REPARATIONS AND THE HUMAN

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> Perhaps most importantly, we must recognize that ethics requires us to risk ourselves precisely at moments of unknowingness, when what forms us diverges from what lies before us, when our willingness to become undone in relation to others constitutes our chance of becoming human. To be undone by another is a primary necessity, an anguish, to be sure, but also a chance—to be addressed, claimed, bound to what is not me, but also to be moved, to be prompted to act, to address myself elsewhere, and so to vacate the self-sufficient "I" as a kind of possession. If we speak and try to give an account from this place, we will not be irresponsible, or, if we are, we will surely be forgiven.
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> —Judith Butler[1]

I. necessary grief

I would like to begin by returning to *Antigone's Claim* insofar as it traces a particular strain of thought in Judith Butler's writings about the relationship between social difference and the problem of the human.[2] Sophocles's Oedipus trilogy has been

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[1] JUDITH BUTLER, GIVING AN ACCOUNT OF ONESELF 136 (2005) [hereinafter GIVING AN ACCOUNT].

[2] *See* JUDITH BUTLER, ANTIGONE'S CLAIM: KINSHIP BETWEEN LIFE AND DEATH (2000) [hereinafter ANTIGONE'S CLAIM].

subject to a myriad of interpretations in philosophy, classics, literature, and political theory. Butler's reading of *Antigone,* the third installment of the Oedipus cycle, is singular, however, insofar as it reconceptualizes conventional understandings of the relations among the incest taboo, kinship, the state, and the possibilities for social change and belonging.[3] If the incest taboo might be reconceived outside of its normative Oedipal resolutions, Butler asks, what new forms of kinship and sociality might emerge outside of conventional heterosexual arrangements to challenge as well as incite state recognition of non-normative sexualities and communities? In the eyes of the law, what today counts as a livable and grievable life today, and what does not? These questions have consequential implications for war, violence, and mourning, as Butler shows us with increasing urgency in her more recent works, and for contemporary legal notions of reparations, the human, and human rights, as I hope to suggest in this article.

To remind us: in Sophocles' drama, Antigone not only buries her brother Polyneices in defiance of the King's command, but also refuses to disavow her act of disobedience, even in the face of death.[4] In so doing, she figures a crisis in kinship and politics—indeed, a crisis *between* kinship and politics—in a state of war. In *The Phenomenology of Spirit,* Hegel reads Antigone as a figure who represents the transition from matriarchal to patriarchal rule. For Hegel, she represents the pre-political sphere of kinship that conditions but is ultimately foreclosed from the domain of the political proper, from the state and its ethical order.[5] Yet Antigone is not so compliant a figure. Her defiance of Creon's sovereign ban on mourning Polyneices, as Butler observes, "transgresses both gender and kinship norms . expos[ing] the socially contingent

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[3] Chronologically, the events of *Antigone* occur last among Sophocles's three Theban tragedies. However, Sophocles composed *Antigone* first, followed by *Oedipus the King* and finally *Oedipus at Colonus.*

[4] SOPHOCLES, SOPHOCLES I: OEDIPUS THE KING, OEDIPUS AT COLONUS, ANTIGONE (THE COMPLETE GREEK TRAGEDIES) (David Greene trans., Univ. of Chicago, 1991).

[5] *See* G.W.F. HEGEL, THE PHENOMENOLOGY OF SPIRIT (A.V. Miller trans., Oxford Univ. Press, 1977) (1807). *See* ANTIGONE'S CLAIM, *supra* note 2, at 27–55 (providing her own interpretation of Hegel).

character of kinship, only to become the repeated occasion in the critical literature for a rewriting of that contingency as immutable necessity."[6]

Antigone throws us into both gender and kinship trouble, with substantial implications for contemporary political struggles ranging from the legal recognition of same-sex marriage to the evolving constitution of the family of nations (a process occurring in large part today through the exclusion of Muslim societies, whose cultures are pathologized as irremediably misogynist and homophobic).[7] In a post-Oedipal tragedy in which the father is the brother, the sisters are the daughters, and the brothers are the sons, Antigone finds herself confounded by the terms of kinship. She is, in Butler's words:

> [C]aught in a web of relations that produce no coherent position within kinship. She is not, strictly speaking, outside kinship or, indeed, unintelligible. Her situation can be understood, but only with a certain amount of horror. Kinship is not simply a situation she is in but a set of practices that she also performs, relations that are reinstituted in time precisely through the practice of their repetition. When she buries her brother, it is not simply that she acts from kinship, as if kinship furnishes a principle for action, but that her action is the

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[6] *Id.* at 6.

[7] For a discussion of legal recognition of gay family and kinship, *see* Lisa Duggan, *The New Homonormativity: The Sexual Politics of Neoliberalism, in* MATERIALIZING DEMOCRACY: TOWARD A REVITALIZED CULTURAL POLITICS 175-194 (Russ Castronovo Dana Nelson eds., 2002); DAVID L. ENG, THE FEELING OF KINSHIP: QUEER LIBERALISM AND THE RACIALIZATION OF INTIMACY (2010); Katherine Franke, *The Domesticated Liberty of* Lawrence v. Texas, 104 COLUM. L. REV. 1391 (2004); TEEMU RUSKOLA, *Gay Rights versus Queer Theory: What is Left of Sodomy after* Lawrence v. Texas*?*, 84–85 SOCIAL TEXT 235 (2005). For a discussion of the pathologization of Muslim societies post-911 *see* Muneer I. Ahmad, *Resisting Guantanamo: Rights at the Brink of Dehumanization*, 103 NW. U. L. REV. 1683 (2009), JASBIR K. PUAR, TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES (2007); LETI VOLPP, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002); Leti Volpp, *Disappearing Acts: On Gendered Violence, Pathological Cultures, and Civil Society*, 121 PMLA 1631 (2006).

