"Literature," the "Rights of Man," and Narratives of Atrocity: Historical Backgrounds to the Culture of Testimony

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"Un récit? Non, pas de récit, plus jamais[!]"
—Maurice Blanchot[1]

Over the past few decades, in response to the horrifying state-sponsored atrocities of the late twentieth and early twenty-first centuries, we have seen the rise of what is essentially a new phenomenon, quasi-judicial, quasi-political, quasi-theatrical in nature: the truth commission and other national and international arenas in which victims may bear witness to what they have suffered, and in which the narration of atrocity may serve at once as testimony, redress, and public catharsis. At least twenty truth commissions have been formed over the past several decades (with testimony broadcast on radio and television).[2] There are international and national post-atrocity tribunals of various sorts, personal testimonials in public venues, televised confessionals, documentary films, Internet sites featuring human rights victims telling their stories, all devoted to giving voice to those who have suffered. While the truth commissions differ in significant ways from the international tribunals and these differ from

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1. Blanchot, *The Madness of the Day / La folie du jour*, trans. Lydia Davis (Barrytown, NY: Station Hill Press, 1981), p. 31.

2. Useful general discussions of truth commissions include Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington, D.C.: United States Institute of Peace Press, 1995); Richard Goldstone, *Healing Wounded People: War Crimes and Truth Commissions / Verletzte Menschen heilen: Kriegsverbrechen und Wahrheitskommissionen* (Heidelberg: C.F. Müller, 1998); the essays in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000); Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001); and Teresa Godwin Phelps, *Shattered Voices: Language, Violence, and the Work of Truth Commissions* (Philadelphia: University of Pennsylvania Press, 2004). There is also a wealth of scholarly material on specific truth commissions.

more general media outlets,[3] they (and other public displays of post-atrocity narrative) share an underlying aspiration to a kind of redemption through storytelling: 1) narratives of atrocity awaken the sympathetic moral sense of the broader public; 2) both victims and perpetrators are healed through the telling of stories of suffering or the confessional narrative; and 3) the community is healed through the narrative "closure" that the trials provide. Narrative has come to be used instead of (or alongside) punishment or victim compensation—not as evidence but as a form of redress in and of itself. Narrative in human rights has come to have an independent legal-political function.

We are thus told that truth commissions and other testimonial venues are necessary because trauma victims must tell their stories, that through narrative they create a memorial to suffering, that confession can redeem even the perpetrators. We are told that storytelling can bind the community, and that is a force for healing. We are told that storytelling will help us to move past atrocity and into the future. Institutions in which victims can speak "affir[m] the value of 'narrative' as well as of 'forensic' forms of truth."[4] "Narrative truth" contributes to "the process of reconciliation by giving voice to individual subjective experiences."[5] "What is at stake when victims are enabled to 'tell their own stories'" is

> not just the specific factual statements, but the right of framing them from their own perspectives and being recognized as legitimate sources of truth with claims to rights and justice. The relevant sense of truth is of a more holistic *narrative truth*—that involved in the overall framing of the events and experiences that together make up the victim's own 'story.'[6]

Allowing victims to tell their own stories offers them relief, we are told, even in the absence of other forms of redress. Thomas Buergenthal, a judge on the International Court of Justice and former member of the El Salvador Truth Commission, describes the victims' "silence and pent-up

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3. The scholarly literature most commonly contrasts post-atrocity criminal prosecutions (primarily punitive) with truth commissions (which often offer amnesty to perpetrators). But it is worth noting that, even on a prosaic level, they often function in similar ways. According to Lawrence Weschler, the War Crimes Tribunal in the Hague has provided for a mechanism known as a "Rule 69 Proceeding," in which, instead of bringing perpetrators to trial, victims testify on public television about what the accused has done, in effect replacing trial and punishment with a truth commission of sorts. See *Truth Commissions: A Comparative Assessment* (An Interdisciplinary Discussion Held at Harvard Law School in May 1996) (Cambridge: Harvard Law School Human Rights Program, 1997), p. 35.

4. Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice," in Rotberg and Thompson, eds., *Truth v. Justice*, p. 70.

5. Alex Boraine, "Truth and Reconciliation in South Africa: The Third Way," in Rotberg and Thompson, eds., *Truth v. Justice*, p. 152.

6. André du Toit, "The Moral Foundations of the South African TRC: Truth as Acknowledgment and Justice as Recognition," in Rotberg and Thompson, eds., *Truth v. Justice*, p. 136.

anger" before "finally, someone listened to them." When given the opportunity to speak, "they were more interested in recounting their story and being heard than in retribution." Their testimony produced "a record of what they had endured." But "the mere act of telling what had happened was [also] a healing emotional release."[7]

The healing power of testimony offers narrative closure for victims: "When the work of knowing and telling the story has come to the end, the trauma then belongs to the past; the survivor can face the work of building a future."[8] But it also offers narrative closure for society as a whole. Through "'narrative' . . . truth," nations can achieve "reconciliation, national healing, and moral reconstruction."[9] And thus, in producing "healing and restorative truth," testimonial venues not only restore victims' "dignity,"[10] but serve "humanity" in general.[11] Indeed, Homi Bhabha argues, such narrative is, itself, a human right whose exercise is necessary to the prevention of further atrocity:

> The right to narrate is . . . a metaphor for the fundamental human interest in freedom itself, the right to be heard, to be recognized and represented. . . . When you fail to protect the right to narrate you are in danger of filling the silence with sirens, megaphones, hectoring voices carried by loudspeakers from podiums of great height over people who shrink into indistinguishable masses. Once we have allowed such "walls of silence" to be built in our midsts and our minds, . . . we are compelled to return to the silent killing fields of the past and the present—be it Colonisation, Apartheid, the Holocaust, or Vietnam, Palestine, Afghanistan, South Africa, Rwanda, Kosovo—to try and give voice to those who were silenced.[12]

What lies behind claims about the value of post-atrocity narration are a set of views influenced by ancient Christian traditions of confession and redemption and by modern psychoanalysis, but borrowed also from literary and narrative theory of the past quarter century. These views were promulgated most directly by what became known in the 1980s as the "law and literature movement," with its 1990s offshoot, the "legal

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7. Buergenthal, "United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law*, vol. 27, no. 3 (Oct 1994), p. 539.

8. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), p. 67.

9. Kiss, "Moral Ambition," p. 70.

10. South African Promotion of National Unity and Reconciliation Act (No. 34, 26 July 1995) (preamble), which provided for the establishment of the South African Truth and Reconciliation Commission.

11. Boraine, "Truth and Reconciliation," p. 152.

12. Homi K. Bhabha, "Literature and the Right to Narrate," University of Chicago lecture, October 28, 2000: http://www.uchicago.edu/docs/millennium/bhabha/bhabha_a.html (part of a forthcoming book).

storytelling movement."[13] Proponents of the latter, in particular, insisted that attending to narrative in legal contexts could at once humanize the lawgiver, give voice to those traditionally silenced by the law, and help to bring about legal redress. These movements entered into dialogue with less narrowly legal and more global sub-disciplines and theoretical movements: Holocaust studies, with its discussion of the nature and limits of the representation of atrocity and the paradoxes of memorial; feminist criticism and critical race theory, with their discussion of the liberatory force of counter-hegemonic narrative; Latin American "testimonio" and trauma studies, with their discussion of witness bearing and the curative power of truth. Under this optic, not only could victim narratives be viewed as potentially subject to the interpretive tools of literary criticism. The narration of atrocity could be seen as a good in itself, offering its own special form of redress through catharsis and of rectification through the truths of storytelling.

The proliferation of testimonial venues can, of course, be attributed to numerous forces, not least, the full institutionalization of human rights in the late twentieth century. But the convergence of literary studies of witness testimony and legal storytelling, converted into imperatives, may be thought of as in some part responsible for the rise of public testimony as an intrinsic part of human rights adjudication. There is a deep shared history that lies behind this recent convergence. What I would like to do here is step back, for a moment, and look at the intertwined histories of modern literature and modern rights, histories that are (as I will suggest) inextricably linked from the eighteenth century onward. Understanding these linked histories may help us not only to contextualize contemporary claims about the function of narrative in the representation of human rights abuses, but also to look critically at some of their strongest assumptions. To explore fully the institutional, ideological, and cultural network which "literature" and "rights" (as modern institutions) share and the nature of their relationship would take a great deal more analysis and demonstration than I can offer here. Nonetheless, I would like to sketch the outlines of an argument that should offer a useful template for understanding first, the mutually imbricated histories of literature and human rights and, second, the recent focus on narrative as a medium for

13. There are a number of recent helpful discussions of "law and literature" as a sub-field and as a movement. For the most extended discussion, see Guyora Binder and Robert Weisberg. *Literary Criticisms of Law* (Princeton: Princeton UP, 2000). For additional retrospective accounts, see Anthony Julius, "Introduction," *Law and Literature*, ed. Michael Freeman and Andrew D.E. Lewis (Oxford: Oxford UP, 1999), pp. xi-xxvi, Richard Weisberg, "Literature's Twenty-Year Crossing Into the Domain of Law: Continuing Trespass or Right by Adverse Possession?" in Freeman and Lewis, ed., pp. 47-62, Jane B. Baron, "Law, Literature and the Problems of Interdisciplinarity," *Yale Law Journal* 108 (1999), pp. 1059-85, and my "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120:2 (March 2005), pp. xxxx.

truth and healing.

