beyond."[34] There are various and multiple readings that are possible of this punctum, which is also but a remnant. The punctum looms large and the illuminated tableau is but its demonstration — its activation. *"Stand* with me at the altar of Saint Michael and look up" is the outward expression of the echo, a beginning or first step. *"Kneel* with me at the altar of Saint Michael and look within (not up)" is a transitional transposition of that hypothetical outward expression, a second step, insofar as it negates the originating formal imposition of the memory theater. All three imagined admonitions are nonetheless an amplification of the echo of the punctum. Each one is also an injunction — to action and instruction.[35] *"Kneel* with me at the altar of Saint Michael

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examples. *Surrationalism* is a term coined by Gaston Bachelard in 1936 to describe what was at stake in Surrealist attempts to escape conventional rationality. Georges Bataille and the dissident Surrealists (i.e., those who objected to André Breton's heavy-handed command of the Surrealist agenda) may be said to have taken this quest to the limit, insofar as they intentionally entered into an artistic accord with chance occurrence and preconscious currents in their semi-apocalyptic dance with works-based agency and forms of anti-modernism.

34 Brother Elias (a.k.a. "Elias of Cortona" or "Elias the Sinner"), commissioned ca. 1227 by Pope Gregory IX to design the basilica at Assisi, actually envisioned three churches, one atop the other, with the lower of the three constituting the crypt of Saint Francis. The first stone was laid in July 1228. Elias was also responsible in 1230 for the hasty and somewhat clandestine transfer of Francis's mortal remains from San Giorgio to the new basilica underway at Assisi. Regarding the checkered and sometimes scandalous history of Brother Elias and his relationship to the Franciscan Order, see Paschal Robinson, "Elias of Cortona," in *The Catholic Encyclopedia,* vol. 5 (Robert Appleton Company, 1909), http://www.newadvent.org/cathen/05382a.htm. Branded a traitor or "Judas" by the Franciscan spirituals (the so-called zealots of the Order), Elias's co-optation by the Roman curia and his sponsorship of the material expansion of the Order quite likely also saved the order from extinction.

35 The three admonitions escalate in significance. Each one is a step toward accessing the illuminated tableau of the mirror.

and look within and beyond" is the proverbial escape route from all mere catechisms.

The wholly arbitrary and personal translation of the event of ideational Franciscanism is an elective rite, and always was intended as such. To find it inscribed in the south transept of the sanctuary at the Upper Church at Assisi is merely circumstantial. It may be read from near and far. It can be wholly imagined as much as it can be witnessed through the cascading "windows" of Assisi, Upper Church, South Transept (the actual or physical-material situationality, grandeur, and largesse of the papal impositions). Cimabue planted this illuminated rite of passage in these metaphorical windows through now-inexplicable means, regardless of the misadventures of art historians over centuries in attempting to reconstruct what actually occurred "there" in the late thirteenth century. Such a reading or re-reading (or an intentional misreading via such misadventures) sidesteps "all of that," just as such a reading transcribes the dogmatics imposed then through the observation and deconstruction of the subsequent slow secularization of such thematics across ensuing centuries and the assimilation of decomposing power by emergent or nascent power, i.e., in ever-increasing and ever-shifting games of subjugation and secularization. To equate Capital Triumphant and Church Triumphant is merely to acknowledge the structural regimes of power at play and the attendant means to conquest through serial colonization and acquisition.

Thus, the imaginary three admonitions are also three contiguous steps (while it is also quite possible to remix them toward wholly new purposes through the type of game of random chance often indulged by Francis during his peregrinations hither and yon):

1. "*Stand* with me at the altar of Saint Michael and look up";
2. "*Kneel* with me at the altar of Saint Michael and look within (not up)"; and
3. "*Kneel* with me at the altar of Saint Michael and look within and beyond."

In this particular case of a constructed and constructive imaginary combining architecture and frescoes, mnemonics (the tradition of the memory theater, plus anamnesis) is the interiorizing of the iconographic emblems Cimabue painted on the east and west walls of the south transept of the Upper Church at Assisi — they are, literally, the combined physical-visual forcefield of the architecture and the frescoes.[36] Once internalized, however, the effect of the hypothetical illuminated mirror (the two painted walls as reflexive or intuited spatio-temporal event and doubled field of vision) becomes a visionary apparatus in the sense of structurally embodying Franciscan affective regimes through an aleatory version of somaesthetics — i.e., the focus on seeing and feeling that is presented within what is otherwise an external and pictorial catechism is transposed through spatio-temporal displacement in *thought as vision.*

The step invoked in Admonition 2 shifts attention, for individual subjects, away from the painted architectural catechism toward the inner, lived experience or potentiality of the (anarchic/apocalyptic) events depicted. Or, Admonition 2 takes Admonition 1 out of the pictorial or iconographic realm toward the dynamic and iconological realm of the singular event of the mirror. That singular event is invocational and/or annunciatory. Radical presentism takes precedence. The distance between Step 1 and Step 2 is also aleatory and generative — for subjects. It in-

36 In many respects there is, indeed, *art-historical* significance to this portion of the Upper Church (i.e., the south transept), insofar as it is the only portion of the Upper Church that scholars agree upon as having been executed by Cimabue and School — as in, that the *entire assemblage* of the south transept frescoes belongs to Cimabue and School versus mere parts. See "Appendix III" in Alfred Nicholson, *Cimabue: A Critical Study* (Princeton University Press, 1932), 53–55. Nicholson's judgments are, in part, relative to the timeframe of his book insofar as the major controversies (yet to be resolved today) regarding attribution of works at Assisi and the subsequent "Assisi problem" were amplified by a 1937 Giotto exhibition in Florence. It is, oddly or not, the authorship of the left (south) transept that is more or less now safely beyond the arguments and disputations of the art historians, unlike the right (north) transept and almost the entirety of the fresco cycles of the nave.

vokes or activates the subjective (unstable) practices versus the objective (static) categories of the Franciscan worldview. The ideological cachet of the externalized catechism (imposed more or less by the Roman Church) becomes ideational — i.e., the spirit of the work returns "home" to its existential and radical (revolutionary and semi-heretical) origins. The High Romantic idealism of Franciscanism (often described as chivalric and epitomized in the figure of Archangel Saint Michael) may be detected in the punctum — that is, *through* that silent echo that crosses all readings of the illuminated mirror and which comes to its most powerful expression in the south transept through the twin triforia from where the angels peer into the south transept.

The crucial step embedded in Admonition 3 suggests that the "beyond" inferred is also or obviously within (an internal prospect), or only accessible from within. Yet, it is a "beyond" that implies that the illuminated self that is produced by the internalizing of the event of the mirror is a means to transcendence of the self (to self-transcendence). The internal illumination via the illuminated mirror then requires action. "Beyond" effectively equals works. The transcendental "I" is engaged in and/or through (in and through) Step 2. It is then transfigured in and/or through (in/through) Step 3. The "beyond" is also, existentially, a return to works (and the closing of a circle).

Mapped back onto the three-fold set ("itinerancy, poverty, works") that constitutes the primary coordinates of the so-called rule of the Franciscan form-of-life, a rule that shifted with the terrain traversed by the Franciscans of the thirteenth century, the three admonitions suggest:

1. Acknowledge and observe and study the mirror ("Stand and look up"), or, dialogically, "Walk away from illness" and "Pick up thy bed and walk";
2. "Kneel and look within," or acknowledge the transitional status of the transcendental "I" and its dynamic relation to the mirror; and

3. "Look beyond," or engage the illuminated mirror within and return to the world through works.

"Look beyond" thus becomes an entreaty to re-engage the world. This is a key aspect of Franciscanism, which was never intended, by Francis, to constitute a retreat from the world.

Mapped back onto works for works (works as life-work and form-of-life), the resultant path for artist-scholars suggests:

1. Observe, study, and become the illuminated mirror (through inspired itinerancy);
2. Renounce authorial privileges (authorial rights, presence, and identity); and
3. Remain in the world, to change the world, through collectively produced works (life-work).

Thus, three stations (crossings) emerge, for subjects; with an implied progression from a nominally physical state (standing and looking up) to an insistently subjective state (kneeling and looking within). The red thread is vision, or where the attention of subjects is intentionally directed. There is an implied optic at play in the shift, one that moves from the real to the surreal (or irreal) and back again. It is a classic spectral or speculative shift that, arguably, ends without ending in the apparitional Real of the Ideal. In the third or apparent final station, where "look up" has been displaced by "look within (not up)" in the second station, the proverbial wild blue yonder of High Romantic Franciscanism comes into view with the "look within and beyond." The entire operation is, irreducibly, recursive (it circles back via its ethos), and, most critically, "I" becomes (twice over) "Not-I." The "beyond" of the third station suggests a departure. The transcendental "I" is not the destination, it is the vehicle (the path). For it to be the destination would imply a reified ego as an end in/for itself (e.g., an "I am" in the sense of personal identification with divinity). The transcendental "I" gives way (renounces/sacrifices itself in the manner of divinity). The resultant path to be lived, versus merely theorized, is through confraternal (collec-

tivist) works that re-inscribe and renew the illuminated mirror as passage. The admonitions vanish with the path, the subject becomes the path, and the doubled presentism produces a fusion of ethos and telos (in Kierkegaard's sense of what distinguishes prophetic agency). Battles are joined through works, for and on behalf of free subjects, whereas complicity or neutrality concerning the subjugation and exploitation of subjects by power is no longer an option. This is the utter radicality of the presentism of the mirror. It is a call to collective action. "I/Not-I" marks the revolutionary ethos of the transpersonal nature of the illuminated mirror. The resultant subjective state denoted "I/Not-I" is, in a sense, the crossing of, or the crossing over to, the wild blue yonder of the form-of-life engendered through the life-work.

> YOU ARE HERE — (1) "Stand with me at the altar of Saint Michael and look up"; (2) *"Kneel* with me at the altar of Saint Michael and look within (not up)"; (3) *"Kneel* with me at the altar of Saint Michael and look within and beyond."
>
> (1) *"Stand* with me at the altar of Saint Michael and look up"; YOU ARE HERE — (2) "Kneel with me at the altar of Saint Michael and look within (not up)"; (3) *"Kneel* with me at the altar of Saint Michael and look within and beyond."
>
> (1) *"Stand* with me at the altar of Saint Michael and look up"; (2) *"Kneel* with me at the altar of Saint Michael and look within (not up)"; YOU ARE HERE — (3) "Kneel with me at the altar of Saint Michael and look within and beyond."
>
> YOU ARE HERE

Almost 800 years ago, this illuminated window into parallel worlds (proverbial *worlds within worlds*) was created at Assisi at the height of mid-thirteenth-century apocalyptic expectations and hysteria. Much of the agitation was coming from the mendicant orders of the time. Franciscanism, while then mostly tamed

by the Church, nonetheless retained an apocalyptic chord. The south transept is, without question, a depiction of Franciscan expectations of the impending End Times. Francis appears in the Crucifixion scene painted by Cimabue on the east wall of the south transept. He is caught up in a storm:

> The colossal body of the dead Christ is the center of an elemental conflict, evident in the storm of angels and in the loin cloth lacerated by a great wind. On the faces of the compact and violently drawn group to the right is a mixture of imbecile savagery and fearful comprehension […]. In the group to the left, John clasps the hand of his newly adopted mother; and in the quietly rhythmic gestures of these sorrowful women and of the Evangelist there is something of a low musical complaint which becomes suddenly strident in the upthrust arms of the Magdalen. Behind this group are the many women who followed Jesus from Galilee; and huddled on the rock at the cross's base above the skull of Adam is St. Francis, seeking obliteration in Christ Crucified.[37]

What is different as of the early twenty-first century? The same socio-cultural strife, the same games of power and privilege are staged and played out today but in a more strenuous and mostly supposed secularized manner. This is true in democratic and non-democratic societies. It is a global contagion. The ideology of the Church Triumphant of the thirteenth century has, across

37 Nicholson, *Cimabue,* 11. Nicholson's prose is in the spirit of connoisseurship, and his narrative strategy is clearly influenced by Bernard Berenson, whom he credits with having brought Giotto "back to life" for art history. For a defense of the literary values of connoisseurship, see Sydney J. Freedberg, "Some Thoughts on Berenson, Connoisseurship, and the History of Art," *I Tatti Studies in the Italian Renaissance* 3 (1989): 11–26. For a summary of "conditions and beliefs within the Order" in the mid-1200s (i.e., the various millennialist heresies, etc.), see G.G. Coulton, *From St. Francis to Dante: A Translation of All That Is of Primary Interest in the Chronicle of the Franciscan Salimbene (1221–1288), Together with Notes and Illustrations from other Medieval Sources* (D. Nutt, 1906), cited in Nicholson, *Cimabue,* 38n20.

multiple and increasingly disparate socio-cultural and socio-political registers, been re-inscribed in the ideology of Capitalism Triumphant. Notably, globalized capitalism is a Western contrivance forced through finance capitalism and multilateral trade agreements upon most of the developed world, while it is incipient in what is left of the "undeveloped" world insofar as there is anything left "there" to be exploited. Criticism of the Church and the State in the thirteenth century by the more strident and militant of the millennialists may easily be transcribed to criticism of Capital and State today.[38] The curious presence of a Marxist appropriation of Saint Francis, and the attendant reading of the origins of the capitalist exploitation and servitude of subjects in the late-medieval period (by Marx et al.), is a more-than-adequate reminder that Franciscanism was, in essence, revolutionary *in its time*.[39] In extracting from that history, an inherently timeless ideational Franciscanism to re-mount the apparitional barricades of the early twenty-first century, apropos of the apocalyptic sensibilities of present times, is therefore a-historically indeterminate, and the time-sense for that appropriation is always already the same. It is the "now-time" of Walter Benjamin, and it is the combined force of ethos and telos through works as delineated by Kierkegaard and his battles with Hegelianism as incipient statist imposture via its explicit and implicit terms of mediation (i.e., proposed and/or imposed terms

38 While present-day corporatized statism, for the most part, *facilitates* transnational capitalism, it is also more or less *negated* by its practices. This is best illustrated by how international trade agreements tend to erase local authority (e.g., national laws concerning labor, etc.) and, in the case of disputes, impose arbitration through tribunals that are run by the very actants benefiting from globalized trade.

39 See, for example, Karl Kautsky, "Der heilige Franz von Assisi — ein Revisionist des mittelalterlichen Kommunismus," *Die Neue Zeit* 22, no. 35 (1904): 260–67. Kautsky's caustic remarks concerning how Franciscanism was utterly defanged by the Church is accompanied by a reading of how the mendicants of the late-Medieval period constituted a type of lumpenproletariat through their penchant for begging and/or living off of rent versus actual work (labor). He is, nonetheless, effectively confirming Marx's reading of medieval mercantilism as the origins of modern capitalism.

of engagement for subjects with the world). It has crossed and re-crossed idealism and Romanticism in all of the various forms such pursuits have taken across centuries. It is "in" nineteenth-century anarchism and it is "in" twentieth-century nihilism, plus nineteenth- and twentieth-century anarcho-syndicalism. Franciscanism may oddly even be found in intensely configured neo-Marxist historical analyses of Capital's ongoing conquest of life itself, whether or not one tends to agree with the proposed utopian remedies for the otherwise trenchant diagnoses (e.g., further class warfare or further attempts to "inbourgeois" the subject).[40] The Marxist remainder today is utterly telling, while

40 For example, see Michael Hardt and Antonio Negri, *Empire* (Harvard University Press, 2000). "There is an ancient legend that might serve to illuminate the future life of communist militancy: that of Saint Francis of Assisi. Consider his work. To denounce the poverty of the multitude he adopted that common condition and discovered there the ontological power of a new society. The communist militant does the same, identifying in the common condition of the multitude its enormous wealth. Francis in opposition to nascent capitalism refused every instrumental discipline, and in opposition to the mortification of the flesh (in poverty and in the constituted order) he posed a joyous life, including all of being and nature, the animals, sister moon, brother sun, the birds of the field, the poor and exploited humans, together against the will of power and corruption. Once again in postmodernity we find ourselves in Francis's situation, posing against the misery of power the joy of being. This is a revolution that no power will control — because bio-power and communism, cooperation and revolution remain together, in love, simplicity, and also innocence. This is the irrepressible lightness and joy of being communist" (ibid., 413), as cited in Bruce Holsinger and Ethan Knapp, "The Marxist Premodern," *Journal of Medieval and Early Modern Studies* 34, no. 3 (2004): 466. This entire passage is italicized, for style and/or effect, by Hardt and Negri, in *Empire*. For strenuous objections to this supposedly "naive" appropriation of Saint Francis and Franciscanism by Hardt and Negri as a "utopian fantasy" for a new "anticapitalist medieval mendicancy," i.e., "the multitude," yet via a form of anti-Hegelian and anti-Marxist, postmodern counter-criticism (which, in turn, is based primarily in an inspired and admirable neo-Medievalist, anti-reductionist revisionism), see Holsinger and Knapp, "The Marxist Premodern." For example: "The century and a half separating the *Communist Manifesto* and *Empire* develops a neglected but powerful strain in Marxist thought that this volume names and studies as the 'Marxist premodern': the diffuse practices of historical and theoretical appropriation in the Marxist critical tradition that collectively enlist, ab-

its conversion to action begs an entirely different playing field upon which to carry out the last (conclusive) revolt.

Thus, a form-of-life for artist-scholars comes into view:

1. to erase careerist agendas and defend the honor and the agency of life-works;
2. to renounce authorial privileges and defend a No Rights status for life-works;
3. to defend literary-artistic forms of scholarship and life-works;
4. to erase institutional and territorial closure for life-works;
5. to dedicate life-works to Archangel Saint Michael;
6. to battle capitalist exploitation of life-works and artist-scholars;
7. to work collectively in defense of works-based agency and life-works;
8. to honor and defend speculative inquiry through works-based agency and life-works; and
9. to honor and defend useless beauty through works-based agency and life-works.

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ject, and reconstitute the cultures and artifacts of medieval and early modern Europe as explanatory tactics in the analysis of modern ideological formation and of the problematics of capitalist emergence. On one level, the Marxist premodern exists as a *longue durée* of theoretical innovation, from the early writings of Marx himself through myriad twentieth-century revisionisms in the work of Gramsci, Althusser, and Žižek, among many others. At the same time, it oscillates between a tactical recruitment of the premodern as a source of critical energy and a more strategic interest in policing the disciplinary boundaries between modernity and the Middle Ages as selective archives of exemplification, between the *grands récits* of Marxist historiography that locate premodernity within bold narratives of social change and the fragmentary appropriations that can lend the medieval in particular an almost iconic resonance within certain texts and traditions of Marxist thought" (ibid., 466–67). The term *inbourgeois* comes from Emmanuel Levinas. In partial defense of Hardt and Negri's appropriation, it is useful to note that Simone Weil also fell for the Franciscan legend during her 1937 visits to Assisi and Florence. Regarding Assisi's effect on Weil, see Simone Weil, *Lettre à un religieux* (Gallimard, 1951).

3

The Universal Exception

The Great Other as Exception

The Great Other of theology and a-theology, versus the Big Other of spectral systems of psychological domination, has nothing to do with the nominal self — the Ego. Nor does it align with jurisprudence and other such this-worldly extravagances of law and power. They are, as "other than," both superlatives, up and against one another. The battle joined, as a result, is the Great Battle, an epic confrontation between Self and Other. Foremost, it has to do with the fact that the "gift" of prior art (the immemorial debt of ideational Franciscanism) cannot be repaid, nor is it expected to ever be repaid. It is impossible. Repatriation of that debt, or its return via life-works, is only possible with the existential passage required of subjects en route else-where — e.g., beyond privileges associated with this-worldly endeavors. Yet, repatriation does not confer upon subjects the literal cancellation of the debt. Instead, it is a matter of the renunciation of the nominal self that owes that debt. The debt is erased with the self that owes it. Déjà vu all over again, if you like, or, remembering to forget. But what is at stake are primordial, preconscious, and — alas — preternatural states that inform subjectivity. Very few rational subjects like the preternatural, for obvious reasons. It is, forlornly, "out there" (an apparent "pure outside," "near abroad," or transitional zone) — even if every conscious subject

is subject to its effects (in dreams or in nightmares, awake or asleep). Is it a vestigial form of vitalism (the apparitional nature of Nature), which rational beings nonetheless seem to be willing to reject in order to construct a rational self? It is, objectionably, other-worldly. Objecting to its presence constitutes a decision to remain in the world, and to pursue worldly objectives. It flies in the face of terms such as *free will* and *free subjects.* What, after all, are free subjects? Free to do what? Free to determine what? Tempting Fate is the true calling of so-called free subjects. But it also entails a complete renunciation of what is commonly considered free will.

The difference between life-works and works is that the former, operating as illuminated tableaux, are clearly fated. They are, however, fated from within. They are not fated in the sense that they are written in advance. They write themselves, *en passant,* and authors merely serve as witnesses to the event of the work. The life-works of Chris Marker and Andrei Tarkovsky are excellent examples, even if authorial privilege is still at play in the fashionable term, "auteur." We might also add Jean-Luc Godard, as example, even if, in the case of Godard, the role of polemic often eclipses the internalizing voice of the work. For Godard, in his own fashion as "auteur," doubled the consciousness of the work and introduced several layers of cinematic mischief in the process. Such are his intertitles or Brechtian signposts. His filmic oeuvre is, thus, more intentionally or self-consciously complex than that of Marker or Tarkovsky.

Perhaps this is the meaning of Heinrich von Kleist's "reanimate marionettes," plus the search for a back door to Eden. Authors can obviously never own such works. To claim such would be a complicated game of faux-juridical justifications and ever-more-elaborate and elastic excuses for the universal exception that has ruled authorial privilege since the Enlightenment, and which arrived at a moment when authors were primarily seeking to escape from censorial measures associated with "royal households" and other forms of patrimonial closure across works. The exception always contained a second gesture, anyway, that was simultaneously evoked by way of what was generally disclosed

as the public good. Works eventually were assimilated to patrimonial and statist culture by other means, but as a type of "commons" as caesura, which was ruled nonetheless by expectations of conformity and de facto censure for anything considered of no use to the public good, however "public good" was to be defined.

The entire history of the modernist avant-garde may be seen as an illustrious adventure in escaping closure only to then be captured and summarily recorded as "adventure" in the annals of art history and socio-cultural production. Entire disciplines have been subsumed by these categorical assemblages of cultural import, with the avant-garde only ever fully assimilable well after the fact. Inassimilable works escape re-acculturation simply by being inassimilable. What determines their fate is the internal metric of works as escape. Far from tautological, this condition is determined in advance and never after the fact. Life-works may be said, then, to open onto other places and other times. The states invoked also have no stake in propping up the fortunes of authors and/or disciplines per se. That is only ever super-added by market ideologies. The default position for life-works is always, more or less, "uselessness" — before, during, and after the fact of the event of the work. The Great Other establishes a non-authorial exception for life-works through the transfer of authorial privilege from authors to works.

Moral Rights + Life-works

The transfer of moral rights (*droit moral*) to works becomes under such a scenario the principal rite of passage for works produced across life-works. That transfer is required to protect works from re-assimilation to the circuit of Capital. It is also utterly elective and cannot be enscribed in law and/or rules that govern the so-called knowledge commons. The aleatory premises of works developed under such auspices will also determine how and where such works are editioned or archived. Exiting the more abstract and abstruse considerations for such a maneuver, and only a maneuver in terms of the punitive and post-

rationalist justifications for authorial privilege, authors will, in electing such an option for works, generally and quite often agonistically confront the last exhausted reserves of proprietary gestures embedded in the processes of enscribing and editioning works in a "No Rights" idiom.

Additionally, this takes the entire fracas backward to the point of the emergence of *privilegio* (late 1400s), insofar as authorial privilege was tied to the ontic nature of books and not to anything conceptually ethereal such as intellectual property. *Privilegio* also had a territoriality attached — i.e., in the case of Venice in the late 1400s, the Venetian Republic. Not quite restoration or retroactive restitution of a primitive form of copyright, this reverse-engineered maneuver actually holds a promise that can only be termed "futural." It subsists within works, after all. And it is played out in the world of cultural production as bona fide universal exception versus conferral of reward for and upon authors and publishers. The fact that the modern version, as well as the Early Modern version of copyright and authorial privilege actually privileged the apparatuses of law and power, is not without significance. Its own versions of despotic reverse-engineering across centuries are actually apostrophes in the history of intellectual property rights, foremost given that the emergence of the publishing industry in the 1500s quickly eclipsed or obliterated the then-somewhat charming origins of *privilegio* for authors.

Archē-mēde

Three citations, working from Saint Paul to Agamben to Saint Paul and back (crossing Badiou and, then, the extraordinary austerities of Gnosticism), the third being a summary of the displacements and diremptions in the first two, will suffice to establish a point of departure regarding authors and the eclipse of authorial privileges required to reach a threshold where the so-called impossible becomes possible (and the unsayable, sayable), the premise being that the sacrifice of authorial privilege

opens a door that cannot be opened as long as such privileges remain in place and/or in force.

From within Agamben's *The Time That Remains,* Saint Paul speaks of a remnant:

> Thus then also in the of now time [a] remnant according to [the] election of grace has become; but if by grace, [and] no more from works, then — grace no more becomes grace.[1]

> And if by grace, then is it no more of works [observance of the law]: otherwise grace is no more grace. But if it be of works, then is it no more grace: otherwise work is no more work.[2]

Notably, this introduces a type of chiasmus, wherein, through double negation, something quite mysterious emerges (e.g., Badiou's "senseless superabundance"):

> In this scenario, Saint Paul's notoriously rigid and faux-dogmatic chiasmus and/or injunction regarding grace versus observance of the law may be turned toward a quite different horizon (that is, toward the production of works aimed at overriding the very law that negates divine grace and messianic time). Therefore, the structurally determined antidote, "If not by grace, no works…" / "If not by works, no grace…," interpolated as such from Romans 11:6 (via Agamben and others), subverts all second-order clauses preserved in the injunction. This negation of the paradigmatic, first-order injunction of Saint Paul creates a syntagmatic, second-order

1 Saint Paul, cited in Giorgio Agamben, "Appendix: Interlinear Translation of Pauline Texts," in Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans,* trans. Patricia Dailey (Stanford University Press, 2005), 161.

2 Saint Paul, Romans 11:6, *The Holy Bible: According to the Authorized Version (A.D. 1611): With an Explanatory and Critical Commentary and a Revision of the Translation,* ed. Frederic Charles Cook and Henry Wace (Scribner, Armstrong and Co., 1881), 192.

injunction for works that may speak for the election of grace. All who might place limits on the work of art should also consider that, under certain conditions, a first-order work of art may actually encode that "remnant" Saint Paul speaks of by way of such limits. These complex and associative statements by Saint Paul, blamed for all manner of mischief and articulated nominally in reference to the "remnant" (an embodied exception to the law, or Agamben's "messianic subject"), take on the signature of the Sublime for life-works by shifting the tenses and reversing the second-order negations, as above. And yet, sublimity in this case is written through the election of the arch-sublimity of the Christic (The Holy Name). The negations of this injunction are only valid when the arbitrariness of the law is abolished and messianic time is invoked — through works as grace. Such works are first-order works. They lead back to community ("public domain" as Democratic Communism) through their intensely situated transpersonal agency.

Such a reading, or intentional misreading, of Saint Paul's anti-legalistic injunction (against outmoded forms of law and interpretation of law), suggests antinomial sublimity (Badiou's "senseless superabundance") for works that transgress ideological formulations that pass for law. This schism, or the inference of a socio-political blind spot in biblical exegesis, introduces the ontic/ontological torsion of much of the criticism associated with appropriations of Saint Paul on the left for political, sociological, and/or historical-materialist purposes. Anti-capitalist sublimity, while but another name for a-historical sublimity, escapes capture by systems through first-order works. The insistence of sublimity for such works raises the stakes for all works that might also constitute a state of collective grace (cultural redemption, restoration of moral rights, and renaissance).

At the center of this mystery of first-order works is the Gnostic (semi-heretical), "pointless," or "useless" self-sacrifice of aeons over aeons to produce worlds (the "remnant" as immaterial remainder) — the message of the Franciscan,

> six-winged seraph of Mount Alverno. This primordial form of grace as un-repayable gift is the very justification for the Good that inhabits first-order works — the literary work of art as gift. That the Arts and Letters are a possible safe house (plus turquoise-emerald spiral as means of dissemination) for such revolutionary works is the premise for the anti-capitalist sublime as immemorial "voice" inhabiting such works. As refuge for this "voice" and the production of first-order works, the Arts and Letters take on a sublime significance ("senseless superabundance"), yet only as an a-historical and a-temporal way station for the supervention or subvention of mere quotidian or arbitrary forms of law.[3]

Clearly, then, something must be erased for something else to appear. What is it? What is Archē-mēde?

The term *archē* (ἀρχή) occurs in Greek philosophy and in Derridean deconstruction — in the latter case, writing the possible via the (im)possible (re-writing relativity/relation) and linguistic transpositions and inversions of/via Aristotelean *gramma*. *Archē* is defined as "something that was in the beginning: a first principle: a/ in early Greek philosophy: a substance or primal element. b/ in Aristotle: an actuating principle (as a cause)."[4] It has been transposed in Western philosophy to "consubstantive" — e.g., the Thing-in-itself, archetype, etc. It has become ghostly and apparitional across centuries.… The term *mēde* (μηδέ) is a conjunctive in Greek grammar, meaning "But not, and not."[5] Conjoined (*archē-mēde*), as they sometimes appear in a-theology and theology, there is an indirect inference to the Christos (χριστός) of Gnosticism (early Christianity), and to immanentist messianicity (the Derridean kind and the a-theological kind that animates post-phenomenology, i.e., mes-

3 Gavin Keeney, "Epilogue: Neo-Hegelian Spirit," in Gavin Keeney, *Knowledge, Spirit, Law, Book 2: The Anti-capitalist Sublime* (punctum books, 2017), 134–35.

4 *Merriam-Webster Dictionary,* s.v. "arche," https://www.merriam-webster.com/dictionary/arche.

5 *Greek Lexicon,* s.v. "mēdé," https://greeklexicon.org/lexicon/strongs/3366/.

sianicity without messiah). Teleology collapses into eschatology once again, perhaps suggesting that there is more of Walter Benjamin in Agamben's theological constructions than meets the eye, as there is often a nihilist remainder in Agamben most likely acquired from Guy Debord and the Situationists. The syntax of "in the of now time [a] remnant according to [the] election of grace has become" is exceptionally Benjaminian in its conjugation. It slips all over the place. It also resembles the passages in the extant writings of Francis of Assisi where we can actually begin to believe they are actually his words. While appearing Neo-Platonist, and as also enshrined in *Pistis Sophia* (third to fourth century AD, by Valentinus), and, perhaps, the fourfold process of Greek theater, *agonē, pathos, thrēnos, theophania,* there is the sense of an elementalist mathesis (cryptic phronesis) present in and across the compound term *archē-mēde.* It is possible to reduce it to: Beginning (proscription) + negation = (!). It is perhaps no accident that (!) resembles the empty set [ ] of "No Rights."

This mathesis may be expanded, slightly, through a tripling of negation via somewhat broad, yet instructive cultural coordinates that signal extensivity across philosophical discourses that purposefully bridge the East and the West (the presence of Vedanta in German Idealism being an obvious given):

1. Negation of negation ("exit") — Hegelianism, Nietzscheanism, etc.
2. Self-negating negation ("re-birth") — Negative theology + Negative dialectics
3. Affirmation by negation ("immanentist paradox") — Advaita Vedanta + Gnosticism

To sense but not see (know) via critique of world-system is at play in the immanentist structuralism of the interposing terms. And, this structuralist-inspired logics notably gives way to a type of presentism that is essentially the signature event of theology and the arts — or, at the least, of what theology and the arts share through their seminal appropriations of prior art. To

say that incommensurability has exhausted itself is a paralogical and tautological aberration: for it has actually, in the case of self-sacrifice, fulfilled itself.

This transitional (transitioning) "paradox" (through which we often sense we are, collectively and/or globally, at either the leading edge or the following edge of an epochal change), while causing the blindness or blind spot suffered, nonetheless permits an aleatory and iterative sequence of explorations en route out of what is already passing away. Yet, this paradox of sense versus knowledge also asks that we condition what is to come through reflexive works that engage us at the meta-critical level (viz., "what is taking place" is right before our eyes but cannot be properly seen because we are in the midst of it). This is "fidelity to the event." And, it is the ultimate re-registration of something that appears to be erased. The subject of subjects returns. One subject is erased such that another may appear. Yet the subject erased erases itself. The mathesis is the transcript of self-sacrifice (e.g., as in the Gnostic legend of the Aeons, who are said to have created worlds).[6]

6 Derek Jarman invoked the Aeons in the written documents that supported his films. In many respects, Jarman's bespoke works are an example of experimental cinema struggling en route to becoming an illuminated life-work. Regarding Jarman's last film, *Blue* (1993), see Gavin Keeney, "Lived Law and Works for Works," in Gavin Keeney, *Works for Works, Book 1: Useless Beauty* (punctum books, 2022), 67–73.

4

Scriptoria + Collecting Societies

Spectral Scriptoria

What would scriptoria for works that apparently write themselves look like? They would, at the least, need to be inoperative in the sense that they would also need to remain spectral. They would, by the very nature of the works to be developed, seem to not exist. Their existence would be spectral in the sense that they would never quite take place in any conventional physical sense. The immateriality or temporality of the model would, due to what is at stake, require the bracketing of prevailing conventions for works of literary-artistic scholarship and erasure of normative forms and/or definitions of authorship.

They would nonetheless be collectivist in spirit — foremost, since the very idea of a scriptorium is, essentially, confraternally established. In remaining spectral, such scriptoria would permit the rites of passage of works preeminence. Works would dictate terms, versus the prevailing modalities and justifications for what constitutes scholarship and what constitutes the work of art, both predetermined and defined in accord with terms of engagement that are imposed versus willingly observed.

The model once launched, therefore, escapes the Jamesonian "prison-house of language," defying definitions as much as modalities in contemporary scholarship and art as established by

institutions and as established by law.[1] There need be neither institution nor laws, other than those that pertain to the interiorizing modus vivendi of the life-work. To prevent re-assimilation to capitalist or other forms of exploitation, the scriptoria will, as the life-work assembles itself, lead to the creation of its mirror image via spectral collecting society.[2]

The trinitarian analytic underwriting the "No Rights" idiom returns here, but with the sole purpose of being tested against what it has permitted, as event, to appear.[3] This incipient post-rationalization of no purpose underscores the recursivity of the process of emergence and editioning for works within the trajectory of the life-work.[4] The recursivity is the result of ethos

1 Fredric Jameson, *The Prison-house of Language: A Critical Account of Structuralism and Russian Formalism* (Princeton University Press, 1973).

2 Authors, by default, all have archives. The archive is the life-work.

3 Regarding the troubled prospects for inhabiting diremptions, see Gillian Rose, *The Broken Middle: Out of Our Ancient Society* (Blackwell, 1992).

4 The term *recursivity* is used here to connote a doubling back of agency and a type of compounding of agency: that which is emitted, thus returns. It is also the foundation of Levinasian interpersonal ethics. All intersubjective relations are subject to this recursivity that saves transpersonal relations from collapsing into solitary silos or ghostly echo chambers. This process also underwrites the experimental and iterative nature of works of artistic scholarship, plus the plethora of editioning strategies available for such works. In Lacanese, recursivity is problematized through the positing of a blind spot in all subject-object relations, a type of cancelation of the Kantian Thing-in-Itself and the imposition of a return gaze. This, in turn, sets up the psychologization of the Lacanian Thing, which operates at a threshold as perennial threat to subjects, being beyond symbolization or incorporation into the Symbolic, with the Symbolic being one of three registers Lacan employs in his triadic system of The Real, The Symbolic, and The Imaginary. Recursivity in the Lacanian system is always already a form of impending madness. It functions across all three registers and informs both creative praxis and madness. Alenka Zupančič troubles this classic discordant harmony in subject-object relations as both curse and gift: "Here (and in conformity with a long poetic tradition) the abyss of infinity is contained in the eye that gazes at us (Hegel called this 'the night of the world'). But, of course, there is one instance when the two terms, *Auge* [*Auge/n,* eye/s] and *Blick* [gaze], are even more happily united: precisely the notion of *Augenblick* (moment). When, in *Zarathustra,* the theme of eternal recurrence appears for the first time (in the chapter 'On the Vision and the Riddle'), Nietzsche talks about a 'gateway' called 'Moment' (*Au-*

and telos combined in the work proper and the apparent neutralization of an outside. As elective post-rationalization, the trinitarian analytic verifies the implicit and explicit uselessness of the work accomplished. The scriptoria produce the works. The collecting societies hold in abeyance the re-assimilation, misuse, and exploitation of what has been accomplished. The aleatory procedures involved access liminality and threshold states buried in normative cultural production. The spectral scriptoria produce the spectral image of the lost and abandoned avant-garde of the modernist period — that somewhat ethereal discord via art now either demoted as never having existed or converted to legacy and paraded upon occasion through the very institutions it resisted association with in its day.