> action of kinship, the performative repetition that reinstates kinship as a public scandal.[8]

By insisting on her right to bury Polyneices, Antigone enacts kinship not just as a repeated "public scandal" on the edges of social and cultural intelligibility but, equally important, as the condition for care—as the *precondition* of being human in a state of violence. Creon's interdiction on mourning raises the critical question of how kinship is mobilized to secure the conditions by which certain lives become livable and recognizable or, alternately, repudiated and foreclosed. It does so by constituting a social sphere in which the differential production and allocation of grief and grievability operates, as Butler writes in *Precarious Life,* "to produce and maintain certain exclusionary conceptions of who is normatively human: what counts as livable life and a grievable death?"[9]

Creon's interdiction on mourning consigns Polyneices to the far side of being human, but insofar as it prohibits grief and

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[8] ANTIGONE'S CLAIM, *supra* note 2, at 57–58.

[9] JUDITH BUTLER, PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE xiv–xv (2004) [hereinafter PRECARIOUS LIFE]. Throughout her publications, Butler writes about this differential production and allocation of grief in several different historical contexts. In the context of the AIDS epidemic of the 1980s and the refusal of a public language to mourn a seemingly endless series of excoriated, dead young men. JUDITH BUTLER, THE PSYCHIC LIFE OF POWER: THEORIES IN SUBJECTION 148 (1997) ("Insofar as the grief remains unspeakable, the rage over the loss can redouble by virtue of remaining unavowed. And if that rage is publically [sic] proscribed, the melancholic effects of such a proscription can achieve suicidal proportions."). In the context of a post-911 global politics, Butler writes: "Is a Muslim life as valuable as legibly First World lives? Are the Palestinians accorded the status of 'human' in U.S. policy and press coverage? Will those hundreds of thousands of Muslim lives lost in the last decades of strife ever receive the equivalent to the paragraph-long obituaries in the *New York Times* that seek to humanize—often through nationalist and familial framing devices—those who have been violently killed? Is our global capacity to mourn not foreclosed precisely through the failure to conceive of Muslim and Arab lives as lives?" Judith Butler, *Explanation and Exoneration, or What We Can Hear*, 20 SOCIAL TEXT 177, 184 (2002). For Butlers views in the latter context, as well as in the context of torture and the Israel-Palestine conflict, *see* JUDITH BUTLER, FRAMES OF WAR: WHEN IS LIFE GRIEVABLE? (2009) [hereinafter FRAMES OF WAR]; *see also* Judith Butler, *Afterword* to LOSS: THE POLITICS OF MOURNING 467 (David L. Eng David Kazanjian eds., 2003).

care on the part of his survivors, they too are rendered less than human, cast outside the bonds of family and kinship. In acting out, then, Antigone performs kinship, upsetting its normative structures, and she does so precisely by attempting to constitute and produce a new form of being human against the dictates of the state. Antigone exhibits a willingness to become undone—indeed, she is undone—but her extravagant act is the risk, the excessive gamble constituting her chance of *becoming* human, as the epigraph from *Giving an Account of Oneself,* with which I begin this article, so proposes.[10] In this regard, if kinship is the precondition of the human—rather than the human a precondition for kinship—we might describe Antigone's claim, in Butler's words, as the "occasion for a new field of the human, achieved through political catachresis, the one that happens when the less than human speaks as human, when gender is displaced, and kinship founders on its own founding laws."[11]

Antigone's necessary grief might be considered, then, not just as an act of mourning the loss of the human, but simultaneously as an act of *repairing* the human, an act of *reparation.* Antigone's claim becomes the occasion to redress the social violence that constitutes the human's political boundaries and psychic limits in order to create another field, a new field, for the human. By drawing attention to the ways in which the "human is not only produced over and against the inhuman, but through a set of foreclosures, radical erasures, that are...refused the possibility of cultural articulation,"[12] Antigone raises the question of what kind of social world might emerge when the borders of kinship and social belonging—when the limits to their representations and representability—are rent and exposed. If Antigone's acts of defiance might from this perspective be characterized as the anguished process of becoming human, then the human cannot be considered ontologically pre-given, a universal entity, or a singular subject or form. Rather, the human must be thought of as an

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[10] ANTIGONE'S CLAIM, *supra* note 2, at 136.

[11] *Id.* at 82.

[12] JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF SEX 8 (1993) [hereinafter BODIES THAT MATTER].

achievement in the making.[13] Such a process asks us, in Butler's words, "to risk ourselves precisely at moments of unknowingness."[14] In its call, it urges us to reconsider a genealogy of reparations and the human across political as well as psychoanalytic registers. Ultimately, as I hope to demonstrate, those to whom reparation can be offered become the very sign of the human.

II. the loop of enlightenment

Let me turn in this section, for a moment, to the relationship between political and psychic genealogies of reparation, before returning to Butler and the figure of the human as it is conceived today in legal configurations of reparations and discourses of universal human rights. I will rethink these configurations by exploring how political and psychic genealogies of reparation trace an uneven history of the figure of the human in both its classical incarnations and its contemporary forms.