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In two important essays written in the 1970s, Raymond Williams identified the modern concept of "literature" as an invention of the later eighteenth century, tracing the word in English from its late medieval and early modern usage to its late eighteenth-century transformation into something like its modern usage.[14] While the distinction between poetry (the making of imaginary stories) and history (the making of true stories) reaches back, of course, to the ancients, there was, in the eighteenth century, as yet no inclusive class of works of imaginative literature distinct from other kinds of works. For sixteenth- or seventeenth-century writers, the term "literature" meant either the quality of being well-read (something like what we mean by "learning"), the capacity to read well (something like what we mean by "literacy"), or the collection of works representing learning—a broadly inclusive category comprehending, essentially, all human knowledge in written form. Jean de La Bruyère, for instance (writing c.1688), praises those who have "wit and pleasing literature."[15] Sir Francis Bacon lauds James I for being "learned in all literature and erudition, divine and human," possessing a conjunction as much of "divine and sacred literature as of profane and human."[16]

By some time in the eighteenth century, however, the term had come to refer to a narrower category of "polite letters," privileging classical texts (and those modeled on them) and segregating works worthy of preservation from the mass of cheap ephemera being circulated by the popular press: "Literature" was opposed to the "whole heaps of trash" to be found in the ordinary booksellers' shops.[17] By mid-century, the word had begun to take on nationalist overtones (as the entries in the *Oxford English Dictionary* and French *Littré* suggest), shifting emphasis from the classical to the vernacular: Literature was "French literature" or "English literature." David Hume, writing to his friend Gilbert Elliot in 1757, comments with bemusement that, while the Scots "speak a very corrupt dialect of the tongue," they are "the people most distinguished for

14. Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), pp. 45-54; and Raymond Williams, *Keywords: A Vocabulary of Culture and Society*, 2nd ed. (New York: Oxford University Press, 1983), 183-8.

15. "Gens d'un bel esprit et d'une agréable littérature"; quoted in Paul-Emile Littré, *Dictionnaire de la langue française* (Versailles: Encyclopaedia Britannica France, 1994), IV:3555.

16. Francis Bacon, *The Philosophical Works of Francis Bacon*, ed. John Robertson (Freeport, NY: Libraries Press, 1905), p. 43 (*The Advancement of Learning*, dedication to Bk I).

17. Pope's prefatory matter to William Shakespeare, *The Works of Shakespeare*, ed. Alexander Pope, 6 vols. (London: Jacob Tonson, 1725), I:xvi.

literature in Europe."[18] By the turn of the eighteenth century, the modern usage was fully emerging, designating "literature," first, as the worthiest works of the vernacular imagination (a still narrower category), and only secondarily as other kinds of writing. The histories of literature produced in the last decades of the eighteenth century (*Les Siècles de littérature française* [1772], *Storia della letteratura italiana* [1772], Herder's *Über die neuere deutsche Literature* [1767]) treat poetry, drama, and (notably) novels as a unique class, the imaginative writings that define the national spirit.[19] By the end of the eighteenth century, the category had been created out of which professional literary study was to emerge in the nineteenth—a category privileging canonical works of the imagination, classing them not with "rhetoric" or "grammar" but with the aesthetic. Literature was like art, to be set apart from the more prosaic works of science and of the popular press. Simultaneously (and, in a sense, constitutively), literary criticism was born in the coffeehouses and the news press, confirming the identity of "literature," legitimizing such new (or relatively new) genres as the novel, creating doctrines of literary judgment, and establishing the canon of works through which a national literature could recognize itself.[20]

At the same time, the concept of "rights" was becoming central to political discourse. "Natural rights" in European political and legal theory can be traced back at least to the twelfth century, when various theorists began to develop the idea out of Roman natural law principles.[21] And

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18. Guillory, *Cultural Capital: The Problem of Literary Canon Formation* (Chicago: U Chicago P, 1993), p. 122; quoting John Hill Burton, *The Life and Correspondence of David Hume*, 3 vols. (New York: Garland Publishing), III:28.

19. Williams, *Keywords* p. 185. In his study of literary canon formation, John Guillory, extrapolating on Williams, offers a helpful diagnosis of these three stages, each of them identified with a particular canonical formation: "Between the sixteenth and the nineteenth centuries three such canonical forms appear: (1) *poetry*, which privileges the texts of classical literacy; (2) *literature* (in the general sense) or 'polite letters,' which privileges writing in the vernacular; and (3) *literature* (in the restricted sense) or 'imaginative' writing, which privileges poetry, novels, and plays." The first corresponds roughly to the sixteenth through early eighteenth centuries. The second corresponds roughly to the later eighteenth century. And the third corresponds roughly to the turn of the eighteenth century. Guillory, *Cultural Capital*, p. 123.

20. On the rise of periodical literary criticism over the course of the eighteenth century, see James Basker, "Criticism and the Rise of Periodical Literature," *The Cambridge History of Literary Criticism*, ed. H. B. Nisbet and Claude Rawson (Cambridge: Cambridge UP, 1997), pp. 316-32; and (for an account of its relation to various ideological formations of the period) Terry Eagleton, *The Function of Criticism* (London: Verso, 1984).

21. See Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta, Georgia: Scholars Press, 1997), which argues for the twelfth-century origin of subjective, juridical, natural rights; Michel Villey, *La formation de la pensée juridique moderne* (Paris: PUF, 2003) and *Seize essais de philosophie du droit dont un sur la crise universitaire* (Paris: Dalloz, 1969) ("La genèse du droit subjectif"), in which Villey discusses their origin in such thinkers as Jean Gerson or William of Ockham; and Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge UP, 1979), which identifies them as originating in the fourteenth century, and offers a detailed discussion of their seventeenth-century articulation.

modern notions of subjective natural and inalienable rights (rights possessed innately by virtue of one's humanity, inhering in the individual and defining the individual's relation to the state, neither granted by nor capable of obliteration by any earthly power) were, in a sense, fully formed in seventeenth-century political theory (for instance in Grotius, Hobbes, and Locke). However, there was a disconnect between radical political theory and popular discourse. Whatever new elements seventeenth-century philosophers may have brought to the theory of rights, "rights" in popular discourse throughout the seventeenth century and for much of the eighteenth still tended to refer to specific privileges (for instance those specified in the *Magna Carta* or the English Bill of Rights), not innate human properties. Even as late as 1755, Samuel Johnson's *Dictionary* (as always, reflecting conservative usage) offers no definition of "right" that comports with what was to become the new revolutionary use of the word. Instead, under the heading defining a "right" as a "just claim," he offers a quote from Milton affirming the right of the Messiah to reign, following this with several quotations on citizens' rights as "Property," "interest," "Power," "prerogative," that is, powers specifically granted by law. ("The citizens, / Let them but have their *rights*, are ever forward / In celebration of this day with shews"; the people have "*rights* and liberties, due to them by the law.").[22]

It was only in the later part of the eighteenth century that "the rights of man" (importing modern subjective theories) became central to popular discourse, an integral part of various Enlightenment political programs: All men (a term which generally did not include women) were "endowed by their Creator with certain inalienable rights" (as the American Declaration of Independence had it); those rights were based on reason and nature, and pertained to men as members of the human species. "Say to yourself often," commanded the *Encyclopédie* article on "Natural Right": "I am a man, and I have no other truly inalienable *natural rights* than those of humanity."[23] Whether the concept of rights underwent a radical philosophical transformation in the eighteenth century, or even came into its own as a modern philosophical concept, is debatable. The discourse of rights certainly did not displace the various other political vocabularies available to eighteenth-century writers and orators (duty, virtue, obligation to the public good). But for many theorists, the ground of rights ceased to be divine law and became nature, reason, and consensus. For many, rights came to require democratic political

22. Samuel Johnson, *A Dictionary of the English Language* (London: J. and P. Knapton et al, 1755).

23. Encyclopédie, ou Dictionnaire raisonné des sciences, des arts et des métiers, 28 vols. (Paris: Briasson, 1751-80), V:116.

institutions founded on a theory of social contract and grounded in notions of human equality (in opposition to hierarchy). Most significant, rights talk gained a new political purchase in the last decades of the eighteenth century. The language of rights became *the* vocabulary for making political claims (of a variety of kinds, emerging from a variety of political positions), rung incessantly in the French, English, and American popular press in such major political manifestos and programs as the Declaration of the Rights of Man and Citizen, the American Bill of Rights; in the numerous treatises modeled on Thomas Paine's *Rights of Man*; and in such parodies as Thomas Taylor's *Vindication of the Rights of Brutes* (1792) (a sign of the conventionality of the genre). ("The next stage of that irradiation which our enlighteners are pouring in upon us," wrote Hannah More derisively, "will produce grave descants on the *rights of children.*").[24]

As important, the discourse of rights was transformed, in the late eighteenth century, by its fusion with various doctrines of humanitarianism, and it is to the influence of humanitarian discourse on eighteenth-century rights that we can, in part, trace the contemporary fusion of human rights and humanitarian law. Humanitarianism as a philosophical doctrine had been developing since the late seventeenth century, in arguments for the natural benevolence of humankind—as a humanist counter-discourse to Hobbesian arguments about the depravity of human nature. But, like rights, it became a part of popular discourse only in the later eighteenth century, with the absorption of moral theories of natural benevolence (propounded by such thinkers as the Earl of Shaftesbury and Francis Hutcheson), in reaction, in part, to various mechanistic theories of power as right, which accompanied the beginnings of industrialization.[25] Human beings were naturally driven by "irresistible compassion" to relieve the suffering of others. Natural human compassion gave rise to an equally natural human moral obligation—a duty to aid those whom one perceived to be in distress. "Nature hath implanted in our

24. Hannah More, *Strictures on the Modern System of Female Education*, 2 vols. (London: T. Cadell and W. Davies, 1799), I:135; quoted in Jenny Davidson, *Hypocrisy and the Politics of Politeness: Manners and Morals from Locke to Austen* (Cambridge: Cambridge University Press, 2004), p. 104. I am grateful to Jenny Davidson for pointing out to me the existence of such parodies as Taylor's.