It is the voice of life-works that determines modalities and editioning strategies for works. And it is the time-senses of that voice that establish the verb tenses for works. Insofar as they are proto-nihilist, they also have that prescient time-sense of "Now" — albeit, a "Now" haunted by a messianic something that is never quite willing to disclose itself. Intonality and implied gesturalism, across works, leads to and fro. The reversibility of the trajectory matches the recursivity of the internal metric. The idea of "trajectory" becomes relative, and the topological nature of presentism (preposterous and otherwise) becomes self-evident through works.[5] This relativity of affect accounts, in part, for the sense that works write themselves, or that they have always already existed. Conventional authorial voice has given way to an anteriority that informs such works, with that anteriority echoing the privations of the prior art embedded in new works. The anteriority is also relative — relative in relation to the parallax (the subject-object discord) induced across works

genblick), a point at which two paths meet (as if 'offending each other face to face') — two paths that seem to contradict each other, and to stretch for an eternity in opposite directions." Alenka Zupančič, *The Shortest Shadow: Nietzsche's Philosophy of the Two* (MIT Press, 2003), 22–23.

5 See Gavin Keeney, Andreas Philippopoulos-Mihalopoulos, Ilenia Maschietto, and Neža Zajc, "Veronese," *Vesper: Journal of Architecture, Arts & Theory* 8 (2023): 198–99.

and the post-rationalist deliberations often visited upon works to convert them to commodity status.

Spectral Collecting Societies

What would collecting societies for works that apparently write themselves look like? As a development of the spectral scriptoria, they would also remain primarily non-existent or inoperative in the sense that they would be the antithesis of the conventional CMO (copyright management organization). Less openly confrontational with the supposed ethos of the modern collecting society (which is generally established as a means of exacting tribute for authors and/or publishers), spectral collecting societies — by default, also confraternally established — would mimic those that they are effectively opposed to. The resemblance would be of the "family" order only, whereas the intention would be to safeguard works from all that the family order ordains as the justification for the modern collecting society. More importantly, the spectral variety of collecting society associated with the spectral scriptoria would safeguard life-works versus bespoke (singular) works. This latter swerve in intentionality is derived, in turn, from the combinatory magic of ethos and telos as one thing: in and of the work in/for itself. The premise of autonomy is red herring, primarily because the conceptual fold for autonomy for works comes from the modernist bias that works of art have no relation to utility prior to default assimilation to the public domain. Additionally, the very idea of a public domain for such works has long been contested by law (on behalf of authors and publishers), and long corrupted by the misuse of the public domain as open vault for re-capitalization via assimilation to other works — i.e., assimilation of prior art to proprietary wares marketable primarily as fashionable appurtenance, but nonetheless marketed across real and virtual platforms for the proverbial knock-on effect associated with the manipulation of the knowledge commons by the vectoral class. The fact that the vectoral class includes institutions is, ineluctably, part and parcel of the present crisis regarding producing works of

literary-artistic scholarship that defy assimilation to the circuit of Capital. A spectral collecting society, in protecting life-works, would principally be safeguarding what has come to be known as legacy rights in IPR, or those assemblages of works that pass for life-works still under the uncharmed auspices of authorial privilege and exception. That moral rights of works would be transferred to life-works (and all works within life-works) is the *coup de grâce* required to even reach any formally effective version of a collecting society that is no longer a collecting society convened for the express purpose of exacting tribute for authors and/or publishers.

Past States for Life-works

There is a trinitarian *oikonomia* at play, as painted in the transept of the Upper Church of the Basilica of San Francesco of Assisi, which suggests three registers that, *qua registers,* signal the inescapable combined reality and irreality of prior art (e.g., "the given" of post-phenomenological inquiry, or the transcendentals of idealist philosophy). They are Angelology, Mariology, and the Apostolic/Prophetic tradition or path. This painted *oikonomia* (household economy), as configured in relation to the three altars of the Upper Church transept (i.e., Saint Michael altar, High altar, Apostles' altar), and having been derived from the universal mysteries engaged by Francis of Assisi and the early Franciscans, even though appearing to be ideological, remains sacrosanct or inviolable at another level. That level is the equivalent of the *itinerarium mentis* mapped by Bonaventure, however late in the game, and these three registers are effectively "source code" for practices associated with Franciscanism, inclusive of liturgy. Each one may be drawn upon for various reasons, toward works, and/or toward the acquisition of Grace. The inward-focused tension in Saint Paul's admonitions, in Romans 11:6, regarding Grace versus works, falls away. Here the concept of law and custom is erased or raised to a higher octave. As a type of universal "source code," and no matter how further encoded with Christian terminologies and High Church dogma,

it is possible to extract from each register both theological and a-theological precepts, foremost perhaps when the relation of subjects to source code undergoes a recalibration through the honoring of the *oikonomia* as a form-of-life (monastic or otherwise). Thus, a form of negation of worldly privileges emerges toward the securing and the elaboration of other privileges that are inaccessible when subjective states are ravaged by worldly pursuits (wealth, privilege, power, etc.) and dictated by arbitrary law (ecclesiastical, institutional, statutory, or otherwise).

There is an elective nature to this "other" nature. It has profoundly useless agency as its proverbial calling card. The uselessness is the mark of the universality of the code — plus its initiatory inwardness prior to externalization in and through works. To draw upon it requires, when the relation is intensely lived versus merely observed, entering upon the path of negative theology and an enlightened nihilism, the latter only valid in the sense that it is an exit strategy, however temporal, from the ravages of enforced subjective states, empty edicts, hollow law, etc. For artists and scholars (and for artist-scholars), everything is illumined, even the darkness. The darkness is, nominally, co-equivalent to Fate. The darkness is, under other-worldly auspices, illumined by Grace. Fate thus becomes Faith, across a series of stepping stones resembling those used to enter a Japanese tea house, the stones rising in scale and height as you approach the entrance.[6] The return of this gift to worlds, to alter worlds, is its revolutionary potential — its ethos. It has, historically, played out in ways that also suggest that without the impress of the universal versus the ideological there is no ultimate liberation of subjects. Utopias and revolutions fail for many reasons, but they most often fail due to not having been willing to honor and abide with the universal precepts that come through a form of agency that is heedlessly apolitical and rigorously anti-ideological, by default.

6 This is Kierkegaard's Knight of Infinite Resignation becoming a Knight of Faith.

Negative theology and enlightened nihilism constitute the apophatic path, for subjects and for works. Useless works become useful at that moment when they prepare a liberatory path for subjects. They are useless in the prosaic sense; and they are useful only insofar as they are useless to utilitarian concerns as constituted by the pursuit of privileges. This intensely calibrated and heterodox *oikonomia,* then, might be utilized toward the invalidation of this-worldly claims toward other-worldly rites and rights. The abolition of intellectual property rights (and of property as such) opens a door to "walk through" in pursuit of works that are inaccessible otherwise. This argument must however be re-registered through works to be made apparent — for the real and the irreal to be realized as one thing. Illumined works, of whatever order, but most especially in the artistic register, draw upon registers of the order of this trinitarian *oikonomia*.

"What is Angelology?" and "What is Mariology?" are questions for theologians. Yet whatever they portend, for subjects, must also register at a level where they may be lived, and where they may be free of any reductive catechism. To extract them from Franciscanism, on behalf of a study of works-based agency in artistic scholarship, is to honor their origins beyond all such catechisms, which always reduce agency and quite often neutralize it by installing unnecessary forms of mediation and unruly or abject forms of censure.

Life-works past are models for life-works present and/or underway. For the life-work today to enscribe (encircle and draw upon) agency of the order of Angelology and Mariology requires a noteworthy bracketing of anti-religious fervor or cross-religious dogmatism and antagonism. If the arts often resemble religions, that is primarily because they draw upon similar sources, if not the same sources. Perhaps in the case of the arts, these sources are properly anonymized. What, for example, is the equivalent of Angelology in the arts? Cimabue, Giotto, and El Greco are "Franciscan artists" due to the fact that they drew directly upon the "Franciscan" *oikonomia*. The iconographic or narrative content of their works is, however, erased by the iconological and illumined nature engaged — i.e., that real-irreal

nexus that puzzles art historians and negates any attempt at the historicization of the embodied affect as art-historical artifact. This inspired assimilatory power of the arts in relation to Franciscanism is most especially true with El Greco, insofar as his various peregrinations clearly resemble the mendicant rites associated with the religious orders of the day (the 1500s) and those that came two to three centuries earlier (1200–1300), inclusive of Franciscanism. Yet what has come to be called Angelology or Mariology is clearly something that could also remain nameless.

Present States for Life-works

There is a form of works-based Grace embedded in the Franciscan *oikonomia,* and Angelology, Mariology, and the Apostolic/Prophetic tradition are merely notable assimilations of a wide array of influences. An example of an exercise in works-based Grace is the early Franciscans' work with lepers and their works with the dispossessed, in general. This economy overcomes Saint Paul's contortions regarding works and Grace, in Romans, and his objections to the conventions of law regarding the obtention of Grace. It is, after all, through selfless works that the Franciscans enter into a rapport with so-called transcendentals.

There is a splitting in two here that resembles what occurs with artists and scholars, when and if they ever reach the level of bespoke works becoming life-works. This is the splitting in two of the nominal self, with the ego more or less abandoned and intentionally dispossessed, along with authorial privileges. Voice and name become neutral voice and "no name," a temporal new address for authors and artists (and artist-scholars) en route to the illumined tableaux of life-works.

A rapport with the human and the non-human entelechy of worlds ensues, under certain conditions. What these conditions may be is constantly shifting, with the times, insofar as many such conditions become mired in the gamed ecosystems of power and privilege. Origins are corrupted, as prior art is subsumed by systems. This rapport nonetheless, or initially, opens

up an odd temporal instance of a futural ethics (ethos and telos merged) and an embrace of an *oikonomia* of other privileges that have little or nothing to do with the servicing of wealth, celebrity, and power. In the Franciscan *oikonomia,* and part and parcel of the adventure of the event of early Franciscanism, as it was drawn from previous such experiments in crafting an inspired departure from the enforced antics of mere survival, having no fear of what Francis of Assisi called the Second Death is a principal tenet of the inner landscape required. This absence of, or bracketing of, the fear of death is closely related to the process of splitting in two. If psychologized or post-rationalized, for authors and for artists, it resembles a process of dialectical sublimation (as described by Bachelard regarding Novalis, or as attributed to Ruskin, Rilke, and Hölderlin by scholars).[7] This swerve also explains and redeems many of the darker moments in Agamben's philosophical chiaroscuro, as bemoaned by figures such as Negri and Žižek.[8] Agamben's darkness is exactly the

7 "But what if I had to speak and this compulsion to speak were the sign of the inspiration of language, of a vitality of language within me? And what if my will also wished only what I were compelled to do? Then might not this, after all, without my knowledge and conviction, be poetry and elucidate a mystery of language? And might I not then be called to be a writer; for what is a writer but one who is inspired by language?" Novalis, "Monolog," cited in Ian Balfour, *The Rhetoric of Romantic Prophecy* (Stanford University Press, 2002), 47, from Novalis (Friedrich von Hardenberg), *Die Werke Friedrich von Hardenburgs,* vol. II (W. Kohlhammer, 1960). Regarding the presence of the Sublime configured as Parousia in the multiple arts, see Gavin Keeney, "The Cosmogonic Parousia," in Gavin Keeney, *"Elsewhere": Essays in Art, Architecture, and Cultural Production 2002–2011* (Cambridge Scholars Publishing, 2011), 153–73. Regarding Bachelard and Novalis, see Gaston Bachelard, *The Psychoanalysis of Fire,* trans. Alan C.M. Ross (Beacon Press, 1964).

8 "There are in fact two Agambens. The one holding onto an existential, fated and horrific background, who is forced into a continuous confrontation with the idea of death; the other seizing (adding pieces, manoeuvering and building) the biopolitical horizon through an immersion into philological labour and linguistic analysis: here, in the latter context, Agamben sometimes almost looks like a Warburg of critical ontology. The paradox is that these two Agamben[s] always live together and, when you least expect it, the first re-emerges to darken the second, and the gloomy shadow of

darkness of the apophatic path. That it also resembles the late paintings of Caravaggio is no accident. It is not at all totalizing or all-encompassing. It is illuminated by the hoped-for antidote and remedy, configured in Agamben's written works as a form of inoperativity that is quietly operative at another level that he calls potentiality. His goal, always, is to escape corrupted contingent orders. Agamben is, like Francis of Assisi, a troubadour and a Romantic. His post-Romantic leanings or inclinations are the source of the dissonance in his works.[9]

Works-based Grace thus resembles works-based agency, although not all works-based agency is co-equivalent with works-based Grace. An embrace or encounter with dark vitalism in the arts (and in philosophy) is often a waystation. To be trapped there is to become enamored of, or paralyzed by, the darkness, which is also what Negri tends to imply regarding Agamben,

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death spreads over and against the will to live, against the surplus of desire. Or vice versa." Antonio Negri, "The Ripe Fruit of Redemption," trans. Arianna Bove, *Il Manifesto,* July 26, 2003, https://www.generation-online.org/t/negriagamben.htm. Negri is ostensibly reviewing Agamben's *State of Exception,* trans. Kevin Attell (University of Chicago Press, 2005).

9 "By opening to man his authentic temporal dimension, the work of art also opens for him the space of his belonging to the world, only within which he can take the original measure of his dwelling on earth and find his present truth in the unstoppable flow of linear time." Giorgio Agamben, "The Original Structure of the Work of Art," in Giorgio Agamben, *The Man without Content,* trans. Georgia Albert (Stanford University Press, 1999), 101. There is a "Hölderlinian" gesture here that is just out of reach. Hölderlin's "Is there a measure on Earth [for justice]?" is echoed in Agamben's statement, "the work of art also opens for him the space of his belonging to the world." "The essence of nihilism coincides with the essence of art at the extreme point of its destiny insofar as, in both, being destines itself to man in the form of Nothingness. And as long as nihilism secretly governs the course of Western history, art will not come out of its interminable twilight." Giorgio Agamben, "A Self-Annihilating Nothing," in Agamben, *The Man without Content,* 58. Further, "Since the goal is already present and thus no path exists that could lead there, only the perennially late stubbornness of a messenger whose message is nothing other than the task of transmission can give back to man, who has lost his ability to appropriate his historical space, the concrete space of his action and knowledge." Giorgio Agamben, "The Melancholy Angel," in ibid., 114.

or what Bergson is said to have endured.[10] The arts are often a type of parking lot for such dark works. Literature, cinema, theater, and painting, for example, have all been utilized to "illustrate" how the psyche often becomes trapped in what otherwise might be a passage to a type of else-where that the arts have also illustrated since time immemorial. If Existentialism arrived amidst Modernism, just as Mannerism arrived amidst Renaissance Humanism (Early Modernism), its darker reaches were inhabited by an expectation for some-thing else, no matter how remote and no matter how deeply buried in a preternatural and elemental datum.

The operative inoperativity (or inoperative operativity) of works-based Grace was central to the debates between Bonaventure and Aquinas concerning Agent Intellect. In terms of authorial presences, Agent Intellect is transcribable to the question, "Whatever possessed me to […]?" This question has been answered across the history of the philosophy of art and literary criticism through the evocation of "genius" and "inspiration" and the creation of the Muses. If that history comes to a type of apotheosis or hiatus in Badiou's increasingly abstract and logic-based evocations of the "Event," it is primarily because his analytic needs to remain austere and remote from contingent orders that would otherwise re-enscribe elements of the debauched knowledge commons of the late-modern capitalist putsch.[11] Indeed, both Žižek and Badiou made contact with

10 See George Steiner on Henri Bergson, *passim*. For example, and regarding Bergson's "evolutionary subjectivism," see George Steiner, *After Babel: Aspects of Language and Translation* (Oxford University Press, 1975), 144–45. To be fair, it is probably Bergson's darkness that appeals to Deleuze and Guattari. See Elizabeth Grosz, "Deleuze, Bergson and the Concept of Life," *Revue internationale de philosophie* 241 (2007): 287–300, https://www.cairn.info/revue-internationale-de-philosophie-2007-3-page-287.htm. Grosz calls Bergson "Darwinian" and Deleuze "Bergsonian."

11 See, for example, Massimo Cacciari's reading, in *The Withholding Power,* of Epimetheus having overtaken Prometheus and the present age as a matter of the invention of continual plagues to forestall Apocalypse: "There does not seem to be much more than this to know. Prometheus has withdrawn — or has once again been crucified on his rock, and Epimetheus is

Saint Paul to argue forth aspects of Saint Paul's insurrectional agenda regarding law — a then-debased type of canon law that the then-new Christian dispensation was considered a response or antidote to.[12] Badiou's theory of the Event, in particular, has all the markings of an inspired encounter with an *eventful oikonomia* that has, as not-so-hidden substrate, an intense ethical

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at large and in our world opening ever newer Pandora's boxes." Massimo Cacciari, *The Withholding Power: An Essay on Political Theology,* trans. Edi Pucci and Harry Marandi (Bloomsbury Academic, 2018), 117.

12 Alain Badiou, *Saint Paul: The Foundation of Universalism,* trans. Ray Brassier (Stanford University Press, 2003). For an important review, see Daniel Boyarin, "Review of *Saint Paul: The Foundation of Universalism*," *Bookforum,* April-May 2006, 12–13. *Saint Paul* appeared in English at roughly the same moment as Badiou's *Infinite Thought: Truth and the Return of Philosophy* (Continuum, 2003). Both books privilege the rediscovery of the present-present, a form of radicalized time that is purely inherent in the very nature of being (of being alive). It is for this reason that Badiou expropriates Paul, given Paul's exquisite rhetorical circling of the question of being alive or dead (awake or asleep). See also Slavoj Žižek, *The Puppet and the Dwarf: The Perverse Core of Christianity* (MIT Press, 2003). Both Badiou and Žižek confer on the subject (the late-modern self) the role of self-destroying angel, a figure that actually rescues the subject from its dependence on mutually "filiated" forms of subjection (servitude) and repression structurally imposed by the abstract principles operating within dematerialized and de-territorialized capital. Both authors are essentially responding to the last phases of "le tournant théologique" (*le tournant phénoménologique*), underway since at least the late 1980s. See Gavin Keeney, "Žižek/Badiou: The Neo-Marxist Sublime," in Gavin Keeney, *Dossier LANY 2001–2008,* published in *PhilPapers* (2013), 79–80, https://philpapers.org/rec/KEEDL. See also Jean-François Courtine, ed., *Phénoménologie et théologie* (Criterion, 1992), and Dominique Janicaud and Jean-François Courtine, eds., *Phenomenology and the "Theological Turn": The French Debates* (Fordham University Press, 2000). A key figure in the early years of the theological turn was Jean-Louis Chrétien. Chrétien's works published across the arc of the theological turn include: *L'inoubliable et l'inespéré* (Desclée de Brouwer, 1991), published in English as *The Unforgettable and the Unhoped for,* trans. Jeffrey Bloechl (Fordham University Press, 2002); *L'appel et la réponse* (Éditions de Minuit, 1992), published in English as *The Call and Response,* trans. Anne A. Davenport (Fordham University Press, 2004); *Corps à corps: A l'écoute de l'oeuvre d'art* (Éditions de Minuit, 1997), published in English as *Hand to Hand: Listening to the Work of Art,* trans. Stephen E. Lewis (Fordham University Press, 2003); and *Le regard de l'amour* (Desclée de Brouwer, 2000).

and moral agenda etched in the approaching event-horizon of the enfolding analytic.[13] Whether Badiou crashes en route remains to be seen, since the instantiation of systems atop diffuse and amorphous entelechies underwriting the order of works-based agency or Grace, and effectively bridging worlds, tends to de-nature or neutralize what is analyzed. What might work out best, in attempting to honor the event and event-horizon of works-based agency and Grace, is to take a page out of another book, and say, "I took a golden leaf out of that page of that book…." The golden leaf is the prior art embedded in all such works. If this sounds "Hölderlinian," that is because that is exactly what Hölderlin practiced, most especially in his late works, and that is exactly what many artist-scholars practice in their late works. In fact, it is late works of such an order that are de facto "anonymous." The author has vanished. Voice and name have vanished. Another or a neutral voice and no name have arrived. Such works are often literally editioned and circulated anonymously. The fact that many such works still are attributed to authors and artists has more to do with the "market forces" at play than anything resembling last traces of authorial privileges and authorial presences. Such works are best made "public," and such works are often disseminated in peer-to-peer fashion when both the public and the market cannot handle them, and should

13 "Such is the intervenor, such is one who knows that he is required to be faithful: able to frequent the site, to share the fruits of the earth; but also, held by fidelity to the other event [the storm] able to discern fractures, singularities, the on-the-edge-of-the-void which makes the vacillation of the law possible, as dysfunction, its crookedness; but also, protected against the prophetic temptation, against the canonical arrogance; but also, confident in the event, in the name that he bestows upon it. And, finally, thus departed from the earth to the sea, embarked, able to test the fruits, to separate from their appearance the latent savour that they draw, in the future anterior, from their desire to not be bound." Alain Badiou, "The Event: Intervention and Fidelity," in Alain Badiou, *Being and Event,* trans. Oliver Feltham (Continuum, 2005), 261. This passage concerns Hölderlin's poem "Mnemosyne": "[…] And always / there is a yearning that seeks the unbound. But much / must be retained. And fidelity is needed." Friedrich Hölderlin, *Poems and Fragments,* trans. Michael Hamburger (Anvil, 1994), 519.

not handle them. Such works are incendiary and luminous, at heart. En-scription has overtaken inscription. Such works are not so much written, painted, or filmed as they are endured (lived). Author has become scribe for the event of the work. Far from being a case of the reverse-engineering of authorship and a return to the Middle Ages, "author as scribe" relieves the author of the burden of theft of prior art by authorship.

Future States for Life-works

The metaphor here is that everything required for a "No Rights" idiom for works of artistic scholarship always already exists — is here ("here and now") — and that what is required is to release that which is locked up and disfigured by IPR law. The "golden leaves" of prior art also always already exist, in past works, in present works, and as potentiality in future works. The paradox is that these golden leaves (traces of prior art in past and present life-works) may be extracted and utilized in the creation of new works without recourse to IPR law. In doing so, new "illuminated manuscripts" emerge — illumined from within due to the presence of prior art. The historical irony is that this suggests the "state of the art" prior to the arrival of the printed book (via the illuminated manuscript), and prior to the emergence of the book trade and copyright per se. Yet, there is no backward or regressive trajectory involved. Neither is there an evolutionary gestalt involved. The historical telos collapses due to the fact that everything required for such a status for life-works always already exists.

5

Useless Collegia

Nominally Useless Collegia + The Red Thread

> The reconciliation of irrational forms in which certain economic relations appear and assert themselves in practice does not concern the active agents of these relations in their everyday life. And since they are accustomed to move about in such relations, they find nothing strange therein. A complete contradiction offers not the least mystery to them. They feel as much at home as a fish in water among manifestations which are separated from their internal connections and absurd when isolated by themselves.
>
> — Karl Marx[1]

The socio-cultural and socio-political "cut" of nearly three decades of scholarship focused primarily on Renaissance Italy and

1 Karl Marx, "Genesis of Capitalist Ground-rent," in Karl Marx, *Capital: A Critique of Political Economy,* vol. 3: *The Process of Capitalist Production as a Whole,* ed. Friedrich Engels (Foreign Languages Publishing House, 1962), 760. Further, "What Hegel says with reference to certain mathematical formulas applies here: that which seems irrational to ordinary common sense is rational, and that which seems rational to it is itself irrational" (ibid.), with reference to the irrationality of "the relation of a portion of the surplus-value, of money-rent […] to the land [as such]," viz., there is no logical relation whatsoever (ibid., 759).

patronage — i.e., from the early 1960s to the late 1980s, and said to have started with Gombrich and then more or less petered out due to exhaustion — is utterly misleading regarding what was actually at stake in Renaissance Italy in terms of the multiple arts at the close of the Late Medieval period.[2] It is also a sign of the times in which it was written, crossing as it does the postwar cultural revolution and the onslaught of neoliberalism. If Marx may be detected in some of these examples of misprision (intentionally biased sociological misreadings), it is primarily due to the fact that he made his own shallow dive into Renaissance Italy to extract both a critique of the art of his own time and some gestures toward the supposed origins of capitalism and the commodification of life via "merchant capital" and urbanization.[3] Patronage and capital then share a common terrain, reaching back into antiquity, and, oddly enough, that terrain intersects with incremental urbanization — the expansion of towns and cities where the merchant classes tended to congregate.[4] Here we are not far from Baxandall's "dancing merchant savants" as the true sponsors or progenitors of the Italian Renaissance, although by blaming urbanization or blaming the merchant classes we are further from the real point (the Hege-

2 See F.W. Kent, Patricia Simons, and J.C. Eade, eds., *Patronage, Art, and Society in Renaissance Italy* (Oxford University Press, 2002).

3 For the appearance and disappearance of Marx across the terms of engagement for this extensive foray into Renaissance Italy, see Margaret Rose, "Marx and the Study of Patronage in the Renaissance," in ibid., 313–19.

4 It is the carriage trade that Marx implicates in his analysis, and the buying cheap and selling dear practices associated with it. "Merchants' capital, when it holds a position of dominance, stands everywhere for a system of robbery, so that its development among the trading nations of old and modern times is always directly connected with plundering, piracy, kidnapping slaves, and colonial conquest; as in Carthage, Rome, and later among the Venetians, Portuguese, Dutch, etc." (Marx, *Capital*, 3:325–26). See also Marx, *Capital,* 3:328n50, regarding the English in India and a "string of futile and really absurd (in practice infamous) economic experiments," including the creation in Bengal of "a caricature of large-scale English landed estates." Marx compares the trading nations to intermediate worlds similar in spirit to the *intermundia* of Epicurus (and Lucretius) where the gods live (ibid., 3:325).

lian "real of the real") than ever.[5] Reducing art to socio-cultural ashes to perform a forensic report on origins may resemble science, but it obliterates all traces of what was actually present, prior to incineration, as trace or impress of "origin" — i.e., how the ontic conceals the non-ontic. Renaissance patronage was, according to the scholars of this thirty-year war of words irredeemably linked to urban dynasties — both aristocratic and capitalist-mercantilist.[6] The obsession with Florence, mostly by Anglo-American scholars, and known as "florentinitis" (a term coined by a Milanese scholar to ridicule the shallow and somewhat pretentious glorification of the Florentine Renaissance) is also utterly disfigured by the obvious recourse to the Medici, with the balance of Florentine history generally consigned to flames (along with all dissenting factions deposed or corrupted by the despotism of the Medici).

No less self-righteous than Medici Florence, the Venetian Republic was, at the least, truly heterodox. Patronage in Venice may have followed similar trends (determined by the materialist histories scholars of the period love to cite and then mostly ignore), but it was of an entirely different order. What was this other order? Various justifications exist for calling it a "mythic order," but in contradistinction to the cooked histories that potentates commissioned in the Renaissance to offer up a classical edge to their dynasties (in the manner of Suetonius and Livy, again according to scholars of the thirty-year war of words noted). The mythic and the classical therefore diverge. In terms of art and patronage the difference is significant. By the time of the Renaissance, and inimically so, the writing of history (historiography proper) was intentionally *literary*. It was an artform.

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5 Michael Baxandall, *Painting and Experience in Fifteenth-century Italy: A Primer in the Social History of Pictorial Style* (Oxford University Press, 1972).

6 In *Capital,* vol. 3, *passim,* Marx makes several telling remarks (in part via excoriating citation in footnotes) regarding the battles between the nobility and the merchant classes, the latter robbing the people, and the former robbing the latter. Karl Marx, *Capital: A Critique of Political Economy,* ed. Friedrich Engels, 3 vols. (Foreign Languages Publishing House, 1954–1962).

And perhaps it is fair to say that multiple disciplines followed suit, including the multiple visual arts. In Venice, for example, the literary and the artistic realms were totally mixed up with one another in a type of dance that at times resembled a *danse macabre*. The sudden appearance of the printing press had quite a bit to do with this commingling of interests, as did Venice as an international entrepot. If artistic-literary license was "born" in this period, it is also a misnomer for something far more interesting.[7] In a sense it might be better to say it was a matter of artistic-literary *dissent* than *license,* both terms nonetheless retrospectively applied to events that are, indeed, markers for what we like to call the emergence of modernity. The echo a few hundred years later in the French Enlightenment only serves to underscore that the so-called modern did emerge through dissent, and that patronage was linked to and complicit in all that preceded that emergence and all that followed.[8] Links to the ar-

7 Amidst the claims of scholars of the Italian Renaissance we find statements such as: "In fact, it was only in the course of the Renaissance that art *created consciously* as such emerged as a specific kind of object; and much of the 'art' that fills our museums today never achieved that distinctive status at the time." Richard Goldthwaite, "The Empire of Things: Consumer Demand in Renaissance Italy," in Kent, Simon, and Eade, eds., *Patronage, Art, and Society in Renaissance Italy,* 153 (italics added). Goldthwaite is troubling and agreeing with Pierre Bourdieu's claim that art cannot inhabit "a sacred island systematically and ostentatiously opposed to the profane, everyday world of production, a sanctuary for gratuitous disinterested activity in a universe given over to money and self-interest." Ibid., with reference to Pierre Bourdieu, *Outline of a Theory of Practice,* trans. Richard Nice (Cambridge University Press, 1977), 197. The birth of artistic license supposedly occurred in opposition to the "learned advisors" who ran the systems of patronage, i.e., the middlemen. See F.W. Kent and Patricia Simons, "Renaissance Patronage: An Introduction," in Kent, Simon, and Eade, eds., *Patronage, Art, and Society in Renaissance Italy,* 17, with reference to Charles Hope, "Artists, Patrons, and Advisors in the Italian Renaissance," in Stephen Orgel and Guy Fitch Lytle, eds., *Patronage in the Renaissance* (Princeton University Press, 1981), 293–343. See also H.W. Janson, "The Birth of 'Artistic License': The Dissatisfied Patron in the Early Renaissance," in ibid., 344–53.

8 If the chief characteristic of the Italian Renaissance was that it was pagan, the chief characteristic of the French Enlightenment is that it was secular. Scholars also love to argue over the actual date of the emergence of moder-

tistic exception in both eras tend to confirm this. Dismissing the exception remains, as a result, incredibly difficult and/or incredibly self-serving, by scholars and by patrons. Both Kant and Hegel defended "uselessness" as the principal sign of the work of art. If it had overt utility, it was generally demoted to craft.

The body is also a horse. Sometimes the horse becomes a nightmare. Is this not culturally determined? Yet what is the vehicle of the work of art? Is it not what has come to be called the exception, i.e., the "soul" of the work, as Diderot and others would eventually spell out in opposition to the forms of patronage present in the *ancien régime*? The body of the work of art is the ontic level and this level is privileged through the mechanisms of patronage. If you wish to dissent, you will have to produce intentionally un-authorized works and present *them* as such. How? And where? You can "write" them with impunity, but can you also edition them with impunity in a real or virtual police state? The "soul" of the work is the true vehicle — the non-ontic level (arguably also its agency). How it travels through worlds, dodging the merchant class operating on behalf of the police state of capital, becomes the answer to all questions. Where it leads others is an open question: primarily because it almost always depends on others.

> "Walk away from illness…." — "Pick up thy bed and walk…." — "Habit is a great deadner…."

Habit as "great deadner" — a quip by Beckett, with a sting. Perhaps habit here is Bourdieu's *habitus?* Walking away from *habitus*.… How? Leaving the Fountain of Bethesda and carrying your bed.… Where to? Present-day patronage and its various contagions are not so much different than in Kierkegaard's "present age."[9] The same life-less patterns remain. The still-born

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nity, with the primary moments being either the Italian Renaissance or the French Enlightenment.

9 Søren Kierkegaard, *The Present Age: On the Death of Rebellion,* trans. Alexander Dru (Harper Perennial, 2019). First published as a pamphlet in 1846.

works produced under prevailing conventions only prop up the illnesses of the age — variable and viral, symptomatic and full-blown. The necessity of the exception remains, and its enemies are all more or less those who have decided to placate power and privilege, plus those unhappy souls wishing for access to power and privilege. False consciousness, indeed. Enslavement by choice; illness by indoctrination. False consciousness comes often from unconsciousness. Illness is of body and soul — the former the register where symptoms first appear, the latter where the antidote or exit may be prepared. Psychology, sociology, art history are paths into and out of the dark wood. Purgatory and Limbo. As stations en route else-where, both are, indeed, socially constructed chimera — hallucinatory and spectral. *Habitus* is an old cloak. Better to walk naked — at times.[10]

Kierkegaard draws out the consequences through a series of feints that nonetheless contain an aberrational foray into truth-telling insofar as his goal is to define into oblivion the alienated soul of the artist (and self-identity is at play here as much as any objective analysis he may have derived from his own struggles with Hegel):

> The law governing artistic production applies, on a smaller scale, to every one in daily life. Every man who has a real experience experiences at the same time all its possibilities in an ideal sense, including the opposite possibility. Aesthetically these possibilities are his lawful property. Not so, however, his private and personal reality. His talk and his production both rest upon his silence. The ideal perfection of his talk and of his production will correspond to his silence, and the absolute expression of that silence will be that the ideal will include the qualitatively opposite possibility. But as soon as the artist prostitutes his own reality he is no longer essen-

10 The metaphors here are derived from Yeats — i.e., the "old cloak" and the necessity of "walking naked" at times. While Yeats is throwing off the cloak of "old mythologies," the inference here is that *habitus* is equal to inhabiting "old mythologies." The poem that embodies this, for Yeats, is "A Coat" (1912).

> tially productive. His beginning is his end, and his very first word will be a sin against the modesty of the ideal. This type of artistic production is therefore even, aesthetically speaking, a kind of private gossip. It is easily recognized because it is not balanced by its opposite; for ideality is the balance of opposites. For example, if the man who is moved to write by suffering is really initiated into the realm of ideals, he will reproduce the happiness as well as the suffering of his experience with the same affection. The condition of his attaining this ideal is the silence with which he shuts off his own personality. Otherwise, in spite of all precautions, such as changing the scene to Africa, his one-sided predilection will be privately recognizable. For an author, like any one else, must have his own private personality, but it must be his own *åßatov* [Holy of Holies]; and just as the entrance to a house is barred by the crossed bayonets of the guards, the approach to a man's personality is barred by the dialectical cross of qualitative opposites in an ideal equilibrium.[11]

This, in turn, sets in motion the existential register *of and for* works-based agency:

> Only by suffering can the "unrecognizable" dare to help on the levelling process and, by the same suffering action, judge the instruments. He dare not overcome the levelling process directly, that would be his end, for it would be the same as acting with authority. But he will overcome it in suffering, and in that way express once more the law of his existence, which is not to dominate, to guide, to lead, but to serve in suffering and help indirectly. Those who have not made the leap will look upon his unrecognizable action, his suffering as failure; those who have made the leap will suspect that it was victory, but they can have no certainty, for they could

11 Kierkegaard, *The Present Age,* 44–45. This "silence" appears to be an aspect of works-based agency, and the warning concerning prostituting one's inner reality an aspect of honoring works-based agency.

> only be made certain by him, and if he gave that certainty to a single person it would be the end of him, because he would have been unfaithful to the divinity in desiring to play at being an authority: that would mean that he had failed; not only by being unfaithful to God in trying to use authority, but because he did not obey God and teach men to love one another by compelling himself, so that even though they begged him to do so he should not have deceived them by exerting authority.[12]

In the context of the complex topology of his acerbic and often doubly ironic critique of culture in 1846 (i.e., by troubling his own authorial voice), Kierkegaard says "all of this," in his prevailing tone of self-deprecating high seriousness and then deigns/feigns to disown it: "But I break off. All this is only fooling, for if it is true that every man must work for his own salvation, then all the prophecies about the future of the world are only valuable and allowable as a recreation, or a joke, like playing bowls or cards."[13] Kierkegaard's categories are not mutually exclusive: they only appear so in the contingent terms engaged. That is the beauty of his topological project. It is up to the reader to "disarm" the ironies (doubled and otherwise) — they are, after all, forms of revelation. His wise exposition resides in that topological excess, not dissimilar to other artists and authors who have indulged the same.

To further escape this self-established trap, Kierkegaard splits himself in two, as do most artists when faced with a potential stalemate in works and through works, but foremost while embroiled in the agency of the life-work:

> If the genius is an artist, then he accomplishes his work of art, but neither he nor his work of art has a *telos* outside him. Or

12 Ibid., 59. Here we have a veiled reference to a necessary modesty, with self-interest as the enemy of the truth(s) of/for works. It is also, *almost,* a "biblical" injunction. Authorial presence is negated, or so it seems.