Reparation is a key term in political theory, but it is also a central concept in psychoanalysis, specifically object relations theory, yet the two are rarely discussed in relation to one another.[15] As a political concept, reparations have a long history,

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[13] The Human Rights Campaign's (HRC) equation of gay rights with human rights suggests one such contemporary process of doing and undoing, of becoming human. In linking gays and lesbians with the figure of the human, the HRC not only makes a substantive claim on this figure but also implicitly aligns itself with the liberal tradition that serves as the genealogy of the human in the West. The political effects of this link—what I describe elsewhere as the historical emergence of "queer liberalism"—are yet to be determined. Is the HRC, like Antigone, in defiance of the state? Or is it complicit with a liberal tradition of recognition and rights foundational to the concept? As I note in THE FEELING OF KINSHIP, "prior historical efforts to defy state oppression and provide a radical critique of family and kinship have given way to a desire [on the part of many gays and lesbians] for state legitimacy and for the recognition of same-sex marriage, adoption, custody, inheritance, and service in the military." ENG, *supra* note 7, at 3.

[14] GIVING AN ACCOUNT, *supra* note 1, at 136.

[15] One notable exception is E. Tammy Kim's excellent article. E. Tammy Kim, *Performing Social Reparation: 'Comfort Women' and the Path to Political Forgiveness*, 16 WOMEN PERFORMANCE 221 (2006).

dating back at least to the first Punic War in third century BCE, with Rome's imposition of monetary payments on a defeated Carthage.[16] In its classical definition, reparations concern an *interstate* relationship: a defeated state is compelled to indemnify a victorious one for the costs of war.[17]

Reparations experienced a second life in political theory and international relations after World War II.[18] Under the long shadow of total war and genocide, the postwar rise of discourses of international human rights has broadened the focus of reparations from purely an *interstate* relationship to consider, as well, questions of *individual* harm.[19] For the first time, that is, the spread of ideas of human rights has empowered individuals to make legal, moral, and monetary claims on states for redress, apology, and compensation.[20] Great evils of past and present, as Martha Minow observes, are nothing new.[21] However, "mounting waves of objections and calls for collective responses

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[16] *See* J.F. LAZENBY, THE FIRST PUNIC WAR: A MILITARY HISTORY (1996).

[17] For classical discussions of reparations as the costs of war *see* HUGO GROTIUS, THE RIGHTS OF WAR AND PEACE, BOOK II (Richard Tuck ed., 2005); JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., New Am. Library 1965) (1689).

[18] *See generally* POLITICS AND THE PAST: ON REPAIRING HISTORICAL INJUSTICES (John Torpey ed., 2003).

[19] *See* BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR (Martha Minow Nancy L. Rosenblum eds., 2002).

[20] There is also a growing body of work on contemporary claims to reparations in the post-WWII era of genocide, ethnic cleansing, slavery, internment, and apartheid. *See* ELAZAR BARKAN, THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES (2001); ALFRED L. BROPHY, REPARATIONS: PRO AND CON (2006); J. ANGELO CORLETT, RACE, RACISM, AND REPARATIONS (2003); PABLO DE GRIEFF, THE HANDBOOK OF REPARATIONS (2008); FREDERICO LENZERINI, REPARATIONS FOR INDIGENOUS PEOPLES: INTERNATIONAL AND COMPARATIVE PERSPECTIVES (2009); ERIC K. YAMAMOTO ET AL., RACE, RIGHTS, AND REPARATION: LAW OF THE JAPANESE AMERICAN INTERNMENT (2001).

[21] MARTHA MINOW, *Breaking the Cycles of Hatred, in* BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR 14 (Martha Minow Nancy L. Rosenbaum eds., 2002).

to mass violence"[22] are decidedly new, with individuals and groups turning to the language and instruments of law for adjudication and relief. This significant postwar shift in international politics and morality has opened up a host of new legal strategies for the repair of previous wrongs in the context of state-sponsored violence, injury, and harm—especially violence, injury, and harm done by a state to its own citizens and civilian populations. Indeed, this remarkable postwar political shift has expanded classic definitions of reparations as simply "the spoils of the victor" to encompass more idealized notions of morality, justice, truth, and reconciliation as a necessary response to unjustified and unjustifiable violence.[23]

In its plural form, reparations today describe the convergence of a number of political as well as social justice movements seeking redress for state-sponsored and extra-state violence. In its singular form, however, reparation describes the repairing of harm in object relations theory, not on the level of the social but on the level of the psychic. In Melanie Klein's famous account of child development, reparation delineates a psychic process by which the infant learns to manage its hatred of the bad mother so that "love [can be] freed."[24] From a slightly different perspective, we might propose that, similar to the moral expansion of reparations to encompass broader notions of justice, truth, and reconciliation in political theory, Klein's focus on the preservation of love in her psychic account of reparation might be seen as an attempt to shift the inexorable negativity of the death drive, and its will to destruction, in a more productive and moral direction, as well.

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[22] *Id.*

[23] For an analysis and critique of this phenomenon in the context of truth and reconciliation in South Africa and other historical contexts *see* LOSS: THE POLITICS OF MOURNING (David L. Eng David Kazanjian eds., 2003); MARK SANDERS, COMPLICITIES: THE INTELLECTUAL AND APARTHEID (2002).

[24] Melanie Klein, *Mourning and its Relation to Manic-Depressive States, in* THE SELECTED MELANIE KLEIN 163 (Juliet Mitchell ed., 1986).

