

After the Law: Towards Judicial-Visual Activism

by

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Declaration of original authorship

'I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.'

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Abstract

Law and art are oftentimes perceived as standing in opposition, and even seen in conflicting terms. The first is dismissed as provincial, rigid, and bureaucratic, while the latter is repeatedly characterized as global, flexible, and dynamic. Yet, closer observation and analysis reveal hidden links and layers, and substantial preoccupation by both legal and art practitioners in the visual and in the judicial. It is through the unraveling of spaces, gaps, and lacunae in which both fields of practice and knowledge intersect that this publication sets in motion an exploration of influences and interactions between law and art.

Offering a new critical approach and methodology to deal with existing and imagined relations between law and art, this publication analyzes curatorial and artistic projects by revealing overlooked legal dimensions embedded within them. It introduces legal theory and scholarship in relation to visual artworks in order to expand and foster new paths for both judicial and visual activism. Based on the reassessment of artistic and curatorial capabilities and encounters in a time of globalization, it is concerned with broadening our perception of the role of art and legal practitioners with regard to justice.

Following an introduction of Nancy Fraser's three-dimensional concept of justice, and Saskia Sassen's notion of capabilities in a world shaped by the dual existence of the nation-state and globalization, Chapter One focuses on the 7th Berlin Biennale as a curatorial case study for political and artistic activism, and on “Artist Organisations International” (AOI) as an example of artist-created institutions concerned with political activism.

Two artistic projects that premiered during the 7th Berlin Biennale are then critically examined in Chapters Two and Three. An in-depth exploration of Yael Bartana's First Congress of The Jewish

Renaissance Movement in Poland (JRMiP) as a space prompting global justice is the focus of Chapter Two. The building of a Parliament in Rojava by Jonas Staal's New World Summit (NWS) as an artistic reinvention of the Right of Intervention is the concern of Chapter Three.

Judicial-visual activism is further developed in Chapter Four through an inquiry into the theory of the emergence of disputes, and the Right of the Encounter in relation to artistic actions taking place in state institutions. Chapter Five contains a reflection on my own recent curatorial projects dedicated to encounters that I facilitated between legal and art practitioners. The result of these encounters led to the exhibition *Motions for the Agenda* structured around five motions/projects developed in a collaboration between the participants dealing with legal texts and documents, just as with the place of law, its language, and its archive.

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Introduction

1. The Fictive-Witness: An Early Curatorial Proposal

At the center of this research lies an interest in exposing and exploring the complex relations that arise when law and art are brought into close proximity. In order to facilitate the intersection of knowledge and practice of two different fields, and examine its outcomes, I have chosen to follow a threefold methodology. The first phase, manifested in Chapters Two and Three, begins with a quest to unravel already existing, but mostly hidden or seldom acknowledged, legal components in artistic and curatorial projects with which I have been professionally involved. The second phase in the executed methodology focuses on linking law and art through legal interpretative methods. This suggests that legal theory and scholarship can be used in discursive and interpretative manners when we critically analyze contemporary works of art. Based on the developments in the first two stages, the third phase leads us into curatorial practice as it sheds light on measures I refer to as judicial-visual activism. With this stage, I shall seek to demonstrate how one might be able to cultivate a position in which art activates a position alongside, after, and possibly beyond existing legal concepts and institutions.

My preliminary assumption when embarking on this research was that a growing number of contemporary artists, long recognized for their activism and politically engaged art, might hold a certain affinity with the legal field. This understanding has been based on almost a decade of working as a curator with artists such as Yael Bartana and Jonas Staal. Researching their work alongside the work of other artists with whom I have collaborated, such as Aernout Mik, Public Movement, and Lawrence Abu Hamdan, I came to realize that this inclination, this interest in law and the legal sphere on the part of artists, has rarely been critically explored, or thoroughly

observed and reflected upon. This led me to acknowledge the long journey I myself had had to make, from studying and practicing law before changing my trajectory into the art world. It was only during the process of working and writing the curatorial text for my first large-scale museum exhibition titled *A Generation*¹ that I began to comprehend the lingering influence of my legal studies and several years of practicing law on my curatorial work.