13 Ibid.

> he is an author, who abolishes every teleological relation to his environment and humorously defines himself as a poet. Lyrical art has certainly no *telos* outside it: and whether a man writes a short lyric or folios, it makes no difference to the quality of the nature of his work. The lyrical author is only concerned with his production, enjoys the pleasure of producing, often perhaps only after pain and effort; but he has nothing to do with others, he does not write *in order that:* in order to enlighten men or in order to help them along the right road, in order to bring about something; in short, he does not write *in order that.* The same is true of every genius. No genius has an *in order that;* the Apostle has absolutely and paradoxically, an *in order that.*[14]

Magnificently, with these statements by Kierkegaard we are both inside of and traversing the critical decade of the 1840s, when many such souls, troubled by the stasis instilled by bourgeois capitalism, and the complicity of artists and scholars with bourgeois capitalism, are engaged in both an internal insurrection and an external insurrection. This is the decade when Marx enscribed *The German Ideology* (1845–1846). It is impossible not to see the young Marx astride the same dilemmas — inclusive of the ongoing rebellion of the Left Hegelians against Hegel, with "mediation" almost always the great dybbuk. Battling Hegelianism had actually become part of the problem of the decade, and escaping its orbit would take substantial firepower.[15] If the

14 Søren Kierkegaard, *Of the Difference between a Genius and an Apostle,* in Kierkegaard, *The Present Age,* 86–87 (written in 1847). This splitting in two will be echoed in the parable of the Knight of Infinite Resignation and the Knight of Faith. In effect, but not quite in a literal sense, Kierkegaard established a categorical imperative, for works, split himself in two, and thereby abandoned the stalemate produced by assigning the problem to works.

15 See Ernst Bloch, "Marx as a Student," in Ernst Bloch, *On Karl Marx,* trans. John Maxwell (Verso, 2018), 11: "The most obviously unique characteristic of the young Marx was his objective and youthful vigor amid the surrounding post-Hegelian decay. The young philosopher was concerned essentially neither with himself nor the insipid flatlands about him; instead,

1840s prepared the way for Schopenhauer and Nietzsche, the historical detritus includes that epic gamesmanship that scholars play across centuries, dismissing one another along the way and being dismissed, in turn, by those who come later. Some, however, escape such censure by never having actually arrived. Kierkegaard is one such soul, his life-work barely acknowledged outside of Denmark and only taken to task inside Denmark, in its day.

Ernst Bloch only requires eight pages in *On Karl Marx* to dispose of the French Revolution, on behalf of Marx (and on behalf of the Creative Marxism of the 1950s), and by implication, the earlier American and English revolutions, which he only refers to obliquely.[16] The dismissal rests upon the fact that, in such cases, the revolution freed the bourgeois subject (*l'homme*) and, in each case, the primary freedom obtained through the Declaration of the Rights of Man was the freedom to *own property.* He nonetheless does see buried in the internal logic of the French Revolution, no matter how mystified, and amidst its claims to a liberal civil society, the promise of a next step, which would then be on behalf of all citizens and lead to the true humanitarian project of Marxism. The *soi-disant* "economic program of the day" was, irreducibly, and again on behalf of Creative Marxism (i.e., in a kind of doubled retrospection), the "egotistic dynamics of individual production," for "private property determines the content of freedom."[17] Bloch refers to this as a "decline in the stature of the citizen […] insofar as the nation had not yet surrendered the ground in which the flowers of true freedom

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he reflected the light of a world that had not yet come to be but on whose horizon he stood."

16 Regarding Creative Marxism, see Gavin Keeney, "Anamnesis," in Gavin Keeney, *Dossier Chris Marker: The Suffering Image* (Cambridge Scholars Publishing, 2012), 7–76. Notably, Bloch does not distinguish between Young Marx and Late Marx, as many will do in Post- or Late-Marxism, or that which follows Creative Marxism. The splitting into two is generally for the purpose of getting rid of the Young (Left) Hegelians, once and for all, and of which the Young Marx was, in fact, a partisan, dissenting or otherwise.

17 Ernst Bloch, "Man and Citizen in Marx," in Bloch, *On Karl Marx,* 47.

bloom."[18] According to Bloch, "Marx and Engels pointed to the complete success of this revolution as the emancipation of the bourgeois, and the profit system then required by the economy — a reference which could not be made without sharp criticism of the ideology of human rights itself."[19] That said, it was "not quite enough…."

Marx's discovery of "private property as dominant among the other human rights" led to the conclusion that all of the other human rights were thus duly disfigured.[20] The three bourgeois human rights as of 1791 were, via "Bloch + Marx," (1) *propriété*; (2) *sûreté;* and (3) *résistance.*[21] The abolition of private property remained the Holy Grail of true Marxian communitarianism. Thus, in the *"program* of socialism" (the italics belong to Bloch), "the quest for the rights of uncompromising objective criticism, followed by pragmatic intervention" is the primary means to overcome the last obstacles.[22] And the "result would be that the *citoyen* would be pulled back out of the abstract-moralistic transcendental world which he inhabited in the ideology of the French Revolution, into the mundane world appropriate to socialized humanity."[23] Further,

> The image of the *citoyen,* when still in the bourgeois womb, so to speak, suffered an injury which has exercised its effects subsequently, because it was not recognized initially. But the whole image of the *citoyen,* notwithstanding its diverse sources [classical and otherwise], and even its pernicious stewards [Jacobins, Cromwellians, etc.], continued — even as a slogan — to exert an effective critical force against its contrary [the bourgeois subject], as it developed; indeed, it

18 Ibid.
19 Ibid.
20 Ibid., 49.
21 Ibid., 47.
22 Ibid., 50.
23 Ibid.

> always contained within itself, as Hölderlin showed, renewed self-purification.[24]

What is quite beautifully conveyed here by Bloch, in part via the reference to Hölderlin, is that the "still abstract and idealistic, ideal-construct of the *citoyen*" carries with it the hoped-for remedy to the half-baked freedom of the bourgeois subject.[25]

Lastly, then, the elective abolition of proprietary rights opens on to other rights:

> When Marx denounces private property as the bourgeois barrier to human rights, he does not reject freedom, the resistance of the people to oppression, and security, as other rights. But he concentrated on the forward effect of Right, which no private property can impede or ultimately destroy. Marx criticized private property by the standard of the very radiance and humanity of the human right to freedom. Freedom is the viewpoint from which his conclusions follow: not freedom of property but freedom from property; not freedom of industry but from the egotism of industry; not emancipation of the egotistic individual from merely feudal

24 Ibid., 49.

25 Ibid., 47; i.e., *citoyen* as "allegorical moral person," until otherwise realized (ibid., 52–53). The fact that Bloch repeatedly refers to Hölderlin is instructive. He is one of the few German idealists of the pre-Hegelian High Romantic moment (Jena, etc.) that does not take a serious beating across the diatribe of every instance of liberation being externalized and materialized or damned as wishful thinking and transcendentalist obscurantism. Both Marx and Bloch (and Bloch is effectively and/or channeling Marx) take German Idealism to task for its in-borne tendency and other-worldly pretensions. At the same time, however, they quietly extol the value of the inward revolution, the inner revolt, insofar as it eventually becomes acted upon *in the world.* Most contentious of all, however, is *how* it is to be acted upon in the world. For Marx and his followers, it is through class warfare. Bloch does not shy away from stating what he (via Marx) considers the just desserts of the aristocracy and the resistant bourgeoisie. It will take a demon such as Lenin to show the consequences of "what is to be done."

society but the emancipation of all men from every type of class society.[26]

If we can believe the stories of Lenin in exile, the revolutionary cadre he organized and supported before his fateful return to Russia included some revolutionary brigands — i.e., a small group (including Stalin) that practiced "expropriations" by theft (quite literally, armed robbery). Perhaps thinking of themselves as honorable Red Robin Hoods, or inspired High Romantic highwaymen, they are said to have robbed banks, while Lenin milked socialist sympathizers, which in one case included a "millionaire" merchant. Lenin's personal income, derived from family resources, including an estate, and modest proceeds from his writings (clandestine and otherwise) could not, accordingly, have fully supported his various and extensive peregrinations, nor his penchant for somewhat elegant accommodations while traveling abroad. His finances thus included what little he actually earned by his own labor, some family money, and what he and his cadre managed to beg, borrow, or steal.[27]

Who, then, are the true revolutionary "creditors" — those who actually pay the price for revolution? Are they not the long-suffering — the proletariat that Marxist ideology expected would bring about the much-anticipated revolt? How is such a revolt prepared? It may be argued that revolt is first prepared

26 Ibid., 49–50.

27 This story is told in a book produced in the post-glasnost Yeltsin years, with the author having access to "all the secret Soviet archives." See Dmitri Volkogonov, *Lenin: A New Biography,* trans. Harold Shukman (The Free Press, 1994). Given the origin and timing of this book, it is clearly aimed at demolishing the last vestiges of the "myth" of Lenin. The book also seeks to blame the travesties of Stalin on Lenin, not to absolve Stalin but to show that Lenin led to Stalin. Wresting control of social production from the aristocracy, the church, and the bourgeoisie apparently required brutality from the get go. While tarnishing the legend of Lenin may be the goal, it is also possible that promulgating the legend of Lenin has come full circle. That said, the book has a certain aura of propagandistic American influence that must be taken into account despite the acclamations by jacket blurb from a Harvard professor, a Stanford professor, and a Boston University professor.

ideationally, by creative dissent, across systems of classical patronage that are quite often difficult to detect and define but easy to dismiss, and that the materialization of revolt depends on many factors, including chance and/or fate. The generally maligned mystification of the revolutionary ethos proceeds nonetheless via both immaterial and material means. They are hand-in-glove, so to speak, which sometimes translates into the velvet fist. If ethos is vaporous and essentially a-historical (or literary-historical), telos is material and historical. Hegel therefore prepared the way for Marx by developing both strands simultaneously. In Kierkegaardian terms, Hegel operated as *prophet,* not literary artist or philosopher. If the Marxist-Leninist materialization of revolt thus took a severe historical-materialist turn, it by no means discredits the immateriality that prepared its way and often sustains the agency of the event across serial failures. The issue becomes what, in fact, the Young Hegelians were debating throughout the 1840s — i.e., what forms of mediation (historical, socio-political, artistic, and philosophical) might be privileged to foster a proper cultural renaissance and/or revolution in Prussia and, by extrapolation, across Europe. Reaction had already set in, against Romanticism and against idealism, while Western anarchism and nihilism were vying with socialism for the attention of the intelligentsia. Russian nihilism, in particular, fomented a literary renaissance across the 1800s. Dostoevsky, Gogol, and Tolstoy may all be said to have embraced Romanticism and idealism through literary-artistic means, with a touch of emergent realism. They were poets as much as novelists. And the nihilist element had more to do with the absence of a proper addressee for this cultural phenomenon other than a fairly broad Russian bourgeoisie dabbling in liberalism. The "nothingness" or zero degree embraced was the proleptic void all such insurgencies inhabit before blossoming. The Symbolists carried the flame up to the first failed full-blown revolt against the State (with Soloviev dying in 1900). The Futurists and the Supremacists carried the flame after the first failed full-blown revolt and up to and through the October Revolution, only to be marginalized and dismissed across the 1920s, in the Soviet Un-

ion, and summarily disowned and discredited with the arrival of Stalin and Socialist Realism. The avant-garde moved West, by degrees, and, in art-historical terms, across rolling insurrections associated with modernism. One movement followed another, each one subsumed by the culture industry along the path of the twentieth century. Teleology now underwrote art history, as an insurance underwriter covers the possibility of a fiasco at sea in the carriage trade.

We see the true revolutionary creditors every day, if we do not practice aristocratic blind sight (walking quickly, eyes slightly downcast, through streets and squares). They are legion because they are that great abstraction known as Everyman. But they especially include the ones whom we find begging for spare change on the main thoroughfares (the corporatized high streets) of our "world-cities" — or wandering amidst the clamor of the tourist hordes (caught in the abject splendor of the *commercium* of official cultural production). Venice, Rome, London, Barcelona, Zagreb, Ljubljana, New York, Mumbai, Hong Kong, Melbourne.… It hardly matters which world-city you visit. Sometimes they are selling trinkets to cover for the fact that they are begging (to avert any "civil" ordinances against begging). Sometimes they are the dispossessed Aboriginals (such as in Fitzroy, Melbourne), who take the money you give them and promptly throw it away. We often find the truest of true revolutionary creditors drinking beer in the morning on a park bench, alone or in groups of similarly minded, apparently lost souls. These foremost creditors are also on the commuter buses in world-cities; e.g., the woman in a wheelchair, who lets out a screech when the bus driver almost misses her stop. The revolutionary creditors are not all so similarly indisposed, however. Yet some have paid more dearly than others. They are young and old, rich and poor. They are damaged and they are entirely wholesome. They stroll as much as they stagger. Some saunter. They ride bikes to work and visit the gym. Yet within this class of universal citizens, subjects *are* subjects. It is tautologically sound to say so. It is impossible to argue with a tautology. There is no dialectic. Yet "Subject to what?" becomes

the main question. The unbearable presence of myriad homeless souls in world-cities begs the question for the self-proclaimed "guardians of the cultural commons" how such an abomination could come about.[28] Blaming the victim never works. Blaming the victor usually does work. Walking away from illness might just mean, at times, walking away from your masters.

"Subject to mediation" becomes the most obvious answer to the question "Subject to what?" And mediation takes many forms, including ideological form (also known as socio-political subjugation). It can be openly repressive subjugation or very subtle. It hardly matters. Often enough we are mediated into oblivion, regardless of subtlety or brutality. This more than accounts for why both Romanticism and idealism privileged subjective states over and above the social order. The Kantian critique of reason and Fichte's subjective idealism in many senses prepared the way for German Idealism — for Hegel, at least. Mediation is quite readily styled as indoctrination or socialization. Socialization is a key Marxist term for what needs to occur to bring the revolutionary ethos down to Earth, from the stars, and into play, or, out of the self-absorbed egotist and into everyday praxis. It is for this reason that "Bloch + Marx" object strenuously to the ideational and ideological impositions of variations on the theme of endlessly deferred gratification, foremost when it is offered up as a reward for "waiting," or worse yet — complicity.… This is the tired and worn-out Marxist metaphor of "opiates for the people," in which art sometimes is included. This includes all of Marx's objections to German Idealism and its hypostases (as Bloch calls anything reified into the nothingness or the pointlessness of wishful thinking). Religion becomes

28 There is an utterly devastating moment in Jean-Luc Godard's *Éloge de l'amour* (2001), when interviews are being conducted toward some sort of film and one hapless soul rounded up for a walk-on role is asked, "When are you most afraid or despondent?" (or such). He tells them that he is most afraid or most vulnerable when he is down to his last cigarette, or when his shoelace breaks. Such is the existential datum for a zero degree for "citizens." See Roland Barthes, *Writing Degree Zero,* trans. Annette Lavers and Colin Smith (Jonathan Cape, 1967).

an obvious target, but only the organized catechisms of otherworldly rewards for remaining quietly enslaved. Bizarrely and brazenly, at times — i.e., to those who think Marxism is co-equal to atheism — there is a powerful messianic and theological current running through Marx's life-work. The a-theological tenor is a red herring.[29] Like Hegel, he functioned as prophet. The messianic element comes through in Bloch's writings on Marx when he waxes poetic about artists and scholars past who have embodied in works the spirit of revolt. Beethoven is an example. Ultimately, it would seem that art is a revolutionary and absolute form of dissent when and if it sheds all forms of instrumentality and mediation to simply speak.[30] Art, too, is tautological at its highest octaves. "It simply *is*." The various means to ends disposed of include forms of mediation that destroy the voice of the work and impose an external voice to justify its presence. Useless collegia abound, via systems of patronage or not, dictating terms of engagement, whereas *totally useless collegia* are what is required, via systems of patronage or not. The apparent singularity in such instances includes the manifold. Works produced across works-based agency, as life-works, only appear as

29 It is instructive to note that it was via *a-theology* that Theology was permitted back inside of the Arts and Humanities.

30 In speaking of "Marx + Bloch," it is necessary to emphasize that Bloch is writing well after the age of revolutions has passed. Creative Marxism is in many ways a restoration of many of the literary-artistic elements abandoned in late Marx and subsequently troubled across the twentieth century by Marxists as they attempted to keep the catechisms of revolt under the rule of "social production." Bloch's "Changing the World: Marx's *Theses on Feuerbach*," in Bloch, *On Karl Marx,* 54–105, returns repeatedly to this hyper-materialist formulation. The catechism of "social production" obliterated all traces of transcendentals and *a-historical praxis.* While Feuerbach grounded Hegel, according to "Marx + Bloch," Marx's major task in the 1840s was to ground Feuerbach and then to move beyond him. Marx's *The German Ideology* (written in 1845–1846) would be the rite of passage for this final break and Marx's *The Holy Family* would be the transitional rite of passage. The major works of Feuerbach, to which Marx was responding, included *The Essence of Christianity* (1841); *Preliminary Theses toward the Reform of Philosophy* (1842); and *Principles of the Philosophy of the Future* (1843).

"products." The culture industry excels at defining their status as objects and as properties. Yet they are incessantly indeterminate and productively incommensurate, as such. They are not produced in isolation, and they draw on the inordinate fire-power of prior art. The modernist white cube gallery is an embarrassment of riches. Ownership of such works is a parody of the very concept of property. If, as Pierre-Joseph Proudhon famously declared, "all property is theft," it is theft because it originates in a plenitude that is wholly collectively "owned," not determined. Much of it pre-exists any form of social determination. The universal citizen may be an abstraction, but the origins of the concept are sound. Mediation is relative to the work at hand.

One of the great blind spots in Marx concerns the concept of the given — i.e., that which pre-exists human appropriation and represents a type of pure outside extolled by philosophers since time immemorial. He must, out of necessity to his agenda, negate or sublate anything given, as it is in his worldview a mystification. This has more to do with his version of classic materialist necessity (Epicureanism, etc.), which he struggles with, than anything modern. In other words, Marx flirts with the default skeptical position of abject materialism that requires that everything be subject to utilitarianism and material transformation through use, even if in his most inspired moments he leaps all bounds and delivers the *coup de grâce* for all forms of rote instrumentalization that are not in the best interests of his own abstracted version of humanity (*humanitas*). It is in such moments that he reveals his Romanticism. It is mesmerizing in *Capital* to see him claim, for example, that land has no value until it is cultivated.[31] In turn, he then savages the very concept

31 Marx, *Capital,* 3:797. This occurs in the section denoted by Engels as "The Trinity Formula," 794–810. Marx is discussing what he calls "vulgar economy." *"Capital — Profit* (profit of enterprise plus interest), *Land — Ground-Rent, Labour — Wages,* this is the trinity formula which comprises all the secrets of the social production process" (ibid., 3:794). Further, Marx wrote, "Vulgar economy actually does no more than interpret, systematize and defend in doctrinaire fashion the conceptions of the agents of bourgeois production who are entrapped in bourgeois production rela-

of rent. Without saying so, he is actually valorizing the fact that land is purely *given* and that its use-value is relative to all appropriations. Something cannot be appropriated if it is not already a given. The temporality of givens is at play here: they are originally given or they are given, taken, given back, and taken, over and again across the ages until the prevailing rational faculties of the day have assumed they are all fictitious, factitious, and suspect, all at once. What Marx is actually up to is demolishing *social* givens, but he cannot quite say so, which is correct given his somewhat totalizing agenda. He just cannot escape the orbit of his own neo-classical construction of necessity. This necessity tends to take the form of a rite of passage to Utopia — viz., it must merely be endured. The "true realm of freedom" begins with necessity and leads to the "development of human energy" in/for itself.[32] Marx's saving grace is that he will then disown private ownership of property and thus resurrect the concept of the given under other auspices — i.e., that collective ownership is the only form of ownership that is of value (and within that re-construction he steps into moral philosophy, which he has previously dismissed for its alliance with theological versus social concerns).[33] Red goes black at times, in Marx, as he steps into a type of self-imposed nightmare only to emerge on the other side of an apparent irrationality with the keys to the kingdom which he quietly extols in passages of his early writings that negate vapid materialism, one of many nemeses he slowly destroys en route to a vision of the earthly paradise he pre-ordains through his transposition of the Hegelian dialectic to a Marxian dialectic. He does not so much turn Hegel upside-down or on

tions" (ibid., 3:797). Marx then delivers his concluding blow: "It should not astonish us, then, that vulgar economy feels particularly at home in the estranged outward appearances of economic relations in which these *prima facie* absurd and perfect contradictions appear and that these relations seem the more self-evident the more their internal relations are concealed from it, although they are understandable to the popular mind" (ibid.).

32 Marx, "The Trinity Formula," in *Capital,* 3:800. "Energy" here is also "agency."

33 His *given* is a taken-back and, then and only then, a given.

his head as inside-out. Spirit in Hegel was also communitarian, whereas in Marx it is both communitarian and materialist. Givens return in Paradise, apparently, though they are banished en route to Paradise. Negation tends to be proleptic at times.

The same is true of subjectivity as of all other givens: there is nothing until there is the social. The zero degree is necessary for Marx to seal off his analytic from anything pre-existing his analytic. Subjects are formed *only* through social praxis. This so closely resembles his negative approach to the "pure outside" (reduced to a mechanistic materialism in the archaic period) due to the fact that Paradise is to be completely fabricated by humanistic orders and anything nominally pre-existing in this world or in subjects must be bracketed and/or discredited. There is an inverted Absolute here, for the "here and now" — or, immanence writ large — and a type of conscious void created from which to proceed. Yet this also betrays or discloses the fact that Marx, as Hegel before him, requires rather strenuous *conceptual* tricks to pull the rabbit out of his magician's hat.[34] The rabbit is the free subject in a free world. In other words, humanity proper is duly freed from enforced forms of subjective alienation (including religious alienation as found in Feuerbach or existential alienation as found in Stirner) through communitarian praxis across worlds. The hat is "Marxism." Private worlds must be banished to permit the collectivity to emerge. Private property must be banished to permit the emergence of the agency of Paradise. What was purely given must be renounced, although, in Marx, it is claimed that such never actually existed. Once inside the trajectory of the hoped-for Paradise, the tautology instilled is: "Everything is capital — until it is not…." This occludes any concept of anything preceding that telos of productivity as forward-marching entelechy. It is Aristotelean in the extreme. Platonism is also banished. There is no going backward, no anamnesis.[35]

34 This may actually be the ideal mark of genius.

35 The mythic is the mythic (and, in Marx and others, a negative tautology); it does not exist, as such (to rationality), except as an illusory some-thing else. Yet all magicians know that illusion is the point (i.e., the truth of the illusory).

Knowledge in and for itself is banished as well. All mythic reserves (e.g., Socrates via Plato) that may have led to entering this tautological, historical-materialist state are mooted — viz., they are made doubly immaterial and rendered (by pillage) as either merely retrospective and vaporous conceptualizations or reactionary mystifications. Yet, in a sense, normative time-senses collapse under duress, and in the Marxian analytic the eschaton appears on or over the horizon. Eschatology famously demolishes teleology. It has to be pushed to The End Times such that it does not destroy the trajectory of the work prematurely. The Young (Left Hegelian) Marx seems to imply that through works we may reach a time and place that has always been the promise of our status in the world. What else is a promised land? The eschaton is the Promised Land. Should anyone claim that it inheres in worlds, they would be asked to prove it. The only proof thus far, across all ages, is the work of art. The Promised Land can be prepared as much through the revolutionary work of art as through revolutionary social production. In many ways, and as attested by art history, such works of art re-load what Marx has suppressed: the banished givens of cultural production. Many such works start from the exact zero degree that Marx utilizes for social praxis. The only difference is that they often head off into the purely negative coordinates of the apophatic path Marx abhors, only to return by a transposition or transfiguration (*catasterism*) of effects and affects Marx would never be able to see or accept, in principle or in fact. His brutal take-down of anything resembling negative theology is telltale for what it, in turn, negates. Nihilism, for Marx, is egotism. Yet he is riding the crest of a wave that might be compared to the greatest sleight of hand in all Hegelian mischief (neo-Hegelian and Hegelian mischief) — i.e., the majestic negation of negation, which is only ever possible after near-endless trial and error (historically or personally). Bloch will summarize these proverbial "swerves all over the road," by Marx, as follows: "Precisely because genuine hope within the world proceeds by way of the world and works through the mediation of the world's objective

process, it is engaged in a venture together with this process, and they stand in the *front line* together."[36]

Mediation again. It seems unavoidable. The question must then be, "What form of mediation?" Most forms of modern and modernist collegia are nominally useless, given they are also parasitical in most cases.[37] They feign usefulness but are useless. Another way of mediation must be sought, one that is *truly, totally,* or *utterly* useless versus only apparently useless as ruse for appropriation, indoctrination, usurpation, and alienation.[38] They will feign uselessness and, thereby be paradoxically very useful in their uselessness to the re-discovery of the Promised Land both on the far horizon, at the historical demise of Capital, and always already "here and now," buried in the majestic and unrecognizable a-historical time-senses of works of art, below and within the physical and intellectual rubble of Capital as it implodes.

The true revolutionary creditors for both Marx and Lenin include artist-scholars past, present, and yet to come, including many either ignored, banished, or embraced by Marx and Lenin.

Totally Useless Collegia + The Red Thread

Any study of cognitive capitalism and how the hearts and minds of citizens are colonized and subverted by Capital in the twenty-first century will have to reach back into the past, to the origins of Capital (arguably in the Early Modern period), yet concerning itself with the present-day, post-contemporary condition

36 Ernst Bloch, "Karl Marx and Humanity: The Material of Hope," in Bloch, *On Karl Marx,* 39–40.

37 "Nominal": "adj. 1. existing, etc. in name or word only, not in fact […] 2. […] much below actual value given or received." A.S. Hornsby and E.C. Parnwell, eds., *Oxford English-Reader's Dictionary,* new ed. (Oxford University Press, 1979), 333.

38 "True": "adj. […] 1. in accordance or agreement with fact […] 3. genuine; rightly so named. 4. correct" (ibid., 553). "Total": "adj. complete; entire" (ibid., 545). "Utter": "attrib. adj. complete; total" (ibid., 565).

and focusing upon forms of artistic scholarship, where possibilities exist for absolute dissent that are not in any manner merely immaterial, given the ontic and non-ontic agency of such works. The goal (ethos and telos, as force-field) for such works would be found through actualization (but not mere praxis, which is instrumentality proper), and through charting an escape route for artist-scholars as outriders. The escape route would only appear through the focus on works-based agency and the telos, as such, would not purport an end in itself but an end to unnecessary mediation. In the past this has been denoted as immemoriality, and, whether of the post-phenomenological variety or the more archaic variety, immemoriality is, for artist-scholars, a reserve function in art and scholarship that relies on the cognates of a time-sense that is very close to sublimation: dialectical sublimation versus continuous sublimation.[39]

A central concern is when critique becomes commodified, plus how it becomes commodified. A central tenet of the post-contemporary, immanentist paradox inhabited by artist-scholars is that critique proper (whether cultural and/or political) has been serially ravaged by both careerism and authorial privileges, through a forced slow march through institutions, e.g., in the case of art and scholarship, via the art-academic industrial complex plus the false necessity of engaging with the protocols and biases of institutions and patriarchal culture.

The knowledge or creative commons (terms developed by late-modern capitalism and its various service industries, inclusive of the art world and academia) thus becomes suspect terrain for developing new forms of radical-democratic artistic or scholarly insurrection. The default position, also quite possibly pre-determined by Capital and its allies, is then the proverbial "back foot" (scare quotes required) — a position for dissidents that also has become mired in the attendant discourse of biopol-

39 For example, in *The Psychoanalysis of Fire,* Gaston Bachelard claims that dialectical sublimation is the form observed by Novalis across his life-work. Gaston Bachelard, *The Psychoanalysis of Fire,* trans. Alan C.M. Ross (Beacon Press, 1964).

itics. Colonization of heart and mind proceeds through occlusion of parallel realities and parallel time-senses in/for works. Thus, one possible (or suitably impossible) means to no ends is to explore and elaborate parallel realities and parallel time-senses for works, versus for any specific socio-cultural or socio-political gain. Mediation and patronage of a classical order may suggest that anything thus produced is by default a "product." Yet the actual point of purchase for the establishment of a new ecosystem for works of artistic scholarship with no relation to Capital is the negation of commodity status.

In this manner "works for works" (as category experience) becomes — via privileging works-based agency versus authorial presence — a proleptic subjective state by which the subjective state of the author is duly liberated from the ravages of the forced slow march. The peculiar and ironic, the aleatory and the generative, and the absurd and the ridiculous quite often counter and/or expose the occlusions inculcated in works by censorial power. The escape route that appears is also highly temporal and must be guarded. To guard it, any editioning of new such works must also undermine and subvert the prevailing ecosystem for works as maintained and policed by Capital and its service industries, defining "on the run" an emergent ecosystem that restores what has been destroyed or repressed by the colonization processes of vectoral capitalist agendas. Ultimately, what is at stake is the free human subject. The remaining question is, "Can this monkish sensorium (both severe and absurd) also become a *scriptorium* for new works-based agency, versus mere works, that has no relation whatsoever to Capital and its intended conquest of human subjectivity?"

Thus, Bloch offers the following defense of idealism: "Idealism must be studied, and in many ways must continue to be fertilized in a *crypto-materialist* sense; it must not be permitted to remain abstract or unknown."[40]

40 Ernst Bloch, "The University, Marxism, and Philosophy," in Bloch, *On Karl Marx,* 133 (italics added). "In the great ages, that is, in periods when thinkers and artists are really able to stand at the summit of a great age, the

Intellectual property, as constructed and mediated by social, economic, and technical means, operates in/from the base. What would be its status if it had no relation to base and, as a result, was effectively negated? Is this not the reappearance of "the exception" in/for itself — in all its ghostly and useless splendor? What would works that operated only in the superstructure look like? Would the concept of intellectual property vanish? Would something long lost or something long forsworn appear? If historical process is strictly a one-way street, nothing demolished by teleology is likely to re-appear other than as reactionary token struggling against the immense sweep of historical agency proper. Yet if historical process is a two-way street, certain aspects of the past, either buried or struck from the record, might *re*-appear in revitalized form. The arrogance of the one-way street is often also the myth that strikes down all value in such a mythic reserve in historical process.

Crypto-materialist would seem to mean "hidden in plain sight." If the ideal is the real, the real also exists in the apparent rarified realms of the superstructure (politics, law, art, religion, science, and philosophy). "Fertilizing" idealism in a crypto-materialist *manner* (Bloch's term is *sense,* which is a "field" denoted by Marx to counter empty-idealist gestures in Hegel) suggests that the superstructure-base dichotomy is also dialectical. It too can, therefore, be negated. What types of works might counter the ideological impurities and impostures of the superstructure? Might such works remain empty of both ideological and rote materialist agendas?

The ontic nature of such works is bracketed and/or returns only through entirely new or new-old means. The vessel of desire is left empty. (The vapors of authorial presence circle but do not congeal insofar as they have also been bracketed.) The non-ontic (ideal) nature or anti-nature takes precedence, until

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superstructure is the location of culture — of a culture which is not in the least devaluated, but transmits its substance and inheritance to us when everything transitory in it, that is, everything that is merely attached to the ideology of the time, is comprehended and dissolved" (ibid., 128). Thus, when culture is embedded in vulgar economy, it is also vulgar.

a shift occurs in the base, as in the economic and technological substrate which nonetheless is, for Marx, the lived and *sensed* domain for revolutionary praxis. The non-ontic may be the register where, in so-called cultural matters, crypto-materialist subterfuges are prepared and/or staged, and their test will take place "below." Totally and utterly useless collegia will, thus, inhabit, out of necessity, the para-logical realms of politics, law, art, religion, science, and philosophy, working through paralogism after paralogism until the impurities of the realm of ideology and ideation are purged of historical and a-historical detritus. In terms of radical forms of artistic scholarship, "Art + Law" will be privileged.

Bloch seems to warn us against carrying trophies from the base up into the superstructure as hypostases (the very dybbuk of reifications and, perhaps, rationalizations based only in fact). The warning is telling, at least insofar as it is one of many ways to permit new instantiations of false consciousness to contaminate the superstructure, and to rebound to base as new forms of enslavement to the idols of Mammon, e.g., money, power, and privilege. Perhaps in the present age technological hubris is the great example, as hollow self-congratulatory nothing much, foremost given how it privileges Capital, and how it leverages knowledge produced in the base to disfigure anything truly emancipatory in the base. Such is the denudation of the artistic exception and its slow devolution to an empty gesture within intellectual property law and a subset of copyright-based monetary rights. The presence of moral rights in copyright law remains one of the great paradoxes of the present age. It resembles the great abstractions of natural law that Marx and Bloch rightly take to task as mere stepping stones to actually existing communitarian rights. If the Enlightenment prepared the way for a bespoke universalism without any real purchase in worlds, many of the vestiges of that way remain buried in what Marx called "putschism" and its various historical travesties. This seizure of power that is perhaps the fuse or switch in all instances of an otherwise possible benign shift of states, for all, or toward a proper homeland for all, is writ large across the last half of the

twentieth century as, and in, the arrival of neoliberal capitalism and its assault on immaterial labor. The putsch here is outright theft. If to Marx all workers were already converted to commodities with the onset of capitalist production, with the onset of the financialization of life itself the entire world has become subject to the dictates of Capital — inclusive of any areas hitherto of no interest and/or areas of cultural production where the means of the extraction of rent and tribute were not yet in place and/or not yet permitted. It is in the cultural apparatuses of worlds that the greatest damage can be done, and the latest maneuvers of Capital are essentially a re-enclosure of the commons.

What are the idols currently being carried up into the collective cultural superstructure on behalf of Capital? And, more specifically, what are the hypostases of "Art + Law" that are contaminating ideation in the name of a globalized worship of Mammon?

Artistic scholarship is an intentional conflation (as is "Art + Law") toward revealing exactly what is at stake in these latest maneuvers by Capital to exploit labor, yet now immaterial labor and all that such portends. Thus, the primary suspect terrain is exactly the so-called knowledge commons (also known as the cultural commons), with all of its various wares, which include reputations as much as works. The production of celebrity culture is too easy a target, however. What is behind celebrity culture is far more telling. It is, in fact, the great stroke of demented genius by Capital, on behalf of authors and artists, to *permit* them celebrity status, always a type of algorithmic formula hiding a cultural code reduced by classic mystification to either genius or luck. This brings into play Bloch's warnings regarding mystifications on behalf of de-naturing what is actually at play *in* the base. The creation, circulation, and maintenance of cultural commodities *are* the game, and most apologists will claim that it has always been so. Even Marx claimed so, even though he also foresaw (and prophesized) the end of the game.

Are these crypto-materialist fertilizations of ideality any different than what Bloch actually warns us against — i.e., the hypostases of Capital, from below to above? If it is ideality (idea-

tion) that is the address for the former, is it ideology that is the address for the latter? Is it the transfer to base that constitutes a proper difference, from above to below? The two registers, as dialectically constructed, seem to embody difference itself, yet they always default to a difference that inhabits the spaces between the two (perhaps as Derrida theorized). And given that immateriality is the target of Capital in the present age, where exactly may these materialist gestures have any *real* leverage? If it all seems hopelessly futural, then it is also quite possible that the two registers are a temporal appendage to the Marxist critique of cultural production and their negation is one primary target of that apparently hopeless futural essence.

The mythic reserve is privileged and damned, at once, in Marxist catechisms, though maybe not in Marx and Bloch. What is it? It holds the promise (Bloch's "Not-Yet") of the Promised Land, at times and through time, for Marx and for Bloch, for an *eventual* actually existing Utopia (for Bloch) and a *true* and lived communitarian ethos (for Marx). Yet Marx's materialism is a very strange affair: it has a secret mythic reserve no doubt brought over from his source material (the prior art buried in his project). This comes forth most powerfully in his own arguments with Democritus and Epicurus (nominally the subjects of his 1841 doctoral dissertation, "The Difference between the Democritean and Epicurean Philosophy of Nature"), and it leaps forth via the clinamen. His materialism has a peculiar, unstable "material" side, a Socratic bow to something not exactly of it or of rationality proper.[41] It is the Derridean trace of the

41 See Ernst Bloch, "Epicurus and Karl Marx," in Bloch, *On Karl Marx,* 153–58. See "The Declination of the Atom from the Straight Line," in Karl Marx, "The Difference between the Democritean and Epicurean Philosophy of Nature" (1841), first published 1902. The clinamen is a type of ataraxy: it establishes a self-conscious indifference or freedom from forms of rote or mechanical determination, a position from which Marx then departs across the 1840s. Bloch emphasizes, *passim,* that, according to Marx, both Democritus and Epicurus appeared at a time when the Greek polis was slowly withering away and individualism was on the rise. This clearly converts Marx's readings of classical philosophy to an emergent social praxis.

mythic (perhaps Logos), and it, indeed, hides out in difference itself, in the aporias of rational discourses, and also animates any turn into the arts. Foremost, then, the mythic hides in the arts, for Marx. But it hides forcefully in the other discourses or disciplines partially banished or eclipsed by the Marxian analytic (or provocatively troubled by Marx and Bloch), e.g., religion (best denoted theology). The mythic force of Marx's own teleology (bordering on an a-theology) is, *inter alia,* derived from Hegel and Hegelianism (particularly the Left Hegelians of the 1830s-1840s). This is undeniable. And then, semi-miraculously, it escapes Hegel and lands in a transpositional Nature, via the classical philosophers of "atoms," and via his very own materialist swerve (via the mysterious beauty of the clinamen) into a charmed historiographic mannerism that exposes the wheels and pulleys of a type of demiurge he names Capital. It is a mesmerizing journey (process) that never ends other than over the horizon, in the Promised Land. The immanent character of this is duly hidden, but only because he is adamant to force a march through time to The End, with his eschaton being the realized utopia. Therein lies the fatal blow. He has inadvertently re-loaded "waiting." He has re-loaded Hegelian teleology under other auspices. His blind spot is a type of proleptic repression. He has permanently sublimated Eternity in favor of a deferred Utopia.