Sigmund Freud outlined his famous theory of the death drive in *Beyond the Pleasure Principle.*[25] Published in 1920, this short but powerful volume was composed in response to a pattern of unremitting psychic trauma exhibited by soldiers returning from the battlefront during World War I. Similar to Freud's other patients, these war veterans suffered from "reminiscences." Their reminiscences, however, could be traced to neither a primordial nor a pleasurable object of desire but rather, and unexpectedly, to their recent participation in grisly violence on the battlefield. A witness to these soldiers' involuntary reliving of their painful and negative experiences, Freud wrote *Beyond the Pleasure Principle* as an attempt to understand not just our drive toward pleasure but also, and more inexplicably, our drive toward death. Freud's slim book is considered a decisive turning point in his meta-psychology. It raised disturbing questions about a repetition compulsion irreconcilable to—indeed, *beyond*—the pleasure principle: the proliferation and sexualization of aggression, and the impossibility of human relationality.[26] In turn, Klein's theories of reparation—which were also developed during the interwar years as the dream of European Enlightenment dissolved into the nightmare of total war and genocide—implicitly engage with and respond to the impossibilities of human relationality.[27] Indeed, as a number of recent psychoanalytic commentators have suggested, Klein's theory of reparation potentially offers a

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[25] *See* 18 SIGMUND FREUD, *Beyond the Pleasure Principle, in* THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 1 (James Strachey trans., 1959).

[26] BEYOND THE PLEASURE PRINCIPLE is considered a decisive turning point in Freud's meta-psychology concerning a repetition compulsion that cannot be reconciled to pleasure—a compulsive but unacknowledged behavior that serves to individuate us under the sign of not life but death. While Freud raises the issue of the death drive in 1920, as early as 1915, he was already contemplating what we might describe as the socialization of the death drive. Writing amid the engulfing violence of World War I, Freud observes in *Reflections upon War and Death* that Western civilization has lost its ethical bearing, killing with impunity while refusing to be haunted by the death of the other it has directly brought about. SIGMUND FREUD, *Reflections Upon War and Death (1915), in* CHARACTER AND CULTURE 107 (Philip Rieff ed., Collier 1963).

[27] *See* MELANIE KLEIN, THE SELECTED MELANIE KLEIN (Juliet Mitchell ed., 1986); MELANIE KLEIN, *Love, Guilt and Reparation, in* LOVE, HATE AND REPARATION 55 (1964).

more creative and enabling vision of love meant to mitigate and redress a host of negative psychic forces associated with Freud's death drive: paranoia, hate, projection, and aggression.[28]

At first glance, political and psychic genealogies of reparation would seem to circulate in wildly disparate economies. As I noted, they have rarely been discussed in relation to one another, something I propose to do in this article by considering how they might supplement one another in legal theories of justice and psychic theories of love. This convergence of moral response to violence in the domain of the political and the psychic is no coincidence. As Lynn Hunt argues in *Inventing Human Rights,* "human rights are difficult to pin down because their definition, indeed their very existence, depends on emotions as much as on reason. The claim of [their] self-evidence relies ultimately on an emotional appeal; it is convincing if it strikes a chord within each person."[29] Human rights are not only legal doctrines forged in the jurisprudence of international relations but also intimately depend on an affective logic, "on a disposition toward other people, a set of convictions

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[28] *See* EVE KOSOFSKY SEDGWICK, TOUCHING, FEELING: AFFECT, PEDAGOGY, PERFORMATIVITY (2003). Sedgwick writes:

> For Klein's infant or adult, the paranoid position—understandably marked by hatred, envy, and anxiety—is a position of terrible alertness to the dangers posed by the hateful and envious part-objects that one defensively projects into, carves out of, and ingests from the world around one. By contrast, the depressive position is an anxiety-mitigating achievement that the infant or adult only sometimes, and often only briefly, succeeds in inhabiting: this is the position from which it is possible in turn to use one's own resources to assemble or 'repair' the murderous part-objects into something like a whole—though, I would emphasize, *not necessarily like any preexisting whole.* Once assembled to one's own specifications, the more satisfying object is available both to be identified with and to offer one nourishment and comfort in turn. Among Klein's names for the reparative process is love.

Id. at 128. *See also* EVE KOSOFSKY SEDGWICK, *Melanie Klein and the Difference Affect Makes* 106 S. ATLANTIC Q. 625 (2007).

[29] LYNN HUNT, INVENTING HUMAN RIGHTS: A HISTORY 26–27 (2007).

about what people are like and how they know right and wrong in the secular world."[30] Genealogies of political and psychic reparation, I suggest, are two crucial sites for tracing this intertwined history of reason and emotional appeal—a disposition toward others—that subtend the conceptual limits of the human and political limits of human rights. As Butler insists in *Giving an Account of Oneself,* "I am not altogether out of the loop of the Enlightenment if I say, as I do, that reason's limit is the sign of our humanity."[31] How do psychic genealogies of reparation abet, and how do they interrupt, not just the political but ethical possibilities of reparations and the human?

If contemporary human rights claims are implicitly embedded in the evolution of the liberal individual—the human being as the ontological ground for the rights of man—thinking, feeling and exercising independent moral judgment, this history is also and at once, as *Antigone* underscores, a story about the human not as an ontological pre-given but as a continual process of doing and undoing. It can neither be a story of the universal human as an abstract and equal subject before the law nor a story about human rights as the pure defense of the innocent and powerless against the powerful and despotic.[32] Instead, as Butler underscores throughout her writings, the production of the human as *the* natural bearer of rights and recognition is continually ghosted by gendered, sexual, racial, religious and civilization differences that obviate any possibility of a universal human.[33] To be sure, two structures of normative power produce differential notions of "the more and the less 'human,' the

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[30] *Id.*

[31] GIVING AN ACCOUNT, *supra* note 1, at 83.