25. On eighteenth-century doctrines of humanitarianism, see Norman S. Fiering, "Irresistible Compassion: An Aspect of Eighteenth-Century Sympathy and Humanitarianism," *Journal of the History of Ideas* 37:2 (April-June 1976), pp. 195-218; and Thomas L. Haskell, "Capitalism and the Origins of the Humanitarian Sensibility," Parts I and II, *American Historical Review* 90:2 (April 1985), pp. 339-61 and 90:3 (June 1985), pp. 547-566. Discussing the usual scholarly identification of humanitarianism with capitalism, Haskell argues less that humanitarianism is a compensatory reaction to industrialization than that the origins of the modern humanitarian sensibility lie in capitalist market principles of agency and causation, stimulated by industrialization, which laid a groundwork for humanitarian ideas of moral responsibility for social ills.

breasts a love of others," wrote Thomas Jefferson, "a sense of duty to them, a moral instinct, in short, which prompts us irresistibly to feel and to succor their distresses."[26]

The grounding of humanitarian principles in rights, and of rights in humanitarian principles, fused the sentimental with a political program. "The rights of man" were humane principles, entailing not just claims but *obligations*, and these not only toward the ordinary run of humanity but toward slaves, the poor, the young, primitives, eventually criminals, and various and sundry other downtrodden persons. Reading through Thomas Paine's *The Rights of Man* (1791-2) or Mary Wollstonecraft's *Vindication of the Rights of Woman* (1792) suggests the extent to which humanitarian language—the language of compassion, pity, the succor of distress—inflected rights discourse. Attacking Burke's *Reflections on the Revolution in France*, Paine writes: "Not one glance of compassion . . . has he bestowed on those who lingered out the most wretched of lives, a life without hope, in [the Bastille], the most miserable of prisons." Burke "is not affected by the reality of distress touching his heart, [the] prisoner of misery, sliding into death in the silence of a dungeon. . . . Lay then the axe to the root, and teach governments humanity."[27] Rights and the humanitarian duty to aid were, in a sense, two sides of the very definition of what it was to be human: One had rights by virtue of one's humanity (as the *Encyclopédie* article proclaimed), and it was one's sense of obligation to another's suffering that proved one human ("humane," in the spelling that did not yet, in the eighteenth century, distinguish between species identity and moral identity).

The simultaneous emergence of the modern concept of "literature" and the modern concept of "rights" in popular discourse suggests a historical intersection between literature and human rights, which I would like, here, to attempt to untangle. The most conventional account of this intersection might look at literary discourses as agents of rights talk, noting that certain texts we would consider "literary" were crucial vehicles for galvanizing the imagination of the newly constituted "public" in the eighteenth century, thus coming to serve as a foundation for modern rights claims (as well as proving symptomatic of tensions in the era's notion of rights).[28]

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26. Jefferson to Thomas Law, June 13, 1814, in Andrew Lipscomb and Albert Bergh, *The Writings of Thomas Jefferson* (Washington, D.C., 1903), XIV:141; quoted in Fiering, "Irresistible Compassion," p. 195.

27. Thomas Paine, *The Rights of Man* in *The Thomas Paine Reader*, ed. Michael Foot and Isaac Kramnick (Middlesex: Penguin Books, 1987), pp. 212-3.

28. One might take, as examples, for instance, *Robinson Crusoe*, *Pamela*, *The Marriage of Figaro*, or *Émile*—all *causes célèbres* that became crucial narrative reference points in discussions of rights during the period. Through various forums (the popular press, the theatre, political, religious, and legal oratory), they were translated into a political program that eventually got converted into a set of normative legal claims. *The Marriage of Figaro*, for instance—with its attack on aristocratic

Another approach might focus on the *political* writings most central to the formulation of "rights" in the eighteenth century (the central rights treatises, the public speeches, and the pamphlet literature that ultimately disseminated and normalized the rhetoric of rights), noting the extent to which the politics of modern rights were re-imagined through literary aesthetics and narrative. Rights treatises could be indistinguishable from what we would think of as literary genres: Simon-Nicolas-Henri Linguet's *Mémoires sur la Bastille* (1783), or Count Mirabeau's *Des Lettres de cachet et des prisons d'Etat* (1778), or the scandalous *Les Fastes de Louis XV* (1782).[29] Indeed, for eighteenth-century theorists of rights, drawing on a range of moral and political example from the ancients to the moderns, there is no clear segregation of ancient history from ancient literature; Biblical history from its modern literary retelling; Herodotus, Caesar, or Cicero from Homer, Virgil, Corneille, Shakespeare, or Milton. The aesthetic was mingled with the political, the narrative with the discursive, fiction with non-fiction. In *The Social Contract* (1762), for instance (with its often forgotten subtitle, *Or Principles of Political Right*), Rousseau can cite Genesis, *The Odyssey*, and *Robinson Crusoe*, all within a few sentences of one another, as authorities on the nature of sovereignty.[30] In her *Vindication of the Rights of Woman*, Wollstonecraft can argue with

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privilege and its plea for the people's rights to freedom of discussion and freedom from the excess powers of the police—produced riots when it was suppressed on opening night in 1783, the crowds shouting "oppression," "tyranny." ("Detestable!" declared Louis XVI, famously, "The Bastille would have to be torn down before the presentation of this play could be anything but a dangerous folly.") (According to Jeanne Louise de Campan, who read the manuscript to the King, in her *Mémoires*, quoted in Marvin Carlson, *The Theatre of the French Revolution* [Ithaca, NY: Cornell UP, 1966] 2; and see Carlson 3 for the opening night riots).

29. Mentioning these works in his discussion of the centrality of the French literary underground to the formulation and circulation of the ideologies that issued, ultimately, in the French Revolution, Robert Darnton (*The Literary Underground of the Old Regime* [Harvard: Harvard UP, 1982], p. 140-7) suggests the extent to which the political genres of the Old Regime (pamphlets, libels, *chroniques scandaleuses*) were inseparable from the literary genres. While "literature" as a concept may have been in formation, the modern conceptual division of literary texts from other kinds of texts was not yet fully in place. The distinction of "poetry" from "philosophy" and "history" was an ancient one, but these had always belonged to a single domain, treating the same kinds of subjects, and equally appropriate as vehicles of moral or political persuasion. Genteel rhetorical education had, since ancient times, understood the study and use of literary style as central to political oratory, as eighteenth-century "men of letters" (at once theorists of rights and masters of oratory) continued to do. The ancient rhetorical tradition inherited by eighteenth-century rights oratory was inseparable from the tradition of narrative citation and the use of narrative as exemplum. One thinks of Burke and Sheridan as prosecutors in the trial of Warren Hastings in the 1780s and '90s (on trial for various atrocities against the local population in his capacity as first British Governor-General of India), consciously calling on Shakespeare, Spenser, and Milton for literary exemplifications of Hastings' crimes in order to "vindicate the *rights* of man." Richard Brinsley Sheridan, *The Speeches of the Right Honourable Richard Brinsley Sheridan*, 3 vols. (New York: Russell & Russell, 1969. [Orig. 1842]), I:395 (and, for a few examples of literary evocations and references to "the rights of man," see I:368, I:412, I:420-1, II:377).

30. Jean-Jacques Rousseau, *On the Social Contract With Geneva Manuscript and Political Economy*, ed. Roger D. Masters, trans. Judith R. Masters (New York: St. Martin's Press, 1978), p. 48 (Bk I, Ch II).

Milton, Pope, Rousseau's portrait of Sophia in *Émile*, and "Moses' poetical story" of Adam and Eve over the capacity of women (as rational creatures) to be proper rights-bearers.[31] The culture of stories created foundational narratives for the culture of rights. The critical analysis of narrative embedded in political treatises on rights was inseparable from the political claims of those treatises.

If literature and rights were bound, at their modern origins, through the more general use of the belletristic tradition as a foundation for political rhetoric, however, they were perhaps most importantly bound through their simultaneous modern institutional crystallization. It is on this relationship that I would like to focus. Raymond Williams speculatively identified the transformation of the concept of "literature" with several concomitant material and institutional transformations: the passing of aristocratic authority and the rise of the bourgeoisie; the growth of print capitalism; changes in literacy; the development of ideologies of the nation (and hence of national literatures); and the professionalization of criticism. He argued that the creation of the modern category "literature" (imaginative, creative, and above all *human*) was a reaction to the specialization and mechanization of modern conditions of wage labor in the industrial capitalist order. Literature came to represent "truth" and "beauty" by way of negative contrast with "science" and "society," technical skill, "discursive" and "factual" writing, "popular" writing, and "mass" culture. Criticism became the central "humane" activity.[32] Williams's brief speculation on the production of "literature" as a modern category has been taken up and vigorously examined, over the past decade or so, in various studies of literary culture in the eighteenth- and nineteenth-centuries.[33] While some of these studies refine his claims or challenge particular points, his broader speculations essentially stand. These have been extended into various explorations of the relationship between the conceptual transformation of "literature" and a number of

31. Mary Wollstonecraft, *Vindication of the Rights of Woman*, ed. Miriam Brody Kramnick (Harmondsworth, Middlesex: Penguin, 1982), pp. 101-2, 107, 109.

32. Williams, *Marxism*, p. 51.

33. John Guillory (*Cultural Capital*), for instance, has explored the place of "literature" as the "cultural capital of the bourgeoisie" in the broad history of literary canon formation, identifying the development of the English canon (along with the English curriculum) as linked to the development of the idea of the nation. Jonathan Brody Kramnick (*Making the English Canon: Print-Capitalism and the Cultural Past, 1700-1770* [Cambridge: Cambridge UP, 1998]) looks at the development of the English canon, the turn from amateur to professional criticism, the origins of modern literary study in the rise of literary expertise, the rise of the national literary tradition, and the separation of commercial from aesthetic value, in the first three-quarters of the eighteenth century, identifying these as products of the rise of print capitalism and of the dynamic interaction between public culture and the culture specialization during the period. Stephen Greenblatt ("What Is the History of Literature," *Critical Inquiry* 23:3 [Spring 1997], pp. 460-81) has examined the broader Renaissance field of "literature" as the pre-history of contemporary literary study.

phenomena (largely situated in the eighteenth century): the production of the commercial system of letters; the development of the modern system of authors and readers (and the transformation, in the eighteenth century, of the concept of the "author" itself through the development of author copyright); the development of the modern vernacular literary canon as the "cultural capital of the bourgeoisie"; the increased prominence and power of women writers and readers; the rise of the bourgeois "public sphere"; the final centralization of national vernaculars and vernacular literatures and their use in the production of ideologies of the nation; the rise of journalistic and (eventually) professional literary criticism; and the institutionalization of vernacular literary study (all of these, of course, crucial to understanding the historical identity of contemporary literary study).