Seriality + Technē + Negation

> The real or the essence is that *which does not exist, which is in quest of itself in the core of things, and which is awaiting its genesis in the trend latency of the process.*
>
> — Ernst Bloch[42]

42 Bloch, "Karl Marx and Humanity: The Material of Hope," in Bloch, *On Karl Marx,* 41. Bloch troubles here false transcendence and the materialization of hope versus "premature hypostases or fixed determinations of essence" (ibid.). "As surely as the conscience of concrete utopia does not cling positivistically to the fact of *direct visibility,* even more surely it does not ascend in a vaporous mist of mere fact hypostases of purely *mythological invisibility"* (ibid.). Further, Bloch writes, "But now not only

Technical mediation (as chosen and indulged by artists, and as expounded and privileged by critics) displaces or erases, as much as social mediation does, the non-ontic, elemental anti-nature of works and works-based agency. Yet this displacement and erasure may be found primarily in art-critical exegesis that tackles and re-tackles the enforced versus elective apparatuses and regimes of cultural production — i.e., the apparently unavoidable terms of engagement any age offers to artists. That it may be purposely applied to conceptual art is not to be seen so much as a contradiction but an admission that even the late modernist avant-garde is subject to the stresses of an immediacy that is also an interrupted immanence, gerrymandered quite often on behalf of usurping powers.[43] Works that are examined

art but philosophy — and especially the latter — has consciously to bear the responsibility of prefiguration as that of an objectively real appearance, of the *world of process, of the real world of hope itself"* (ibid., 43). For Marx, the "realm of freedom actually begins only where labour, which is determined by necessity and mundane considerations, ceases; thus, in the very nature of things it lies beyond the sphere of actual material production" (Marx, "The Trinity Formula," in *Capital,* 3:799). This permits Marx to acknowledge within capitalist production a movement toward overcoming "forms of slavery, serfdom, etc.," where the dominance of one portion of society over another may slowly vanish. "It creates the material means and embryonic conditions, making it possible in a higher form of society to combine this surplus-labour with a greater reduction of time devoted to material labour in general" (ibid.). Thus, beyond satisfying mere necessity lies the Promised Land (Utopia).

43 See Zachary Tavlin, "Serial Unreading," *Critical Inquiry* 48, no. 4 (2022): 721–41, who writes, "Serial unreading ultimately regrounds the epistemic art of criticism, conveying how concepts achieve causal solidity as built features of the artwork that emerge in and through series" (721). Further, serial unreading "includes rediscovering the rules governing the production of the work [of art]. Thus, unreading is not necessarily an end in itself. In fact, by dispersing and expanding our attentional field, acts of unreading make us better readers of nonserial works" (ibid.). Tavlin is establishing a critique of art as craft, and admits it, all the while asking, "Why bother?" Authorial presence is erased toward a type of machinic agency that exposes *technē* as primary author. Tavlin references several key critics in this tour de force of materialist reductionism: Henry Staten, *Techne Theory: A New Language for Art* (Bloomsbury, 2019); Kenneth Goldsmith, *Uncreative Writing: Managing Language in the Digital Age* (Columbia Uni-

in this light are generically and technically reduced to paying homage to *technē,* while the artistic and critical tricks employed to actually embrace it almost always default to a materialism deemed, oddly, irreducible or unavoidable anyway. The embrace is, therefore, a form of conformity, even if the artists engaged in this dance with *technē* believe that they are doing so voluntarily. It is complicity, writ large or small by works and by artists, in association with an intelligentsia that has agreed to privilege usurpation, insofar as it may be useful to the agendas of criticality itself. It is a strangely useful dance in the sense that the forces of usurpation via *technē* are acknowledged, even if it is the mere apparatus versus the usurping powers that are directly engaged in works and in criticism. The entire operation has value as exposé.

The paradox of such a reduction to placid irreducibility plays out both through works (as self-imposed dogma, which can, in turn, induce a dark-vitalist battleground, for artists, bordering on obsessive-compulsive traits in work and in artist) and through criticism, the latter most often actually leading the way because conceptual and avant-garde art is suitably as self-conscious in its own right and rites, via the transfer of agency from artist to work, as it is concerned with its ultimate and oth-

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versity Press, 2011); and Marjorie Perloff, *Unoriginal Genius: Poetry by Other Means in the New Century* (University of Chicago Press, 2010). These texts all refer to a key point Tavlin wishes to make regarding "technosocial adjacency," and one of its chief outcomes, i.e., a "deflationary sense of creativity" (Tavlin, "Serial Unreading," 726). As he writes, "The critical commonplace is that procedural, constraint-based composition takes expressive, lyrical agency away from the maker. It mechanizes artistry. In one sense that's entirely true. In another sense, it merely reveals the way all composition is a machinery of a sort […]. Whatever inarticulate emotion flowers into the poem, it must deconstruct in the process. As Jacques Derrida showed in his reading of Jean-Jacques Rousseau in *Of Grammatology,* the medium or midwife of poetic self-expression adulterates the precious immediacy of auto-affected feeling. Some struggle between the inside self and the outside self, feeling and language, occurs in every poetic act via the forms of the techne, and ultimately the outside wins if and when the poem is produced" (ibid., 738).

erwise radical "honesty" in the face of banality and ubiquity.[44] This processual admixture does however include suppressions and repressions, mostly intentionally, auto-affective ones. Thus, deflating the pretensions of the avant-garde has a long history across the arc of modernism and art criticism when social utility is the primary concern.

The work nonetheless suffers duress from its submission to *technē,* no matter how one might frame that submission and servitude. Seriality in conceptual art sends that duress, as obdured compulsion, across a body of works that may resemble a prototypical life-work, yet only for the life (or duration) of the series. The upshot is that such works are self-conscious *in extremis,* a situational double bind chosen and/or imposed from without. Such works are turned inside-out, with the interiorizing tendencies converted to an algorithm that the artist observes and becomes beholden to. What is the agency of such works other than as embodiment of an inverted expressive force (now compulsion) — the inversion being the conversion to compulsive criticality via duress. There is a subtle self-torturing, art-critical ethos in the manner of presentation as series — a seriality of endurance through *technē* as bloodied Muse. The art critic finds, in this process, "revelation" (or "self-revelation"), a confirmation of the status of criticism as criticism triumphant (of a nearly religious ardor) and art only of service in a continuum of constantly shifting justifications for art-critical praxis.[45]

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44 For such an experiment in dark vitalism, see Gavin Keeney, Ishita Jain, and Harsh Bhavsar, "The Art of Law (and the Law of Art) Is Perpetual Crisis," *Jindal Global Law Review* 13, no. 1 (2022): 141–53.

45 As justification for such extravagances, Tavlin writes: "Serialism, conceived as conceptualism revealed as techne, as conceptualization in process and on its way toward system or structure, is revelation of a particular sort. It is the revelation of our critical standpoint, reading as unreading" (Tavlin, "Serial Unreading," 741). "The series is techne revealed, in visible motion, not hidden as it usually tries to be. Series disclose their stitches but do not explain them. Gaps between the units insist on a meaning that refers solely to something unarticulated in the present state of the work but begged by it at the same time. In a word: To the concept, built or found, that moti-

Under such auspices, the work of art and the artist are trapped inside of the apparatuses of the base as perennial prisoners.

Would not Bloch's "crypto-materialist fertilizations" be misplaced if situated only within the superstructure as provocation? Can they actually only reside there anyway? Is it not perhaps part of the mystifications of the Marxist model or catechism that the superstructure can be addressed directly and given preeminence? Seriality in conceptual art is very close to the iterative and generative a-historical intentions for the editioning of new works as means to no end, while the "No Rights" idiom is not addressed insofar as conceptual art also operated within the art world and within the cultural commons as defined by late-modern capitalist agendas, avant-garde and otherwise. A return to base is always possible, then, for radicality, and Bloch seems to suggest this through his otherwise partly mystical arguments.[46] It is the iterative and generative, however, as distinguished from machinic agency, that has historically displaced the avant-garde embrace of determinism as disclosed in conceptual art. That passage, from the 1960s to the present age, concerned the necessary displacement of modernist ideologies of art, primarily conceived in the postwar era and thoroughly commodified by mid-century. Banishing Abstract Expressionism was one rite of passage for conceptual artists of the 1960s, partly because it had become culturally *de rigueur,* while doing as much damage as possible to the so-called art world was another (especially the privileges of the intermediate classes represented by galleries and closed cabals of critics and artists). Needless to say, the protocols of academia were also totally suspect terrain for situating anything resembling revolt against the conventions of the time.[47] The insurrection of early conceptual art was a transitional affair

vates the creative force of the artist-machine's echoes in formed language, traced graphite, captured light" (ibid.).

46 Bloch's mysticism is said to have come by way of György Lukács, but early in the game, i.e., when they were both still Young Turks.

47 The revolt against academia instead took the form of demonstrations and serial refusals of participation, culminating in the international insurrection known as "1968."

(not quite a gestalt), opening the floodgates of experimentation across media, with an attendant acceleration occurring with the arrival of new media.

Marx's critique of labor "renders the idea of communist art problematic: communism is the achievement of a principle that is at the core of the aesthetic revolution itself, namely, the idea of an abolition of the division of labor that imposes a separate reality on art and labor."[48] What is this "separate reality"?

> Art in the singular, art as a specific sphere of experience, appeared as such with the movement that detached works from the functions they fulfilled in the service of the majesty of princes, the dogma of religions, or the pleasures of nobles, collecting them instead in museums. This detachment that separated artworks from the context and constraints that had presided over their production did not, however, transform them into pure inhabitants of a separate kingdom of art. Those who invented the idea of "art" as an autonomous reality in the eighteenth century also endowed it with a new subject: the people.[49]

For Schiller, "Free people are not simply those who are free of subjection to a foreign people or free from authoritative power; they are people who do not experience the division of labor that is the principle of all hierarchical order."[50]

This argument against art on behalf of art is very hard to take at times, unless it is also taken to task for playing both sides of

48 Jacques Rancière, "Does Communist Art Exist?," *Critical Inquiry* 48, no. 3 (2022): 462; with reference to Karl Marx, *Economic and Philosophical Manuscripts of 1844* (published posthumously in 1932) and G.W.F. Hegel, *Lectures on Aesthetics* (first published in 1835).

49 Rancière, "Does Communist Art Exist?," 460, with reference to Winckelmann and Schiller, i.e., Winckelmann, *History of Ancient Art* (1764) and Schiller, *On the Aesthetic Education of Man* (1795).

50 Rancière, "Does Communist Art Exist?," 461. As Rancière also says, "For a free people there is not on one side government, on the other religion, on the other art, and so on; for a free people there is one and the same *form of life*" (ibid., italics added).

the concept of a "communist" (i.e., *communitarian*) art, at once. For example, the museum may have de-natured art, which it does do, but such collections were liberated from imposed utility in the process, which is no small feat in itself. Perhaps the modernist white cube gallery is the greater culprit, in terms of truly erasing context, with its various pretensions to purity a cover story for the way in which art is then plugged directly into the *commercium* of the art world. Reaching back into the Enlightenment to set into play an answer to the question of what a properly free form of art might look like, yet always on behalf of freedom itself, re-introduces the great idealist and Romantic conceptions of art that are extremely difficult to dismiss; thus, Schiller and Hegel, but also the young Marx. If the historical process finally freed art from servitude, is there any point in reloading servitude at a supposed higher level and/or at an apparently more ethical level on behalf of a politics of liberation for subjects?

Communist art is or was an attempt at communitarian art. Marx would agree if he had lived to see what became of agit-prop art in the twentieth century in association with avant-garde modernisms. Hegel's "End of Art" was prescient, at least insofar as he saw the trajectory across nihilism later predicted by Nietzsche. Socialist Realism, in particular, was tainted by a renascent ideology regarding the purposes of art, even if it was also tainted by Stalinism. In all such cases art and, by extrapolation, scholarship end up stuck back in service to utility unless utility also includes the so-called higher registers where utility and temporality as mediation vanishes, momentarily or permanently.

At the close of the Enlightenment, then, and crossing both German Romanticism and German Idealism, we find Hölderlin engaged in a type of holy vigil for something else, something different, and something wholly not of rationality per se, but perhaps buried in rationality:

> The Hölderlinian project, argues Hamacher, aims at cutting a path out of the systematic philosophies available at the time,

> such as Kant's, [...] Fichte's, and [...] Hegel's, toward a new conception of the poetic. [...] Drawing on Hölderlin's concepts of hyperbole and overdrive, Hamacher perceives the impossibility of any determination of temporality for a poet who was writing [and living] constantly in extremis.[51]

Time-senses, again, but this time with time erased. Such too is the absolute erasure of mediation. Hegelian (and Marxian) mediation is effectively time (chronological or teleological time). There is no longer any such telos under this particular spell (poetic hyperbole and overdrive) because it has imploded and become absurd. The absurdity opens onto the abyssal, as it always does, and the abyssal is "knee-deep." Only a poet of the order of Hölderlin could ever erase Kant, Fichte, and Hegel, but he does it without tackling Kant, Fichte, and Hegel directly. They are only present as a perturbing absence. The register at which Hölderlin addresses worlds is bizarrely "not of this world." Can works-based agency also access this "not of this world" and alter this world? It all depends on the terms of engagement. The measure Hölderlin is searching for includes transgressions.[52]

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51 Feng Dong, "Review of Werner Hamacher, *Two Studies of Friedrich Hölderlin*," *Critical Inquiry* 48, no. 4 (2022): 810–11, with reference to Werner Hamacher, *Two Studies of Friedrich Hölderlin,* ed. Peter Fenves and Julia Ng, trans. Julia Ng and Anthony Curtis Adler (Stanford University Press, 2020). Hölderlin's late lyric poetry has become "something tortuous, inhibited, de-absolutized, and thus abyssal; Hölderlin's verse is not only 'subject to the dominion of meaning, but also gifted with the sovereign capacity to usurp meaning's dominion'" (Dong, "Review of Werner Hamacher," 810). Accordingly, Hölderlin's "Hesperian sobriety" concerns the elucidation of a "real measure, a fate" (ibid.). Positivity (nominally "Greek" in Hölderlin) thus undergoes, "through an exposition of 'sacred pathos,'" a transposition to a figure of deferral. Hölderlin's "Hesperian reversal thus constitutes 'the double path of measure and excess, of sobriety and the violation of the law, of decline and preservation.'" Thus, we see Dionysus and Christ in Hölderlin as "brothers," because he cannot make them One. Dong, "Review of Werner Hamacher," 810, with reference to Hölderlin, "The Only One" ("Der Einzige"), written and re-written (*un*-written) three times.

52 Dong, "Review of Werner Hamacher, *Two Studies of Friedrich Hölderlin*."

History completes itself through "sobriety and the violation of the law."[53] The violations of the law are violations of abject or rote temporality and forms of enforced (ideological) mediation, on behalf of freedom for works and for subjects — for, in effect, the life-work.

53 Ibid.

6

Exiting Biopolitical "Hell"

The "Back Foot" + Biopolitics

> What is spirituality?
>
> I think it's a certain practice by which the individual is displaced, transformed, disrupted, to the point of renouncing their own individuality, their own subject position. It's no longer being the subject that one had been up to that point, a subject in relation to a political power, but also the subject of a certain mode of knowledge [*savoir*], subject of an experience, or subject of a belief.
>
> — Michel Foucault[1]

1 Michel Foucault, "Political Spirituality as the Will for Alterity: An Interview with the *Nouvel Observateur*," trans. Sabina Vaccarino Bremner, *Critical Inquiry* 47, no. 1 (2020): 123–24. Further, in the same interview, Foucault said, "Truth is nothing but an episode in the history of spirituality" (ibid., 130), with reference to scientific thought (i.e., rationality). The highly contentious interview took place on January 3, 1979 but was never published. It was rediscovered in Summer of 2017 at the National Library of France. In other words, it was sold to them at some point, along with other papers, by Daniel Defert following Foucault's death in 1984. See Sabina Vaccarino Bremner, "Introduction to Michel Foucault's 'Political Spirituality as the Will for Alterity,'" *Critical Inquiry* 47, no. 1 (2020): 115–20. See also Michel Foucault, "Les 'reportages' d'idées," in Michel Foucault, *Dits et écrits: 1954–1988,* ed. François Ewald, Daniel Defert, and Jacques Lagrange, 2 vols. (1994; repr. Gallimard, 2001). For a summary of the various criticisms from the Left of Foucault, during and after his

> Until a new and coherent ontology of potentiality (beyond the steps that have been made in this direction by Spinoza, Schelling, Nietzsche, and Heidegger) has replaced the ontology founded on the primacy of actuality and its relation to potentiality, a political theory freed from the aporias of sovereignty remains unthinkable.
>
> — Giorgio Agamben[2]

With Agamben's "two vectors," as denoted below by Sergei Prozorov (and as generally dismissed by cultural theorists who prefer radical contingency and/or political utilitarianism to any form of transcendentalism), there is a realm set aside where the command-and-control mechanisms of power are incapable of exerting any direct or indirect influence. This posits a metaphysics of sorts that is also generally argued as an ontological reserve that pre-exists cultural and social praxis, benign or otherwise. As Prozorov writes,

> If we maintain the separation between empirical and transcendental planes, we end up with a rather different image. If the state of exception always remains empirical and does not enter the quasi-transcendental realm, in which bare life functions as the presupposition of positive forms, the two concepts can never form an articulation, even if one postulates their movement towards each other. The vectors in question might well have opposite directions but, belonging to different planes, they remain *antiparallel* and do not intersect. Sovereign power may ceaselessly *presuppose* bare life but cannot actually produce it and remains resigned to regulating a plurality of positive forms of life. By stripping life of its form, it can only succeed in demonstrating that this form

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so-called "ethical turn" in the early 1980s, but regarding foremost his supposed embrace of neoliberalism and the perception that he was, as a result, an "inept ally" for progressive politics, see Tuomo Tiisala, "Foucault, Neoliberalism, and Equality," *Critical Inquiry* 48, no. 1 (2021): 23–44.

2 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life,* trans. Daniel Heller-Roazen (Stanford University Press, 1998), 44.

> was there to begin with and some of it may even survive the effort of denuding […]. Sovereign power has no access to life as such, because there is no such thing as sovereign power "as such": there are only ever particular forms of power grappling with all kinds of forms of life except for bare life, which cannot itself enter the series of forms that it enables.[3]

Thus, a form-of-life emerges where this realm is the founding principle for resistance and its stewardship requires vigilance of an inordinate nature. Again, and for those who argue with Agamben's privileging of inoperativity, there is an implied censure of all forms of life that do not rise to this level of resistance, as if any such posture also becomes, by default, moralistic. The caesura noted "between worlds" suggests that a conscious effort must be made to maintain boundaries, inclusive of the boundary between any form-of-life and what supports it.

> In none of these confrontations does power attain a hold upon life as such or bare life, which is the only reason why all these forms of power can be and frequently are resisted. This resistance does not consist in obstinately holding onto a particular form or affirming the formlessness of life but retains the potentiality for transformation from within whatever form one happens to dwell in.[4]

> Life can appear "in its free and intact form" only if there is a caesura between it and a variety of forms of power. Only when it is inaccessible to the inclusion into the apparatuses of power as a negative foundation, can the transcendental principle of bare life continue to generate myriad forms of life, none of which are reducible to what made them possible.[5]

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3 Sergei Prozorov, "A Farewell to Homo Sacer? Sovereign Power and Bare Life in Agamben's Coronavirus Commentary," *Law and Critique* 34 (2023): 76.

4 Ibid., 77.

5 Ibid., 78.

All of the various arguments around the concept of "bare life," and whether it is given a positive or negative form, then imply The Exit. Yet, the exit is subject to an evidentiary expedient depending upon which point of purchase (Archimedean point of leveraging bare life) is exerted. Political praxis, in terms of activism, clearly implies that the exit is towards the polis, and that engagement, direct action or indirect action, in political or socio-political agitation is superior to philosophy and metaphysics as such. Therefore, and by reduction, there is no "as such" for political praxis – it is already a form of constructing goals and of serial efforts as the constitution of a telos for action, whereas the exit inferred by inoperativity and "inaction" connotes an ethos and telos that is effectively inscribed within a sacred realm set aside from all political engagement. Is it possible that this disengagement might be, under the right conditions, the most radical political position possible?

> Arendt did not merely trace [in *The Human Condition*] the way bare life *enters* politics in modernity but also argues that its exit alone could revive politics in the modern period.[6]

Agamben attempts to construct a form of knowledge as excess. It is where he indulges his most slippery linguistic skills, and it is where his conception of "messianicity" often steps forward, to take a bow and then step away.

> "In the tradition of Western ethical and political thought there are two paradigms, which intersect and incessantly keep separating from one another in the course of its history. The first situates the essence of the human and the proper place of politics and ethics in action and praxis; the second

6 Sergei Prozorov, "A Parody of Action: Politics and Pantomime in Agamben's Critique of Arendt," *Constellations: An International Journal of Critical and Democratic Theory* 29, no. 4 (2021): 1, with reference to Hannah Arendt, *The Human Condition,* 2nd ed. (University of Chicago Press, 1998).

> situates it instead in knowledge and contemplation (in *theoria*)."
>
> In *Karman,* Agamben focuses his critique primarily on the first paradigm, yet he does not subscribe to the second one, but rather ventures to "open the space for the *tertium*" or the third paradigm, whose exemplary activity would be a *mysterion* or theatrical performance.[7]

It is here, in the interstices of operativity and inoperativity, and the language games associated with defining both (almost into oblivion), that the dance with power, as illustrative of *art itself,* begins a not inelegant riposte to all objections to transcendentals hidden in everyday resistance to the apparatuses of subjective states and their noteworthy antitheses as found in processes of de-subjectification and re-subjectification. The proverbial back foot that subjects are often forced upon, in merely defending their last rights and rites, is, in fact, an elective dance with power and with regimes of conformity and/or the shifting definitions of what constitutes engagement, for or against apparatuses, and for or against the privileges of power-sharing.

> Agamben's well-known politics of *inoperativity* that seeks to deactivate the operation (*ergon*) of various apparatuses, in which the human condition is confined, is only intelligible in the context of his approach to praxis as resigning the human being to ceaseless action for the purpose of attaining the happiness that eludes it. It only makes sense to even try to *suspend* the operation of apparatuses, if they are, first, operative at all and, second, operating perpetually, their end being constitutively elusive.[8]

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7 Prozorov, "A Parody of Action," 2, with reference to Giorgio Agamben, *Karman: A Brief Treatise on Action, Guilt and Gesture,* trans. Adam Kotsko (Stanford University Press, 2019), 35.

8 Prozorov, "A Parody of Action," 5, with reference to Agamben, *Homo Sacer,* 60–62; Giorgio Agamben, "The Work of Man," trans. by Kevin Attell, in Matthew Calarco and Steven DeCaroli, eds., *Giorgio Agamben: Sovereignty and Life* (Stanford University Press, 2007), 6–9; Giorgio Agamben, *The Use*

Agamben uses "gesture" as an elusive archetype of "posture" and "imposture." It tends to signify an elemental datum by which the indeterminate may be privileged. It borders on the immemorial and has its origins in linguistic theory. It is only half-contingent or expressive. It retains something of the reserve function noted above of the realm from whence action may proceed *as potentiality* without permitting that realm to be accessed through a "back door" built into subjectivity and subject-object relations. Thus, the caesura acts as uncrossable hinterland, between action and "no action," between rights and "no rights," with both "no action" and "no rights" only being made effective or co-substantial through their relation to the continuum that nonetheless is neither contiguous in form nor fully effective as traversed terrain. It would seem to signal the *itinerarium mentis* that may only be undertaken "with eyes closed."

> What happens when we now separate the means from the end and expose its mediality freed from any relation to it? Does not this freedom from any external end suggest that this means now has its end in itself? Agamben insists that gesture cannot be "conceived as end in itself", which is the only reason why "in gesture, each member, once liberated from its functional relation to an end — organic or social — can for the first time explore, sound out and show forth all the possibilities of which it is capable, without ever exhausting them."[9]

of Bodies, trans. Adam Kotsko (Stanford University Press, 2016), 245–48; Leland De la Durantaye, *Giorgio Agamben: A Critical Introduction* (Stanford University Press, 2009), 18–20; and Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government,* trans. Lorenzo Chiesa with Matteo Mandarini (Stanford University Press, 2011), 245–53.

9 Prozorov, "A Parody of Action," 6, with reference to Giorgio Agamben, *Profanations,* trans. Jeff Fort (Zone Books, 2007), 82.

Telos + Ethos

Immanence invokes various tautologies that come to expression in the dance with two worlds noted in passing and mostly "between the lines" in works of art that nonetheless engage in de facto critique of subjective conditions and subtle political corollaries, such as exiting socio-political intrigue for a form-of-life for works in/for themselves, such that they might serve as a "pantomime" or "parody" of what otherwise is taken for "a given" or "for granted." In such cases, "a given" is never a given state. That state is imposed and/or culturally generated through consensus. Stepping outside of either condition is the secret role of art and religion. It is where art and religion overlap and suggest, as singular pursuit, that the "as if" is as powerful as the "what is."

> Contrary to the traditional idea of potentiality that is annulled in actuality, here we are confronted with a potentiality that conserves itself and saves itself in actuality. Here potentiality, so to speak, survives actuality and, in this way, gives itself to itself.[10]

"Pantomime + Parody" — as a set — becomes highly moral. The moralistic is, admirably, bracketed through the theatricality of the dance with power. Art registers its clear and definitive relation with potentiality, in all of its other-worldly splendor. Agamben's darkened horizons always conceal something that he refuses to acknowledge. As a philosopher, he is generally guilty of demeaning anything that does not rise to the occasion of philosophy. That his philosophy is so closely aligned with philology is telltale. His monumental critique known as *Homo Sacer* only fails because it set out to fail. It put itself on the back foot quite early, and intentionally. It took the apparatuses of power as co-

10 Giorgio Agamben, *Potentialities: Collected Essays in Philosophy,* trans. Daniel Heller-Roazen (Stanford University Press, 1999), 184, cited in Prozorov, "A Parody of Action," 10.

equal to biopolitics. In ascribing to the human condition, the fundamental or ontological status of bare life as crowning glory, he then subverted it and darkened the discourse inherited from twentieth-century socio-political intrigue.

> Agamben treats gestural performance as primary and non-derivative, itself offering an example for political practice to emulate. Politics and theatre thus exchange places and what was resigned to imitation becomes the model to be imitated. This displacement corresponds to what Agamben has analyzed as the logic of parody, a relocation of an object or a practice to a new, unconventional or unsuitable context, which would deactivate its force and render it inoperative. Parody takes up a preexisting model or concept and transforms it from something serious into something comic, leaving some formal elements intact but also adding new incongruous or ridiculous ones. In this manner, Arendt's "potential space," in which human beings reveal and distinguish themselves by words and deeds, is recast as a pantomime theatre, where these words and deeds are exhibited as gestures, in which what is rendered inoperative is less the "work," which was never there to begin with, than the very actuality of the action itself. […] Agamben persistently affirms means over ends, potentiality over actuality in order to suspend what is for him an endless pursuit of ends that resigns us to responsibility and guilt.[11]

"Telos + Ethos" (another set) comes home to roost, over and over again. Inoperativity becomes the meeting point where they are alchemically fused into one secretive operative nothing. The status of "nothing" reveals the nihilist traces Agamben has inherited across the arc of his astonishing life-work. The rules of negative theology combined with negative dialectics fall away.

11 Prozorov, "A Parody of Action," 11, with reference to Agamben, *Profanations,* 37–51.

What is revealed is the potentiality of the life-work as cipher (albeit "roadmap").

> Inoperativity is not inert; on the contrary, it allows the very potentiality that has manifested itself in the act to appear. It is not potentiality that is deactivated in inoperativity but only the aims and modalities into which its exercise has been inscribed and separated. And it is this potentiality that can now become the organ of a new possible use.[12]

12 Giorgio Agamben, *Nudities,* trans. David Kishik and Stefan Pedatella (Stanford University Press, 2010), 102, cited in Prozorov, "A Parody of Action," 11.

7

The Agency of the Artist-Scholar

Time-senses

The agency of the artist-scholar is almost always post-contemporary, because it engages with the arts and literature (visual and textual forms of knowledge) across time-senses, and rarely is contemporary in its own time. When it does break through whatever norms or conventions of the time in which it nonetheless co-resides *with* but not *for,* it is the agency of the event in tension with other events and times that are registered in works. This accounts, more or less, for the arrival on the scene, as if ex nihilo, of artistic and scholarly insurrections, whether they are overtly or implicitly political. The political is to be found in the artistic and often lyrical visual and textual, or visual-textual, means employed. Manifestos as associated with the modernist avant-garde tend to be self-conscious statements of the emergence of agency in early works. The art-historical record is littered with retrospective analyses of such moments and remains complicit in a type of conspiracy of promoting diachronic or temporal agency, which has given teleology and historical studies a subtle yet troubling "bad conscience," in the sense that the measures induced to weigh such moments also tend to erase them and impose a sociological or cultural justification by cri-

tique that is irreducibly ideological and political in some cases and irreducibly ideational or abstract in most cases.[1]

The time-senses engaged by artist-scholars confer upon such works traces of what has come to be called "immemoriality." Immemoriality is the mark of the recondite, abstruse, generative, and aleatory measures internal to the work of art and scholarship, and foremost to artistic scholarship. "Insurrection" is relative to what is being challenged merely by the existence of these works. It need not actually be a goal.

The key traces of that immemoriality in the agency of such works include, therefore, the iterative, the generative, and the aleatory as an ongoing, internalized metric that also confers upon works an incipient subjective state, which, in turn, is generally post-rationalized as "autonomy" for works, a status often then utilized toward reinstating the artistic exception and the valorization of genius. These aspects (the iterative, the generative, and the aleatory) are rarely consciously pursued, however, at least when most successfully engaged. Most often they serve as productive post-rationalizations for works that are essentially only truly operative at a pre-conscious or pre-rational level. Here, in this shadow-world, resides the opportunity for the "theft of agency" as property, cultural or otherwise. "Autonomy" and "exception" underwrite theft and subsequent commodification.

Language tries to capture this "phenomenology": it is called "poetic," "lyrical," "surreal," "irreal," and many other things. In terms of the *gramma* of the operative agency, all of these terms

1 A very good example of this penchant to re-write art history, plus the necessity *for* re-writing art history, is the collective work of Hal Foster, Rosalind E. Krauss, Yve-Alain Bois, and Benjamin H.D. Buchloh, otherwise known as "the gang of four," foremost as presented in their textbook *Art Since 1900: Modernism, Antimodernism, Postmodernism* (Thames & Hudson, 2004). A majestic, structuralist-inspired rewrite of the history of modern art, *Art Since 1900* is also a highly charged indictment of the self-serving, teleological sweep of art history itself, insofar as the section on antimodernism generally liberates many of the movements formerly misappropriated to the chronological and serialized history of modern art, as converted to inviolable canon by the art-academic culture industry, inclusive of "museums of modern art."

are also post-rational, almost vitalist justifications for works after the fact. That these qualities tend to reproduce themselves across works, for and through the artist-scholar, is what leads to the ultimate historical rationalization of the life-work, the one continuous work that includes all works "performed" by the artist-scholar.

Conceptual Parallax

> The philosophical twist to be added (to parallax), of course, is that the observed distance is not simply subjective, since the same object that exists "out there" is seen from two different stances, or points of view. It is rather that, as Hegel would have put it, subject and object are inherently mediated so that an "epistemological" shift in the subject's point of view always reflects an ontological shift in the object itself. Or — to put it in Lacanese — the subject's gaze is always-already inscribed into the perceived object itself, in the guise of its "blind spot," that which is "in the object more than object itself," the point from which the object itself returns the gaze. Sure, the picture is in my eye, but I am also in the picture.
>
> — Slavoj Žižek[2]

A point of departure for any discussion of the complexities of architectural parallax, which is never quite equal to the perspectival logics of architectural *mise-en-scène,* is the simple fact that subject-object conditions prevail, across both architectural design (drawing and its corollaries) and the actual experience of architectural space (versus any mere optical engagement with the architectural object as such).

In 2009, under the auspices of a lecture entitled "Architectural Parallax: Spandrels and Other Phenomena of Class Struggle,"[3]

2 Slavoj Žižek, *The Parallax View* (MIT Press, 2006), 17.

3 Slavoj Žižek, "Architectural Parallax: Spandrels and Other Phenomena of Class Struggle," public lecture, Jack Tilton Gallery, New York City, New York, April 23, 2009.

Slovene philosopher Slavoj Žižek performed a masterful demolition of architectural pretexts by privileging what he called "exapted forms." These leftover forms include what might be otherwise characterized as useless and/or demented (devolved) idiosyncratic possible situations and scenarios given to architecture as demiurgic undertaking (somehow, in Žižek's reading, always defaulting to the servicing of ideological pretexts, always already subsumable under The Name of the Father, the ultimate Lacanian figure of the Big Other). Examples include: "halls, stairs, closets, and all manner of interstitial, otherwise psychologized nothings" that typically service the ontological foundations of architecture ("its rooms and its functions")."[4] Additionally, "As a good Lacanian, the irruptive often pleases Žižek the most (as when a stopped-up toilet threatens to overflow and 'return' things expelled, versus swallow them and rid us of their unwantedness and/or wantonness)."[5] To illustrate what he considered the ultimate showdown, however, and to demolish the role of cultural "framing" performed by architecture by multiplying it to its logical explosion into absurdity, he suggests that "if the rich need an opera house to parade about and ogle one another in, let's just dispense with the theater and give them a building that is nothing more than a gigantic staircase (e.g., the Guggenheim). Here the monstrous nature of the Lacanian Symbolic (location of The Name of the Father) is exposed as perennial obscene joke."[6]

The doubled "licentiousness" of Veronese's great painting, *The Wedding at Cana* (1562–1563), at the Palladian Refectory, San Giorgio Maggiore, Venice, performs the same irruptive demolition project on architectural heavy-handedness — albeit, on the glorious and geometrically severe architecture of Palladio. The doubled insincerity, if that is the right word, of Veronese's act of sedition (painterly heresy) also bizarrely returns to ground in the manner by which it actually preserves the essential mystery

4 Gavin Keeney, "Observations on Architectural Parallax," *Log* 16 (2009): 6.
5 Ibid.
6 Ibid.

and majesty of the "riddle or miracle" of The Wedding at Cana. The preposterous presentism (the event of The Wedding at Cana staged as occurring in Venice at the very time of its composition) and the illusionistic architectural ambiance is an absolutely masterful end-run around all of the prevailing customs and expectations for such a prestigious commission in alliance with such a prestigious architect. The wealth of the monastery is on display, while the poverty of the main protagonists remains sacrosanct amidst much pomp and splendor. That poverty is encompassed in an ethereal silence that haunts the painting, in and through its first perspectival vanishing point — i.e., the position occupied by Jesus and Mary (who sit in silence at the very center of the banqueting scene, clearly "not there"). This vanishing point is accomplished through Veronese's (mis)use and abuse of the theatrical device of *frons scenae*.[7] The scene, while raucous, is suffused with something that exceeds all iconographical gestures. That something hides in the painterly presumptions, in and through the parallax of the room and painting, coming to expression "in the shadows" and (with any and all accounts of the intimated iconographic gravitas of the coming crucifixion set aside) through what amounts to a complete short-circuit of the scenographic relation of room to painting and vice versa.[8] That would seem, then, to account for the second perspectival

7 See Claire Constans and Jean Habert, "Maestoso Teatro," in Emmanuel Ducamp, ed., *"The Feast in the House of Simon": History and Restoration of a Masterpiece,* trans. Barbara Mellor (Alain de Gourcuff Éditeur, 1997), 28–29: "Veronese drew inspiration for the settings of these banquet scenes from theater designs by two contemporary architects with whom he was well acquainted." That is, Serlio and Palladio. In Serlio's case, it was through *Libro secondo di perspectiva* (Paris, 1545; Venice, 1560) and the favoring of a single, framed architectural vanishing point. In Palladio's case, it was through the antique theatrical *frons scenae,* or the foregrounding of action in antique stage design. "To this system, Veronese — who willingly described himself as an architect — added a number of features particular to his work." That is, using architectural motifs, he opened out his *frons scenae* "so as to create a background containing one or several vistas," often with multiple vanishing points (ibid., 29).