[32] *See* PHENG CHEAH, INHUMAN CONDITIONS: ON COSMOPOLITANISM AND HUMAN RIGHTS (2007); HARRI ENGLUND, PRISONERS OF FREEDOM: HUMAN RIGHTS AND THE AFRICAN POOR (2006); THOMAS KEENAN, FABLES OF RESPONSIBILITY: ABERRATIONS AND PREDICAMENTS IN ETHICS AND POLITICS (1997); JOSEPH R. SLAUGHTER, HUMAN RIGHTS, INC.: THE WORLD NOVEL, NARRATIVE FORM, AND INTERNATIONAL LAW (2007).

[33] For a history of the "universal human" in relation to China (and the Chinese as "inhuman") *see* David Eng, Teemu Ruskola Shuang Shen, *China and the Human*, SOC. TEXT (forthcoming 2011). *See also* ERIC HAYOT, THE HYPOTHETICAL MANDARIN: SYMPATHY, MODERNITY, AND CHINESE PAIN (2009).

inhuman, [and] the humanly unthinkable"[34]: "[O]ne operates through producing a symbolic identification of the face with the inhuman, foreclosing our apprehension of the human in the scene; the other works through radical effacement, so that there never was a human, there never was a life, and no murder has, therefore, ever taken place."[35] Sophocles' drama surely lies in the shadowy realm of Butler's latter category. Antigone's claim and act of mourning contest Creon's radical effacement of Polyneices, the notion that "there never was a human"—a life to recognize, a murder to acknowledge, or a death to mourn.[36]

If juridical power constitutes the mirage of a universal, autonomous human subject that it purports merely to represent—an insight on the force of law following from Butler's monumental thesis in *Gender Trouble*[37]—then any analysis of the law must occasion the investigation of the human not as a ground, but as a *problem*, for ethics, as Butler suggests in *Giving An Account of Oneself*.[38] In other words, the human necessarily

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[34] BODIES THAT MATTER, *supra* note 12, at 8.

[35] PRECARIOUS LIFE, *supra* note 9, at 147.

[36] In terms of Butler's first category (the "inhuman"), I might note that China in contemporary human rights discourses is the poster child for human rights abuses in the Western imagination—the paradigmatic face of the "inhuman." Indeed, in the Western imagination, China's relationship to human rights and political freedoms seems to have an almost inverse relationship to its recent economic successes.

[37] *See* JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990).

[38] Butler observes in GIVING AN ACCOUNT OF ONESELF that:

> Both [Foucault and Adorno] are trying, in different ways, to dislodge the subject as the ground of ethics in order to recast the subject as a problem *for* ethics. This is not the death of the subject, in either case, but an inquiry into the modes by which the subject is instituted and maintained, how it institutes and maintains itself, and how the norms that govern ethical principles must be understood as operating not only to guide conduct but to decide the question of who and what will be a human subject.

GIVING AN ACCOUNT, *supra* note 1, at 110.

becomes a subject of inquiry, rather than a subject fully transparent or knowable to itself or, equally relevant, to the law and its rational, representative power. Rather, the subject necessarily remains subjected to a set of naturalized norms and ideals to which it does not have access or knowledge. Antigone's claim is our claim, too, insofar as her act limns the social and psychic processes by which certain individuals and groups are evacuated from kinship, excluded from humanity, divested of political and psychic claims, and thus foreclosed from the promise of either justice or love.

In the context of contemporary reparations claims, our inquiry must consider the evolution of human rights as not only a moral response to violence in the name of justice, or in the name of love, but also, and equally important, as the possible extension of this very history of violence. Histories of war and violence continue to generate the human, the inhuman, and the humanly unthinkable in all their conceptual excesses—as rights and recognition, as stigma and shame, as repudiation and erasure, as abjection and foreclosure. The moral responses to violence delineated by political and psychic theories of reparation constitute an uneven history of the figure of the human in its global itinéraries and vicissitudes. In the remainder of this article, I would like to consider one such errant journey by focusing on a series of interlocking Butler commentaries on Melanie Klein and reparation.

III. justice and love

How might Klein's psychic theories of reparation supplement political theories of reparations? In thinking about genealogies of the political and psychic in relation to one another, what might we learn about the presumptions of justice in contemporary discourses of human rights as well as the prospects of love in object relations theories of inter-subjectivity? From a slightly different perspective, how might we come to understand justice and love not as universal concepts, but as differentially applied and distributed, circumscribed as well as circumscribing the uneven productions of the human and inhuman?

According to Klein, reparation is the means by which the infant negotiates a way out of the depressive position by making "good the injuries which [it] did in phantasy [to the mother], and for which [it] still unconsciously feel[s] very guilty."[39] Klein defines psychic reparation as an act that encompasses "a variety of processes by which the ego feels it undoes harm done in phantasy, restores, preserves, and revives [dead] objects."[40] It is only after having traversed the primal violence of the paranoid splitting, persecution, and defense; it is only after having destroyed the mother as a hated but also loved object; and it is only after having responded to the anxiety and guilt arising from this destruction, that the infant can negotiate the depressive position and begin to come to terms with the psychic havoc it has wreaked.