It is worth noting that none of the works in *A Generation* dealt consciously with legal matters. The starting point was rather an investigation of mechanisms employed by contemporary artists when dealing with private and historical events. I delved into this topic after coming to learn of a video work by Frédéric Moser and Philippe Schwinger titled *Acting Facts* (2003). Based on testimonies of both victims and victimizers of the My Lai massacre in Vietnam in 1968, I aimed at furthering my investigation into the inherent tension signaled in the video's title: between *acting* and *facts*. With an emphasis on video and film works, the exhibition was intended to discover the space between illusion and truth as it is manifested in works in which the borders between the private and the public, between facts and fiction, have evolved into the creation of a new sensitivity of our perception of the world. *A Generation* drew inspiration and theoretical ground from two main publications: Giorgio Agamben's *Remnants of Auschwitz: The Witness and the Archive*,² and Shoshana Felman and Dori Laub's *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*.³ What struck me at that time as most relevant to my

¹ *A Generation*, 25.3.2010 – 26.6.2010, Petach Tikva Museum of Art, Israel. Participating artists: Rosa Barba, Yael Bartana, Martin Dammann, Ohad Fishof, Sirah Foighel Brutmann, Eitan Efrat and Daniel Mann, Aernout Mik, Frédéric Moser and Philippe Schwinger, See: <http://petachtikvamuseum.com/en/Exhibitions.aspx?eid=1246>.

² Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive* (New York: Zone Books, 2002).

³ Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (New York and London: Routledge, 1992).

curatorial practice was the relentless, unsolvable paradox of witnessing. In his renowned book, Agamben touches upon the impossibility of bearing first witness to the abyss of Auschwitz. Even though Holocaust survivors struggle to give an account of and bear witness to the horrific conditions they had been forced to endure, witnessing encounters a great deal of limitation. By stating that, “Those who saw the Gorgon, have not returned to tell about it or have returned mute,”⁴ Agamben concludes that most survivors testify more so indirectly, or by proxy. Shifting this notion to the creative process, it was Felman and Laub who claimed that writers and filmmakers hold little or no choice after the horror of the Holocaust but to testify and bear witness, for if not they risk committing perjury.⁵

In a challenge to myself and to the visual artists I invited to participate in the exhibition, I aimed for the exhibition to be a space in which one could actively propose and seek alternative practices of witnessing. Wishing to fill in the void, the gap, the lacuna of the witness as exemplified by Agamben, Felman, and Laub, I coined the term “*fictive witness*.” It was an attempt to describe the position and the role taken up by visual artists – expanding the field of reference beyond writers and filmmakers to which Felman and Laub refer – when investigating events of which they had either very little recollection, or at which they had no possibility of being present in the first place. By doing so, by suggesting a term in which the fictive and the witness enmesh into one, in which illusion and the real are united as one, I tried to join the imaginative with reality. Proposing artists as fictive witnesses, I curated the exhibition as a space through which one could question and engage in the presumption that artists might hold a key to understanding and reflecting on situations in which the act of witnessing is impossible. As I stated then in the catalogue

⁴ Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, p. 33.

⁵ “To commit perjury” are the words of writer Elie Wiesel quoted by Shoshana Felman at the beginning of her essay “In the era of Testimony: Claude Lanzmann's Shoah,” *Yale French Studies* 79 (1991): 39.

accompanying the exhibition, the quest was to unravel artistic creation as a “means to draw nearer to the inconceivable, to that which may only be imagined.”⁶ Suggesting a role and position for artists as fictive witnesses, I endeavored to connect fiction and reality as a manner through which to approach the paradox of witnessing via the curatorial and the artistic.

In the preliminary research for the exhibition, I came upon a much earlier example of the complexity embedded in the act of witnessing. I found that the problem of the witness arises already in rabbinical interpretations of the Bible. In the Book of Genesis, the following sentence appears: “Lord came down to see the city and the tower, which the children of men builded.”⁷ The need for God Almighty to descend and bear witness to the work of men also puzzled the Jewish Sages of the Mishna, Tosefta, and Talmud eras. God's need to bear close and personal witness was an indication to the Sages of both the importance and complexity of any given testimony. It is therefore not surprising that already in biblical times it was established that there was a need for more than a single witness: “At the mouth of two witnesses [...] shall the matter be established”⁸ in order to come to a just verdict.

2. Truth and Falsehood in the Era of the Witness

Returning to more recent times, by famously declaring the post-World War II era as the “era of the testimony,” Felman has immanently linked art and law. In her revolutionary research on witnessing, literature, and trauma, Felman has established the legal and artistic essence in bearing witness. At the very beginning of an essay by Felman that preceded her publication with Laub,

⁶ Avi Feldman, *A Generation*, Petach Tikva Museum of Art, 2010, exhibition catalogue, p. 55.

⁷ Gn 11:5.