While there is an extensive critical literature on the development of the concept of rights in seventeenth- and eighteenth-century political theory, much less work has been devoted to the underlying ideological framework of rights in the eighteenth century and to its broader cultural valence: its relation to other cultural and ideological developments during the period; its discursive and rhetorical trajectories; its historical unconscious.[34] There are, however, certain recurrent themes that emerge from discussions of the modern idea of "rights" and that identify the discourse of rights with a set of related values and phenomena (controversially, in some cases, but nonetheless with a good deal of consistency): the new-found political power of the bourgeoisie; the rise of the "bourgeois public sphere" and of Enlightenment public culture; the concomitant modern separation of public from private; the increased role of ideologies of individual freedom (accompanied by a liberal, contractarian paradigm); the development of liberal political and economic institutions, accompanying the development of mercantilism into *laissez-faire* industrial capitalism; the development of ideologies of benevolence based in the cult of "sympathy"; philosophical universalism accompanied (paradoxically) by political nationalism.

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34. Those which offer the most by way of analysis of rights as a discursive and cultural-ideological formation include: Luc Ferry and Alain Renaut, *Philosophie politique: Des droits de l'homme à l'idée républicaine* (Paris: Presses Universitaires de France, 1985); J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge: Cambridge UP, 1985); the essays in Michael J. Lacey and Knud Haakonssen, ed. *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law 1791-1991* (Cambridge: Cambridge UP, 1991); the essays in Dale Van Kley, ed., *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford: Stanford UP, 1994); and Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart, 2000). Lynn Hunt is currently working on a history of human rights—outlined in her short essay, "The Paradoxical Origins of Human Rights," in *Human Rights and Revolutions*, ed. Jeffrey N. Wasserstrom, Lynn Hunt, and Marilyn B. Young (Lanham, MD: Rowman & Littlefield, 2000), pp. 3-17—which promises to offer a wide-ranging investigation of the cultural foundations and psychological origins of human rights.

"Literature" and "rights" were thus identified with and dependent on the same set of cultural phenomena. But they were also identified with and dependent on each other, contributing importantly to each other's institutional evolution. The development of the idea of rights liberated writers from dependence on either aristocratic patronage or the market. Authors became, simultaneously, the "natural proprietors" of their works (in the words of Jean-François de La Harpe, addressing the French National Assembly in 1790) and those who had "natural" and "exclusive" rights in them.[35] The deprivation of the author's literary property through censorship was (according to Victor Hugo, writing several decades later) akin to sending the author to the Bastille—a violation of the author's most fundamental rights.[36] The concept of rights also helped to promote educational initiatives that eventually put vernacular literature at the center of the primary curriculum (displacing the aristocratic classical curriculum). And both author copyright and the spread of vernacular reading were essential to the reconstitution of "literature" as a category. At the same time, the development of the genres that became "literature" (and of a self-conscious "literary" public) created both the material and ideological conditions necessary to the discourse of rights, through the simultaneous stimulation of the print trade that disseminated the rights treatises and the development of a bourgeois reading public receptive to (and capable of financing) them.

If literature and rights were each essential to each other's institutional foundation, they also shared an ideological framework and a set of social functions that kept them bound in far less obvious, but no less important ways. "Rights," it has often been said, were born of the marketplace, arising as a political discourse that could justify the liberation of the bourgeoisie—through its new commercial power—from the privileges of the aristocracy. If the French Revolution (framed as a "rights" revolution) was explicitly a project for the liberation of the bourgeoisie from aristocratic tyranny, rights discourse generally directed itself toward the political and social empowerment of an already commercially empowered population. That discourse depended for its full political power on the commercial power achieved by the bourgeoisie only in the eighteenth century. At the same time (as has often been noted), it helped to internalize bourgeois commercial values, casting as innate those powers most necessary to a thriving market, unfettered by aristocratic or government privilege: the right to property; freedom from searches and

35. La Harpe, *Adresse des auteurs dramatiques a l'assemblé nationale, Prononcée par M. de la Harpe, dans la Séance du mardi soir 24 Août* (Paris: n.p., [1790]), p. 30.

36. Hugo, *Théâtre complet*, 2 vols., ed. J. -J. Thierry and Josette Mélèze (Paris: Gallimard, 1963-4), vol. I, p. 1324 (Préface to *Le roi s'amuse*).

seizures (necessary to the protection of property); freedom of religion (long associated, in Britain, with the merchant dissenters); representative equality and equality under the law (equality, that is, by reference to the aristocracy, though not the un-propertied, slaves, or women). Rights were allied with commerce: Thomas Paine sung the virtues of commerce, and understood the necessity of rights to what he saw as a properly functioning market.[37] The conception of freedom embedded in rights discourse (freedom from encroachment by the state) served the constitution of a power base independent of the feudal allocation of political, material, and cultural goods: Freedom meant freedom to construct an alternative, non-aristocratic, commercial sphere of political and cultural control.

The new ideology of rights, however, not only drew on and served the liberation of the marketplace. At the same time, paradoxically, it depended for its legitimation (and hence the legitimation of the bourgeois rights-bearer) on the ostensible autonomy of political rights from the market. Rights were paired with claims based in ideologies of aristocratic virtue, ostensibly autonomous from market values. They could not function without reciprocal duties (*noblesse oblige*). They were "inalienable" and "sacred," essential to human dignity. Rhetorically (though not actually) liberated from property in the American context, rights served the "pursuit of happiness"—a goal apparently dissociated from crass lucre, one that united the private and the public good. Authority could be achieved through merit rather than birth, but was also (officially, at least) to be dissociated from commercial power. The meritorious individual could, regardless of class or net worth, attain political power, equality before the law, "the pursuit of happiness." "Rights," then, were at once a tool of bourgeois liberation and an ideology that cast a mantle of aristocratic dignity over its beneficiaries. Ideologically, they served to clear the bourgeoisie of the taint of commercial power. Rights granted their bearers, on the one hand, liberation from the control of the historical aristocracy (whose dignity and privileges they could appropriate, rather than being ruled by them). On the other hand, rights (as they were eventually framed) granted their bearers freedom from the excesses of democracy in the political sphere (the danger that one's bourgeois rights might be voted away). Rights were not only the thing that protected one from overreaching nobles, but also the thing that protected one from the tyranny of the dangerous democratic majority. In this sense, while posing as tools of liberation from class privilege, "rights" (enshrined in constitutions) served as a stay against the numerical power of the rabble. They enacted a

37. See his discussion of commerce, and his identification of a rich manufacturing sector with the "universal right of conscience" and the "universal right of citizenship." Paine, *Thomas Paine Reader*, pp. 309-13, 233-4.

double and contradictory move: Born of the market, they identified themselves as autonomous from the market.

"Literature," similarly, might be thought of as born of the marketplace. In the late middle ages and early Renaissance, it has been argued, the aristocracy began the project of taking over from the Church the production and control of spiritual life in the form of aesthetic patronage and display (central to its own display of power). In the eighteenth century, the newly powerful bourgeoisie began to take over "culture" from the aristocracy by bringing art into the marketplace (where aesthetic norms could be subject to the judgment of "the public"). In the literary sphere, this project was assisted by the growth of bourgeois literacy, and the concomitant development of print capitalism and a literary marketplace (displacing aristocratic patronage with market-based public patronage). It resulted in the proliferation of genres by and about the bourgeoisie (most notably, the novel). According to Raymond Williams and those who have followed him, the birth of modern "literature" (along with the birth of "art" in the modern sense) thus represented a bourgeois encroachment on aristocratic institutions—both a space for non-aristocratic cultural production and consumption, and (through literary criticism) a space for non-aristocratic legislation on cultural production. As with "rights," however, the new aesthetic ideologies depended not only on the subjection of art to the marketplace, but the establishment of a set of bourgeois institutions ostensibly autonomous from the market: literary and art criticism (with "taste" and "judgment" as their regulatory norms); public collecting and display (developing into the salons and art museums of the later part of the century); literary criticism (developing both in the popular press and the universities); and vernacular literary study (developing throughout Europe in secondary schools in the seventeenth and eighteenth centuries, finding a home in Scottish universities in the late eighteenth century, established in colonial secondary schools in the early nineteenth century, and instituted in universities throughout Europe and the United States by the end of the nineteenth century).[38]

If "literature," then, emerged from a bourgeois bid for cultural power, it also emerged from the felt need for a distinction between the productions of Grub-Street (the imaginary territory of the new class of commercial literary hacks and other writers for hire) and "polite letters" (the territory of the bourgeoisie, aspiring to nobility as a way of distinguishing itself from Grub Street). In this sense, literature was parallel to rights in its

38. On the rise of vernacular literary study, see D. J. Palmer, *The Rise of English Studies* (London: Oxford UP, 1965); Franklin E. Court, *Institutionalizing English Literature: The Culture and Politics of Literary Study, 1750-1900* (Stanford: Stanford UP, 1992); and (on its history in British India), Gauri Viswanathan, *Masks of Conquest: Literary Study and British Rule in India* (New York: Columbia University Press, 1989).

conceptual work: At once liberating culture from the monopoly of the aristocratic classes and allowing literature's new possessors to aspire to the aristocratic dignity and privileges associated with the realm of polite letters. Constructed in the capitalist culture market, "literature" emerged as a reaction to the degradations of that market. It was an attempt to create a sphere unsullied by the buying and selling of the products of the spirit, a sphere free of the commercial power of the "illiterate" rabble, who represented democracy gone awry in the realm of culture, and from whom culture had to be reclaimed. To draw on Pierre Bourdieu's framework, literature was created out of the opposition between exchange value and aesthetic value: "literature" as a category created a "field of restricted cultural production" opposing itself to "the field of large-scale cultural production" in order to create a new form of capital—cultural capital—autonomous from mass buying power.[39] This cultural capital depended on an ideology of non-commercial merit similar to that in the sphere of rights. The modern "author" was, by definition, one who rose to prominence solely on his or (increasingly, her) own worth. The author could take on the authority of "genius" and be rewarded in the form of "literary property" (in the self-reinforcing circle of commercial reward for the kind of merit that dissociated one from commerce).[40]

If the development of print-capitalism and the spread of bourgeois literacy were, in part, responsible for the creation of the modern category "literature," they also assisted in the dissemination of ideas about rights. "Rights" and "literature" converged in the eighteenth-century "public sphere" (first theorized by Jürgen Habermas in his influential *Structural Transformation of the Public Sphere*).[41] Whether or not we are to believe

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39. Pierre Bourdieu, *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson (Cambridge: Polity Press, 1993).