If the infant succeeds in mitigating this psychic violence, then it can "repair," "reinstate," and "restore" the mother as a separate object—indeed, a separate subject with agency and will —initiating an object relation not just with her but with the rest of the world beyond her and the many creatures in it. From this perspective, we might describe reparation as the psychic condition of possibility for the precipitation of both the (m)other and the social world themselves. Reparation is a notably one-sided affair: the phantasmatic violence (or actual aggression) enacted by the infant against the (m)other is repaired not because of social coercion, forced submission, or even retaliation on the part of the aggressed. Rather, reparation is initiated by the infant's unconscious guilt over the real or fantasized destruction of the object; through its anxiety about the severing of the ties that bind self to (m)other; and, by "an internal mechanism that seeks to save objects from the ego's own destructive possibilities."[41] Butler observes that, in contradistinction to Freud's account of melancholia as instituting the division

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[39] MELANIE KLEIN, *Love, Guilt and Reparation*, *in* LOVE, HATE AND REPARATION 68 (1964).

[40] MELANIE KLEIN, *The Psycho-analytic Play Technique: Its History and its Significance*, *in* THE SELECTED MELANIE KLEIN 48 (Juliet Mitchell ed., 1986).

[41] Judith Butler, *Moral Sadism and Doubting One's Own Love*, *in* READING MELANIE KLEIN 185 (John Phillips and Lyndsey Stonebridge eds., 1998) (hereinafter *Moral Sadism*).

between internal and external worlds through the internalization of a moral prohibition, "[Klein's] emphasis on preserving the object, which prefigures the work of reparation, suggests that incorporation also has its benevolent and ego-sustaining dimension, one that Freud overlooks in the effort to link melancholia with the institution of the super-ego."[42]

Importantly, Butler contends in *The Psychic Life of Power* that the preservation and restoration of the destroyed object prefigures any moral framework *per se.* The advent of guilt that impels the reparative process appears to emerge on the psychic scene, she writes:

> [N]ot in consequence of internalizing an external prohibition, but as a way of preserving the object of love from one's own potentially obliterating violence. Guilt serves the function of preserving the object of love and, hence, of preserving love itself. What might it mean to understand guilt, then, as a way in which love preserves the object it might otherwise destroy? As a stopgap against a sadistic destruction, guilt signals less the psychic presence of an originally social and external norm than a countervailing desire to continue the object one wishes dead. It is in this sense that guilt emerges in the course of melancholia not only, as the Freudian view would have it, to keep the dead object alive, but to keep the living object from "death," where death means the death of love, including the occasions of separation and loss.[43]

In *Frames of War,* Butler develops this line of analysis between guilt and prohibition even further: for Klein's infant, "the question of survival *precedes* the question of morality."[44] That

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[42] *Id.* at 184.

[43] FRAMES OF WAR, *supra* note 9, at 25.

[44] *Id.* at 45 (emphasis added).

is, the infant desires for the mother to survive—desires to keep this living object from death—only so that it may also survive. Paradoxically, Butler observes, "guilt—which is so often seen as a paradigmatically human emotion, generally understood to engage self-reflective powers and so to separate human from animal life—is driven less by rational reflection than by the fear of death and the will to live."[45]

As a consequence, the infant's unbridled desire for self-preservation, one threatened by its destructiveness toward the mother but checked by its utter condition of dependency on her, configures the emergence of guilt and morality in this psychic scene as the *instrumental consequences* of such a desire. In Butler's provocative reading of Kleinian object relations and its moral genealogy of reparation, the mitigation of sadistic destruction and the preservation of love result less from concerted self-reflection and remorse over wrongdoing on the part of the infantile ego. Rather, they ensue because the obliteration of the loved object would leave "the ego without the possibility of attachment and, hence, destroy[] the ego as well."[46] In short, "the ego seeks to preserve the object if only because its own survivability depends upon the continuing existence of that object,"[47] the maintaining of a bond required in order to survive. In this manner, the infant's precarious life decidedly trumps the precarious existence of the other and, from this perspective, we might say that morality and self-reflection are not the *cause* but rather the *effects* of reparation.

Butler's striking interpretation of Klein radically dissociates reparation from both morality and justice. If Klein delineates a psychic process by which the death drive does not hold ultimate sway—a theory of reparation and guilt in which *eros* is not finally or fully extinguished by *thanatos*[48]—the preservation of both love and life in this scenario cannot finally

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[45] *Id.* at 46.

[46] *Moral Sadism*, *supra* note 41, at 185.

[47] *Id.* at 186.

[48] *See* FREUD, *supra* note 25 (offering a discussion of love (*eros*) and death (*thanatos*)).

or definitively be described as an ethical detour of the death drive. It is neither an antidote to aggression nor a synthesis of guilt into a more comprehensive and self-reflexive moral framework. It is not an ethical assumption of responsibility toward the other—namely the emergence of justice, truth, or hope. In the end, although reparation for Klein constitutes "a fundamental element in love and in all human relationships," it must be rethought as an optative gesture, a leap of faith beyond reason's moral and political calculations, a scramble to preserve and sustain life itself in the face of continued violence.[49]

Indeed, reparation must be approached as a kind of responsibility that, as Butler concludes in *Frames of War,* is "bound up with an anxiety that remains open, that does not settle an ambivalence through disavowal, but rather gives rise to a certain ethical practice, itself experimental, that seeks to preserve life better than it destroys it. It is not a principle of non-violence, but a practice, fully fallible, of trying to attend to the precariousness of life, checking the transmutation of life into non-life."[50] This is the "precarious subject of reparation *and* responsibility,"[51] to borrow a suggestive phrase from Gayatri Chakravorty Spivak, one that allows us to qualify the pious moralizing and political denunciations often attached to popular debates concerning the human and the inhuman, human rights abuses and the promise of justice.