8 For a slight shift in reading *The Wedding at Cana* in relation to Veronese's late painting, *The Agony in the Garden* (1584), see Gavin Keeney, Andreas

vanishing point — i.e., the sky and the birds (as formed by following the receding lines of the illusionistic architecture, which begins where the architecture of the room leaves off).[9]

Veronese defaults to two forms of depicting or intimating the *other*-worldly in his otherwise very *this*-worldly, nominally and legendarily, licentious painting. Yet, he is hardly the heretic that he has been accused of being (e.g., by the Inquisition), and his heresy is, as with most such versions, that of artistic rebellion against conventions.[10] That he gets to the essence of the event of The Wedding at Cana through his artistic heresy perhaps should have made him eligible for canonization by the Church versus by the art world.[11]

Philippopoulos-Mihalopoulos, Ilenia Maschietto, and Neža Zajc, "Veronese," *Vesper: Journal of Architecture, Arts & Theory 8* (2023): 198–99.

9 Peter Greenaway's diagrams for these two vanishing points may be found in Peter Greenaway, *Veronese, The Wedding at Cana: A Vision by Peter Greenaway* (Charta, 2010), as follows: (1) Vanishing Point #1 (Jesus and Mary), 46–47, 50–51, and (2) Vanishing Point #2 (The Sky), 48–49. Greenaway's installation at San Giorgio occurred from June 6 to September 13, 2009. The original painting, now at the Louvre, was scanned in November-December 2006 by Factum Arte. The resulting reproduction was installed in the Palladian Refectory in August 2007. This was preceded by a "virtual return" in March 2005 via a high-definition projection. See Pasquale Gagliardi, ed., *The Miracle of Cana: The Originality of the Re-production — The Wedding at Cana by Paolo Veronese: The Biography of a Painting, the Creation of a Facsimile and Its Theoretical Implications* (Fondazione Giorgio Cini/Cierre Edizioni, 2011), 8–9.

10 In 1573 the Inquisition inquired as to whether Veronese's *The Last Supper* at the Dominican monastery of Santi Giovanni e Paolo in Venice was licentious or not, no doubt due to the well-known Aretino-Veronese compact. Nearly a decade earlier, had *The Wedding at Cana* at San Giorgio Maggiore alerted the post-Council of Trent (1545–1563) authorities to Veronese's "heterodoxy"? Apparently, it was then permissible to take liberties with the latter but not with the former. Yet, it is those very liberties taken by Veronese, with both paintings, that warrant a closer look insofar as Veronese's *The Wedding at Cana* encloses a then-prevalent theme of the relationship of sacred space and artistic space, but with that relationship framed by questions of "sacred time versus artistic time." This was but one aspect of the 2009 exhibition, *Titian, Tintoretto, Veronese: Rivals in Renaissance Venice,* Museum of Fine Arts, Boston, MA.

11 It is here that John Ruskin's comments begin to make sense: "I felt as if I had been plunged into a sea of wine of thought, and must drink to drowning. But the first distinct impression which fixed itself on one was that of

What then happens is that the conventional perspectival laws of Renaissance painting and the variable and relative rules of parallax break down — they become (rightly) a shambles. One begins to look for another "way into" the painting; and one begins to sense — after examining the lines of the room from different positions in the room, as they enter the painting and as the lines of the painting enter the room to meet the eye — that there is a secret entrance into the painting *from the room* that is also a secret entrance into the room *from the painting.* Bordering on delusional, such a reading is nonetheless justified in terms of the conceptual parallax that opens up once the literal or optical games of parallax and perspective are dismissed.

The entrance to the painting from the room is at the top-right corner of the painting. It is a type of Žižekian blind spot.[12] It re-

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the entire superiority of Painting to Literature as a test, expression, and record of human intellect." John Ruskin, "Dinner at Simon, the Pharisee's," cited in Andrew Tate, "'Archangel' Veronese: Ruskin as Protestant Spectator," in Robert Hewison, ed., *Ruskin's Artists: Studies in the Victorian Visual Economy* (Ashgate, 2000), 134. Here Ruskin is describing his encounter in 1849 at the Louvre with Veronese's *The Wedding at Cana.* He continues, in similar terms, to describe what "inhabits" the painting: "awful and inconceivable intellect"; "reach of conscience"; "moral feeling"; "kingly imaginative power"; and an "Interpretation of Humanity." Ruskin, "Dinner at Simon, the Pharisee's," 2.437, in ibid. See also John Ruskin, *Diaries: 1848–1873,* ed. Joan Evans and John Howard Whitehouse (Clarendon Press, 1958), 437–38.

12 There is a type of Kantian remainder in Žižek obscured by his Lacanianism and Hegelianism. This remainder (something that exceeds and undermines his usual rhetoric) comes through in evocations of the blind spot, something Kant developed across his three critiques through paralogisms and the eventual privileging of the Sublime in his aesthetic theory. In a sense, Veronese has reached a plateau in his painting that is the equivalent of an embrace of the Sublime. This, in part, is what Ruskin could see and feel when he more or less knelt before *The Wedding at Cana* in Paris. Veronese seems to embody in this painting Kant's Kingdom of Ends. The Christian dispensation has been summarily internalized and all external authority banished. In a way, this is confirmed by a late painting attributed to Veronese, which edges into Mannerism (via Tintoretto's influence), *Christ in the Garden of Gethsemane* (1583–1584). The miracle of the "shining rubies" (Aretino, *Humanità di Christo,* 1535) of the red wine presented at Cana is, with this painting, duly "repaid with vinegar." "Father, the hour

quires a ladder to enter the painting, as it requires a ladder to exit the painting and enter the room. Across the entire arc of this rightly renowned, celebrated, and subsequently stolen painting, Veronese stages a painterly Bonaventurian *itinerarium mentis.* The ladder is mnemonic, and as Giordano Bruno would prove a few decades later, "mnemonics" (i.e., that hyper-consciousness that resides within all memory theaters[13]) is an extremely dangerous path to walk in the twilight years of the Renaissance, when the Counter-Reformation is already well underway.[14]

The great irony of the facsimile installed at the Palladian Refectory at San Giorgio Maggiore in August 2007 is that it is more real than the original painting that now hangs in the Louvre.[15] The facsimile is more real because it occupies the place that the original painting now in Paris was meant to occupy — i.e., its "place of taking-place." Such archetypal and ontological in-

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is come; glorify thy Son, that thy Son also may glorify thee. [...] I have glorified thee on the earth: I have finished the work which thou gavest me to do. And now, O Father, glorify thou me with thine own self with the glory which I had with thee before the world was." John 17:1.4–5; cited by Giorgio Agamben, in Agamben, *The Kingdom and the Glory.* See https://pinacotecabrera.org/en/collezione-online/opere/christ-in-the-garden-of-gethsemane/. The scenario for this painting also comes from Aretino's *Humanità di Christo.*

13 See Frances A. Yates, *The Art of Memory* (University of Chicago Press, 1966).

14 Giordano Bruno was burned at the stake in Rome, at Campo de' Fiori, on February 17, 1600. To add insult to injury, he was hung upside-down with a clamp on his jaw. In 1889, having liberated the square, Italian Republicans (and Freemasons) erected a statue of Bruno by Ettore Ferrari. Bruno holds a book (a symbol of knowledge) and stares into the distance, in the direction of the Vatican. Thus, heterodoxy meets and stares down orthodoxy once again.

15 For the associated travails of the painting (post-theft by Napoleon) and its "countless promises of restitution," plus a masterful disquisition on the absurdities of non-fungible tokens (NFTs) in relation to judgements concerning authenticity, see Chiara Casarin, "Creating Authenticity," *InsideArt* 122 (2021): 68–75: "After being one and the same with Palladian architecture for 235 years, the work of the Venetian painter was therefore displayed in the Parisian museum, precisely in front of the Mona Lisa. Despite countless promises of restitution and the commitment of men of culture and politicians, the large canvas did not return to Venice" (68).

stances do, after all, "count," even if they sometimes count as null set. The architectural setting for the painting, far from being irrelevant, actually sets up the masterful demolition of the rules of perspective and parallax coyly carried off by Veronese, who was, as characteristic of his times, more the *artist-scholar* than artist-architect.

The Voice of Life-works

> Se non è vero, è molto ben trovato.
>
> — Giordano Bruno[16]

> Real freedom is an inner submission to a value which defies history and its successes.
>
> — Albert Camus[17]

There is a beautiful moment in the history and production of the French dictionary known as *Dictionnaires Le Robert* (founded in 1951), i.e., a great caprice, where, in 1967, *Le Petit Robert* arrives, as if to question the very idea of comprehensive editions

16 "If it is not true, it is very well-invented": Giordano Bruno, *De gl'eroici furori* (Einaudi, 2000), 170, originally published in 1585. For the fuller context: "If this argument is not true, it is most original; and if not original, it is excused in any case; for when two forces exist, one of which is not stronger than the other, both forces must stop functioning; because the resistance of one is equal to the persistence of the other, inasmuch as the one can attack as much as the other can repulse the attack. Therefore, if in the eyes the ocean of tears is infinite and the force of tears is infinite, they must forever manifest themselves by setting aflame or fanning the impulse of the fire hidden within the breast, and the eyes will never be able to dispatch their twin currents to the sea, if the heart puts an obstacle of equal force in their way. This is why no appearance of tears flowing from the eyes or flames flashing forth from the heart can invite the beautiful deity to show mercy to the afflicted soul." Giordano Bruno, "Third Dialogue: Second Reply of the Heart to the Eyes," in Giordano Bruno, *The Heroic Frenzies,* trans. Paulo Eugene Memmo, Jr. (University of North Carolina Press, 1964).

17 Albert Camus, "Historical Rebellion," in Albert Camus, *The Rebel: An Essay on Man in Revolt,* trans. Anthony Bower (Vintage, 1991), 186 (first published in 1951).

of what has come to be called "dictionaries."[18] An ironical grand reduction was apparently in order, as if to prove that it was even possible.

On the fiftieth anniversary of *Le Petit Robert* in 2017, a further problematization of the entire edifice of attempting to nail down words occurred with a special edition, edited by Alain Rey, and supplemented by calligraphic paintings by the artist Fabienne Verdier. Verdier chose twenty-two, semantically charged word pairings to attempt to decipher, in her exceptionally neo-neoclassical calligraphic artform. Rey, author of books on "language's vitality and generativity," effectively put Verdier up for the task of rendering language itself as semiotically challenged.[19] Jakobson, the structural linguist, would have seen through this, in a flash. But "here" we are in the land of post-structuralism — a charmed anti-rationalist land. Verdier chose word pairings that already had a certain resonance with one another, for example: force/forme; dualité/dialogue; harmonie/hazard; arborescence/allégorie. The phonemes already set up a conversation at a primitive or primal level. Her method of producing the calligraphic paintings included a notebook to "introduce many of the project's preoccupations and assumptions."[20] The notebook was a collection of drawings, texts, and collages on vellum, which Verdier then used to approach her prey on cat's paws. She was on to a type of hunt, for preternatural and pre-linguistic prey, for how language transgresses the supposed

18 Produced by lexicographer Paul Robert, *Le grand Robert: Dictionnaire alphabétique et analogique de la langue française* "arrived" in 1950 to great acclaim. *Le petit Robert de la Langue Française* (a.k.a. *Le petit Robert: Dictionnaire alphabétique et analogique de la langue française*), first published in 1967, served as a one-volume summary of what by then had reached six volumes — i.e., *Le grand Robert*.

19 Peter Schwenger, "Fabienne Verdier and the Force between Words," *Critical Inquiry* 49, no. 1 (2022): 103, with reference to Alain Rey and Fabienne Verdier, *Polyphonies: Formes sensibles du langage et de la peinture* (Albin Michel-Le Robert, 2017), published in conjunction with the exhibition organized by the Bibliothèque de Genève and held at the Musée Voltaire, Geneva, Switzerland, November 3–December 17, 2017.

20 Schwenger, "Fabienne Verdier and the Force between Words," 106.

protocols of linguistic orders — of "how" it exceeds itself, or of "how" to fails to rise to the challenge of fully intelligible and transparent system. She wished to render, in paint, the equivalent of the energy fields between words.[21]

Such a hunt is fascinating, if not doomed. Perhaps it is fascinating because it *is* doomed. Language is (normatively and otherwise) else-where, which Verdier's resultant "one-liners" (the twenty-two, bespoke calligraphic paintings) portend. All of the largesse of post-structuralist mischief returns, glorious and ill-fated. We see Lacan and we see Derrida. We see the "scene of writing" and we see the "instance of the letter."[22] What we do not see or hear is the voice of works. It is a reductive exercise, given to the apparatuses of the historical trajectory of the dictionary itself. In this case, however, the dictionary wished to self-destruct. It is admirable, if not also self-serving. It calls forth all monstrous exercises performed in the name of deconstruction to find and/or ascertain what we cannot ever quite know. It is similar, in spirit, to Malevich's Suprematist pitch for a type of transrationality, which was always in anticipation of something else — e.g., Surrealism, and what Surrealism was in anticipation of (e.g., Surrationalism). The problem always returns, however, in the transcription and in the productive élan of cultural production as machinic and faux-universal enterprise, dead set upon reaching a threshold called "here and now," even if dead on arrival, for yet another round of mischief in the name of Capital and its serial fashion statements. Malevich fell prey to Soviet ideology (more or less excommunicated and dying in poverty in 1935), but he was also playing with ideology. He missed the

21 See, for example, ibid., 106, figure 3, "Arborescence/allégorie" (2015).

22 See Schwenger, ibid., 110, and his references to Jacques Lacan's "The Instance of the Letter in the Unconscious, or Reason after Freud," in Jacques Lacan, *Écrits: A Selection,* trans. Bruce Fink, Héloïse Fink, and Russell Grigg (W.W. Norton, 2002), 419, and Jacques Derrida, "The Fundamental Property of Writing as Spacing," 110, with reference to Jacques Derrida, "Freud and the Scene of Writing," in Jacques Derrida, *Writing and Difference,* trans. Alan Bass (University of Chicago Press, 1978), 217, where a "texture of relationships" arises out of *motion.*

difference between ideology and ideation by a hair's breadth. His Black Square cut two ways: into this world and out of this world. The mischief of post-structuralism and deconstruction fell prey to massive ennui — e.g., the inability to keep up and the academic world's need to move on, to greener pastures and more self-consciously rendered efforts to serve and/or save the abstract public (a reduced version of abstract humanity). Zeitgeist was reduced to episteme. The public humanities beckoned across the demise of critical theory. Whatever Capital names as the "new black" rules academia and the art world. The fashions come and go, but always, in the background, another voice wishes to be heard.

New Year Zero

> It seems as if it is not possible to attain with the brush what can be attained with the pen. The brush is tattered and can attain nothing in the twists and turns of the brain; the pen is sharper. […] There can be no talk of painting in Suprematism; painting is long since obsolete and the artist himself is a superstition from the past.
>
> — Kasimir Malevich[23]

23 Kasimir Malevich, *Chernyi kvadrat,* ed. Aleksandra Shatskikh (Azbuka, 2001), 80, cited in Yekaterina Andreyeva, *Malevich: The Black Square,* trans. Paul Williams, 2nd ed. (Arca, 2019), 49. The context of this statement is the explanatory statement for an album published in December 1920, entitled *Suprematism: 34 Drawings.* Shortly afterward, Malevich would become head of GINKhUK, the State Institute for Artistic Culture, in Petrograd. In 1923, Malevich published the manifesto, *The Suprematist Mirror,* "in which the artist asserted that our knowledge of the world is infinite, as are religion and art, and that means they are equal to zero" (Andreyeva, *Malevich,* 50–51). In many ways it was the beginning of the end for Malevich, who was increasingly battling an emergent, postwar Soviet ideology that privileged materialist and production-minded statists, including Tatlin and Rodchenko. The ideological putsch would all end with the arrival of Socialist Realism by the end of the 1920s. 1919 signaled the political turn in Suprematism, and the attempt to register the revolution of sensibilities in a cultural agenda before it was too late (ibid., *passim*).

> I was called by another *trait,* this graphics of invisible words, this accord of time and voice that is called (the) word — or writing, scripture.
>
> — Jacques Derrida[24]

"No Rights," as a generative and wholly elective (non-enforced and a/legal) status for new works of literary-artistic scholarship with no relation to Capital, and as a-historical negation of IPR, ironically and somewhat absurdly (in the Agambenian sense) represents a new Year Zero — viz., a fresh start for a debauched system of authorial privileges and artistic exceptions that has exhausted itself in service to itself, in the name of Capital, and a new zero degree for the voice of life-works. In the latter case, it is a threshold to be established and maintained through the bracketing and/or refusal of renascent authorial presence and privilege toward the privileging, instead, of the presence of multiple authorial voices of and/or through works.[25]

The grammatical density of the "electrical" circuitry of the argumentation for "No Rights" (Derridean in spirit, to break down meaning, so to speak), both as philosophically inflected language game (in the Wittgensteinian sense) and as translational-rhetorical ambit (in the Augustinian versus Aristotelean sense, thus escaping *gramma* proper and engaging an illuminated apparent dualism that nonetheless escapes dialectics), is such that it permits a "seal" to emerge of/for bespoke works. In terms of "No Rights," this seal is a provisional and proleptic type of closure and non-legalistic, non-authoritarian, and non-paternalistic imprimatur, which prevents the reinstitution, recalibration, and re-rationalization of forms of corruption or censure definitively expelled through both Year Zero

24 Jacques Derrida, *Memoirs of the Blind: The Self-portrait and Other Ruins,* trans. Pascale-Anne Brault and Michael Naas (University of Chicago Press, 1993), 3, cited in Schwenger, "Fabienne Verdier and the Force between Words," 115.

25 Here it is possible to see the origins of much of modernist avant-garde theater, from Artaud to Brecht to Ionesco to Brook, though it may be argued that much of it was actually anti-modernist.

and zero degree. It appears across works, even if it is assigned to bespoke works. It is also co-terminous with the emergence of the voice of life-works, insofar as those works speak for themselves. Ideationally engaged versus ideologically engaged, the voice of life-works falls silent when abject contingents intervene (law, authority, etc.) and when the apparatuses of worlds collide with the intentionality of subjects and works.[26] This silence is not without merit, and it often is the proving ground of what is yet to come. For this reason, studies of art-historical merit that concern this transpositionality as figurative ephemerality (conjugation and conjuration) versus static states (or convocation of effects toward re-historicizing what was always a-historical in its inception) are the equivalent of reading the stars, insofar as any reading of the stars is the equivalent of gazing into a mirror.[27] There is no objectivity possible in engaging with works as they develop toward life-works, for artists or for artist-scholars.[28] It is therefore, and in part as pure provocation, the literary-artistic modality of exegesis that permits a close reading of the operative magic of works en route to life-works and it is literary-artistic scholarship that may emphatically clear the ground for a "No Rights" idiom and the elective abolition of IPR.

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26 Rilke's legendary refusal of "analysis" (i.e., psychoanalysis) has a peculiar resonance in this context. He was actually worried that the voice of his works would disappear if he submitted to analyzing the status of his own complicity in conjuring that voice.

27 The neoclassical practice of painting *plein air* with a Claude glass is another apt metaphor for this process of ideational translation. What is seen is only ever seen indirectly. To do this intentionally is where art historians begin to leave behind the apparatuses of their trade. Georges Didi-Huberman and Hubert Damisch are both excellent examples of such art-historical soothsayers. Their readings of artworks become topologically inflected through, arguably, an embrace of iconology versus iconography. An excellent example is Damisch's *A Theory of /Cloud/: Toward a History of Painting,* trans. Janet Lloyd (Stanford University Press, 2002), as is Didi-Huberman's *Confronting Images: Questioning the Ends of a Certain History of Art,* trans. John Goodman (Pennsylvania University Press, 2005).

28 This is Malevich's point in *Chernyi kvadrat* with "the achievement of the non-objective" and the "kingdom of non-thinking" (cited in Andreyeva, *Malevich,* 37).

In the manner of Malevich's *Black Square* or *Black Cross,* "No Rights" is situated at the nexus between the positive-positive and the negative-negative spheres of influence in cultural production.[29] The compression of the architecture or architectonic of the justification is decidedly point-like in the conceptual field it inhabits — i.e., criticism as criticism as the crossing or crisscrossing of the paradigmatic and syntagmatic concerns or biases engaged. Such a field is also unavoidable in terms of the nascent causality or the preternatural necessity operative at the hoped-for, phenomenally rich level to be ascertained or accessed *through works* versus through the orchestration or analysis of works toward commodification and re-rationalization as

29 See Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics,* trans. Winston Moore and Paul Cammack (Verso, 1985), and Pierre Bourdieu, *The Field of Cultural Production: Essays on Art and Literature,* ed. Randal Johnson (Columbia University Press, 1993). Both Pierre Bourdieu and Ernesto Laclau employ a type of plotting of the field of cultural production via a quadrilateral graph. In such a graph of cultural production, with X and Y axes, "positive-positive" is the upper-right quadrant and "negative-negative" is the lower-left quadrant. In Laclau's terminology, the vertical axis is the paradigmatic line, and the horizontal is the syntagmatic line. Laclau's reading includes the acknowledgement that the paradigmatic axis is, for better or worse, the more powerful of the two, and that every higher position on that axis influences or controls a larger swathe of the horizontal, syntagmatic axis. This, in part, accounts for the abandonment of the paradigmatic axis by rebels, malcontents, anarchists, syndicalists, and nihilists, who privilege instead pure or impure contingency, luminous or dark immanence, relational aesthetics, and hyper-critical anti-avantgardism. The lower-left, double-negative quadrant may be said to be a type of Purgatory for artists and for artist-scholars, entered intentionally or through enforced precarity. In terms of life-works, works produced there have the added advantage of becoming so utterly iconic that they constitute the classical catasterism, to then reappear through a type of conceptual anamorphosis in the highest regions of the upper-right quadrant, where, if luck is with them, they may remain as illuminated works. If luck is not with them, they will slowly fall into the middling range of acceptable and canonized works as promulgated by the guardians and authorities of cultural heritage. Regarding Malevich's *Black Cross,* see its appropriations and re-deployment in new contexts by the Slovene art collective, Neue Slowenische Kunst (NSK), e.g., in the name of a new artistic "state."

cultural property. Works for Works, as transmedia, jettisons the outmoded and embraces the recondite and abstruse orders of prior art overwritten by excessive rationality, determinism, and utility. This departure from the socio-cultural cut of the operatic cult of criticism is absolutely required as *a priori precondition* to reach the level of inquiry that works-based agency represents through apophatic means (e.g., means to no ends or intentionality as uselessness).

What is iconicity when transferred to language or to texts? Is it not actually already there, in language, and merely re-privileged over and against pure visuality, as a temporal measure pointing to, *inter alia,* the transcendentals of knowledge as lived rite? Is it not a transfer of affect through the aegis of language, arguably the origin of language being visuality as affective regime?[30] The voice of life-works emerges, notably, across works. It is never guaranteed in advance, and the life-work is effectively the transcription of an event that takes place across events. The tautological sensorium is telltale, through works, to-

30 See *Le Petit Robert* versus *Le Grand Robert,* in Schwenger, "Fabienne Verdier and the Force between Words." For a two-session, silent "séance," performed in 2019, to extract answers to questions from the icons of IRWIN, and then to extract from the five members of IRWIN new questions from those answers, see Gavin Keeney, "The Icons of IRWIN," in Gavin Keeney, *Works for Works, Book 1: Useless Beauty* (punctum books, 2022), 143–62. See also André Malraux, *Les voix du silence* (Gallimard, 1951), and Susan Sontag, *Styles of Radical Will* (Farrar, Straus and Giroux, 1969), on the virtues of silence and shutting down inessential discursivity in the Arts and Letters. Regarding Jean-Luc Godard's appropriations of Malraux, including in *Histoire(s) du cinéma (1988–1998),* see Gavin Keeney, "The Film-essay," in Gavin Keeney, *Knowledge, Spirit, Law, Book 1: Radical Scholarship* (punctum books, 2015), 80n31. Regarding Sontag and the emergence of conceptual and minimalist art and art criticism in the 1960s, see Gavin Keeney, "Appendix B: Notes on Language and Its Other," in Keeney, *Works for Works, Book 1: Useless Beauty,* 209–29. As Sontag writes, "Silence is the artist's ultimate other-worldly gesture: by silence, he frees himself from servile bondage to the world, which appears as patron, client, consumer, antagonist, arbiter, and distorter of his work" (Susan Sontag, "The Aesthetics of Silence," in Sontag, *Styles of Radical Will,* 6), "The Aesthetics of Silence" was a type of sequel to Sontag's *Against Interpretation and Other Essays* (Farrar, Straus and Giroux, 1966).

ward life-work. The voice emerges through fidelity. "No Rights" is the formerly banished negation, via law, of law. It resides and it persists in and through works versus in support of works. It is co-extensive with the voice of works and life-works, though it may be formalized as status for such works in an /a-legal/ manner toward the production and dissemination of works en route to life-works.

Lexical Situationism

The density of the justification of privileging the voice of works as primary subtending chord in the creation of new works of literary-artistic scholarship with no relation to Capital, as path out of the conundrums of IPR law and its attendant gamed ecosystems, is indeterminate by the required artistic-linguistic customs of establishing such escape routes, for subjects and for works. The isolation of key terms of engagement, however, toward a type of lexicon that refuses closure, reveals an admixture of linguistic schematics that foreclose any attempt at full categorization or re-rationalization, in keeping with the fact that there are multiple authorial voices at play in the voice of works and life-works:

> generative and wholly elective (non-enforced and /a-legal/ status — a-historical negation of IPR — authorial privileges and artistic exceptions — threshold to be established — bracketing and/or refusal of renascent authorial presence and privilege — presence of multiple authorial voices — philosophically inflected language game — translational-rhetorical ambit — illuminated apparent dualism — provisional and proleptic type of closure — non-legalistic, non-authoritarian, and non-paternalistic imprimatur — co-terminous with the emergence of the voice of life-works — abject contingents — the intentionality of subjects and works — transpositionality as figurative ephemerality (conjugation and conjuration) — convocation of effects — literary-artistic modality of exegesis — operative

magic of works — positive-positive and the negative-negative spheres of influence — paradigmatic and the syntagmatic concerns — nascent causality or the preternatural necessity — recondite and abstruse orders of prior art — operatic cult of criticism — *a priori precondition* — intentionality as uselessness — against pure visuality — transcendentals of knowledge as lived rite — transfer of affect — aegis of language — visuality as affective regime — transcription of an event — formerly banished negation — voice of works and life-works

These terms are also the measure established that may then be utilized to generate further works, turning text to film-essay, and film-essay to performative presentation or transmedia-infused transpositions and translations. "Transpositions and translations" signal that the hoped-for engagement with a formidable formalism, always present even if hidden, is, in fact, a possible escape route from the ravages of capitalized and monetized forms-of-life masquerading as knowledge commons.

A further reduction is also possible through the creation of a subset of terms that jettisons additional rhetorical baggage. Such a subset also sets aside the apparent dispassionate nature of the analytic and establishes an emotionally charged register for the voice of works. The reductions are classic rites of *linguistic* passage, dropping along the way trenchant particulars that justify nonetheless discursive noise in service to silence. The metaphor is to music, where silence punctuates sound, and which, without silence, music would just be continuous noise.[31] There is also a subtle version of sublimation of effects toward enhancing affect, similar in spirit to dialectical sublimation versus the repressions of rationalized discourse analysis. A map of emotion, this subset (second set) may be utilized toward new "measures" that speak

31 This is related to Michel Serres's "art of forgetting," or the necessity of shutting down a great deal of noise to "hear" anything at all. See Michel Serres, "The Origin of Language: Biology, Information Theory, and Thermodynamics," in *Hermes: Literature, Science, Philosophy,* ed. Josué V. Harari and David F. Bell (Johns Hopkins University Press, 1982).

for and of justice for and toward subjects and works contra the dictates of Big Capital and Big History. Cycling through these sets then puts into motion a vital current, electrical in its operativity, that suggests further conversations through works toward the form-of-life for works known as "life-work." Certain terms jump forth, as the reduction moves upstream so to speak, such as "formerly banished"…[32]

> non-enforced and /a-legal/ — a-historical negation — exceptions — threshold — presence and privilege — authorial voices — philosophically inflected — translational-rhetorical — illuminated — provisional and proleptic — imprimatur — emergence of the voice — contingents — intentionality — conjugation and conjuration — convocation — literary-artistic modality — magic of works — spheres of influence — paradigmatic — nascent — orders of prior art — operatic cult — *precondition* — uselessness — pure visuality — knowledge as lived rite — affect — aegis — affective regime — transcription — formerly banished — voice

What has formerly been banished returns, and it returns situationally, through the voice of works and the hoped-for life-work. A grand anti-historical turn (return), canceling the impositions of Big History as Big Other, would thus be the return of a state for works free of IPR law, through the elective banishment of IPR law by artists and artist-scholars no longer interested in being in servitude to Capital or in residing on the estates of the enlightened nobility as semi-free subjects nonetheless subject to the Capital's sovereignty.

32 With reference to Theo Angelopoulos's film, *Trilogy: The Weeping Meadow* (*Trilogia I: To livadi pou dakryzi*) (Hellenic Broadcasting Corporation, 2004).

8

Illuminated Mirrors

The Peregrinations of El Greco

> I call upon my memory to remember, I assemble my life from the air, place myself soldierlike before the general, and make my Report to Greco. For Greco is kneaded from the same Cretan soil as I, and is able to understand me better than all the strivers of the past and the present. Did he not leave the same red track upon the stones?
>
> — Nikos Kazantzakis[1]

"The Book of El Greco" — not the art-historical catalogue raisonné per se, but a type of life-work as *paysage moralisé,* leading from Candia to Toledo — does not exist as such. Quibbles of art historians set aside, and ignoring warring factions, merely observed in passing, the nonexistent book nonetheless includes mostly unresolvable problems of classic attribution — i.e., questions concerning which works are by El Greco (i.e., by his own "hand") and which works are by his school and workshop(s), inclusive of Titian's workshop and, probably, Bassano's workshop. From the late 1800s to the early 1930s, the troublesome catalogue raisonné is duly assembled, anyway, and his itinerary

1 Nikos Kazantzakis, "Author's Introduction," in *Report to Greco,* trans. P.A. Bien (Simon and Schuster, 1965), 15. First published in 1961.

from his native Crete to Spain, in the late 1500s, disputed.[2] He is "there," in this well-meaning, but often self-serving, attempt by scholars to pin down his authorial presence, and he is "not there." And Saint Francis of Assisi is also "there" and "not there," most likely from the first days, at Candia, given that Saint Francis was patron saint of the Venetian colony at Crete, and the main Latin church (monastery) at Candia was "Franciscan."[3]

2 For scholars and key dates for early publications on El Greco associated with this period of re-discovery, see Nicos Hadjinicolaou, "El Greco's Italian Period and Ellis K. Waterhouse," in Nicos Hadjinicolaou, ed., *El Greco in Italy and Italian Art,* Proceedings of the International Symposium, Rethymno, Crete, September 22–24, 1995 (University of Crete, 1999), 71–103. Hadjinicolaou credits Waterhouse with clarifying the lineage and the number of paintings associated with El Greco's travels in Italy, even if the list of twenty-six paintings included by Waterhouse in his attempt to craft a definitive catalogue raisonné for this period has not entirely held up. See Ellis K. Waterhouse, "El Greco's Italian Period," *Art Studies: Medieval Renaissance and Modern* 8 (1930): 61–88. Waterhouse is from the interwar school of art historians and scholars that included Anthony Blunt and which was effectively influenced in terms of connoisseurship by Bernard Berenson. In effect and tone "effete," their production almost always sided with emergent trends in the art market and institutional collections and the necessity of justifying attribution toward "sales" of artworks and the "spectacularization" of artworks and artists.

3 "The figure of the saint of Assisi dominated the childhood of El Greco — that great figure of reconciliation between believers divided by schism and a reminder, too, of an exceptional destiny. No saint was to be painted by El Greco so often, with such affection, almost with such frenzy, as St. Francis. It was as if he wanted to wrest from him the secret of his meditations, the mystery of his ecstasies. At each stage of his life El Greco returned to him as a man returns to a safe and familiar refuge. His vision of him was always the same, but, at the same time, different; and these effigies of the saint reflect the curves of his own evolution." Antonina Vallentin, "A Land in Decay," in Antonina Vallentin, *El Greco,* trans. Andrew Révai and Robin Chancellor (Doubleday, 1955), 21. Vallentin states that El Greco painted Saint Francis of Assisi over 120 times. Even if this literary rendering of El Greco's relationship to Saint Francis of Assisi is essentially Romantic in spirit, Vallentin should be credited with breaking the spell of a type of art-historical scholarship that focuses intently upon the dubious categories associated with periods and authorized works, which almost always translate back to reputations and surplus value. El Greco, not unlike many artists now long gone, fell afoul of this retroactively applied consensus that authors and works by the authors' "own hand" are the only

The art-historical arguments about the "first" painting by El Greco of Saint Francis receiving the Stigmata all circle his last years in Italy (the 1570s), placing its origin in Rome (1570–1575) or in his much-disputed return to Venice (1575), after Rome, prior to departure for Spain (1577). If its provenance is shady, it is also somewhat "Mannerist" in spirit, resembling something Giorgione might have painted, suggesting through its poeticized means that he has, as of the 1570s, already imbibed the Mannerist rebellion against High Renaissance artistic conventions and Renaissance humanism more generally. It is the least formal or least "framed" of his paintings from this "Italian" period (1560–1577), and it is somehow highly personal. The affective register that will haunt his Toledo works is already present, or beginning to emerge. This is a "moral" landscape, notably *not of this world and of this world,* at once.[4] It is an "interiorizing" of subject and content, plus painterly style (stylistics), the three major emphases of his training in Venice and Rome — with his "training" being his wandering, and his wandering consisting of resisting assimilation to any canon then present.

Given that European Mannerism (ca. 1518–1600) was defined quite late in the art-historical game, i.e., by Max Dvořák in 1924, it is not the situational largesse of the period in which this painting appeared that is important, especially since almost all

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legitimate means of assessing a life-work, when, in fact, there is so much more beyond what the art market requires to specify authentic works, and, in the case of El Greco, so much that eludes the Renaissance penchant for propping up masterworks and masters at the expense of everything else.

4 *"The isolation of El Greco's figures and their disembodied detachment from earthly associations are El Greco's own conception and they have no exact analogues in Venetian art."* Harold E. Wethey, "The Genius of El Greco," in Harold E. Wethey, *El Greco and His School,* 2 vols. (Princeton University Press, 1962), 1:55 (italics in original). Wethey states that El Greco's skies "have no physical existence." According to Wethey, El Greco's more mystical renderings of time and space increase ca. 1580, i.e., when he has finally settled in Spain. A second painting of Saint Francis receiving the Stigmata is also lodged in this transitional moment: *St. Francis Receiving the Stigmata,* ca. 1580 (Madrid, Pidal Collection). Wethey also cites *Crucifixion,* ca. 1580, as signifying El Greco's "departure" into his own realm (ibid., 1:53–55).

attempts to pigeonhole El Greco fail miserably.[5] What is more important, in terms of clarifying why El Greco is considered a Franciscan artist, is the internal prospects of his emergent style, something that will eventually take on a portentous effect once he is settled in Toledo.

The big art-historical disagreements concern what caused El Greco to leave Rome and whether he returned to Venice. The lesser art-historical disagreements concern what he saw en route to Rome, including whether he stopped in Assisi. Additionally, there is the question of why he went to Spain, though everyone seems to be in agreement that he was not quite welcome in Italy, being from a Venetian colony, and that making a "name" in Italy, for himself and his works, was compromised by the lack of any major commissions as an outsider. It is more or less agreed he worked with Titian, and Bassano (maybe), and that his time in Rome was spent under the patronage or tutelage of the Farnese household. The rumored insults leveled at Michelangelo are considered exaggerated (via Mancini) and his abrupt departure, if that is what it was, is a mystery, especially given that there is historical evidence that he joined the painters' guild in Rome, in 1572, suggesting he meant to stay.[6]

El Greco's return to Venice is, therefore, a key conjecture. And his subsequent departure for Spain is generally linked to Titian's connections with Philip II, a major patron of Titian. Yet Titian was reportedly old and cranky, and greedy, and El Greco would have been a "tool" for Titian, if he was still on good terms with Titian upon his return ca. 1575–1576, prior to going to To-

5 Max Dvořák, *Kunstgeschichte als Geistesgeschichte: Studien zur abendländischen Kunstentwicklung* (R. Piper, 1924). See Max Dvořák, "Über Greco und Manierismus," in ibid, 261–76. Mannerism is defined as an abdication of classical optimism and confidence in human achievement, which is countered in art by a focus on "absolutes of the spirit," or a nominal embrace of the Scholastic belief that "a work of art comes into being through a knowledge of God rather than from experience in the physical world" (Wethey, "The Genius of El Greco," 1:56–57).