40. On the eighteenth-century concept of the "genius," see Jonathan Bate, "Shakespeare and Original Genius," in *Genius: The History of an Idea*, ed. Penelope Murray (Oxford: Basil Blackwell, 1989), pp. 76-97; Bürger, *Theory* 51 (on the "genius" as belonging to the process of bourgeois individualization of aesthetic production); and Robert Currie, *Genius: An Ideology in Literature* (London: Chatto & Windus, 1974).

41. Habermas, *Structural Transformation of the Public Sphere*, trans. Thomas Burger and Frederick Lawrence (Cambridge, Mass: MIT Press, 1991) (originally *Strukturwandel der Öffentlicheit*, 1962). For useful critiques of Habermas' characterization of the "public sphere" and his stress on its eighteenth-century invention, see: the essays in Paula R. Backscheider and Timothy Dykstal, eds., *The Intersections of the Public and Private Spheres in Early Modern England* (London: F. Cass, 1996) (on the ongoing intersections of public and private); Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge: MIT, 1992); Johanna Meehan, ed., *Feminists Read Habermas: Gendering the Subject of Discourse* (New York: Routledge, 1995) (especially the essays by Landes and Fleming); Paula McDowell, *The Women of Grub Street: Press, Politics, and Gender in the London Literary Marketplace 1678-1730* (Oxford: Clarendon, 1998) (on the participation of lower- and middle-class women in what we think of as the public sphere); Hélène Merlin, *Public et littérature en France au XVII^e siècle* (Paris: Les Belles Lettres, 1994) (on the earlier formation of a public sphere in seventeenth-century France); and Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution*. Ithaca: Cornell UP, 1988 (on the centrality of women to the eighteenth-century French public sphere).

Habermas' claim that print and literacy were crucial to the rise of a newly "public" form of discourse with a particular set of political consequences, both "literature" and "rights" found their home in the treatises and pamphlets and imaginative genres that addressed themselves to "the public." Addressing this "public," theorists of rights cast themselves as serving "the public good" and identified themselves with a set of values insistently reiterated in the "public-minded" literature of the period: rationality, impartiality, politeness, public transparency, merit-based judgment.[42] At the same time, "literature" identified itself with the discursive values of "public-minded" letters.[43] Like rights, literature provided for polite, rational discourse. It was the product of merit-based participation, a vehicle for the (normatively male) writer's public visibility through his very invisibility (his autonomy from the trappings of rank and artificial power). It was a basis for an imaginary community of like-minded readers. As Jonathan Kramnick writes, the literary "public" stood for "the polite stratum of educated readers hovering above the toiling masses of vulgar illiterates," even if, in actuality, the consumers of "literature" and of pamphlet material on rights were often neither particularly literate nor particularly polite.[44]

Both "literature" and "rights," then, were stimulated by the concept of the "public"—created simultaneously in the coffee-houses, clubs, and pamphlet literature (where the canon of letters was being constructed and the new ideology of rights propagated). But they were also to be consumed in private—ideally, in the private spaces of the bourgeois

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42. See Habermas, *Structural Transformation*, and see my discussion of these values in the theatrical context in Julie Stone Peters, *Theatre of the Book: Print, Text, and Performance in Europe, 1480-1880* (Oxford: Oxford University Press, 2000), pp. 245-50.

43. See the discussion in Guillory, *Cultural Capital* 121-123.

44. Kramnick, *Making the English Canon*, p. 7. The ideology of the polite middle-class readership was, of course, probably rather different from the reality. And we know that even in the later eighteenth century, many literary consumers could not, themselves, read. However, literacy was generally spreading across classes throughout the eighteenth century. David Cressy, for instance, notes that "by the end of the Stuart period [1714] the English had achieved a level of literacy unknown in the past" (*Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* [Cambridge: Cambridge UP, 1980], p. 176, and on increasing literacy on the Continent see pp. 178-82). See also François Furet and Jacques Ozouf, *Reading and Writing: Literacy in France from Calvin to Jules Ferry* (Cambridge: Cambridge UP, 1982), which shows pronounced increases in literacy among the European middle classes in the late seventeenth and eighteenth centuries, and among the European laboring classes in the nineteenth century. For suggestive studies of eighteenth-century literary and political readerships and reading practices, see *Lesegesellschaften und bürgerliche Emanzipation: ein europäischer Vergleich*, ed. Otto Dann (Munich: Beck, 1981); Robert Darnton, *Literary Underground of the Old Regime; Books and their Readers in Eighteenth-Century England*, ed. Isabel Rivers (Leicester: Leicester University Press, 1982) and *Books and their Readers in Eighteenth-Century England: New Essays*, ed. Isabel Rivers (New York: Continuum, 2001); Claude Labrosse, *Lire au XVIIIe siècle: la Nouvelle Héloïse et ses lecteurs* (Lyon: Presses universitaires de Lyon, 1985); Jon P. Klancher, *The Making of English Reading Audiences, 1790-1832* (Madison, Wis.: University of Wisconsin Press, 1987); and Barbara M. Benedict, *Making the Modern Reader: Cultural Mediation in Early Modern Literary Anthologies* (Princeton: Princeton University Press, 1996).

home—and to reproduce the intimate experiences of the private individual.[45] Both rights and literature were associational (crucial to serving and constituting the idea of a collective public). And they were things that permitted the rights-bearer, literary producer, and literary consumer autonomy from a coercive collective sphere. Both "literature" and "rights" as concepts held to the belief in the liberatory and redemptive power of public language (in the form of great works and revolutionary declarations)—a belief learned from the experience of print-based fame and print-produced revolution. But they also drew on and shaped crucial notions of freedom, autonomy, and privacy. For both literature and rights, national identity was founded, paradoxically, on the universality of the human. The universalist French Declaration of the Rights of Man and Citizen grounded national sovereignty (centered in "the Nation") in the "natural, inalienable, and sacred rights of man," just as eighteenth-century anthologies and literary histories grounded claims for the coherence and superiority of a national literature in the "Universal Genius" of its greatest writers.[46]

At the same time, while contributing to crucial ideas about nation, empire, and universal humanity, the shared anti-utilitarian ideology of literature and rights meant that both tended to dissociate themselves from politics in the vulgar sense. As literature became increasingly associated with works of the imagination, it also became—in its pure form—alienated from real-world politics. Literature was, normatively, poetry, that most abstract and airy and distinctly un-useful form of pleasure.[47] To identify literature's resistance to engagement with the public sphere is not primarily a claim about literary content (though the conceptual function of literature clearly had an impact on content), but a claim about literature's

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45. See, in particular here, Peter Bürger's discussion of the novel as perfectly embodying the new identity of literature as "art," as the genre most suited to the newly dominant mode of private, individual reception (a discussion based largely on Ian Watt's *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* [Berkeley: University of California Press, 1957]).

46. Christine Fauré, ed., *Les déclarations des droits de l'homme de 1789*, 2nd ed. (Paris: Payot, 1992), p. 11. For the literary association of universality and nationhood, see, for instance, Catharine Trotter's dedication to her tragedy, *The Unhappy Penitent* (London, 1701), on Dryden as "The most Universal Genius this Nation ever bred." See also Hannah Arendt on the union of universalism and nationalism during the period: in the French declaration of the Rights of Man, "the same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations, the same nation was at once declared to be subject to laws, which supposedly would flow from the Rights of Man, *and* sovereign, that is, bound by no universal law and acknowledging nothing superior to itself." Hannah Arendt, *Imperialism: Part Two of the Origins of Totalitarianism* (San Diego: Harcourt, Brace, Jovanovich, 1968), p.110. For important discussions of the narrative and literary constitution of conceptions of nationhood and their paradoxical relationship to varieties of universalism, see Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983) and Homi Bhabha, ed. *Nation and Narration* (New York: Routledge, 1990).

47. See the discussion in Guillory, *Cultural Capital*, p. 117 (and generally his discussion of Grey's "Elegy"), heavily influenced by the work of Raymond Williams.

presumed relationship to the world of workaday politics. Literature was, in this sense, representative of the aesthetic sphere more generally, ideally autonomous and (in Kant's crucial formulation) disinterested, even while it played a central role in shaping public attitudes toward political questions.[48] Schiller's *Letters on the Aesthetic Education of Man* are, arguably, paradigmatic here. For Schiller, precisely because art is disinterested (autonomous from the world of getting and spending), it is the thing that allows one to realize one's humanity—one's connection to a higher and more universal humanity than that of the everyday (commercial) world. Art redeems one from modern means-end utilitarianism, relieving one from the burden of competition and the praxis of life and preserving, in their ideal forms, such things as joy, truth, solidarity, and humanity. "The citizen who, in everyday life has been reduced to a partial function (means-ends activity) can be discovered in art as 'human being.'"[49]

Paradoxically, rights too began to be seen as distinct from the interestedness of politics, in the nineteenth century increasingly taking both their philosophical and legal character from their opposition to utilitarian policy arguments (as they continue to do today).[50] They were fundamental, neutral, general, disinterested, non-means-driven, autonomous from the particularities of exchange. They allowed you to realize your humanity—a higher and more universal humanity than that of the particular political sphere. As with art (for Schiller), it was through "the rights of man" that the citizen could become a "human being," without being thrust into the exigencies of the public sphere. It is from this division that the claim arose (common until perhaps a decade or so ago) that rights were *not* political, and indeed that their essential identity was their *distinctness* from politics. In this sense, while rights came to represent a variety of institutionalized legal norms—fought over in the political sphere—they also represented something of the aesthetic end of

48. The broader and more general creation during the period of "aesthetics"—an autonomous aesthetic realm, distinct from the economically or socially "useful"—has been discussed extensively, most notably by Peter Bürger in *The Theory of the Avant-Garde* (trans. Michael Shaw [Minneapolis: U of Minnesota P, 1984]) and by Pierre Bourdieu in *The Field of Cultural Production* and Distinction: A Social Critique of the Judgement of Taste (trans. Richard Nice [Cambridge, Mass.: Harvard University Press, 1984]). As Bürger puts it, art could become the realm of non-purposive creation and disinterested pleasure, opposed to the life of society, to be ordered rationally, in strict adaptation to definable ends (p. 42). Kant is generally seen as having produced, in the Third Critique, the separation between art and utility that was to be decisive for the dominant modern concept of the aesthetic. See Bürger, also, on the importance of Schiller's *Letters on the Aesthetic Education of Man*.