Let me conclude by placing Butler's provocative reconfiguration of reparation as an experimental ethics against political theories of the concept positing justice, truth, and hope in the name of—indeed, on behalf of—the human and human rights. Extending Butler's insights, how might psychic theories of reparation function as an extension of aggression and violence rather than as a check against their negative capacities? Equally so, how might they condition morality as neither anxiety nor ambivalence but as disavowal and certitude in the quest to

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[49] KLEIN, *supra* note 39, at 68.

[50] FRAMES OF WAR, *supra* note 9, at 177.

[51] GAYATRI CHAKRAVORTY SPIVAK, DEATH OF A DISCIPLINE 14 (2003) (emphasis added).

preserve and extend life to some, while simultaneously withholding it from others?

I would like to turn to a passage from Klein's *Love, Guilt and Reparation* to consider what happens when psychic theories of reparation move past the charmed dyad of the mother-child into the larger family circle and finally into a broad social sphere defined by histories of colonial violence and nationalism. Describing the European conquest of the New World as a simultaneous wish to run away from the mother, while discovering her anew in an alternate location, Klein offers the following account of reparation:

> In his pursuit the explorer actually gives expression to both aggression and the drive to reparation. We know that in discovering a new country aggression is made use of in the struggle with the elements, and in overcoming difficulties of all kinds. But sometimes aggression is shown more openly; especially was this so in former times when ruthless cruelty against native populations was displayed by people who not only explored, but conquered and colonized. Some of the early phantasied attacks against the imaginary babies in their mother's body, and actual hatred against new-born brothers and sisters, were here expressed in reality by the attitude toward the natives. The wished-for restoration, however, found full expression in repopulating the country with people of their own nationality.[52]

This is a startling passage. In moving beyond the mother-child dyad into the psychic dynamic of sibling rivalry, and consequently into the social dynamic of European colonialism, reparation as the possibility of an experimental, ethical practice is put into explicit crisis.

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[52] KLEIN, *supra* note 39, at 104–05.

Reparation breaks down along the lines of radically asymmetrical power relations. Klein's infant aggresses against the mother upon whom it is utterly dependent, eventually coming to check its sadism through the production of guilty feelings whose moral status remains in ethical abeyance, if not ethical possibility. In this particular scenario, however, the European colonizer cannot be aligned with the helpless infant, as Klein tries to do. The colonizer is, in fact, less the powerless infant than the powerful mother, and his aggression against native populations brings about neither a state of heightened anxiety nor the amelioration of violence toward the native other. To the contrary, reparation comes to name the psychic and social process of responding to European horrors of genocidal destruction by repopulating the New World with images of the self-same.

From a slightly different perspective, following Joshua Chambers-Letson, we might say that Klein glosses over in this particular passage one of the primary components of her own theory, namely the guilt borne of "ruthless cruelty against native populations."[53] She does so by replacing reparation's proper subjects of violence and redress—the vanquished natives—with "new-born brothers and sisters" of the European tribes. In this manner, the "wished-for restoration" is not given to the native other, the actual victim of colonial violence, but to the self-same in the form of "repopulating the country with people of their own nationality." In Klein's colonial theater of the New World, reparation is ultimately driven by the colonizer's will to life and drive for self-preservation in a new and unyielding territory, but one thoroughly divested of responsibility to the native other. His precarious life triumphs over the precarious existence of the native other.

Here, reparation cannot be described as an ethical detour of the death drive. It cannot prefigure any moral framework, any synthesis of guilt into the ethical assumption of responsibility, an experimental ethics. Rather, it must be described as kind of "moral sadism," the moral rationalizing of the colonial project,

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[53] *See* Joshua Chambers-Letson, *Reparative Feminisms, Repairing Feminism—Reparation, Postcolonial Violence, and Feminism*, 16 WOMEN PERFORMANCE 175 (2006).

to borrow a suggestive phrase from Butler, "as a mode of persecution that passes itself off as a virtue."[54] In this passage, we witness the splitting of Klein's theories of reparation: on the one hand, they function as the extension of violence toward the natives; on the other hand, they preserve life and love for the self-same. In this regard, reparation and aggression, as well as morality and violence, cannot be described as oppositional. Rather, they must be considered as collectively constituting a larger psychic and social dialectic delineating the evolution of Western subjectivity and conceptions of the human, outside any prospects of the universal.

With Hegelian echoes of lord and bondsman, psychic reparation is transformed into an alibi for war and aggression by displacing the actual, external violence of colonial conquest and genocide into an internal struggle of European family and nation. The "wished-for restoration" is psychically internalized as self-consciousness toward brothers and sisters, a sublated struggle with alterity whose "full expression" finds its psychic form in the self-same, in a tale about the universal (European) human subject and its storied history of consciousness. In the process, the drama of family is transformed into a drama about the (European) family of nations and its proper membership.[55] Reparation as a psychic process is thus reconditioned by the historical fact of settler colonialism and the "discovery" of the New World. Reparation in Klein re-emerges in the philosophical loop of Enlightenment as a political procedure suffused with kinship trouble. It appears once again, as with Antigone, as the differential production and distribution of the human and the inhuman through the uneven distribution of the precariousness of life. It separates those deserving of reparation—of care and redress—from those who merit no consideration. It divides the man of reason from the unreasonable brute, while generating in the process the limits of reason as the sign of humanity. In short,

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[54] FRAMES OF WAR, *supra* note 9, at 177.