6 Andrew R. Casper, "Introduction," in Andrew R. Casper, *Art and the Religious Image in El Greco's Italy* (Pennsylvania State University Press, 2014), 6–7.

ledo (via Madrid) in "Spring of 1577," and via Malta, according to some hagiographers posing as art historians.[7]

Parsing the travels and travails in Italy has as much to do with the attempted games of ownership of El Greco as anything else. And it is the Spanish that fought the hardest to own him, given that Italy had been somewhat inhospitable and probably financially daunting for El Greco.[8] Thus, "El Greco" and not "Il Greco." History has decided, even if art history dithers. He, indeed, made his "name" in Spain, and the Spanish art historians won the game, in the end, even as the Italians kept at it for decades, finding ever more reasons to deny that he was ill-treated in Italy, making it, instead, a case of his being unique and inassimilable, which may have been true.[9] Even if El Greco donned the persona of an Italian humanist, as many scholars claim (and given his library, he probably did), he was ultimately a secret dissident — abhorring, no doubt, the classical pretensions of the Renaissance humanists. He did not outwardly retain the post-Byzantine, Orthodox background he had emerged from, and many scholars claim he chose to join the Roman Church

7 See Lionello Puppi, "El Greco's Two Sojourns in Venice," in Nicos Hadjinicolaou, ed., *El Greco in Italy and Italian Art* (Ionike Trapeza, 1995), 31–38; English translation, 393–96.

8 There is some speculation that El Greco was supported in Italy by his brother in Crete, who was also, however briefly, a pirate, on behalf of the Venetians. See Nikolaos M. Panayotakis, "Manoussos the Pirate: 1571–1572," in Hadjinicolaou, ed., *El Greco in Italy and Italian Art* (1999), 17–21. It is possible that "the departure of Domenicos from Venice and his proceeding to Rome at the end of 1570 are closely associated with the serious financial difficulties that Manoussos began to face" following his misadventures as a pirate; i.e., his bankruptcy (ibid., 21). Manoussos apparently then went to Toledo in 1590–1591 to join his younger brother, Domenicos (El Greco).

9 The lack of commissions in Italy is cited most often as the reason for his departure to Spain. Was his uniqueness the reason for the absence of commissions? Wethey states that El Greco had won national renown in Spain by the 1580s, with commissions from cathedrals and churches well beyond Toledo, e.g., in Sigüenza, Zamora, and Madrid. See Harold E. Wethey, "Biography of El Greco," in Wethey, *El Greco and His School,* 1:15. It thus seems more likely that his "mistreatment" in Italy was due to the entrenched system of patronage versus his unique style.

anyway, as a nod to assimilation to the West.[10] Yet he was always already headed for various heresies — virtuous heresies in the spirit of the artist-rebel. These heresies tend to get categorized as Mannerist and Expressionist. Whatever medieval or late-Byzantine elements he may have brought with him from Candia, center of icon production, to Venice, were clearly transposed across his interaction with painters in both Venice and in Rome. Attempts to link him to one rebel painter or another, however, tend to fail. Tintoretto and Correggio are the usual suspects, but, as with most such speculation, there is no real evidence and there is even less "sense" in making such claims.[11]

In attempting to see El Greco's legacy as an example of life-work as lived work, the "how" of the content of the works con-

10 There was such a large Greek presence in Venice upon his arrival that, apparently, El Greco had next to nothing to do with. Many of these were the so-called *madonnero,* painters of the painted panels known as *maddoneri,* or Black Madonnas quite popular with the Venetian nobility for private devotional practices. Byzantine Mariology of the time took the form of three classes: (1) Glykophilousa, Virgin of Tenderness; (2) Eleousa, Virgin of Piety; and (3) Cardiotissa, Virgin of Passion. It eschewed the more maternalistic and sensuous form favored in the Renaissance of the Virgin and Child and was influenced by the School of Theophanes of Crete. The holiest icon in Crete was known as the *Messopanditissa,* an image of the Virgin derived from some antique model. It was eventually taken to Venice for safety. See Vallentin, "A Land in Decay," 24–25. Most art historians in attempting to describe whatever it was El Greco was doing in Venice fall over backwards to emphasize that he was most assuredly not a *madonnero.* They also tend to reduce the production of the small painted wooden panels to a craft and thereby dismiss the fact that they actually had a significant purchase on the imaginations of their owners. See Casper, "Introduction," 6. As Wethey writes, "Whereas the Byzantine and mediaeval elements in his style have been much exaggerated, Mannerism in El Greco's composition has been too little comprehended" ("Preface," in Wethey, *El Greco and His School,* 1:vii).

11 Wethey wishes to pin El Greco's Mannerism on Michelangelo, Veronese, and Tintoretto while also giving it a "mystical" quality as later developed in Toledo. Wethey, "The Genius of El Greco," 1:52, with reference to Walter Friedländer, *Mannerism and Anti-Mannerism in Italian Painting* (Schocken Books, 1957). Waterhouse prefers Correggio, whom he assumes El Greco met through the Farnese household in Parma. See Hadjinicolaou, "El Greco's Italian Period," 93.

stituting his life-work becomes critical — i.e., *how* the content of that life-work is constituted across works, and *how* the life-work emerges across his peregrinations from Candia to Toledo. There is a distinct quality in the lived rites of these works that might be called a historical disadvantage. This is both the status of Crete in the late 1500s and the status of El Greco in Italy and in Spain, as "foreigner-ghost."[12]

The life-work, in such instances, develops as a type of autohagiography of itself as life-work. It writes itself. From such a position, in terms of the development of El Greco's life-work, it is possible to see the illuminated tableaux of that lived process becoming embedded in works, through trial and error, culminating in a rather astonishing radiance that breaks through in his late works, generally beginning in the 1580s and coming to a painterly crescendo in the early 1600s.[13]

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12 Leo Bronstein, "El Greco," in Milton S. Fox and Meyer Schapiro, eds., *El Greco* (Harry N. Abrams, 1950), 12. Bronstein uses the terms *foreigner-ghost* and *visitor-ghost* to privilege El Greco's effective role as perennial outsider or exile. He is also using these terms to establish a position for his readings of El Greco's works in an existential register that permits him to take liberties with the art-historical record, which he considers a long litany of misrepresentations of El Greco's life-work by modern apologists. This includes the Romantic versions of El Greco as "mystical hero," but it also includes the "twentieth-century claims" of "insanity," "astigmatism," etc. Notably, El Greco also suffered from what Bronstein calls "whispered slanders of Toledan sacristies," including claims that he lived in luxury in Toledo, in the household of the fifteenth-century sorcerer, Marqués de Villena, all the while enjoying glamorous friendships and attending salons of the Toledan intelligentsia (ibid., 12–13). Bronstein prefers the view that El Greco lived a "grey life, of labor, of patience and trouble" and of "financial difficulties and debts, of professional humiliations," yielding thus to the financialization of his output (ibid.).

13 Bronstein refers to the years 1577 to 1579 as El Greco's "period of trial" (ibid., 28). According to Bronstein, El Greco is in the process of shifting from "looking" to "seeing," i.e., he is beginning to paint from an inner vision or sensibility that is intensely calibrated to the external circumstances he is enduring. His various apprenticeships are finally over. He has assimilated the *terribilità* of Tintoretto (plus the *furioso*), Titian's various gifts (foremost, color), and the sensation of Michelangelo, with the latter's true Mannerist gifts being confirmed with the discovery of works by the sculptor Alonso Berruguete, a follower of Michelangelo. The two key works

> What, after all, is the real subject-matter of the mysterious *Opening of the Fifth Seal,* the strangest of all El Greco's creations, at the end of his life? Who is the emaciate, angular, sharp-nosed, and so sharply projected adolescent — androgyne and angel without wings — kneeling yet advancing […] so terrible and so fragile?[14]

> The Great Day of Wrath has dawned on the world. St. John announces it in prophetic ecstasy. He is as gigantic as his message, the eruption of a power capable of penetrating the terrors of the future. Even were this figure of visionary emotion all that had survived of the picture, one would realize at once that the rest of it must have depicted some very great and awe-inspiring event.[15]

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marking this rite of passage are the Santo Domingo el Antiguo altarpiece (1577) and *Espolio* (1579). *The Martyrdom of St. Maurice* (1580–1582) and *The Burial of the Count of Orgaz* (1586) followed quickly, leading to *Coronation of the Virgin* (1591–1592) and *Immaculate Conception* (1607).

14 Bronstein, "El Greco," 30, with reference to the medieval Franciscan tradition of Francis and the [Sixth Seal] — i.e., the apocalyptic fervor of the West in the thirteenth century. "Did [El Greco] paint in that picture, perhaps without knowing he really did so — his true image of St. Francis — the secret of his heart? One wonders…" (ibid.). Here we get a sense that Saint Francis was, indeed, with El Greco across his entire so-called career, a first inkling present in the first painting of Saint Francis receiving the Stigmata, reportedly painted in Italy and brought to Spain by El Greco as devotional panel. See Richard K. Emmerson and Ronald B. Herzman, *The Apocalyptic Imagination in Medieval Literature* (University of Pennsylvania Press, 1992). The preferred title of this painting is *Apocalyptic Vision.* See Richard G. Mann, "The Hospital of Saint John the Baptist Outside the Walls, Toledo," in Richard G. Mann, *El Greco and His Patrons: Three Major Projects* (Cambridge University Press, 1986), 111–46. Basing his narrative on historical records, Mann lists the subjects of the commission at the Hospital of Saint John (a.k.a. Tavera Hospital) as: (1) Incarnation; (2) Baptism of Christ; and (3) Apocalyptic Vision. The estimation that *Apocalyptic Vision* is a depiction of the opening of the Fifth Seal comes from Cossío. For the provenance of the painting, based on Metropolitan Museum of Art records, see Mann, "The Hospital of Saint John," 134n123.

15 Vallentin, "Eternity Regained," 276. Vallentin then adds, for emphasis, "elemental power" and "surging impetuosity" to describe the tenor of the painting. For her full treatment of *Opening of the Fifth Seal,* see ibid.,

Thus, there is *biography,* there is *hagiography,* and there is *auto-hagiography,* of artists and of saints, but also of life-works, with the latter distinguished by its affective registers — as lived, but interiorized experience. It is surrealist or surrationalist, in the extreme, and the ideal is the real, in the Hegelian sense, of any pictorial representations, regime, or program related to it. Hence the constant refrain of, or recourse to, El Greco's "realism," usually reserved for the finely calibrated detail of his human, this-worldly figures.[16] And, so too, art history's serial attempts to tackle and discipline "El Greco," for its own purposes — e.g., for its "catalogue," and for its marketization of his works. El Greco's rebellious spirit prevails.[17] His "failure" in Rome is countered

276–77. Vallentin agrees with scholars that the painting has been cut down at some point but does not offer any reasons other than the implication that the upper portion was unfinished.

16 This would, of course, quite literally vaporize in his late paintings, with the notable exceptions of portraits.

17 According to Bronstein, "[t]he 'what' of the subject, the ex-voto and its contents, is 'theirs,' and with them remains. The form, El Greco's 'how' and the sense of this form is 'ours,' today's" ("El Greco," 17, with reference to "yesterday's Spain," e.g., Counter-Reformation Spain, etc., and a type of de facto internal exile — even as double transplant — endured by El Greco, increasingly marked by fatigue as foreigner-ghost). This "internal exile" endured was not so much about "Italy" or "Spain," per se, as about the world *as such,* in his day, crossing over from the Renaissance humanist juggernaut of Italy to the Counter-Reformation conservatism of Spain, but notably by way of the Mannerist interregnum. Bronstein uses comments by Pacheco regarding El Greco to signal the conservatism he endured in Spain. Pacheco is also used by Bronstein to set up a very strange dichotomy regarding El Greco's position in that world, which concerns perceptions. Pacheco praised El Greco as "the best and most popular painter of Saint Francis," and, by inference, of "imagery for people's devotions" (ibid., 16–17). This is a classic judgment hiding a prevailing criticism of elevating art above and beyond its role as "icon," something conservative Spain held on to well into the Counter Reformation. Bronstein then claims that El Greco held a "commendable, if humble, reputation in sacristies and monks' parlors," but "only a very slight one among the halls of grandees or coteries of the learned" (ibid., 17). All of this is used to illustrate the competing roles played by El Greco, mostly in the imaginations of historians and scholars. Much like the reasons for "fleeing" Rome, there is no real purchase on any of it as the "real thing."

by his success in Toledo. Along the way, as if there is another non-historical record being written, all of the near-endless trials, including trials by fire, will end up illumining his late works. Did he really return the favor of his trials in Toledo (the various conflicting and self-serving judgments visited upon him by Toledans) by painting *Laocoön* (1610–1614), showing a horse headed for the city, in the middle distance (middle ground) between Laocoön and his sons wrestling with a serpent? Was he saying "good riddance," or was he saying "farewell"? He died in April 1614. And was his *Opening of the Fifth Seal* (1608–1614) an immanentist and immodest evocation of justice served on all-too-worldly pursuits? Is this not an excellent example of preposterous presentism, even if cloaked in a hallucinatory language that defies normative time-space? And, is that painting not, irreducibly, "Franciscan," given that Francis of Assisi was considered in his day a forerunner of the Apocalypse — viz., a modest figure sent "down into Big History," by The Highest, to open the Fifth Seal and prepare the way for the Second Coming?[18] The

18 Curiously, both *Laocoön* and *Opening of the Fifth Seal* are unsigned. Doubly curious is the purported fact that *Opening of the Fifth Seal* was first discovered by the Spanish painter, Ignacio Zuloaga (1870–1945), "behind an old velvet curtain in Cordoba." It was first called *Sacred and Profane Love,* but was subsequently renamed by Cossío as *Opening of the Fifth Seal,* due to its somewhat clear evocation of Revelation 6:9–11. See *"Opening of the Fifth Seal,"* i.e., an explanatory text by Bronstein of the painting, in Fox and Schapiro, eds., *El Greco,* 122–23. See the Metropolitan Museum of Art provenance record below for a possible explanation of its "first being discovered" in Cordoba. Is it possible that we are in the land of multiple authorial presences with these two works? Why did they remain unsigned? Additionally, what is the reason for the claim that the top portion of the painting is missing, i.e., that it was cut down at some point prior to discovery in Cordoba? Is it because the painting was never finished and whoever acquired it wanted to sell it? It is also quite possible that *Laocoön* and *Opening of the Fifth Seal* are unsigned because *both* are unfinished. Does this have any bearing on their ghostly and apparitional effect? If yes, does it even matter? Subsequent over-painting, by another hand, repeated restoration, whether by amateurs or by experts, have a very troublesome relation to the works that are, for whatever reason, altered over time, yet are presumed authentic. It is doubtful that anything El Greco might have added to *Laocoön* and *Opening of the Fifth Seal* would have in any way

Franciscan content here is utterly transposed, almost hidden. The painting is not one of the many devotional canvases or panels of Francis, or of Francis and Leo, that he painted across his sojourn from Venice to Toledo and then mass-produced in Toledo, via his workshop, for the religious trade. This one seals his allegiance to Franciscan idealism. Caution has been thrown to the wind. He has stepped out of one timeframe (historical time) and into another (a-historical time).

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diminished their fiery and portentous nature. In some ways their "unfinished" status, if that is what it is, adds additional depth to the mysterious charge of the late works, while, in the process, throwing the art-historical hounds off the trail. Justice is, therefore, doubled, or doubly served. See also, "Opening of the Fifth Seal," in David Davies, ed., *El Greco* (National Gallery, 2003), 210–13 (exhibition catalogue, Metropolitan Museum of Art, October 7, 2003-January 11, 2004, National Gallery, London, February 11-May 23, 2004). According to the Met, and there is no reason to disbelieve the Met's version of reality, other than perhaps that it too is based on highly mutable narratives, *Opening of the Fifth Seal* is a "large fragment of one of three altarpieces […] for the church of the Hospital of Saint John the Baptist (the Tavera Hospital)," commissioned ca. 1608 and never completed. The three paintings intended for the Tavera Hospital remained in El Greco's workshop until his death. His son, Jorge Manuel, finished two of three altarpieces: Annunciation and Baptism of Christ. He did not, apparently, touch The Fifth Seal. Somehow, and under whatever circumstances, *Opening of the Fifth Seal* was cut down in 1880 by a "restorer at the Prado." The upper half is nowhere to be found (ibid., 210). The Met also restored the painting and has archived both photos and records of that process. For the details of this commission, see Mann, *El Greco and His Patrons,* 111–46. Ironically, Jorge's *Annunciation* was also cut in two at some point, with half of it, as of 2003, in Madrid and half in Athens. The irony is extraordinary. The official Met record of provenance reads, in chronological order of ownership: "[T]he artist, El Greco, Toledo (until d. 1614; posthumous inv., 1614, fol. 4v, as [one of] 'los quadros del ospital enpezados'); his son, Jorge Manuel Theotocopoulos, Toledo (1614-d. 1631; inv., 1621, no. 183, as one of 'Dos quadros bosquejados para los colaterales del ospital grandes'); José Núñez de Prado y Fernández, Madrid; Antonio Cánovas del Castillo, Prime Minister of Spain, Madrid (before 1890); Dr. Rafael Vázquez de la Plaza, Córdoba (by 1890–1905; sold for 1,000 pesetas to Zuloaga); Ignacio Zuloaga, Paris and Zumaya, Spain (1905-d. 1945); Museo Zuloaga, Zumaya (1945–1956; sold to Newhouse); [Newhouse Galleries, New York, 1956; sold to MMA]." "The Vision of Saint John: Artwork Details," *The Metropolitan Museum of Art,* https://www.metmuseum.org/art/collection/search/436576.

> What is the particular theme — the icon or image — that El Greco would have chosen and taken with him in his withdrawal, as his *invenzione?* One wonders: A face, a man's face, would it not be that? An *Ecce Homo's* face — the *Ecce Homo* of Greco's time, the time of melancholy, of death and hope coming out of despair, the time of "mas alto!" too? A face of the new *Poverello* — a new face of St. Francis? One wonders. …[19]

These literary-biographical flourishes are generally dismissed by art historians, even after citing some of them to produce a certain amount of cognitive dissonance for readers. It almost suggests that art historians and scholars are subject to the same mysteries of works and life-works but need to pass off any literary indulgences through citation. Yet, it is precisely literary-artistic scholarship that most often paints the more accurate picture of such "subjects" (i.e., the subjective states that art-historical studies tend to reduce to artists and works).

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19 Bronstein, "El Greco," 30, with reference, no doubt, to Nietzsche's *Ecce Homo: How One Becomes What One Is,* first published in 1908, after Nietzsche's death in 1900, but written in 1888. Bronstein's reading of El Greco's rebellion circles issues such as "conscious deformations" of conventions (however slowly evolved), by way of an "inner" charge given to works, as if the works are actually *in charge,* and "passionate application," which he elaborates as a direct homage by El Greco to Byzantine sources, even as he passionately deforms those sources (ibid., 20–21), with reference to Byzantine works such as: fourteenth-century Chora mosaics; fifteenth-century Mistra; sixteenth-century Mount Athos, etc. "Etc." here includes Slavic icons. There is a type of El Greco-esque space-time involved. By the late 1500s, and into the early 1600s, El Greco is paying his respects to all schools he has passed through. There is a "continuous, ornamental (medieval)" something at work. According to Bronstein, the "adhesion there of the form, of the figure, to this geometric frame. And not only asymmetrical, ovoid, and continuous-ornamental in its volume, but also in the now-contrasting, now-harmonious color accord [and discord]; in the suddenness (very late Byzantine) of the high light's action, in the 'deformed' anatomy of bodies, faces, hands" (ibid., 29), with reference to *Coronation of the Virgin* (1591–1592) and *Immaculate Conception* (1607), but primary as justification for claiming that El Greco has arrived at "the art of the flame that de-forms, of conflict, of discomfort, of alternating despair and serenity" (ibid.).

An example may be found in a text by Nicos Hadjinicolaou, published in a catalogue that accompanied a major El Greco retrospective exhibition in Athens in 1995, concerning El Greco in Italy, paired with a scholarly symposium in Rethymno, Crete. Hadjinicolaou cites a highly colorful and imagined passage from Achilleas Kyrou's 1930s description of El Greco's arrival in Venice, and then states: "Such an approach belongs to the realm of a biographical novel rather than that of a scholarly study."[20] Yet he cites it and then returns to his "Annales School" justification of works, a notable and not altogether unworthy bias also exhibited by Lionello Puppi in an essay in the same catalogue, who nods to a methodology that privileges archival records, even if those records are often used to prop up otherwise unsubstantiated claims and an ideological agenda hidden in the coterie of scholars circling the legend(s) of El Greco. In this case, the historians are well into the second wave of re-patriation of El Greco to Greece, via re-tracing ninety years of speculation and adding a few flourishes. The entire fabrication of El Greco's identity, launched in the early 1900s, from both Spain and Germany, and then slowly mythologized across decades by French, Italian, and American artists and scholars is, without a doubt, mesmerizing, even as it continually avoids the primary reason for the legend — viz., the catastrophic dimensions of El Greco's voyage and the explicit late evocations of his total disdain for the authorized artistic conventions of his day, foremost Counter-Reformation Spain.

20 Nicos Hadjinicolaou, "El Greco in Italy," in Hadjinicolaou, ed., *El Greco in Italy and Italian Art* (1995), 405, with reference to Achilleas Kyrou, *Domenicos Theotocopoulos, the Cretan* (Dimitrakos, 1932). Kyrou's text is associated with the "re-patriation" of El Greco in the first decades of the twentieth century. See Iro Katsaridou and Anastasia Kontogiorgi, "When El Greco (Re)Became Theotocopoulos: Policies and Political Discourse of the National Gallery of Athens," in Eva-Maria Troelenberg and Melania Savino, eds., *Images of the Art Museum: Connecting Gaze and Discourse in the History of Museology* (Walter de Gruyter, 2017), 242. Hadjinicolaou's appropriation of Kyrou is subtle but also clearly strategic. A second wave of "re-patriating" El Greco was underway in the 1990s through a series of rolling exhibitions.

The rediscovery of El Greco ca. 1900 is an astonishing example of a life-work having vanished or fallen into disrepute and then reappearing, semi-miraculously, in this case, just as early twentieth-century Expressionism was emerging in Germany. Anxiety rules, again, as cultural epochs shift with political and socio-economic constraints, and past forms of oppression are merely recoded through new means. If theology slowly dropped away as modern art emerged, it is still possible to see art in a theological context devoid of orthodoxy and enforced pictorial conventions. It may be said, then, with some impunity, that El Greco's "rediscovery" had as much to do with the shifting sands of art as indiscreet and indiscrete, a-political and sacrosanct "measure," in the Hölderlinian sense, as anything else at play then. From roughly 1906 to 1995, we witness dozens of art scholars circling El Greco, seeking the means to define his "name."[21] By the 1990s, the long-sought "book" has become the now-needed "name" — the Greeks, in particular, wishing to re-brand him "Theotocopoulos."

Recovery + Dissonance

> Mystic, Mannerist, proto-Modernist. Lunatic, astigmatic. Hispanic, Hellenic. Strange as it seems, this incongruous assortment of labels has been applied to one of the greatest artists of Western civilization, the man we know as El Greco. How is it possible that the image of a painter who died over 350 years ago could be so confused and contradictory?
>
> — Jonathan Brown[22]

21 See the bibliography in Hadjinicolaou, ed., *El Greco in Italy and Italian Art* (1995), 549–65, for an exhaustive list of the authorized scholars associated with this historical "accounting" project. For a parallel take on the same period, inclusive of literary-biographical works, see the bibliography in Vallentin, *El Greco,* 297–301. Partway through Vallentin's more generous bibliography we find the following telltale entry: Jean Cocteau, *Les Demi-Dieux: Le Greco* (Au Divan, 1943), i.e., a "biography" of El Greco by Cocteau, and part of the series known as "Les Demi-Dieux."

22 Jonathan Brown, "Introduction: El Greco, the Man and the Myths," in Jonathan Brown et al., *El Greco of Toledo* (Little, Brown and Company, 1982),

It was artists, appropriately, plus Romantics, who ultimately saved El Greco from obscurity and oblivion, and it was Napoleon's theft of works by El Greco, via pillage, that brought him to the attention of artists — e.g., Manet, Delacroix, and Millet.[23] From the 1860s through the last decade of the nineteenth century, the battle with the French Academy of Fine Arts by avant-garde artists in France strangely facilitated the resurrection of El Greco. The slights visited upon his works and his person by neoclassicists across the eighteenth century and well into the nineteenth century did not, however, vanish overnight. Yet the adoption of El Greco by the Romantics and by dissident modernist artists and scholars of the late 1800s, or those attempting to break out of authorized and sanctioned forms of representation and scholarship, opened the door for the wave of interest that followed in France, in Spain, and in Germany.[24] The life-work found its true audience in what might be called fellow-

15. Exhibition catalogue. The exhibition was co-produced with the Toledo Museum of Art, Museo del Prado, National Gallery of Art (Washington, DC), and Dallas Museum of Fine Arts, 1982–1983. Brown's Introduction is a masterful summary of the entire history of El Greco scholarship up to the date of the exhibition in 1982–1983, albeit in the form of a chronology of reception, and even though it ends with a feigned attempt at objectivity and neutrality while more or less declaiming El Greco an art-historical "saint."

23 Ibid., 19–20. The Romantic movement assimilated El Greco by way of Théophile Gautier, who visited Spain in 1840. Napoleon appropriated works by El Greco during the French occupation of Spain in 1808–1812 (ibid.).

24 Notably, this also cleared the way for the emergence in Spain of the "re-adoption" of El Greco after a long period of effectively disowning and ignoring him. Cossío et al. are then more or less free to "investigate" and honor or trouble El Greco's legacy, and the Prado will, as a result, mount a major exhibition in 1902. Cossío's monograph on El Greco will subsequently appear in 1908. For this first campaign, in Spain, see Brown, "Introduction," 23–26. This, of course, then launches the "Hispanic or Hellenic" arguments of the 1930s, with Kyrou's book of 1932 falling squarely within the high point of the clamor, with both Spain and Greece attempting to overcome various versions of socio-political collapse through nationalistic agendas. El Greco was introduced to the German art intelligentsia by Julius Meier-Graefe, a champion of Postimpressionism, who made a pilgrimage to Spain in 1910. El Greco's reputation was further

travelers. Kandinsky and Marc and the Blue Rider insurrection in Munich, in 1911, adopted the "mystical proto-expressionist" label, as did Max Dvořák, in Vienna, in his *The History of Art as the History of Spirit* (1928).[25] Reaction ensued across the same period but finally collapsed from its own abject absurdity. Protocols of art shifted, and what even El Greco (with his early Aristotelian leanings) might have termed *the entelechy of the life-work* returned through a wide array of literary, scholarly, and painted means, inclusive of what appeared at times like vengeance. If the "mystic" status of El Greco remained problematic for art historians, this disavowal was nonetheless strenuously countered and reinforced through the various literary and biographical outtakes.[26] The Hispanic or Hellenic arguments regarding his "proper artistic identity" also collapsed, in the 1930s, only to return in the 1990s with the campaign by the Greek establishment to wrest El Greco away from the Spanish. New archival discoveries propped up the anti-mystical school, however temporarily in the 1980s, only to unravel whenever another exhibition was held that did not intentionally seek to espouse any one school of thought regarding his place in the official art-historical canon.[27]

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propped up in France by Paul Lafond, in 1906, who was a champion of the "proto-expressionist" label applied to El Greco's late works (ibid., 27).

25 Ibid., 29. Max Dvořák, *Kunstgeschichte als Geistesgeschichte,* rev. ed. (R. Piper, 1928). Dvořák's formal assimilation of El Greco, as published in 1928, dates back to at least 1920, when he gave a [first] lecture on El Greco. It might be said that Dvořák's work at this time is also dealing with world-historical issues at play and that the anxiety underwriting his approach to art-historical criticism is part of that larger corpus of disturbance that also sponsored forms of cognitive dissonance in the works of Aby Warburg (1866–1929), Henri Focillon (1881–1943), and André Malraux (1901–1976). The neo-Hegelian remainder is telltale, as is the sociological "cut." See, for example, Henri Focillon, *The Life of Forms in Art,* trans. Charles Beecher Hogan and George Kubler (Zone Books, 1989).

26 Brown asserts that Paul Guinard's biography of El Greco, published in 1956, is "one of the best" ("Introduction," 31). It is also one of the many art-critical biographies that are contra the mystical trend in readings of El Greco's work. See Paul Guinard, *El Greco: Étude biographique et critique* (Skira, 1956).

27 Brown cites the discoveries of El Greco's "writings on art," which supposedly confirm his Italian humanist leanings and counter the Spanish,

Branded a "misguided eccentric" for two and a half centuries, El Greco through the luminous tableau of his life-work, regardless of which school of scholars or which cadre of artists might have the upper hand at any given moment, was finally canonized as "saint." How utterly "Franciscan." Even though the art historians continue to find temporal causes for a-temporal phenomena associated with that life-work, the reductions seem absurd:

> The rediscovery of El Greco coincided with the rise of European nationalism, which made it plausible to account for his genius by geopolitical explanations. To Greek writers, hungry for a modern cultural hero, he was a hispanized Hellenic. Spanish critics, who believed that the flowering of El Greco's genius was attributable to his move to Toledo, saw him as a hellenized Hispanic. Venetian scholars were late to join the fray, but when they did, they naturally incorporated El Greco into the glorious narrative of sixteenth-century Venetian painting.[28]

Needless to say, the life-work knows no nationality. "Il Greco, El Greco, Le Greco" is relative — as sequence or scrambled as

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Counter-Reformation mystical trends others have claimed for his late works, e.g., acquired via the works of Teresa of Ávila (1515–1582) and John of the Cross (1542–1591). These discoveries, credited to Fernando Mariás and Agustín Bustamante, were published in *Las ideas artísticas de El Greco: Comentarios a un texto inédito* (Cátedra, 1981). For a review, see John Bury, "Las ideas artísticas de El Greco (Comentarios a un texto inédito)," *Burlington Magazine* 125, no. 963 (1983): 366.

28 Jonathan Brown, "El Greco: An Introduction to His Life, Art, and Thought," in Jonathan Brown and Susan Grace Galassi, eds., *El Greco: Themes and Variations* (Frick Collection, 2001), 9. Exhibition catalogue, May 15-July 29, 2001, in association with seven paintings, two of which, as part of the Frick holdings, were purchased in Spain in the early 1900s by Henry Clay Frick, a wealthy American industrialist, at the time of the Prado exhibition and the Spanish celebration and rediscovery of El Greco. "Although this kind of climate-controlled history is too deterministic for the postmodern world, the old verities die hard, and El Greco studies are still influenced by a chauvinism rarely encountered in the serious study of art history" (ibid.).

cipher. "Theotocopoulos" was the quintessential exile. Why else would Kazantzakis enlist his approval for his own wanderings and his own exile? And, with art, nation-states are pointless anyway. El Greco's "exile" was metaphysical. His work slowly edged ever closer to absolutely other-worldly. The various claims of his abandoning Aristotle for Neo-Platonism, plus counter-claims, are not necessary to establish the datum for the trajectory of the emergence of the life-work.[29] It is there, and on full display. This "It" is the mystery (or *mysterium*) of the works-based agency en route to transformation and transfiguration. How utterly "Franciscan." The post-Byzantine focus on devotional art is ever present across all works, save, perhaps, his portraits of nobility and clerics, which it may be argued were only ever commissions undertaken towards quotidian survival. The swerve between his production by workshop and his signed works is a gesture he maintained almost to the end, even if he somehow failed to sign some of the more incendiary works of his last years. Art historians will always default to the historical record, out of self-imposed necessity. Metaphysical exile, on the other hand, cannot be shown "historically," regardless of how many documents may be produced or "discovered" for or against its so-called reality.

El Greco's peregrinations conform to the tripartite Franciscan set or schema of "itinerancy, poverty, works" in a fairly profound fashion. His peregrinations are both literal and metaphorical (or metaphorical-metaphysical). He ranged widely across multiple disciplines in developing his life-work, thus the arguments by scholars about his intellectual regimen, and that life-work is, irreducibly, a highly compressed "singularization" of "itinerancy, poverty, works." The literality of itinerancy remained in play, even in Toledo, as he remained an exile. The literality of poverty remained in play, in terms of his battles to survive en route to Toledo and once in Toledo, despite all of the unconfirmable stories told about his living in luxury once

29 Here it is possible to see in El Greco's work a Plotinian expression of a mental journey versus a visual journey. It is also consistent with the Bonaventurian *itinerarium mentis* of ideational Franciscanism.

established in Toledo.[30] The literality of works, as works versus commodities, also remained in play, despite all of the troubles visited upon him through elaboration of his workshop once in Toledo. While one cannot separate out the works produced by the workshop, they are of another order and must remain a type of production of prototypes and copies versus primary works. This compressed and vastly unaccountable adherence to a form of ideational Franciscanism may well be in the eye of the beholder, in terms of his biography, yet it remains undeniably in force in the auto-hagiography of the life-work.

Lastly, the pictorial regime engendered, across works, both bespoke and replicated, carries within it the late-Byzantine adherence to the devotional arts. This is undeniable as well. The Renaissance influences do fall away, across works, and eventually are eclipsed by the trajectory of the late works (from roughly 1580 forward). Affectivity leaps to the rescue of El Greco. It is an affective register in his life-work that distinguishes, finally, what may be said to have always already been at play in bespoke works. Almost exactly three hundred years after the miracles of the 1580s, in France no less, it is that affective register that serves to redeem El Greco for artists, and for artist-scholars.

The Myth of Works

The myth of works is something altogether different than the myth of genius or the myths that objective-empirical scholarship loves to demolish. The auto-hagiographic nature of life-works is effectively non-human. The mythos is the mysterium, and vice versa — e.g., in the precise sense that, for Hegel, the ideal is the real and the real is the ideal. (It is also possible to say the ideal *was* the real and the real *was* the ideal, given that Hegel's radical and totalizing project toward a system ended up mired in socio-

30 This is perhaps indicative of an ultra-fashionable, self-imposed, and artistic pseudo-personality disorder known as *ascetic-bon vivant*. Eventually, in most all such cases, the ascetic side wins out, as it did with El Greco in his last years, and as presented in his last (unfinished) paintings.

cultural terms once it began to privilege the real and forms of mediation that bordered on an ideological putsch masquerading as pragmatism and a political utilitarianism that could be co-opted by the left or the right. Marx was, thus, correct to invert and subvert Hegel's system, insofar as the diachronic political agenda was veering off into dangerous territory.[31])

It is all, nonetheless, a case of a doubled tautology at play in and through works and of and for life-works. When transferred from authors to works, in terms of an analytic of works-based agency, this mythos is inherent to works versus applied to works. It becomes in the process an odd echo of modernist theories of autonomy. As inherent nature or anti-nature, it also is sacrosanct and cannot be confirmed or denied. It merely is. It is identified versus constructed. It is the ethos and telos coming into combined effect through life-works, the life-work representing the entelechy of the agency of the works that comprise the life-work. The Aristotelian cut is not required to speak of such an entelechy, for it overflows or exceeds any vitalist estimation of its supposed ecosystem — e.g., its reliance on a pre-existing *gramma*.[32] The Neoplatonism of the antithetical view is also not required, for such life-works as mythos removes any need to premise works on direct antecedents, spectral, archetypal, or otherwise. All of the errors of modernist cultural analysis are

31 It could also be argued that Hegel's project was not actually teleological, as it is often assumed to have been, especially given that it became mired in socio-political forms of mediation and statism — or, that the initial universalism of the project collapsed when confronted with "reality."