49. Bürger, *Theory of the Avant-Garde*, p. 48 (and see his more extended discussion, pp. 42-50).

50. For the (arguable) claim that rights became discredited political tools during the nineteenth century, in Europe at least, see the discussions in Jeremy Waldron, ed. *'Nonsense upon Stilts': Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987), pp. 13-18; and Douzinas, *End of Human Rights*, pp. 110-14.

the legal: They were the beautiful truths (truths higher than the ordinary particulars of history) toward which politics might strive but which politics could never perfectly achieve.

To live in literature, or to experience oneself as the bearer of rights, then, was to rediscover one's humanity, apart from the world of commerce and politics. The language of the "human" embedded in both "literature" and "rights" helped to reinforce this universalist humanism, as well as to distance both domains still further from mechanistic notions of competition in the political, economic, or cultural spheres. Literature was to become the crowning discipline of the "humanities." "Rights" were "the rights of man," on their way to becoming "human rights." What distinguished literature from other kinds of writing was that literature could unite one with the rest of humanity, teaching not the particular but the higher and more universal human values embedded in natural sentiment, far from the brutalities of the market. What distinguished rights from other kinds of political claims is that they were based in universal human nature, and could thus draw on moral claims cognizable through natural reason and sentiment, displacing claims about power or utility as right.

Central to the humanist ideology underwriting both literature and rights were the explicitly "humanitarian" discourses that (as we have seen) were beginning to emerge at the end of the century. These brought literary narrative into the service of rights claims and, in a sense, also brought rights into the service of literature by extending literature's humanizing role. Humanitarianism was grounded not only in a theory of natural human goodness, but also in theories of compassion that relied on a model of individual human sympathy through identification with the sufferer. This was an idea imported from aesthetics and literary theory, most particularly eighteenth-century interpretations of Aristotelian catharsis as a theory not of emotional purgation, but of emotion-based social union through narrative identification. Pity, generated by narrative, was to serve as a mechanism for uniting humanity and stimulating charitable action through the sentimental bond. As Thomas Laqueur has shown (in his suggestive exploration of the "humanitarian narrative" of the late eighteenth century), humanitarianism was founded in notions of the narrative power of the suffering human body as the basis for moral response.[51]

The discourse of rights accompanied by the language of moral obligation served as an imperative formulation of the lessons of sympathy that literature taught. Writing in 1772, Benjamin Franklin expressed the

51. Thomas W. Laqueur, "Bodies, Details, and the Humanitarian Narrative," *The New Cultural History*, ed. Lynn Hunt (Berkeley: U of California P, 1989), pp. 176-204.

idea, referring to the "natural compassion to . . . Fellow-Creatures" that brings "Tears at the Sight of an Object of Charity, who by a bear [*sic*] Relation of his Circumstances" seems "to demand the Assistance of those about him."[52] Sympathetic identification was understood to be responsive to images, but still more to *stories* of suffering, that is, to visual, but still more to *narrative* stimuli ("Relation of . . . Circumstances"), the kind of narrative stimuli which eighteenth-century culture produced in abundance: in the autopsy reports that Laqueur describes (unlike their predecessors, expanded into pathos-rendering narrative); in non-fiction narrative accounts of the period; but above all in "literature." That is, humanitarianism was a fundamentally narrative, or literary, ideology: The narratives of suffering central to literature taught one how to be human, and ultimately to rise above the dehumanizing forces of modernity.

The transformation of "natural rights" and "the rights of man" into "human rights" over the course of the nineteenth century[53] merely confirmed what was implicit in the development of late eighteenth-century rights discourse: Rights were a way of claiming one's humanity, defined by its opposition to utility (from which humanity was to be sacrosanct); rights were, in a world of commodity exchange, a desperate protection of the sacredness of the human. The conjoined discourse of rights and humanitarianism, then, continued to serve a function similar to that of literature. As a number of critics have argued, what dominated both literature and the formalization of literary study in the academy throughout the nineteenth century were grand visions of its humanizing role—very much a moral role, but a role that understood literature as a vehicle for transcending politics and uniting the classes in the harmonies of a shared culture that would elevate all beyond the economics of petty difference.[54] As a result, literature (and its "true-narrative" offshoots) became the central vehicle for the great humanitarian and rights movements of the nineteenth century (one need only think of *Les Misérables* or *Uncle Tom's Cabin*). This was not primarily because its pleasure-value suited it perfectly to the task of popularizing humanitarian ideas, but primarily because its institutional ideology was harmonious with that of nineteenth-century humanitarian and rights talk—aiming to transcend both law and politics with an ideal form of justice, and sheltered

52. The Papers of Benjamin Franklin, ed. L. W. Labaree and W. J. Bell, Jr. (New Haven: Yale UP, 1959), I:37; quoted in Fiering, p. 204.

53. Thomas Paine uses the phrase once in *The Rights of Man*, and it begins to be used occasionally in the nineteenth century in various contexts: abolitionist, feminist, economic (used in opposition to property rights). The phrase begins to be used widely, however, only in the 1940s. I am grateful to Kenneth Cmiel for a helpful email on the history of the term.

54. For an analysis along these lines, see, for instance, the chapter on "The Rise of English" in Terry Eagleton, *Literary Theory: An Introduction*, 2nd ed. (Minneapolis: U of Minnesota P, 1996), pp. 15-46.

from the depredations of utility or the degradations of mass culture.[55]

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One might easily draw a continuous genealogy, from the eighteenth century to the present, in which literature (and narrative generally) join up with rights in the struggle to save the human from utilitarian politics driven by capital and the general brutalization of modernity: from the earliest eighteenth-century humanitarian narratives, linked as they were inextricably to eighteenth-century rights culture; through (for instance) the slave narratives of the nineteenth century, working in the service of abolitionism; through the grim narratives of bodies mutilated by capitalist machinery, told in the service of the movement for labor rights in the later nineteenth- and early twentieth-century; through the Holocaust narratives of the later twentieth century; to today's post-atrocity narratives. Or, one might instead argue that this model—in which literary narrative joined up with the program of rights in the service of the preservation of the human against the anti-humanism of modern politics and capital—went into something like remission for much of the twentieth century, subordinate to other modes of cultural politics, to be reborn at the end of the twentieth century. Arguably, the humanist paradigm on which literature and rights were modeled through the later eighteenth and nineteenth centuries was eclipsed for much of the twentieth century by a social engineering paradigm, heir not of the rights tradition but of the utilitarianism to which rights were opposed. But whether one would wish to argue for continuity or for return, what we can see occurring over the past decade or so is something like a reiteration, through theory and practice, of the humanist union of literature and rights originating in the eighteenth century—and a highly self-conscious one at that. The discursive center of this renewed alliance between literature and rights is not (as in the eighteenth century) primarily among the general readership, but primarily in the academy.[56]

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55. There is a growing body of work on later eighteenth- and nineteenth-century "humanitarian narrative" that takes as inspiration Haskell's "Capitalism and the Origins of the Humanitarian Sensibility." See, for instance, Laqueur, "Bodies, Details, and the Humanitarian Narrative," Gregory Eiselein, *Literature and Humanitarian Reform in the Civil War Era* (Bloomington: Indiana University Press, 1996), and William Morgan, *Questionable Charity: Gender, Humanitarianism, and Complicity in U.S. Literary Realism* (Durham, NH: University Press of New England, 2004). For a very helpful essay on the relationship between narratives of pain and the growth of rights discourse in the abolitionist movement, see Elizabeth B. Clark, "'The Sacred Rights of the Weak: Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *The Journal of American History* 82:2 (Sept. 1995): 463-93.

56. It has so far taken place principally in such sub-fields as "law and literature" and "trauma studies," in both literature departments and law schools. But it has also (in the past decade or so) spread to "cultural studies" as a whole, where even critics whose work might be thought of as emerging from a Marxist critique of culture explicitly hostile to the rights tradition (with its Enlightenment origins) have taken up the task of bringing literature (and allied humanist disciplines)

From the academy, claims for the value of narrative in the service of rights and humanitarian redress have been translated back into the legal and political arenas in which commissions and tribunals are produced.