[55] *See* CARL SCHMITT, THE NOMOS OF THE EARTH IN THE INTERNATIONAL LAW OF THE JUS PUBLICUM EUROPAEUM (G.L.Ulmen trans.,2006). Schmitt notes that if we were to start with 1492 and Europe's "discovery" of the New World, rather than 1648 and the Treaty of Westphalia, the story of international law and the family of nations would shift considerably.

those to whom reparation can be offered are constituted as human.

Klein might be said to be describing quite accurately the historical fact of British settler colonialism and native genocide across the globe. From this perspective her theory of reparation analyzed here names the ghostly psychic and social processes of doing and undoing the human in the context of New World conquest. From this perspective, we might describe the political unconscious of reparation as a hidden history of colonialism and race. What I would like to emphasize is that psychic reparation cannot simply be the preservation of love in ethical possibility. Rather, Klein's passage starkly illustrates reparation as a process that is more accurately characterized by the unequal distribution of love *and* hate across disparate populations and peoples constituted through this process as human and inhuman. In the process, it raises the question of how love might come to be preserved not just for "good" but for "bad" objects as well.

In Klein's startling illustration of the psychic logic of colonialism, reparation comes to circumscribe love. Love emerges not as an experimental ethics that seeks to preserve life better than it destroys it. To the contrary, love comes to condition nation and nationalism—indeed, constituting the colonial settler as the idealized lover of and for the European family of nations. As such, reparation names the collective psychic and political processes by which love and justice become naturalized properties of the (European) liberal human, foreclosing the possibility for racial reparation or redress. In this sense, psychic reparation supplements the political logic by which reparations as a legal concept might be considered not the restoration of invaded territory or the repairing of violence and injury but rather the redistribution of property in the name of justice—the arrogation and naming of conquered land as "homeland." Considered from this perspective, political and psychic genealogies of reparation represent not a break from colonial violence but its continuation: reparations as the spoils of the victor rather than as a claim of ethical responsibility.

IV. forgiven

In *Giving an Account of Oneself*, Butler writes: "For Levinas, who separates the claim of responsibility from the possibility of agency, responsibility emerges as a consequence of being subject to the unwilled address of the other. This is part of what he means when he claims, maddeningly, that persecution creates a responsibility *for the persecuted.*"[56] For Butler, as for Emmanuel Levinas, responsibility emerges from outside the self-possessive "I."[57] This dispossessed "I" is subjected to the unwilled address of the other, one whose persecutory actions occasion not a cycle of violence, an endless dialectic of action and reaction. Rather, this unwilled address provides the opportunity to claim responsibility "by what is done to me," and not "by virtue of my actions, but by virtue of the relation to the Other that is established at the level of my primary and irreversible susceptibility, my passivity prior to any possibility of action or choice."[58] From this perspective, we might come to protect the other against ourselves. This dispossessed "I," Butler concludes, is the condition of possibility for any moral inquiry, and through it we do not "forget that we are related to those we condemn, even those we *must* condemn."[59] In the final analysis, the "way in which we respond to injury may offer a chance to elaborate an ethical perspective and even become human."[60]

In *On Cosmopolitanism and Forgiveness,* Jacques Derrida emphasizes that the only thing truly worth forgiving is the unforgivable. In so doing, he reminds us that forgiveness must be an absolute and one-sided gesture—given, too, from the site of the dispossessed "I." Insisting that we separate political calculations of reparations and apology from absolute ideals of forgiveness, Derrida notes that the:

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[56] GIVING AN ACCOUNT, *supra* note 1, at 85.

[57] *See* EMMANUEL LEVINAS, OTHERWISE THAN BEING, OR BEYOND ESSENCE (Aphonso Lingis trans., 1981) (1974).

[58] GIVING AN ACCOUNT, *supra* note 1, at 88.

[59] *Id.* at 45.

[60] *Id.* at 101.

> [L]anguage of forgiveness, at the service of determined finalities was anything but pure and disinterested. As always in the field of politics. . . . Forgiveness is not, it *should not be,* normal, normative, normalising. It *should* remain exceptional and extraordinary, in the face of the impossible: as if it interrupted the ordinary course of historical temporality.[61]

Mediated by the normative institutions of the law, and by political notions of agency and will, reparations and claims for human rights seek justice and apology for violence through the fetishizing of equivalence—through the belief that past harms between victim and victimizer can be quantified and secured. Forgiveness, however, cannot be demanded. It cannot be exacted, and it cannot be tendered through an economy of equivalence, reciprocity, or commensurability. Offered from the site of the dispossessed "I," forgiveness marks the cleaving of the claim of responsibility from the possibility of agency. It emerges as a consequence of being forgiven to the other, subject to its unwilled address, thus fracturing the political dialectics of perpetrator and victim, apology and repair, and truth and reconciliation, that subtend the ethical possibilities of reparations and the human. "If we speak and try to give an account from this place," Butler promises us, "we will not be irresponsible, or, if we are, we will surely be forgiven."[62]

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[61] JACQUES DERRIDA, ON COSMOPOLITANISM AND FORGIVENESS 31–32 (Mark Dooley Michael Hughes trans., 2001).

[62] GIVING AN ACCOUNT, *supra* note 1, at 136.