32 Could this be the reason that Thomas Aquinas ran "out of ground" with his *Summa Theologica* and eventually gave up, and retreated into silence? Oddly, Schopenhauer will follow Aquinas into a type of enforced silence, once he too has exhausted his critique of world as will and representation. The common ground here is the imposition of forms of mediation that cancel access to what is actually sought — in this case (i.e., "Aquinas + Schopenhauer"), by scholastic theology and by existential philosophy. The arts would, then, be one way out of this stalemate. And an embrace of the arts as a form of literary-artistic scholarship, or philosophically and/or theologically informed inquiry, might be one of the last redoubts for accessing what is effectively beyond rationalist inquiry and actually resists rationalist inquiry.

captured "here" and neutralized — foremost, sociology and psychology as pseudo-sciences. The antecedents are there, as forms of prior art, but they are transformed and transfigured through new works. The implicit homage to prior art is part of the entelechy. In the ecosystems to come, for non-proprietary forms of artistic scholarship, the mythos, as ethos and telos, will need to circumvent or circumnavigate the premises of the current or last vestiges of the socio-cultural biases of modernist revolt against conventions, an insurrection most often portrayed as a revolt against the edicts of Big History. Hobsbawm was almost right in his estimation that any avant-garde or any art that remains "beyond" the reach of the everyday remains effectively pretentious and elitist. The mythos of an artistic scholarship to come (as embedded in the transitional gestalt of the various and absurd, present-day broken ecosystems of late capitalism) also negates, through the explicit but elective abolition of intellectual property rights, the failed prospects of "postmodernist endlessness" — viz., that late-modern complex, sociologically and psychologically conceived, of serial deferral and ponderous inoperativity, plus the equally ponderous demand of the capitalized humanities to make everything "public."[33] Critically, this "last" revolt will be through collectivist-based life-works, and an

33 This is also the agenda of the art-academic industrial complex, insofar as the neoliberal machinery demands that everything formerly locked behind institutional walls, for whatever reason, good or bad, be available to all, with "all" often meaning available for exploitation by neoliberal-capitalist means. This curiously includes monetization and exploitation as commodity. Digitalization is one of the main engines of this theft by redefinition of "the commons" as entrepot for all goods awaiting leveraging. The post-contemporary art world, while also playing the "public" card, is perhaps the more devious player in this game, with the curatorial enterprises of that world masking huge networks of privilege and the production of reputations and symbolic capital. The original impetus of "opening things up" has, for the usual reasons (e.g., careerism and the production of power), led to the closing and policing of the art world by other means. The primary products of the art world and academia remain despite all good intentions, celebrity and privilege for a few. Behind the curtain of "making things public" (e.g., the Public Humanities) is the commodification, manipulation, and policing of the knowledge commons.

entelechy of mythic composure, if it is to have any historical or a-historical merit and grip on reality — to change "reality."

9

Cognitive Dissonance in Contemporary Scholarship

Modalities + Dissonance

> Atmospheres reduce bodies to mere complicity while offering them the illusion of power. For there can be no atmosphere unless the bodies participating in it actually desire the very atmosphere and the power that emanates from the sense of belonging. There is complicity in both emergence and in perpetuation. Foucaultian power leaking everywhere means that law can no longer be conceptualised merely as top-down state law. Rather, law is an institutional affect in and between bodies. From Foucault's disciplinary society to Deleuze's society of control: bodies control other bodies in the way they control themselves and their own affects, even in the absence of state legal hierarchies. Self-policing is driven to hysterics by the collective behavioural pressure to fit in. Our desire to belong becomes exploited by atmospherics.
>
> — Andreas Philippopoulos-Mihalopoulos[1]

1 Andreas Philippopoulos-Mihalopoulos, "The Real Law," *International Journal for the Semiotics of Law* 36 (2023): 46. Further, "In generating and acting through an atmosphere, law matches the expectations of a consumerist society, while continuing to nurture these expectations so that more of the same is needed. An atmosphere generates a cycle of addiction

"No Rights" is a *paysage moralisé* — viz., it is /a-legal/, canceling all legalities attached to, surrounding, and disfiguring authorial presences.[2] Dante was, in many respects, a Franciscan author. What he picked up in Florence at Santa Croce, before his exile, was the unwritten book Saint Francis left behind.[3] This included the apocalyptic "flares" (and flair) of Joachim of Fiore and Bonaventure.[4] Two members of the Spirituals had left their mark at Santa Croce, and given that it was in the 1290s that Dante was

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where, once the supposed desires are converted into 'real needs,' more of the same is offered continuously and in excess" (ibid., 48).

2 The term *paysage moralisé* (moral landscape) is derived primarily from literature, e.g., Rousseau's "walks" (*Rêveries,* 1782) and "idylls" (*Confessions,* 1782), which seem to answer (echo) the call of Madeleine de Scudéry's seventeenth-century rhetorical promenade through Versailles (*La promenade de Versailles,* 1669) and Thoreau's *Walden* (1854), not to mention his "walks," which, in turn, cue Herder's "walks" (in *Critical Forests,* 1769). For the use of the term *a-legal* in this context, see M.R. Tosas, "Life under and beyond the Law: Biopolitics, Franciscanism, Liturgy," *European Legacy* 20, no. 2 (2015): 170–75, which is a review of Agamben's *The Highest Poverty* and *Opus Dei.* Tosas characterizes Agamben's foray into Franciscanism as an attempt to clarify to what extent the *regula* established by Francis are "a-legal" (Tosas, "Life under and beyond the Law," 170).

3 See Ronald B. Herzman, "'I Speak Not Yet of Proof': Dante and the Art of Assisi," in William R. Cook, *The Art of the Franciscan Order in Italy* (Brill, 2005), 195–97; with reference to Ronald B. Herzman, "Dante and the Apocalypse," in Richard K. Emmerson and Bernard McGinn, eds., *The Apocalypse in the Middle Ages* (Cornell University Press, 1992), 398–413. Herzman describes Francis as a "text" and a "sealed document," claiming that Dante wished to become the same and that *The Divine Comedy* is his attempt to do so. Francis of Assisi received his "seal" on Mount Alverno, with the event of the Stigmata. Dante received his laurels in Canto I of *Paradiso,* and his "seal" in *Paradiso* XV-VII, "Heaven of Mars." See Dante Alighieri, *The Divine Comedy,* trans. John Aitken Carlyle, Thomas Okey, and P.H. Wicksteed (The Modern Library, 1950).

4 See Vincent Moleta, "St. Francis and Giotto," in Vincent Moleta, *From St. Francis to Giotto: The Influence of St. Francis on Early Italian Art and Literature* (Franciscan Herald Press, 1983), 81. In the case of Bonaventure, it is in *The Major Legend of St. Francis* that Francis is described as the angel of the sixth seal. See Regis J. Armstrong, J.A. Wayne Hellman, and William Short, eds., *Francis of Assisi: Early Documents,* vol. 2 (New City Press, 2000), 524–683, and Richard Emmerson and Ronald Herzman, *The Apocalyptic Imagination in Medieval Literature* (University of Pennsylvania Press, 1992), 37–39, 44–53.

schooled there, this is also the threshold of the conversion of Franciscanism by the Roman Church to a form of theo-politics, with the assistance of Cimabue and Giotto, the Bardi Chapel at Santa Croce to follow in 1320, and the extravagances of the Basilica at Assisi more or less in place.[5] The Spirituals will be disciplined and the /a-legal/ tenets of the Franciscan form-of-life subsequently re-legalized and policed by the Church Militant. Schooled both by Dominicans and Franciscans, in Florence no less, the most powerful and wealthy of the rapidly urbanizing, late-medieval Italian city-states, Dante will nonetheless side with the Franciscans, and, upon exile from Florence (1302), write the proto-Franciscan literary-theological text (anti-memoir/novella), *The Divine Comedy* (1308–1321).[6] He will summarily denounce theo-politics, send the usurious clerics and simoniac popes to the lower circles of Hell, and profess a doubled inner exile that will place him in the annals of literature as progenitor of a voice that signals and establishes contact with every register Francis of Assisi observed and paid fidelity to.

/A-legal/, affective, Romantic-nihilist (Romantic-idealist) in spirit, the unwritten book of Saint Francis is entitled "No Rights," with prior art determining the status of artworks and works produced under such a spell. Prior art is the affective regimes embedded in works. Every register Francis lived is prior

5 The two members of the Spirituals at the Basilica of Santa Croce were Peter John Olivi and Ubertino da Casale. See Vincent Moleta, "St. Francis and Giotto," in Moleta, *From St. Francis to Giotto,* 81. Regarding Olivi, "one of the most original and interesting philosophers and theologians of the thirteenth century," see Robert Pasnau and Juhana Toivanen, "Peter John Olivi," *The Stanford Encyclopedia of Philosophy,* Fall 2021, Edward N. Zalta, ed., https://plato.stanford.edu/archives/fall2021/entries/olivi/.

6 It is possible that Dante wrote the first seven cantos of *Inferno* before 1302, although scholars disagree regarding historical evidence supporting the premise. See Millard Meiss, "The Smiling Pages," in Peter Brieger, Millard Meiss, and Charles S. Singleton, eds., *Illuminated Manuscripts of "The Divine Comedy,"* vol. 1 (Princeton University Press, 1969), 42n39. It is also possible that Dante and Giotto met, in Padua, and that "Dante + Giotto" is yet another instance of multiple authorial voices in terms of the frescoes Giotto painted at the Arena Chapel (1304–1306), foremost his *Last Judgement* (ibid., 39–43).

art. And "No Rights" means, effectively, that it is absurd and *transitively* immoral to own or claim to own what pre-exists any and all forms of authorial presence, artistic merit, and — most critically — commodity status.

Is it not possible, then, to see at the following edge (i.e., "then") and the leading edge (i.e., "now") an apocalyptic fervor that maps the tragedy of capitalism across almost 1000 years (1200–2100)? Is this not cognitive dissonance at a wholesale and catastrophic register, wherein, for nearly 600 years (1500–2100) of that implied 1000-year trajectory (and factoring in Capital's refusal to concede ground gracefully), the history of copyright, intellectual property, and authorial privileges has traced an increasingly avaricious appetite on the part of the *cultural apparatuses* of Capital that preserve the fiction of rights by subsuming all such rights in legalistic shifting grounds, requiring subjects to constantly renegotiate their relationships to law and to rights as lived rites? The lived five-hundred-year history of intellectual property rights is the *history of the author* — of the fabrication, evocation, and evisceration of authorial presence(s). "No Rights" is the escape route, for authors and for works. It is the transposition of works to an entirely new lawscape outside of and beyond quotidian law, or law as such.[7]

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7 Regarding contemporary lawscapes as forms of mediatic spectacle, in the spirit of Guy Debord's critique of cultural production, but with reference to Habermasian rationality and Luhmannian functionality, see Philippopoulos-Mihalopoulos, "The Real Law": "Law as practical reason: hidden. Law as morality: hidden. Law as discourse: hidden. Law as rational consensus: hidden. Law as rights, law as communicative reason, even law as legal system: hidden" (ibid., 31). Further, he writes, "But law *qua* law: hypervisibilised, shiningly omnipresent, photogenically central, iridescently dominant. Law *qua* law: an explosion of packaging, a selfie thirsty for our likes. This is the *real* law" (ibid.). Philippopoulos-Mihalopoulos's reading of the Kafka-esque qualities of the lawscape resides somewhat uncomfortably within both critical legal theory and critical socio-legal studies, the two disciplines much of his works cites, primarily because he is, at heart, an artist, and his argument is that art is probably the only way out of the lawscape, and that absurdity and parody (per Agamben) are effectively only a transitional strategy that permits artists and authors to "see" what they are ultimately up against and quite

Exiting the Lawscape

> O unsuspected riches! O goods that multiply by being shared!
> — Dante Alighieri[8]

Dante perhaps best exemplifies the set that rules (as elective, not imposed *regula*) ideational Franciscanism, "(itinerancy, poverty, works)." His enforced exile is his itinerancy, his relative poverty in exile is his poverty, and his works are his evocation of a world

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often complicit with. That temporal strategy, at least in terms of how law scholars engage with the lawscape, is "When law students come to realise the not infrequent absurdity of law, the largest and perhaps ultimately taboo question inevitably arises: is law lawful? The legal system itself avoids asking the question because it would threaten its very cornerstone. Society at large avoids asking the question because it would threaten social stability. But explorative pedagogy and art can and ought to ask. The question can only be answered with levity, irony and sharp playfulness that critiques law's authority while at the same time respecting the need to carry on with law. This is a rather complex call. The liminality between respecting and doubting legal authority cannot easily be achieved. In fact, the more spectacularised law becomes, the harder the task is" (ibid., 38). In the Luhmannian context, which Philippopoulos-Mihalopoulos cites for its fairly closed systems-theory approach and then more or less discards, "The more we lawscape, the more we are being lawscaped by the lawscape. There is no emancipation from systems theory here: the lawscape generates us" (ibid., 40). Yet this is, indeed, the position occupied by authors and artists beholden to the neoliberal capitalist *commercium* that generates and polices systems of reward and punishment for artists and scholars (and artist-scholars). Notably, the primary punishment (which is also the primary reward, in the Franciscan sense) for exiting the *commercium* of the neoliberal art-academic industrial complex is poverty, which, in contemporary academic, para-academic, and art-world terms, has been translated to, or re-defined as, precarity.

8 Dante Alighieri, *Paradiso* XI, "Heaven of the Sun," in *The Divine Comedy,* cited in Moleta, "St. Francis and Giotto," 90. Moleta cites Dante Alighieri, *La Commedia secondo l'antica vulgate,* ed. Giorgio Petrocchi (Casa Editrice Le Lettere, 1966). "O glorious stars, O light impregnate with great virtue, from which I acknowledge all my genius such as it is": Dante Alighieri, *Paradiso* XXII, "Heaven of Saturn," in *The Divine Comedy,* Charles S. Singleton translation, cited in Peter Brieger, "Pictorial Commentaries to the *Commedia*," in Brieger, Meiss, and Singleton, eds., *Illuminated Manuscripts of "The Divine Comedy",* 1:101.

freed of avarice. He creates the vernacular Italian literary tradition (though there are predecessors, including Francis of Assisi) and he opens previously closed doors of theological-artistic disputation and canonical arrogance, through the art of the tall tale — i.e., *The Divine Comedy.* The "stigmata of the irreal" (an embrace of fortune or misfortune as one and the same, Fate as Grace, and vice versa) is at play across this dark yet luminous work, with his own transfiguration foretold through the re-telling of the tale of Saint Francis by way of Bonaventure, but given to Aquinas in *The Divine Comedy.*[9]

> He was not yet very far from his rising when he began to make the earth feel, from his great virtue, a certain strengthening; for, while still a youth, he rushed into strife against his father for such a lady, to whom, as to death, none willingly unlocks the door.[10]

Did El Greco paint the *Apocalyptic Vision* (a.k.a. *Opening of the Fifth Seal*) "from" Dante's literary vision of Francis rising from the earth, a new sun?[11] Is the vision of the Fifth Seal the resur-

9 In *Paradiso* XI, "Heaven of the Sun," Thomas Aquinas tells the story of Saint Francis, and then condemns the then-contemporary Dominicans as greedy. In *Paradiso* XII, "Heaven of the Sun," Bonaventure tells the story of Saint Dominic, and then condemns the then-contemporary Franciscans as corrupt and decadent. See Brieger, "Analysis of the Illustrations by Canto," 115–208, in Brieger, Meiss, and Singleton, eds., *Illuminated Manuscripts of "The Divine Comedy,"* 1, 190–91, and 191–92. For Brieger's commentary on *Paradiso,* see ibid., 182–208.

10 Dante Alighieri, *Paradiso* XI, "Heaven of the Sun," as cited in Herzman, "'I Speak Not Yet of Proof'," in Cook, ed., *The Art of the Franciscan Order in Italy,* 194, with reference to *Paradiso* XI, 49–54, wherein Francis is compared to a sun rising in the East, as if out of the Ganges.

11 As Herzman writes, "Francis whom the pilgrim encounters in the Heaven of the Sun in Canto XI of Paradise is the apocalyptic Francis of Bonaventure, who is a figure of *renovatio* within the Church and the angel of the sixth seal." Herzman, "'I Speak Not Yet of Proof'," in Cook, ed., *The Art of the Franciscan Order in Italy,* 195. Herzman writes further that, "Without the virtues of Francis, Dante will be unable to turn his exile into vision" (ibid., 196). Francis is a new Christ because he is the second bridegroom of Lady Poverty (ibid.).

rection of Francis, who is the angel of the Sixth Seal according to Bonaventure?[12] Who knows? The literary imagination says, "Yes."[13] In El Greco's unfinished painting for the Tavera Hospital, commissioned in 1608, the elect *are* rising from the earth. Their nakedness suggests the moment Francis and Lady Poverty were wed. The literary imagination rules "No Rights," rightly so, given that most other forms of scholarship will only follow the literary rites, once established. Literary-artistic scholarship is the forerunner of "No Rights."

Not long after closing up *Paradiso,* Dante died in Ravenna. "He was fifty-six years of age, a Franciscan tertiary in his last years, and he was buried by the Friars Minor alongside their

12 See Bronstein, "El Greco," in Milton S. Fox and Meyer Schapiro, eds., *El Greco* (Harry N. Abrams, 1950), 30.

13 Additionally, and as if to double the stakes, Dante's portrayal of Francis is said by some to be based on *The Legend of St. Francis* at the Basilica of Assisi. As Herzman writes, "Dante's portrayal of Francis much more closely parallels the Basilica in Assisi than any combination of verbal sources that we have so far discovered. How far this juxtaposition can be used to argue that Dante did in fact know the Basilica perhaps depends on other evidence" (Herzman, "'I Speak Not Yet of Proof,'" in Cook, ed., *The Art of the Franciscan Order in Italy,* 199). Herzman then goes on to compare narrative elements of the fresco cycle to Dante's *Inferno,* where aspects of the Franciscan legend are registered and then flipped to new and provocative effect, i.e., allegories of repentance common to Assisi and *The Divine Comedy.* Francis of Assisi appears in Dante's unfinished *Il Convivio,* and in both *Inferno* and *Paradiso* of *The Divine Comedy.* "St. Francis was a steady presence in Dante's mind throughout his exile": Moleta, "St. Francis and Giotto," in Moleta, *From St. Francis to Giotto,* 83. Dante, in his *Life of St. Francis* (in *Paradiso*), "shows the man of Assisi to have been a providential hero of poverty, marked with divine signs from his birth and founding an Order almost in spite of himself, by the sheer liberating force of his own love of poverty" (ibid., 88). As if to confirm his ardent "Franciscanism," Dante's Angelology and Mariology may be found on full display in *Paradiso* XXVIII-XXX. See Brieger, "Analysis of the Illustrations by Canto," in Brieger, Meiss, and Singleton, eds., *Illuminated Manuscripts of "The Divine Comedy,"* 1:203–5, with reference to the Neoplatonic angelology of Pseudo-Dionysius and an idealist versus sentimental adoration of the Virgin. With the canti of *Paradiso* XXX-XXXIII, The Empyrean, Beatrice, Dante's guide through the Heavens, is conjoined with the Virgin and St. Bernard appears to guide Dante to "journey's end."

church of San Francesco."[14] Poetic justice suggests that El Greco never saw Assisi and that all of the usual guesses as to where he got his sense for the Franciscan legend or the *Apocalyptic Vision* are wrong. Whether he picked it up from Dante may also be wrong. But it would be wrong for the right reason, poetic reasons. Both are consummate Franciscans, and the Franciscan *regula* was their voluntary, often violently embraced personal catechism for works.[15] Both were exiles and both lived the Franciscan form-of-life en route to a fairly apocalyptic flair in their last days with their last works.

The literary-artistic text escapes the lawscape, when and if it so wishes. It can also elect to test and to tempt the lawscape to loosen its grip on works, though, increasingly, that is no longer an effective strategy. "No Rights" can, clearly, only take power from power outside of the lawscape. How and under what auspices remain the primary questions to be answered.

Editioning Strategies + Dissonance

Did Dante *de*-theologize Franciscanism, taking it back to its preternatural and spectral roots prior to enforced incorporation into the late-medieval Church? Is not the lawscape of cultural production secretly onto-theological, based on principles of mediation that are forms of censure or the granting of privileges and "indulgences" — e.g., through the sale of works to power via the lawscapes of Capital? In taking works out of the lawscape, the necessity of making them /a-legal/, /a-historical/, and /a-temporal/ appears, out of the blue, through trial and error via lawscapes, with the subtle difference between /a-historical/ and /a-temporal/ a key or signature gesture regarding the Franciscan-inspired rapport with prior art.[16] The transposition of rights

14 Moleta, "St. Francis and Giotto," in Moleta, *From St. Francis to Giotto,* 92.

15 Catechism in this case is the self-enforced, self-chosen dogma of artistic methodology and fidelity to works-based agency.

16 The addition of the lexical marks "/ […] /" to these terms signals that they are "what they are," and linguistically or tautologically autonomous. See, especially, Hubert Damisch's evocation of /Cloud/ as central to works

(riches) to rites, with an attendant transposition of authorial presences to Real Presences (i.e., transcendentals) opens a path contra re-assimilation to lawscapes, etc.: affective registers and regimes and prior art made sacrosanct through "sealed works" as life-works. The "sealed work" notably requires the event of the work taking primacy over all other definitions of works, foremost their registration in debauched forms of a so-called commons. Literary-artistic *measures* combined with a collectivist ethos (ethos as telos, and telos as ethos) produces the internal catechism (self-chosen) of authors and works and the formative dogma (performative and lived rite) observed by authors on behalf of works, i.e., versions of irreal antitheses cancelling, extra-temporally, all imposed orders and catechisms (mediated dogma). The translation of rule (*regula*), both anti-academic and anti-capitalist in spirit, produces the radical nature of works and life-works as, in historical and temporal terms, a possible exit.[17]

What better guide than Dante (and not the Dante of the present-day, two-euro coin), to chart a path through and beyond the hellishness of lawscapes. His *Il Convivio* was an attempt to establish a "banquet" for his times, of then-prevailing forms of knowledge; a banquet resembling an image Agamben borrowed, in *The Open: Man and Animal,* of Paradise as a type of convivial feast (not *commercium*) attended by animal-headed

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of art that sought to overcome Renaissance perspectivalism. Hubert Damisch, *A Theory of /Cloud/: Toward a History of Painting,* trans. Janet Lloyd (Stanford University Press, 2002). Thus, /Cloud/ does not refer to a cloud but to the term /Cloud/. /Cloud/ = /Cloud/. Signifier and Signified collapse. Emphatically. Signifier = Signifier. Signified = Signified. The Sun sets in the West and rises (once again) in the East, a morning star (per Thoreau). The veracity of the gesture is *ex cathedra,* as rite of passage in and for itself, in the Hegelian sense. It is tautologically "sound." "Here" is the gift of deconstructionist and poststructuralist critique, even if both "failed." As passages out of still-born modernist high-handedness, the rhetorical sleight of hand and the extremist tropes were entirely justified.

17 Here the interminable recourse to the postmodernist (im)possible must finally be bracketed and set aside along with the equally interminable undecidability and inoperativity of poststructuralist dialectics.

figures attending to the collectivist ethos of a world free of anthropocentric arrogance and archaic or merely animalistic tendencies. Here, we have the transpersonal made pictorial, and the end of avarice made spectacle, the post-apocalyptic tenor of Paradise portrayed in true ecumenical terms.[18]

"No Rights" thus becomes a type of anti-capitalist or anti-postcapitalist ark, the term *post-capitalist* having already been utterly deformed by new regimes of appropriation on behalf of post-capitalists. But what will be its "seal"? What will determine its Fate as form of Grace *for works?* How might it be *de*-theologized, or purged of the onto-theological traces yet present in capitalist cultural production? How might a Franciscan-inspired form-of-life for such works and life-works also remain outside of or beyond any *re*-theologizing of its *regula?* A partial answer includes: "We are stuck, therefore, asking unanswerable questions (until that end). Questions such as 'when' — but also a 'when' that has no contingent content/currency, and a 'when' that matters not at all, since it simply is without 'measure' (time, place, or form)."[19] Giving such works a "measure" (per Hölderlin's unanswerable question, "Is there a measure on Earth [for justice]?") will require an experimental tableau (and tableaux) which resists default to mediated measures that return such works to the registers of capitalist hegemony and a tragically debauched commons that merely services this-worldly aspirations on behalf of a spiritless and, ultimately, pro forma anti-humanist *commercium*.[20]

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18 Giorgio Agamben, *The Open: Man and Animal,* trans. Kevin Attell (Stanford University Press, 2004). The relevant passage is: "Until we no longer have faces: 'The scene that interests us in particular here is the last in every sense. […] Under the shape of paradisiacal trees and cheered by the music of two players, the righteous, with crowned heads, sit at a richly laid table. […] What is surprising, however, is one detail. […] Beneath the crowns, the miniaturist has represented the righteous not with human faces, but with animal heads.'" Ibid., 160–61.

19 Ibid., 161.

20 Friedrich Hölderlin, *"In lieblicher Bläue"* ("In Lovely Blueness"), in Friedrich Hölderlin, *Hölderlin: With Plain Prose Translations of Each Poem,* trans. Michael Hamburger (Penguin, 1961), 245–51.

Coda

The paradox of life-works is that sometimes they are written and sometimes they are lived. Sometimes they are lived and never written. Other times they are lived and then written by others. If they are written, they are lived. They are rarely written without having been lived, except, perhaps, when *imagined*. The obvious issue here is that sometimes they are lived by a person who never writes anything, and then they are written by someone else, who never lived them or re-lives them. The problem (and the beauty) of multiple authorial presences takes command of such works. Even when life-works are written by the very person who lived them, it is never a matter of a single authorial presence. That, in fact, is the great myth of authorial genius and the construction of authorial identity as privilege. Diderot was not wrong, to defend the moral rights of authors, any more so than Kant was when he sided with the moral rights of authors, by saying that authors should never be forced to speak by having their works appropriated against their will. The voice is the author in such cases. Both had a point, *then*. Yet what has transpired since "then" is a travesty and needs correction before the end of the world.

APPENDIX A

"Messy Transcendentals"

The following commentary on the history of moral rights and authorial privileges is presented in an intentionally impressionistic manner to provide a sense of the absurdities inhabiting the history of copyright law.

Questions upon Questions

Can the biases of present-day neoliberal academia be overcome through the intentionality of works-based inoperativity? Perhaps not directly, but can they be outfoxed? And how might they be outfoxed? Is it by classic subterfuge (prevarication, etc.)? Or is it by modernist *détournement,* "rerouting, hijacking" (all respects paid to Guy Debord) or Agambenian parody? Time will tell.

The entire apparatus (*pace* Agamben) is deformed. What resembles cogency is actually absurdity. The Agambenian call to increase absurdity and pantomime is of interest, but it is also, perhaps, fatally flawed. It tends to engender and confer further anomie, both for and on those excluded by fiat (by gatekeepers and such). The alienation of labor is a long-standing problem. Marx simply inaugurated its formalization via the critique of Capital (*Kapital*) and its penchant to engender alienation through the theft of labor via the valorization of "rent" (surplus value).

What is "rent"? Since time immemorial rent has been sought on subjects. Neoliberal capitalism merely ratchets up the terms of abuse. To say that the immaterial (and immaterial labor) is now subject to expropriation to the nth degree is axiomatic and mostly pointless, since any critique of the same ends up in the wasteland of criticism in the name of abject negativity, or in the semi-charmed spaces of a transitional nihilism.

And why "abject negativity," other than to say that Capital has maneuvered over ages to vouchsafe and protect and thus neutralize all possible positions *contra* Capital? This is almost axiomatic and includes the refusal of "silent interlocutors" (e.g., anything or anyone now "gone" or "lost to time"). Yet "almost" is telltale. Capital continues to fail to close down all objections to Capital. In these last days (apocalyptic or otherwise) what shall we do to preserve these last openings into the beyond — the beyond of Capital?

Messy transcendentals are related to — and/or creatively and generatively marred and disfigured by — the phenomenon known as spooky action at a distance. This Einsteinian example of, or variation on, Kantian transcendental apperception, as given to forms of science (and foremost physics, where physics begins to talk to metaphysics), regards how things separated, but once very close together, no matter the distance, still effectively and phenomenally relate to one another. In the arts, no matter how precisely things are carved out and parsed for effect and meaning, actual meaning and purpose (ethos and telos) elude authors and protagonists, when, as practitioners, they enter into dialogue with "the trades" that seek to control and commodify the arts in the name of Capital. Hollow gestures thus abound, and celebrity dissidents are heralded by Capital as marketable wares. In effect, while in pursuit of effect and meaning, or meaning and purpose, we are in the enchanted land of "prior art," and there is nothing much we can do about it except either honor it or ignore it. History does, however, tend to confirm that to ignore it is to ask for trouble. Prior art is insistent — beyond belief, for some — and its ethical and moral recursivity is spellbinding

once the artist or the scholar (or the artist-scholar) begins to pay homage to it.

The book trade over centuries is an imperfect example, no matter that it is also where many of the choicest games have been played regarding authorial presence. Since the mechanical reproduction of texts, the various positions assumed by authors and publishers range from well-meaning to utterly depraved. Along the way, the miracle of moral rights appears, as if a chimera produced by the subsequent swamplands engendered by the apparatuses of publishing. Within the ravages of the book trade and copyright there is always something else attempting to assert itself or to escape and return under other auspices. What those auspices might be, when the rule of law has become so egregious, is anyone's guess, but they are tutelary and telltale, at once, primarily because they are essentially a-temporal and a-historical. They have been and they will be. If they are missing, it is only because the law of expropriation for profit and for power has exceeded any reasonable limits. Yet, the return of such auspices is a categorical operation: it functions as the thorn in the side of publishing. It is for this reason that moral rights have retained their potency, since their inception — i.e., via their philosophical-historical versus legal definition. They are in many respects a form of shelter for authors, but also for works that do not wish to partake of the ravages of capitalist and careerist presumptions.

Authorial Presence(s)

The following "disconnected" notes summarize the battle, since 1928, to provide international cover, by treaty, for moral rights. The main protagonists are states, and each state has its own reasons for embracing or resisting the statutory implementation of the treaty. Not surprisingly, it is the United States that resists most strenuously, covering up its long-standing practice of protecting industry with the equally long-standing claim that United States law will never be subject to external interference. The United States would, of course, be the principal author of

many international trade agreements — e.g., serial World Trade Organization conventions and, later, TRIPS (Agreement on Trade-related Aspects of Intellectual Property Rights) — as long as it served its own interests first and foremost and could negate or contravene other countries' own internal laws and courts. Notably, most such agreements included the rule of enforced arbitration, overriding any sovereign legal authority in favor of tribunals for the settlement of any and all disputes.

Yet, and perhaps more telling in terms of the historical cut (the timeframe plus the esteemed protagonists), the battles fought in pre-Revolution France between authors, state, and industry illustrate most clearly how the artistic exception may be gamed to almost any purpose — e.g., favoring authors versus authority when and if it actually primarily benefited industry and duly tied authors to industry in a classic *danse macabre*. Through this dance, the maneuvers of the French book trade were gloriously self-serving while also protecting authors from the state. It was only when the state changed the game that the book trade actually began to look out for authors, and authors began to take the artistic exception seriously — i.e., in its ethical and moral dimension versus its ticket to sales and, if lucky, celebrity.

This three-way battle in pre-Revolution Paris played out across many detours, with the most spectacular being the arrival on the scene of Gaultier and Condorcet, more or less lecturing authors on behalf of the state but under cover of some archaic virtue, no doubt of Roman origin, when patronage was still the main game and which required authors to hand over their works with no intention of benefiting since they were, in effect, privileged as authors and owed it to the "greater good" to renounce any interest in either compensation or control of how their works would be utilized. Along the way, however, we have Fichte and Kant to thank for throwing very usefully useless philosophical smokescreens into play in the form of protecting the "voice" of the author (and the "voice" of the work), examples, perhaps, of the last vestiges of Romanticism to be found in the copyright wars of the eighteenth century.

Moral Rights + The Berne Convention

Adeney, Elizabeth. *The Moral Rights of Authors and Performers: An International and Comparative Analysis.* Oxford University Press, 2006.

1928 + 1948 Berne Convention conferences; "then prevailing concepts of the rights were discussed, sifted and adjusted to provide us with the current agreed text of Article 6bis, the Berne moral rights provision. …" Adeney, "Preface," v–vii, in ibid., v.

REDUCTIO AD ABSURDUM

1928 — Moral Rights added to Berne Convention; the US never accepted the moral rights aspect, all legislation failing; 6bis had "cross-border intentions"; the US in particular, sought to protect US interests via copyright law, etc. (versus international treaties)

Legislation on moral rights: UK, 1988; Australia, 2000; Canada, 1931 ("statutory moral rights"), redrafted in 1988; US, 1990 ("a type of moral rights protection for visual artists"), VARA (Visual Artists Rights Act)

Regarding VARA, see "The United States: Developments towards the Current Law," 441–72, in ibid.

French and German statutory provisions plus major commentaries are at the forefront in Europe

Moral rights jurisprudence begins to emerge ca. 2006 in Commonwealth countries (e.g., UK and Australia)

Adeney, "Introduction," 1–6, in ibid.

"'Moral rights', as the words are understood in copyright law, are *specialized legal device*s that allow certain creators to control the treatment and presentation of their work by others. They

thereby safeguard the *non-economic* interests that arise from the creative act." Ibid., 1 (italics added).

"The introduction of moral rights…has been challenged to different degrees.… Nowhere has the challenge been greater than in the United States where the copyright industries mounted a stubborn and organized opposition to the rights. In fact, moral rights, like all individual rights, are apt to frustrate powerful interests. If they cannot do so, they cannot fulfil their purposes." Ibid., 3.

Fichte: "In 1793 Fichte made distinctions, first between the physical book and its intellectual contents, and then between the thoughts expressed in the book and the form in which they were expressed. This latter remained the property of the author. Fichte suggested that, after publication of the book, the purchaser would have exclusive rights in the physical book; the thoughts expressed in it would become the property of the whole community, including the author; and *the form in which the author's thoughts were clothed* would remain the exclusive property of the author." Ibid., 22–23, with reference to Ludwig Gieseke, *Vom Privileg zum Urheberrecht: die Entwicklung des Urheberrechts in Deutschland bis 1845* (O. Schwartz, 1995), 176 (italics added).

Kant: 1785, and the author's "inherent right in his own person, namely a right to prevent another making him address the public without his consent," i.e., literary works were de facto addresses to the public…and the author has an inherent and inalienable right to speak for himself. Adeney, *The Moral Rights of Authors and Performers,* 26, with reference to Immanuel Kant, "Von der Unrechtmäßigkeit des Büchernachdruckes," in Immanuel Kant, *Immanuel Kants Werke,* eds. Artur Buchenau and Ernst Cassirer, vol. 4 (Gerstenberg, 1973).

According to Adeney, attempts at the 1928 Rome sessions on moral rights and the Berne Convention to link moral rights to Roman law (as argued by Vittorio Scialoja, head of the Italian

delegation) failed on the grounds that they were *ethical versus legal.* Ibid., 10; with reference to *Actes de la Conférence Réunie à Rome du 7 mai au 2 juin* 1928, Bureau de l'Union International pour la Protection de Oeuvres Littéraires et Artistiques (Berne, 1929) ('Rome *Actes*'), 316.

Pre-Revolution French Book Trade

Deazley, Ronan, and Martin Kretschmer, Lionel Bently, eds., with Isabella Alexander, Maurizio Borghi, Oren Bracha, William St. Clair et al. *Privilege and Property: Essays on the History of Copyright* (Open Book Publishers, 2010).

See Maurizio Borghi, "A Venetian Experiment on Perpetual Copyright," 137–55, in ibid.

Laurent Pfister, "Author and Work in the French Print Privileges System: Some Milestones," 115–36, in Deazley et al., *Privilege and Property;* authors and publishers and royal privileges (and censorship); "an economy," this system (book trade, author, censor) demotes author to entrepreneur (opposing "the myth of the author as a noble and disinterested producer of scholarly works"). Pfister, "Author and Work in the French Print Privileges System," 120; with reference to Alain Viala, *Naissance de l'écrivain* (Éditions de Minuit, 1985), 104. Thus: "The myth of artistic genius" = The Exception.

See also Michel Foucault, "Qu'est-ce qu'un auteur?," *Bulletin de la Société Française de Philosophie* 63 (3) (1969): 73–104, "What is an Author?," in James Faubion, ed., *Aesthetics, Method, and Epistemology,* trans. Robert Hurley et al. (The New Press, 1998), 205–22, vol. 2 in Paul Rabinow, ed., *Essential Works of Foucault,* 1954–1984, 3 vols. (The New Press, 2000–2002); regarding "penal appropriation of texts"; first royal privileges ca. 1504 to block illegal printing of texts; e.g., André de la Vigne, Pierre de Belge, etc. The royal system tended to protect public versus authorial privileges, insofar as the works protected were favored by

the *ancien régime*. This was complicated by the monopolistic practices permitted by the authorities regarding a pact between printers and booksellers. (See Pfister, "Author and Work in the French Print Privileges System," 123.) In effect, authors were owners only of the intellectual not physical book. By 1725, and in an attempt to push back at a revocation of privileges held by Parisian booksellers, the author was then promoted to owner of the right to sell his rights (this argument made by lawyers for the book trade), with "the work and the exclusive right to print that work" deemed "private properties" (via natural and perpetual property rights) — i.e., the author owned the immaterial work and the publisher the material manifestation. Ibid., 128. "In short, this new conception of authorship was being invoked by the booksellers to usurp the royal authority as the true source of rights, with the role of privilege relegated to one of simply protecting the natural and perpetual right of literary property." Ibid. Regarding the professionalization of writers, see Viala, *Naissance de l'écrivain,* 27–90, and Roger Chartier, "Figures de l'auteur," in Roger Chartier, *Culture écrite et société: L'ordre des livres (XIV^e–XVIII^e siècle)* (Albin Michel, 1996), 51.