While one would not wish to draw too artificial a parallel between claims for the necessity of witness storytelling in public venues and their eighteenth-century predecessors, the present is clearly haunted by the past. In today's truth commissions and tribunals, we have a reiteration of the belief in the rationality of the public sphere and its ability to transcend the chaos and violence of the rabble. We have a reiteration of the notion that private and individual traumatic experience must be brought into the public light. We have a reiteration of the view that the authentic narrative voice of the victim both allows the victim the relief of being heard and creates moral demands, which, speaking to the natural compassion of the audience, bring about a kind of societal conversion. We have a belief that the victim's voice can be deployed in the service of a kind of ongoing catharsis that is the basis for the restoration of social harmony. As in the eighteenth century, narrative is seen as the foundation for responsive action and social union that can transcend the alienation of modernity and return us to the human. It is shared suffering, understood through narrative, which reminds us of our common humanity and thus can redeem us from social trauma. There is an element of anti-utilitarianism here, as in the eighteenth century: The tribunals and commissions are less about what they can achieve than they are about the human dignity for which they stand. As in the eighteenth century, the redemptive humanism of narrative here is, like human beings themselves, an end in itself. Narratives of suffering are thus seen as sufficient to the righting of wrongs, whatever their consequences. In the aristocratic rejection of or the eye-for-an-eye exchange entailed in punishment, given up for a kind of *noblesse oblige* grace (if you tell the truth, we will pardon you), there is a

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into the service of rights. For instance, the 1992 Amnesty lectures featured Jacques Derrida, Terry Eagleton, Barbara Johnson, Julia Kristeva, and Edward Said (Barbara Johnson, ed., *Freedom and Interpretation: The Oxford Amnesty Lectures 1992* [New York: Basic Books, 1993]). The 2001 lectures featured Gayatri Spivak and Tzvetan Todorov (Nicholas Owen, ed., *Human Rights, Human Wrongs: The Oxford Amnesty Lectures 2001* [Oxford: Oxford University Press, 2003]). A special issue of *South Atlantic Quarterly* on human rights, published in 2004, contained essays by Derrida, Spivak, Wendy Brown, Bruce Robbins, Avital Ronell, and Slavoj Zizek (*And Justice for All? The Claims of Human Rights*, ed. Ian Balfour and Eduardo Cadava [103:2/3, spring/summer 2004]). Gayatri Spivak has lectured and written widely on human rights in the past few years (for instance, in her lecture on "Human Rights and Humanities," Stanford University 2001) and "Use and Abuse of Human Rights," *boundary 2* [forthcoming 2005], a revision of the Amnesty lecture and *South Atlantic Quarterly* essay). Homi Bhabha's book on "Literature and the Right to Narrate" is forthcoming. Under the aegis of Domna Stanton and Judith Butler, the MLA and the CUNY Graduate Center will be sponsoring a conference on "Human Rights and the Humanities" in October of 2005.

It would be wrong to reduce this work to a uniform current of thought, or to attempt to identify it as an unambivalent heir of the eighteenth-century model of sympathetic humanist narrative-based rights that preceded it, but it does suggest how central this nexus has become to academic cultural and literary studies.

subtle reiteration of the counter-commercial, pseudo-aristocratic paradigms of eighteenth-century literature and rights, even while the institutions that offer such grace are technocratic machines offering their products (narratives of atrocity) to the consumers of sensationalist media.

One might speculate on the reasons that we have returned to these eighteenth-century paradigms. It has been suggested that the proliferation of truth commissions and tribunals is a response to a moment of crisis for the law, produced by a sense of law's groundlessness, its radical contingency, especially when translated into the sphere of the super-state, with its never-fully-legitimized authority. In this context, the victim is responsible for providing an unquestionable ground for the exercise of legal power, and that ground is located in the performance of suffering.[57] Suffering serves to authenticate a set of newly-created and still-somewhat-tenuous legal claims in the domain of human rights (tenuous because difficult legitimize, difficult to prove and difficult to redress). The truth commissions and tribunals share a desire for a form of authenticity represented through the human voice: The voice of the victim offers a kind of truth that documentary evidence, reports, legal determinations cannot provide. Human rights creates a memorial—a sort of Church built on the "Word"—out of speech and the voice (with distinctly religious overtones: The law offers grace through a penitential ritual).

But if narratives of suffering offer legitimacy to international legal institutions in the absence of national or religious authority, they also offer renewed legitimacy to both literature and rights as institutions. Attempting to offer a historical explanation for the recent rapprochement between narrative and rights, we come upon a paradox: The joint project that, in some sense, involves a return to an eighteenth-century paradigm arises, in fact, from crises produced by the exhaustion of the eighteenth-century paradigms that defined each domain. For literary study, one might see the crisis as arising from the obsolescence of the central historical function of literature.[58] With the rise of a global information society, the distinction between (bourgeois) "cultural capital" (in Bourdieu's terms) and other kinds of capital can no longer be sustained. Literary institutions are no longer needed to serve the function they once did—the maintenance of cultural legitimation independent of the aristocracy but unsullied by commerce. This crisis might be seen as having various results. The

57. I am indebted, for these speculations on suffering, voice, and religious grace, to the discussion at the panel on "Legality: Philosophical Approaches to Legal History" at the Law, Culture, and Humanities Conference (Austin, Texas, 16 March, 2001), particularly the comments of Roger Berkowitz, Austin Sarat, and Karl Shoemaker.

58. I am indebted to Guillory's *Cultural Capital*, for many of the points I am making here about the breakdown of the traditional function of literature, the breakdown of the canon, and the turn to non-literary texts.

essentially nation-based definition of culture (culture as national, public property, built on individual intellectual property) begins to dissolve. "Culture," rather than serving as locale of conservationist consensus, becomes a high-profile site of conflict—in, for instance, the "canon wars." The very definition of "literature" (as aesthetic, primarily imaginative writing) begins to dissolve, while the institution of professional literary study remains under siege but intact. As both a reflection of this breakdown and a recourse against it—an attempt to reclaim legitimacy for a culturally delegitimized institution—literary critics look to "non-literary" texts (primarily philosophy and "social texts" in the 1970s and 1980s, primarily political, cultural, and legal texts in the 1990s and the beginning of the twenty-first century). In the most extreme form, this appears as a discrediting of the aesthetic altogether (the aesthetic is identified as a repressive category, relic of a decayed bourgeois attempt to use culture as a stay against political revolution). But the turn toward non-literary texts more often serves as an attempt to revitalize the moribund category of the aesthetic by asserting the special role of aesthetic (literary) theory as an interpreter of the sphere of human moral action. Thus, literature comes to embrace rights—the most successful global moral discourse of the last half-century—in a renewed assertion of its special role as protector of the human against the depredations of the utilitarian calculus.

For human rights, one might hypothesize that this crisis arises because its historical function as a realm of autonomy from mechanisms of exchange has been challenged by its very institutional success in the past few decades. Rights have become part of the technologies of the modern administrative state and super-state, not merely general constitutional provisions to be absorbed into the legal system as a whole, and not merely items of political exchange, but autonomous institutional machines with staffs and big budgets. Rights are no longer pure principles through which we recognize our humanity but a set of institutional names with acronyms: the Human Rights Commission, the Human Rights Committee, an elaborate set of regional court systems, and countless NGOs. Whether or not rights talk maintains the fiction that rights are beyond politics, they are clearly a function of (defined and produced by) the administrative machinery of the international organizational scheme. One might think of early twenty-first-century rights culture, then, as, recapitulating the original double move of eighteenth-century rights culture. On the one hand, in its labor- and capital-intensive institutionalization, it has fully developed the latent promise of its free-trade, capitalist origins. On the other hand, in reaction to the dehumanizing features of such a development, it is attempting to recapture the original humanitarian paradigm on which it was founded in the eighteenth century by reclaiming

a narrative morality based in compassion, pity, and an aesthetics of suffering. The more technologized the institution of rights becomes, the more its proponents must call on narrative and aesthetic values, which recall the "human" that would otherwise seem to be slipping away. The spectacularization of atrocity through the narration of suffering becomes a mechanism whereby rights culture can distance itself from its very institutional success and reclaim its humane origins. Thus, strangely, the legal culture of rights seems to have picked up some of the discarded humanism and aestheticism of literary study—a humanist aestheticism that is, paradoxically, underwritten by literary criticism's interventions into human rights narrative.

In this sense, however different the reasons for the narrative turn in human rights and the turn toward human rights in literary study, they are both institutionally redemptive projects. By channeling rights culture, literary critics not only give voice to the silenced victims of atrocity. They also reclaim literary study's foundering political role and thus redeem themselves from the terrors of insignificance. While human rights is busy redeeming the injustices of violence and history, it can, at the same time redeem literary criticism from the guilt of aesthetic detachment. By channeling literary discourses, human rights theorists and institutional actors not only oppose the blunt machinery of the law (designed to camouflage its in-built injustices) with the truths of the victims' stories. They also reclaim the aesthetic-humanistic heritage of rights and thus redeem themselves from the taint of technocratic trade.

For literary theorists working on human rights, there is a peculiar idealization of political and economic victimhood, as if these could somehow authenticate the project of the humanities generally. For human rights theorists, there is an idealization of "narrative" or "story," which somehow has access to an underlying reality from which more traditional forms of legal analysis are excluded. For those promoting witness testimony as redress, there is a (psychoanalytically inspired) idealization of the healing powers of the narration of the scene of trauma. For some of the most sophisticated contemporary thinkers, there is a (counter-psychoanalytic) idealization of the witness or sufferer's voice. In his *L'humanité perdue* (translated as *In the Name of Humanity: Reflections on the Twentieth Century*) (1996), for instance, the French philosopher Alain Finkielkraut offers a critique of late twentieth-century humanitarianism and a plea for attending to the individual narrative of suffering that, whatever its official stance against the dangers of sentimentalization, might be seen as symptomatic of this blind idealization of the authenticity

of the suffering voice.[59] If the (Marxist and Fascist) ideological critique of sentimental individualism ended up producing the horrors of the twentieth century, in Finkielkraut's view, large-scale humanitarianism is an attempt at compensation: "It was in the name of ideology that we once refused to be taken in by suffering. It is in opposition to suffering and all the misery in the world that we now refuse to be taken in by ideology." But the humanitarian embrace of the task of combating suffering merely recapitulates the early twentieth-century ideological depersonalization of the human: "[The humanitarian generation] continues to think ideologically. [It] does not like men—they are too disconcerting—but enjoys taking care of them."[60]

Drawing on Hannah Arendt's critique of the anti-humanistic legal technologies of the modern state (in *The Origins of Totalitarianism* and *Eichmann in Jerusalem*), Finkielkraut denounces the dangerous generalization of "humanity" inherent in humanitarianism, founded on a sentimental idea of the unified "cry" of the suffering: "[T]he rescuer without borders embraces all silent calls of distress, subjecting them to no preliminary cross-examination"; the humanitarian generation likes "humanity," but "doesn't like men." In the first half of the twentieth century, "historical reason was used to stifle sentimental reason," explains Finkielkraut. "Now the heart, not history, guides the way, giving emotions their rights once again." "Victims call out in a single voice," he writes derisively, "and that voice does not lie."[61] While he repudiates, then, the simultaneously sentimental and impersonal technologies of twentieth-century humanitarian aid, Finkielkraut also takes an ironic stance toward the eighteenth-century culture of pity, quoting sympathetically Goethe's mocking description of humanitarianism (in 1787): "I must admit that I too consider it true that humanity will finally be victorious, but I also fear that the world will turn into a vast hospital and each of us will become the other's human nurse."[62] He notes Rousseau's sardonic comment on the fact that, while we give in to identificatory pity when we see our neighbors' throats cut under our windows, "man has only to put his hands to his ears and argue a little with himself, to prevent nature, which he has shocked within him, from identifying itself with the unfortunate

59. Alain Finkielkraut, *In the Name of Humanity*, trans. Judith Friedlander (New York: Columbia UP, 2000). My discussion of Finkielkraut and Arendt is indebted to Mark Antaki, "The Discourse of Humanity in Law: Humanity and / as Positive Law" (Law, Culture, & Humanities Conference, March 2001, Austin, Texas).

60. Finkielkraut, *In the Name of Humanity*, pp. 94, 91.

61. Finkielkraut, *In the Name of Humanity*, pp. 91, 87.

62. Johann Wolfgang Goethe, *Selections from Goethe's Letters to Frau von Stein, 1776-1789*, ed. and trans. Robert M. Browning (Columbia, N.C.: Camden House, 1990), p. 294; quoted in Finkielkraut, *In the Name of Humanity*, p. 89.

sufferer."[63]

And yet Finkielkraut begins to diverge from Arendt's arguments about the limits of compassion as the basis for political change in ways that seem to me importantly indicative of his absorption in the historical moment. For Arendt, one of the central lessons of the French Revolution was that pity, or the "sentiments of the heart," compelled by the representation of suffering, can inspire only a dangerously lawless humanitarianism.[64] For her, the narrowness of compassion lies precisely in its fixation on the individual story—its inability to see the whole. Compassion (the moral drive behind humanitarianism), she writes in *On Revolution*, "by its very nature, cannot be touched off by the sufferings of a whole class or a people, or, least of all, mankind as a whole." To deal with large-scale suffering, one needs politics rather than narratively-induced and individually-directed compassion:

> Because compassion abolishes the distance, the worldly space between men where political matters, the whole realm of human affairs, are located, it remains, politically speaking, irrelevant and without consequence. . . . As a rule, it is not compassion which sets out to change worldly conditions in order to ease human suffering, but if it does, it will shun the drawn-out wearisome processes of persuasion, negotiation, and compromise, which are the processes of law and politics, and lend its voice to the suffering itself.[65]

For Finkielkraut, on the other hand, what is dangerous in humanitarian action is in fact the very thing that Arendt values—its response to the unarticulated cries of a whole class or people. For Finkielkraut, to respond to the unarticulated cry of the class subordinates actual men to abstract humanity: "'Water! Water!'—this primitive cry is what passes for *logos* today, the cry of an undifferentiated mass of humanity." "This generation has turned off the sound on the cries of misery. . . . No need to listen, for the will to live is simple." In other words, rather than worrying (as Arendt does) that compassion produced by individual humanitarian narrative blinds one to the suffering of an entire class, Finkielkraut worries that the large-scale, technologically sophisticated response to the suffering of an entire class blinds one to the particular suffering of the individual. What is

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63. Jean-Jacques Rousseau, *The Social Contract and Discourses*, trans. G. D. H. Cole (London: Everyman's Library, 1973), p. 75 (*Discours sur l'origine et les fondements de l'inégalité parmi les hommes*); quoted in Finkielkraut, *In the Name of Humanity*, p. 88.

64. "The direction of the French Revolution was deflected almost from its beginning from this course of foundation through the immediacy of suffering; . . . it was actuated by the limitless immensity of . . . the pity that misery inspired. The lawlessness of 'all is permitted' sprang here still from the sentiments of the heart whose very boundlessness helped in the unleashing of a stream of boundless violence." Hannah Arendt, *On Revolution* (Middlesex, England: Penguin Books, 1973), p. 92.

65. Arendt, *On Revolution*, pp. 85-6.

wrong, for instance, with the doctors who work for *Médicins sans frontières* is that they are busy trying to save lives:

> The global doctor . . . does not . . . car[e] very much . . . about who the suffering individual is—about his being or his reason for being, the world he wants to build, the causes of his persecution and suffering, the meaning he gives to his history and perhaps to his death. Save lives: that is the global mission of the global doctor. Attending to anonymous people in desperate situations, the humanitarian generation is motivated by principles of caution, not brotherly love.

One needs, in other words, to show that one cares by listening to the stories of the suffering. But, tragically, the humanitarian "is too busy feeding rice to hungry mouths to listen to what these mouths are saying. Words do not concern him. He turns his attention to murdered populations, not to eloquent voices."[66]

This is, of course, precisely what the various truth commissions and tribunals purport to offer their audiences: Victims and perpetrators get an opportunity to tell their stories and undergo either ritual healing or the ritual purging of sin; audiences get to experience the narrative pleasure of "eloquent voices." (It is a perplexing by-product of the commissions that, while it is their task precisely to distinguish victim from perpetrator, they tend to blur this line, in the manner of most confessional-conversion modes: When the perpetrator tells his story and undergoes conversion, declares his repentance, reveals his own suffering for what he has done, he can be made one with the victims.). Critics have often complained that the work of both commissions and war crimes tribunals are "merely symbolic" (in their failure to punish the large numbers of people responsible for the atrocities, in their singling out of an exemplary few). But their proponents at the same time claim their symbolic function as their central virtue. Individual narrative becomes, simultaneously, the "telling of one's story" (whose absence Finkielkraut so bemoans in the work of *Médicins sans frontières*) and humanitarian cultural memorial, answering to the recurrent post-Holocaust call "never to forget" (in what, to my mind, is a significant under-valuation of forgetting).[67]

Few would wish to stand against truth. And to create a space for victims

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66. Finkielkraut, *In the Name of Humanity*, pp. 89, 91.

67. Mark J. Osiel, meditating on forgetting in Nietzsche, Breuer and Freud, has written eloquently on this: "Overburdened by the weight of a catastrophic recent history, we are sometimes better off to forget. Nietzsche was surely right that 'life in any true sense is impossible without forgetfulness . . . . We must know the right time to forget as well as the right time to remember, and instinctively see when it is necessary to feel historically and when unhistorically.' . . . Obsession with memory can be as perilous as its repression, anamnesia as problematic as amnesia. 'Hysterics,' Breuer and Freud noted, 'suffer mainly from reminiscences.'" Osiel, "Ever Again: Legal Remembrance of Administrative Massacre," *University of Pennsylvania Law Review*, vol. 144 (Dec. 1995), pp. 570-1.

to tell their stories seems, at the least, harmless enough, and potentially of supreme importance to the moral education of humankind. But whether or not post-atrocity narrative in fact serves truth or moral education is an open question. It is not my purpose, here, to reiterate the detailed critique of truth commissions and other testimonial venues that have found their way into the scholarly literature in recent years.[68] But it is worth reminding ourselves that narratives (both those of victims and those of perpetrators) are produced, in part, by the expectations of the tribunals that give them voice. That exchanges of narrative for Amnesty seem hopelessly corrupt. That there can be only the most tenuous argument for a relationship between the experience of witnessing testimony and moral choice in a moment of trauma and crisis. Back in 1754, Rousseau recognized the limits of a sense of moral obligation based on narrative stimulus ("Man has only to put his hands to his ears and argue a little with himself. . . ."). While elaborating the general arguments of eighteenth-century humanitarianism in his moral theory, Adam Smith (drawing on Hume) similarly saw how limited were sentiments of humanity, generated by narratives of catastrophe, in producing moral action:

> Let us suppose that the great empire of China, with all its myriads of inhabitants, was suddenly swallowed up by an earthquake, and let us consider how a man of humanity in Europe . . . would be affected upon receiving intelligence of this dreadful calamity. He would, I imagine, first of all, express very strongly his sorrow for the misfortune of that unhappy people. . . . And when all this fine philosophy was over, when all these human sentiments had been once fairly expressed, he would pursue his business or his pleasure, take his repose or his diversion, with the same ease and tranquility, as if no such accident had happened. . . . If he were to lose his little finger to-morrow, he would not sleep tonight; but . . . he will snore with the most profound security over the ruin of a hundred millions of his brethren.[69]

The epidemic of storytelling that has come to rights culture and literary theory's claim that it can offer rights a narrative foundation may indeed be a curative return, one that both mobilizes compassion and serves as an art

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68. For general critiques of the truth commissions and similar post-atrocity narrative venues, see Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America," *Law & Social Inquiry*, vol. 20, no. 1 (Winter 1995), pp. 79-116; Margaret Popkin, *Truth without Justice* (University Park, PA: Pennsylvania State Press, 2000); Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 2000); and the essays in Rotberg and Thompson, eds., *Truth v. Justice*.

69. Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Oxford: Clarendon Press, 1976), pp. 136-7 (Bk III, Ch 3, §4). And see David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and P. H. Nidditch, 2nd ed. (Oxford: Clarendon Press, 1978), p. 416 (Bk II, Pt 3[3]).

of healing. But it may be one that—precisely by drawing on the suppressed paradigm at the origins of humanitarian rights—merely offers hysterical repression a ritual expression. It may be a way of focusing on our little fingers at the expense of the global corpus (with its dreary impersonality), or at the expense of getting down to the complicated technical business of saving lives. It may be a sentimental and eviscerated displacement of other kinds of work: the rebuilding of cities and farms; the fixing of broken bodies; the sad policing of still-unquiet violence.