Linguet (1774 + 1777), Diderot (1763), Locke et al. and "possessive individuality," Pfister, "Author and Work in the French Print Privileges System," 130; Diderot and Linguet identify "the manner of the work," i.e., the essential criteria of intellectual property (form and idea).

See Denis Diderot, *Encyclopédie* […] (Paris: De l'imprimerie de Le Breton, imprimeur ordinaire du Roy, 1751–1765); this edition brings up all of the questions regarding how the French philosophes got their works published *in France* in pre-Revolution France. (Voltaire's *Candide* was, for example, published in Switzerland.) Had the "neo-conservative physiocrats" running the Parisian social and cultural orders finally cleared a zone for the apparent "socialist utilitarianists"? It would seem so. Or, did the sheer progressivity of the Encyclopédistes charm the socks off of the various layers of censors policing French book publishing?

Arguing on behalf of the booksellers, Diderot's and Linguet's views were nonetheless dismissed by the booksellers. They could not "buy" this "sacred and undeniable property" (Linguet). Neither could Gaultier or Condorcet, both of whom defaulted to the ruse that at both ends of the spectrum (from conception to publication) common ground or communitarian values are to be found. "According to Condorcet, 'the man of genius does not make books for the money'; Gaultier adds that a man of genius is guided by the desire to educate and instruct his fellow man. When he communicates his thoughts to society, an author does so in exchange for the goods that society has already provided for him." Pfister, "Author and Work in the French Print Privileges System," 131; with reference to "Gaultier's Memorandum for the Provincial Booksellers (1776)."

Such are messy transcendentals, the obvious recourse to conscience and to ethics quite often a ruse to trick authors and artists into complicity with forms of mediation they have no real interest in. Gaultier and Condorcet may have meant well, in their perhaps proto-republican manner (imbibing imaginary Roman precedents), as did Le Chapelier, with his 1791 challenge to Diderot and his Republic of Letters, and his ultra-vague tilt toward a knowledge commons well before it was ever quite described that way.

Diderot:

"The literary text is the 'soul and substance of its author,' despite 'a multiple authorial being of uncertain boundaries.'" Denis Diderot, "Lettre sur la liberté de la presse." Written in 1763, on behalf of publishers, as "Lettre historique et politique sur le commerce de la librairie," and republished in 1777 as "Lettre sur la liberté de la presse." "Lettre historique et politique sur le commerce de la librairie," in Denis Diderot, *Œuvres complètes,* ed. Roger Lewinter, 15 vols. (Le Club Français du Livre, 1969–1973), 5:305–81.

Le Chapelier:

"The most sacred, the most legitimate, the most unassailable, and [...] the most personal of all properties, is the work, [which is] the fruit of a writer's thought; yet it is a property of a type totally different from other properties." Isaac-René-Guy Le Chapelier, *Rapport fait par M. Le Chapelier, au nom du Comité de Constitution, sur la pétition des auteurs dramatiques, dans la séance du jeudi 13 janvier 1791, avec le décret rendu dans cette séance* (De l'Imprimerie Nationale, 1791); cited in L. Bently and M. Kretschmer, eds., *Primary Sources on Copyright (1450–1900),* https://www.copyrighthistory.org.

The challenge is fairly obvious, but such figures as "Le Chapelier" almost always win, and such figures as "Diderot" almost always lose, in an absurdist sweepstakes that is only apparently timeless. Statist and faux-collectivist prerogatives most times trump the "soul and substance" of the author, an idea that was quite a stretch, anyway, in terms of the landscape of the pre-Revolutionary and Revolutionary times under review, and even if, as ill-fated provocation, it might endear us to Diderot and his "Republic of Letters," regardless of his role in defending the French book trade. It might be said that the arrogance of the author is countered, here, by the arrogance of the Revolutionary state. In another time and in another place, or in a parallel reality, perhaps on another planet, Diderot wins. But he wins by losing "here and now," as is almost always the case with truly utopian or messianic gesturalism — viz., futile efforts made well before their time, knowingly and otherwise, foolishly or fatally.

Berlin 1840: Feuerbach, Marx, Stirner

The rhetorical battles of the 1840s between Marx and "Feuerbach and Stirner" (Feuerbach and Stirner being common enemies of Marx) may be reduced to whether one stays in the fray of the battle, for however long it takes, or turns and walks away. This is more or less the same battle that will play out across post-

1847 German Arts and Letters (the German version of Diderot's Republic of Letters) via Schopenhauer and Nietzsche. The primary chord underlying all of the maneuvers will remain, nonetheless, and for nearly the entire nineteenth century, what to do with High Romantic presentiments inherited from the German Romantics and subsequently embedded in Hegel's monstrous philosophical system, which effectively assimilated everything then underway in the Arts and Letters, plus many sub-rosa agendas drawn from sources Hegel would intentionally conceal (e.g., Vedanta and anything else outside of authorized Western rationality). To say that "all of this" then gets incorporated into the emergent fields of sociology and anthropology, and later phenomenology and existentialism, with political economy still more or less trumping all socio-cultural concerns, signals that the economic determinism of the age was the "great engine" that drove both insurrection and reaction. Enlightenment-era Romanticism may have been ultimately inassimilable (and there are traces of it in Early Marx), but it also had an immense force-field that was undeniably behind some of the most banal and abstruse mechanistic orders of the day — all ruled by the law of Capital and colonial conquest (at home and abroad).

Utopianism cut both ways: it was highly deterministic and machinic, and it was vague, indeterminate, and often hiding out in literary-artistic effects and affects. The result, in many respects, was the rolling insurrections of modernism proper, with the twentieth century seeing one radical or anarchic movement after another assimilated and then obliterated by an incessant historicism that was fed by the very disciplines noted above as they struggled to define terms of engagement for subjects. Far from "objective" or "scientific," these disciplines were the result of a massive assimilation of past and then-present "referents," with the assimilatory machinery progressing via pseudo-empiricism. The Arts and Letters remained one of the few "non-places" where authors could dream of, or dream up, whatever or whoever it was that visited them from the past, the present, or the future. The occasional, episodic, and on-rolling meltdown of

cultural orders in the West was fueled by the incessant machinery of culture and cultural imperialism. The elite fell victim as often as not to the same forces they fought — with the construction of reputations and the re-representation of works following a well-worn path to automated ubiquity and neutralization of agency via fiat — e.g., the emergence of museums, etc., in the nineteenth and twentieth centuries, to be followed by *kunsthallen,* biennales, triennales, etc., in the late twentieth and early twenty-first centuries.

Cultural institutions defined authors and works into oblivion. The agency of works fled. Acts of retrieval (retrospective agitprop artworks and literary-philosophical exegesis) would often compensate for this processional act of obliteration of agency. Prior art became "present art" — until, that is, it was once again neutralized as "canon" or defined into a faux-teleological trajectory of near pointlessness on behalf of the culture industry. Art history and Big History overlapped and subsumed the aleatory and generative mysteries of "silent interlocutors" (the force-field of sources drawn upon by artists and scholars) in the name of positivism and progress.

This phenomenon is on display in most all major exhibitions today of the archival resources of cultural institutions. The so-called correction underway by the custodians of both private and public collections primarily concerns politically correct maneuvers aimed at distancing works and repositories for works from anything deemed suspect today. This was on display at the Polonsky exhibition in late 2022 at the New York Public Library, in vitrine after vitrine. The illuminated tableaux included all manner of carefully crafted exposition on whatever "treasures" were being displayed. The exhibition included a vitrine denoted "Beginnings," which included major works from the Enlightenment — e.g., works by Voltaire, Diderot et al., and an "apologia" for Enlightenment-era "pseudo-scientific notions of racial hierarchy."

Further apologies included:

"The works featured in this section represent beginnings of one kind or another — efforts to advance knowledge and promote progress, often in the face of adversity. Many have their origins in the 18th-century movement known as the Enlightenment and were shaped by the ideas of a group of French intellectuals known as the Encyclopédistes. Their philosophy was characterized by a rejection of superstitious ways of thinking in favor of reason, rationality, and the organization of knowledge. The wide dissemination of their work led to revolutionary changes in society, and their republican ideals heavily influenced the framers of the Declaration of Independence and the Constitution of the United States of America.

"Yet there is a paradox at the heart of Enlightenment thought. 'The Age of Reason' coincided with a rapid expansion of slavery across the globe, and some of the most celebrated thinkers of the era promoted pseudo-scientific notions of racial hierarchy and difference that justified and perpetuated oppression in the centuries that followed. And it has taken many years of agitation and sacrifice to more fully realize the ideals of democracy and liberty espoused in America's founding documents — a goal of universal equality that 250 years later, we still have yet to attain. Progress is difficult to measure, and is sometimes imperfectly achieved, but it is an ideal worth fighting for."

The Polonsky Exhibition: Treasures (New York Public Library, Astor, Lenox and Tilden Foundations, 2021), 4; the Enlightenment section is overseen/presided over by "Portrait of Mary Wollenstonecraft" (eminent suffragette).

Double points are scored for the Library. Opposite the Enlightenment section in the extensive, double-sided vitrine are manuscript notes Karl Marx prepared for *Das Kapital,* ca. 1860, research "largely carried out in the reading room of the British Museum […]." Certainly, Marx was aware of just what the Brit-

ish Library represented. Yet, having been kicked out of Germany and France for revolutionary agitation, he had little option.

Exhibition text: "Its ideas [i.e., *Das Kapital*] have not only maintained a secure place in the realm of economic and political theory, but also inspired anti-capitalist revolutions across the globe." Ibid. Thankfully, the New York Public Library curators never mentioned the word "communist."

The New York Public Library's "Polonsky Exhibition" highlights many things that are essential to the post-contemporary cultural world at the moment, perhaps foremost the politically correct nature of the commentary — as corrective, no matter how exceptionally slippery that correction may be. It is all very "ecumenical," if also a bit strenuously observed. The attempt to cover all bases is just one of the more subtle gestures of the politically correct, post-contemporary condition, aftermath most probably of the now-wasted postmodern condition. The gestures become closer to sweeping generalizations when they broach the most sensitive subjects of the day — e.g., "The Enlightenment." The mix is compelling nonetheless because it features and reiterates thematics associated with "social justice," across centuries (and through a privileging of rationality and science), even if, all the while, painting them with a very broad brush and never quite naming the enemy. That "enemy" is the proverbial "the other person." The Library is innocent, apparently. Its collections are only incidentally paid for and endowed by the captains of industry and American plutocrats, like many New York institutions. Its hierarchy (the upper echelons of its bureaucratic structure) is only nominally the elect of New York City. Its benevolence is noblesse oblige writ large. It is, alas, quite obviously "par for the course." The message seems to be, "We apologize for being elitists, but we are not going to do anything about it."

The official message is:

"The objects displayed here are treasured for their rich significance, whether imbued with triumph or tragedy. Many are exceptionally rare or beautiful, while others may initially appear mundane. Some represent a more complicated, darker history. Together they tell the stories of people, places, and moments spanning 4,000 years — from the very first emergence of writing, to the introduction of the mechanical printing press, to America's founding documents, to manuscripts, letters, still and moving images, and the visual arts, all of which bring to life voices from the past." Ibid., 1.

New York 1970: Battle Royale

As late as the 1970s, in the United States, under statutory IPR law, artists were unable to protect their moral rights, as opposed to artists in Europe. The famous Article 6*bis* of the Berne Convention was never adopted and the culture industry furiously fought any and all attempts to bring it into play through legislation. Moreover, the battle over *droit moral* was fought in association with *droit de suite:*

"The *droit moral* has an economic corollary, *droit de suite,* literally the right of follow — meaning the right of the artist to share *pro rata* in any increase in value of his creative work as it changes hands over the course of many resales. Similarly an artist or author in European countries enjoys a right to share in growth of value of his copyrights long after he has assigned them." Jerry Cohen, "The Evolving Law of Artists: The Search for an American Law of Personality," *Art & the Law* 1 (1974): 1, 7.

Art & the Law was published by a group called Volunteer Lawyers for the Arts (36 West 44th Street, New York, New York 10036). The first few issues (1974–1975) were "tabloid" size and fairly primitive in design. *Art & the Law* then morphed along the way into *The Columbia Journal of Law & the Arts.* The journal had been subsumed by Columbia University Law School. "The Journal was until Volume 25 known as the *Columbia-VLA*

Journal of Law & the Arts." This first shift occurred in 1985, with Vol. 24 appearing in 2001 (the last issue before yet another shift and change of title to *The Columbia Journal of Law & the Arts,* dropping the reference to VLA). Whatever the evolutionary path portends, somewhere along the way the terms of engagement had been reversed. It became Law & the Arts, versus Art & the Law. Lawyers had finally won the battle over who had the right to first mention. Art was now fully subsumed by Law, at least within the emergent field of jurisprudence. 2001 was also roughly the year of the "great copyright robbery," when digitalization of publishing began to wreak havoc across all rights. It was the time of the emergence and consolidation of the global apparatuses of academic publishing (Springer, Routledge, et al.) and the general bludgeoning of authors under cover of proprietary rights. Moral rights only existed in this timeframe as a mythic set of "procedural affects," to be invoked and ignored. The artistic exception died by yet another one thousand cuts, waiting to be reborn somewhere else and under more discrete auspices.

The dark tale of American resistance to acknowledging the moral rights of authors and artists as established in 1928, in Rome, during sessions associated with updating the Berne Convention, was a classic *battle royale.* Article 6*bis* had been ratified in 1928 and the United States had been resisting adhering to it ever since. As of 1974, all attempts to change United States copyright law to include moral rights had failed. The major stumbling block was always "industry" — e.g., in the early years, Hollywood and the film industry; and, in the later years, Hollywood and the film industry, plus the music industry, plus the book publishing industry, plus art collectors and auction houses (or, the so-called artworld). The postwar explosion of modern art in the US, and in New York, in particular, would by the 1970s inculcate a vast array of arguments and litigation on behalf of authors and artists, but artists in specific. From the 1950s to the 1970s, the issue of "the presence of the artist himself" (Malraux's famous or infamous words) became the driving concept for a redress of grievances by artists and activists (inclusive of law-

yers) to correct a long-standing favoring of industry by the state versus any acknowledgement of authorial privilege beyond the point of "the right to sell your work."

The battle in the United States was ironic in one major sense — i.e., after extolling the virtues of moral rights, lawyers on behalf of artists would then privilege the United States system over the European system, because, they claimed, it is more flexible and open to customization of rights. The greater irony across all timeframes since the conception of "moral rights" as exception is that they are the functional equivalent of "no rights." This irony is doubled or tripled when considered from different perspectives: from the point of view of industry; from the point of view of authors; and from the point of view of states. A "No Rights" idiom for works has, thus, always existed — or, in the post-structuralist sense, it always already exists and subsists in so-called cultural production. In the *commercium* of capitalist production, moral rights are ignored (by industry), revered (by authors), and reviled (by states). Authors and artists have — irreducibly, and since time immemorial — the "right to have no rights." Tautologically, they are inviolable and untouchable. The non-necessity of copyright, therefore, resembles the non-necessity of slavery; and the abolition of the non-necessity of slavery resembles the abolition of the non-necessity of copyright. Thus, Proudhon (via Bernard Shaw): "All property is theft…." Regarding problems of the so-called "right to have rights," see Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace & Company, 1979).

The United States resistance to the Berne Convention then vanishes in their arguments and we enter the uncharmed territory called "lawyers, courts, and judges" (viz., endless and pointless litigation). Apparently, groups such as Volunteer Lawyers for the Arts saw much hay to make while the sun shined on moral rights, storm clouds only ever appearing whenever legislation reached the United States Congress to be promptly scuppered or neutered on behalf of industry, but almost always under cover of

not permitting international law to interfere with American law. The 1970s were in many ways the historical "fulcrum" for what was to follow. By the 1980s the United Kingdom had adopted legislation at least recognizing moral rights as a part of copyright law, and in 1990 the United States adopted VARA (Visual Artists Rights Act). Schrödinger's cat had escaped its "box." But *droit moral* also took on quite different forms outside of Europe proper. Australia would adopt its version by 2000, following on as the good Commonwealth country that it is, even if all versions effectively still made *droit moral* a subcategory of monetary rights by locking it away in ever-shifting statutory law and the ravages of private law (also known as "black letter law"). Artists and authors at least could now hire a lawyer to attempt to protect their moral rights. The general escape route for miscreants and states was that moral rights were subject to litigation, if/when contested. In many cases, each state also set into place their own exceptions to this exception, canceling the more profound elements of what came to be seen more and more as an ethical precept that could be admired at a distance and ignored whenever desired or necessary.

APPENDIX B

Tolstoy + IP

The following summary of Tolstoy's spirited dance with abandoning intellectual property rights in his last years is presented through excerpts as a means of sampling the battle authors often endure when attempting to disown authorial privileges.

Notes on Tolstoy + IPR

Across the last thirty years or so of his life, or from the 1870s forward, Tolstoy encountered an existential crisis that ranged from despondence to utter despair to exhilaration. What was at stake?

During this same period, and in the closing years, he also attempted to renounce copyright, such that his works could be available to all at little or no cost. The battle was conducted against a background of maneuvering and intrigue amongst family and close colleagues for control of his literary estate, inclusive of his nonfiction writing, which comprised what critics have called his moralistic treatises and his diaries. The fact that this quest for renouncing ownership of his works came in the period when he also was caught up in a battle between what might be called the artistic ego (and its concerns regarding his legacy) and his profound nihilist leanings (which embraced a complete renunciation of private property), is telling.

What open secrets can be detected in the dark passages of his late writings (especially the novellas and short stories from the 1880s), and in his dreams from this same period of crisis (as recorded in his diaries), suggests that the attempt to renounce authorial privilege was ultimately grounded in his life-long engagement with negative theology and its apparent circularity or dialectical digressions, wherein something was always sighted which then promptly disappeared. Key works from this period include *Memoirs of a Madman* (1884); *The Death of Ivan Ilyich* (1886); *The Devil* (written in 1889, published posthumously in 1911); *The Kreutzer Sonata* (1889); and "Master and Man" (1895). Biographers and literary critics have often seized upon themes in his novels as signals of what he was processing in his personal life. The great antitheses described as "two infinities" in *War and Peace* (via the characters Prince Andrei, the Rationalist, and Pierre, the Romantic) do seem to be, whether purloined or envisioned, reflections of a greater taxonomy of effects at play versus a literary means for a picturesque portrait of Russia during the Napoleonic wars, as do the battles between Eros and Thanatos across later works (*Anna Karenina* foremost). Pietro Citati, in particular, belabors and stretches to a near breaking point this immense struggle in the novels, but also quite likely Tolstoy himself, to "see" what almost may be seen (and often it is through dreams or hallucinations that these vistas open up and then close down). It does seem, after all, a matter of the mind's eye. The landscapes portrayed are, apparently, not quite of this world. See Pietro Citati, *Tolstoy,* trans. Raymond Rosenthal (Schocken Books, 1986). There are passages in Citati that make Tolstoy, at least in terms of his novelistic élan and stylistics, into a latter-day Giordano Bruno. See Citati, "What a Novel Is," in ibid., 191–215. Outside of and beyond the insular world of the novels, Tolstoy is, however, more the *panentheist.*

As early as *War and Peace* the apparent meaninglessness of history is paired with a form of illuminated immanence, which then gives way to an alterity that connotes a distant reserve within the immanentist and pantheistic glorification of the

world as such. Is this not Hegel's and/or Schelling's "polytheism of the imagination"?

Gianni Vattimo defines this "polytheism of the imagination" as "the advent of the kingdom of freedom that will be realized only on the basis of a 'sensible religion,' understood as the 'monotheism of the heart, the polytheism of the imagination and of art,' and the 'mythology of reason.'" See Gianni Vattimo, *After Christianity,* trans. Luca D'Isanto (Columbia University Press, 2002), 33, with reference to *Das Älteste Systemprogramm Des Deutschen Idealismus* (Tübingen, 1796–1797), i.e., a pamphlet of unknown authorship but assumed to be by Hegel and/or Schelling.

Paired with his later nihilist and anarchist tendencies, where Law and State are summarily paired as coercive and malevolent, and history again is relegated to a machinic and predatory apparatus (a semi-conscious collective animus) on behalf of power and the ruling classes and/or a despotic God/demiurge, Tolstoy's philosophical position regarding ownership and privilege shifts ground to land in a decidedly metaphysical territory that suggests that art and literature (versus mere poiesis) are "sacred" and, therefore, by default, non-proprietary. (At one point, in extolling the renunciation of personal rights and the pursuit of another form of "beauty," Tolstoy will cite Schopenhauer, who will then cite Francis of Assisi as model ascetic. See Chapter VI of *A Confession* [written in 1879–1880], with reference to Schopenhauer, *World as Will and Representation. A Confession* would qualify as one of Citati's "moralistic works." Notably, it was censored in Russia in 1882, first being published in Geneva in 1884.)

Such untimely and apparently other-worldly speculations turn the entire operation of ownership and commodification of knowledge into a type of primal crime scene, with the mechanisms of Intellectual Property Rights (IPR) law co-equal to the forms of oppression by Church and State that Tolstoy openly denounced in his last works. Thus, "I and Not-I" and "Eros and Thanatos" appear and disappear as the great themes of his entire oeuvre, while the shambles otherwise known as history and the circus otherwise known as polite society act as foils for the dis-

closure of an interior world shaded and often eclipsed by this-worldly pursuits.

Amidst the clamor and tumult of the philosophers and the critics, plus the nihilists and the positivists, something extraordinarily beautiful and mischievous does emerge (something that haunts *War and Peace,* perhaps best exemplified in the dance between Pierre and Natasha), even if it is a seemingly disparate clash of opinions and egos. Schopenhauer and Tolstoy both battle to hold their own ground, drawing on and contesting aspects of idealism (German and otherwise), a ground littered with the detritus of collegial skirmishes and the sometimes-necessary rites of fending off disputatious intellects and dour and pedantic competitors. What appears here, amidst the temporal gloom, and almost as absurdist tragi-comic playacting (cuing those playwrights who would subsequently draw on Schopenhauer and Tolstoy), are the claims of Big History, once again intervening to claim solitary souls to a larger drama or Kafka-esque burlesque of corporeal combat. It is dizzying as much as it is amusing or bemusing, while it also is subject to the same circular speculation that literary exegesis and philosophical posturing exemplifies after and before its own claims to authenticity and authority.

Tolstoy operates at a limit — the long-troubled limits of art. His own humanity conditions his quest for the Absolute, in which he continually falters because he knows somewhere in his existential plight that every tendency toward evading complicity is more or less useless. He knows he is guilty. His attempts at renunciation become picturesque as a result. His true goal would seem to be to renounce renunciation. The ascetic's path of following Schopenhauer to the back door to Eden is his goal, even if he is constitutionally incapable of walking it. His trials make him human (*all too human,* as Nietzsche would say). He is a disaster waiting to happen and his last years are duly recorded by pedants as a colossal failure, as if his death at or near Astapovo railway station was not written in his stars, as if he had not chosen it.

It did not choose him. The murky circumstances prove that. There is the problem of the "dog that did not bark." The biographers and filmmakers who wish to portray his end as dour and self-inflicted have it all wrong. Tolstoy "stepped away" intentionally, steeped in an extreme need to escape himself. He was headed to a monastery (at least initially). He never made it there, and he probably knew he would never make it there. He chose ultra-indeterminacy. It hardly mattered where he ended up. He surrendered all rights to self-determination and at the same time regained other rights denied him as savant, guru, and author.

If we rightly ignore the battles between Tolstoy and his wife Sonya, the issue becomes one that is less personal and more material to the cause of authorial privileges and an elective exit from the restrictions imposed by copyright. Those issues center on the fundamental question, "Why lock up works in the first place?" And additionally, "What closes down when we lock up works in copyright?" Tolstoy returned in his last years to issues first explored in his early years, and his anarchist or nihilist leanings were always mediated by a form of self-censure that seems to signal he was somewhat uncomfortable in the skin of a celebrated author. His almost immediate rebellion against the success of *War and Peace* is both a result of wanting to escape the protocols of the celebrated author and the self-knowledge unfolding across the trajectory of his life-work. Is it not perhaps the agency of works that he is ultimately up against, and the spell they cast, good or bad, on the author as facilitator of their appearance in the world? The late trials he endured in regards to his temperament and his attempts to exile the authorial ego all point to an ongoing attempt to embrace the enduring mysteries of artistic creation and how those mysteries at times turn incredibly dark and foreboding before they open onto an exquisite and open landscape of mytho-poetic intrigue and self-negating majesty. It is in the very nature of works of literary and artistic merit that other options always appear, and the choices the author makes either take them deeper into the trauma of works or to an apotheosis of sensibility and tenor in and through works.

In the case of Tolstoy, this process was played out through a literary-existential, alchemical "nigredo," and the attempt at abandoning authorial privilege was but one stepping stone across the abyss.

In his final days, it seems that Tolstoy was trying to set everyone free, including himself, but also, and more sensationally, *his works*. The secret will he wrote turning over his copyright to the Tolstoyans was later overturned in the Russian court. He lost that battle posthumously. Or did he? The attempt itself was heroic. At that time, it was impossible anyway to renounce ownership of literary works. He had to give them to someone else in order to rid himself of them. That they reverted to Sonya and his children after he could no longer object is, in the larger sense of what was at play, insignificant.

One of the enduring mysteries of Tolstoy's literary works (or his life-work) is that they are effectively co-written or co-produced with his unconscious. This comes through most forcefully in his transcription of his dreams to his novels and novellas. The most excoriating passages are often an encounter with nonrational and what might be termed impersonal forces, whether imagined through his characters or borrowed from his own experiences and embedded in the novels and novellas. That they were also discussed, transcribed, and otherwise co-enscribed/inscribed with his various enablers and interlocutors, including his wife and daughters, is indicative of something that produces tension in any processes of enclosing authorial rights and rites in a loop that ennobles the so-called singular ego at the expense of the existentially charged character of composition and iteration. Even *War and Peace* was not written from a silo. It was written with Tolstoy locked away in his room at Yasnaya Polyana for four to whatever hours a day, emerging with yet another episode or draft for his wife and daughters to transcribe. Those periods of writing were simply the compressed times when he forced himself to record what was unfolding across the trajectory of the period of the appearance of the work. Living Midnight and High Noon are conjoined.… His waking hours and his dreams are co-authors of time-frames and time-senses for

these works. The world provides the backdrop for another world or other worlds. He was not quite the hermit he is often depicted to have been, similar in legend to Flaubert or Rousseau, both whom he read. He was in Moscow often enough, and we can imagine him like Flaubert or Rousseau bemoaning the city, all the while needing the city and the social whirl he was criticizing and mocking in his works. Perhaps, as with Rousseau, we can see him incensed at not being recognized at the opera or theater, even though he went there incognito and with some self-loathing at being tempted into such popular and decadent venues. Thus, the biographers have a field day once they gain access to his journals and diaries. Variations on themes abound across these biographical incursions into the lives of the protagonists of the Tolstoyan dramas. Along the way the issue of collectivist authorial agency occurs and disturbs the narratives, and Tolstoy, as author, ends up generally being trashed en route to the fashionable tale-telling that passes as new biography or corrective indulgence per whatever the current vogue is for trashing or salvaging reputations.

Random Notes (Passim)

Moralism: "The treatises in which Tolstoy tried to systematize his thoughts after [the 'terrible years' of the 1877–79 existential crisis, plus the bleak stories and novellas of the 1880s] were composed by a mediocre reasoner, a boring sophist and polemicist, a bad writer of passwords for the masses. As we go through these flat, rabid argumentations, we ask ourselves where Tolstoy has hidden his brilliant molecular intelligence. As though he enjoyed splitting himself into separate persons, he reserved it for the *Diaries,* which from those years on became the central undertaking of his life. Here speaks the inspired amateur philosopher: instead of laying claim to the architecture of a system, or composing a finished argument, or rounding it out neatly, the aphoristic thought finds pleasure in unilateral ideas, shines fervidly, then darkens, and starts again from scratch. […] He thinks as if he were gambling, advancing ever new hypotheses,

putting down an even higher stake: a kind of youthful delirium lures him into its vortices; and with what intensity, fury, aspiration to knowledge, and desire for the All does he cultivate his delirium." Citati, *Tolstoy,* 231.

Pantheistic Nihilism: "If we understand it in its nucleus, the religious thought of Tolstoy in his last phase is the most robust and vital affirmation of negative theology ever to appear in the old West's exhausted heart." Ibid., 231–32.

The Diaries: "Every day he wrote in his *Diary:* in fact two diaries, a smaller one that he reserved for the immediate stenography of his thoughts; and another where he elaborated the first notations. […] Tolstoy tried to conceal the secret notebook from his wife's jealousy and hid it in a boot. But that was perfectly useless, for afterward he himself asked his daughter Masha to copy part of the *Diaries* and sent them to Chertkov, who would extract from them some moral pamphlets." Ibid., 245.

Calvinist Austerity: "Tolstoyan religion culminates in the abject ideal of an ascetic Rousseauan commune. 'To live all together: the men in one room, the women and girls in another. There must be a room to be used as a library, for intellectual work, and another to serve as a workshop.…Life, nourishment, clothes, everything will always be simple to the highest degree. The superfluous, the piano, furniture, and carriages will be sold or given away.' On Sundays, meals for the poor, readings, conversation; and public confession, during which each member would relate his sins with meticulous ferocity." Ibid., 246.

Sophia [Sonya] Tolstoy's Hysteria: "The last years of their married life were atrocious. Chertkov's return to the neighborhood of Yasnaya Polyana, the struggles for possession of Tolstoy's *Diaries,* the battle over the will and author's rights, the desire to play a great role in history — exhausted her, increasing her hysteria beyond all bounds. She wanted to kill herself: not silently in a corner — but theatrically, like her whole existence had been

theatrical, after writing hundreds of letters in which she would explain to acquaintances and strangers the reasons for her action. Now she thought of letting herself die of exposure like the protagonist of 'Master and Man,' now of drinking the flagon of opium she always carried with her, now throwing herself on the train tracks like Anna Karenina. Never, never, not even at the point of death was she able to free herself from the shadow of the man who had filled her existence." Ibid., 256.

Vladimir Chertkov is effectively taken down — as cad, Tsarist spy, and opportunist extraordinaire — in Alexandra Popoff's *Tolstoy's False Disciple* (2014). He also appears in the same unflattering light in Michael Hoffman's film, *The Last Station* (2009). Most commentaries on the film seem to miss the point that Chertkov was trying to commandeer rights to Tolstoy's works for his own purposes versus placing them in the "public domain." Thus, through the artistic license given to cinematic reduction, the Tolstoyans are all branded the enemy of Sonya (Tolstoy's long-suffering wife) and his heirs.

See Alexandra Popoff, *Tolstoy's False Disciple: The Untold Story of Leo Tolstoy and Vladimir Chertkov* (Pegasus Books, 2014), with reference to Michael Hoffman, dir., *The Last Station* (Warner Bros., 2009).

"The 2009 film *The Last Station,* based on a fine book by Jay Parini and featuring Christopher Plummer and Helen Mirren, made the story of Lev Tolstoy's last days accessible to many who had not read the biographies. It is a dramatic narrative. Commentators have observed that the episode seems like one of the more lurid passages from Tolstoy's great rival, Dostoevsky. The tensions of a long (forty-eight-year), complicated marital history finally boiled over in a chaos of recrimination and misery, and Tolstoy, at the age of eighty-two, fled the family home at night, accompanied by one of his daughters." Rowan Williams, "A Marriage of War and Peace: The Tumultuous World of Lev and Sonya Tolstoy," *The New Statesman,* August 6, 2017, https://

www.newstatesman.com/culture/2017/08/marriage-war-and-peace-tumultuous-world-lev-and-sonya-tolstoy. Review of Andrew Donskov, ed., *Tolstoy and Tolstaya: A Portrait of a Life in Letters,* trans. John Woodsworth, Arkadi Klioutchanski, and Liudmila Gladkova (University of Ottawa Press, 2017), with reference to Jay Parini, *The Last Station* (Holt, 1990).

"What lay behind this tragic end? Tolstoy's disciples, who had in the last decade of his life driven his wife to the limit of her endurance, had a clear story to tell. Sonya Tolstaya was a narrow, unintelligent, materialistic woman, concerned only to defend her comfortable lifestyle and to secure an inheritance for her huge brood of children (nine out of 13 survived early childhood); she sought to resist and belittle Tolstoy's spiritual and political radicalism, and drove him away by her jealousy, her obsessional anxieties and her obstinately limited horizons." Williams, "A Marriage of War and Peace."

"But the Countess has at last had her day in court in recent years. The publication and translation of her diary and her autobiography, as well as some of her own short stories, have shown ample evidence that she was articulate, witty and serious, neither a harridan nor a doormat. The evidence for her contribution to Tolstoy's greatest literary works is clear; he invited her comments and consulted her about details — and of course she played a unique role as the main copyist of his earlier novels, and as manager of the immense project of publishing his collected works and dealing with the legal and administrative issues that this entailed." Ibid.

"The final crisis, the 'last station' of this particular crucifixion, seems to have been the result of some unusually intense quarrelling over Chertkov's influence (he was determined to get Tolstoy's copyrights out of Sonya's hands), Sonya's ill-judged attempts to keep her husband under what he felt was hostile surveillance (including reading his private papers), and what may have been the beginning of some kind of breakdown in Tolstoy's

mental health — obsessive behaviour, suspicion, mood-swings and so on." Ibid.

"One last image to treasure: a letter of 1894 describes a day out in Moscow which Sonya shared with Anna Dostoevskaya and her daughter. They had been in touch a good deal, to discuss the management of their respective husbands' literary businesses; and the picture of Countess Tolstoy and the second Mrs. Dostoevsky (a shorthand secretary by training), comparing notes about their husbands over tea and cakes, calls for the pen of a Tom Stoppard or Michael Frayn. A summer project for someone?" Ibid.

"At the time of his conversion Tolstoy resolved to give away all his copyrights 'to the people.' The decision pitted him in 'a struggle to the death' against his wife, Sonya, who managed the household finances and who, over the years, bore Tolstoy a total of thirteen children. Tolstoy eventually ceded Sonya the copyrights for all his pre-1881 works but turned the rest over to one of the Dark Ones, Vladimir Chertkov, an aristocrat-turned-Tolstoyan whose name contains the Russian word for 'devil' (*chert*)." Elif Batuman, "The Murder of Leo Tolstoy: A Forensic Investigation," *Harper's,* February 2009, https://harpers.org/archive/2009/02/the-murder-of-leo-tolstoy/.

"On a tree stump in these very woods in 1909, Tolstoy signed a secret will. He left all his copyrights in the control of Chertkov and of his youngest daughter, Sasha, a fervent Tolstoyan. This had long been Sonya's worst fear — 'You want to give all your rights to Chertkov and let your grandchildren starve to death!' — and she addressed it through a rigorous program of espionage and domestic sleuth work. She once spent an entire afternoon lying in a ditch, watching the entrance to the estate with binoculars." Ibid.

"At three in the morning on October 28, Tolstoy woke to the sound of Sonya rifling through his desk drawers. His heart be-

gan pounding wildly. It was the last straw. The sun had not yet risen when the great writer, gripping an electric flashlight, left Yasnaya Polyana for good. He was accompanied by his doctor, a Tolstoyan called Makovitsky. After a strenuous twenty-six-hour journey, the two arrived in Sha mardino, where Tolstoy's sister Marya was a nun. Tolstoy decided to spend the remainder of his life here, in a rented hut. But the very next day he was joined by Sasha, who, together with Dr. Makovitsky, convinced the feverish writer that he ought to run away to the Caucasus. The little party left on October 31, in a second-class train carriage, purchasing their tickets from station to station to avoid pursuit." Ibid.

"After Tolstoy's death, Sonya, supported by a pension from the tsar, tried to fight Sasha and Chertkov for the copyrights. History opposed her in the form of the Great War, followed by the 1917 revolution. Sonya and Sasha were finally reconciled during the famine of 1918–1919. Of her mother at this time, Sasha later recalled, 'She seemed strangely indifferent to money, luxury, things she liked so much before.' On her deathbed, Sonya made a strange confession. 'I want to tell you,' she said, breathing heavily and interrupted by spasms of coughing, 'I know that I was the cause of your father's death.'" Mark Lilla, "The Writer Apart," *New York Review of Books* 68, no. 8 (2021): 18–21, with reference to Thomas Mann's reactionary years, as typified by his nonfiction publication, *Reflections of a Nonpolitical Man* (1918), i.e., "a defense of Germany against the onslaught of 'alien' Western ideas of enlightenment and democracy." Ibid., 18.

"The writers he most admired — among them Flaubert, Dostoevsky, and Turgenev — saw life stereoscopically, from multiple standpoints at once. So did Tolstoy, Mann notes, until he donned an ill-fitting Christian monocle and became a bore." Ibid., 20.

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