⁸ Deut 19:15.

she articulated the act of bearing witness as an act of speaking the truth, be it “before a court of law or before the court of history [...] as the narrative account of the witness is at once engaged in an appeal and bound by an oath.”⁹ Following Felman's steps, I also referred to a ruling by a court of law in the exhibition as an entry point for my exploration of the artist as a fictive witness. In the context of *A Generation*, I was particularly interested in finding legal precedents in which a court had had to make judgments on such issues. The case of the film *Jenin, Jenin* (2002) directed by Mohammed Bakri, banned by the Israeli Film Ratings Board (IFRB), had proved to be such an occasion. It was the first film in almost two decades to be censored in Israel, evoking a great public debate.¹⁰ Eight out of the eleven members of the IFRB voted to ban the film that portrayed the “Battle of Jenin,” a deadly fight between Israel Defense Forces and Palestinians in the Jenin refugee camp in the West Bank (April 1-11, 2002). In order to overturn the decision by the IFRB, the case was brought to Israel's High Court of Justice (HCJ). In the verdict given by Justice Dorner (ret.), we learn that one of the main reasons given by the IFRB was that they found the film to be “a distorted presentation of events under the guise of documentary truth potentially misleading to the public.”¹¹ Justice Dorner's decision against the IFRB begins with a quote taken from Maimonides in which he stated: “Through the intellect man distinguishes between the *true* and the false.”¹² According to the HCJ ruling, it is not in the authority of the

⁹ Shoshana Felman, “In an Era of Testimony: Claude Lanzmann’s Shoah,” *Yale French Studies* 79, Literature and the Ethical Question (1991), p. 39.

¹⁰ Regretfully, nowadays censorship in Israel is once again taking center stage, as the Ministry of Culture is headed by an ex-chief censor and spokeswoman for the Israel Defense Forces.

¹¹ HCJ 316/03. Translated by Daria Kassovsky for the catalogue. The verdict can now also be found in English translation: http://elyon1.court.gov.il/Files_ENG/03/160/003/115/03003160.115.pdf. For verdict (in Hebrew): <http://elyon1.court.gov.il/files/03/160/003/115/03003160.115.HTM>.

¹² Moses Maimonides, *The Guide for the Perplexed*, trans. M. Friedlaender (London: Aeterna Press, 2015), Pt. I, Ch. 2.

IFRB to embody the intellect given to humans. Justice Dorner clearly expressed that it did “not lie within the competence of the censorship board to determine what is true and what is false. It is not equipped to do so, nor does it have a monopoly over the truth.”¹³

The verdict, thus, demonstrates the deeply shared engagement of both law and art in the complexity of distinguishing between truth and falsehood, reality and illusion. Even when taking into account the prevailing discussions on the autonomy of art, or of art as opposing and negating the rule of law, the issues of truth and non-truth, of reality and fiction, contentiously bind them together. Felman and Laub do not shy away from the difficulty in distinguishing between the real and the imagined. By claiming that, after the Holocaust, artists have no other choice but to engage with the act of witnessing in order to rethink history and historical events, they indicate that it is exactly in the impossibility of bearing full witness where the strength and commitment of testimony endures. The truth of testimony “engaged in an appeal and bound by an oath” comes about exactly in the moment when the court (just as in the case of the Eichmann trial to which Felman refers) willingly “embraces the vulnerability, the legal fallibility, and the fragility of the human witness. It is precisely the witness's fragility that paradoxically is called upon to testify and to bear witness.”¹⁴

3. From the Era of the Witness to the Era of the Forensic

In more recent years, the conclusion reached by Felman has been challenged through the research and writing of Eyal Weizman. In *Forensic Architecture: Notes from Fields and Forums*, Weizman

¹³ HCJ 316/03. Translated by Daria Kassovsky for the catalogue. Link to verdict (in Hebrew): <http://elyon1.court.gov.il/files/03/160/003/115/03003160.115.HTM>.

¹⁴ Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), p. 134.

stated that the era of the witness has possibly reached its end, to be replaced by the forensic era.¹⁵ In these notes, Weizman does not mention Felman, but in an earlier text written together with Thomas Keenan,¹⁶ Weizman refers to her directly. In that essay, Keenan and Weizman define the time scale of Felman's era of the witness as beginning with the Eichmann trial in 1961, and ending with the discovery of the skull of Josef Mengele in 1985. Tracing the story behind the finding of Mengele's skull, they put forward the incident as the founding moment in the creation of a forensic sensitivity. According to this, testimonies and evidence should be an outcome of a forensic scientific investigation in contrast to the fragile, uncertain, difficult-to-believe, and proven spoken testimony of the witness. Keenan and Weizman mention “DNA, 3D scans, nanotechnology, and biomedical data” that, when examined in relation to a person's biography based on physical and medical records as instruments, can provide much more reliable, truthful evidence in the courtroom. In other words, the two main differences between the era of the witness, and the era of the forensic, can be summed up as follows: first, a move from an oral testimony to an object of evidence; second, a shift from the fragmented, inconsistent testimony of the event, to a reconstructed, coherent narrative of the affair. If, in the era of the witness, it is the fractured quality that provides an oral testimony with legal and moral accountability, in the era of the forensic it is the scientific promise of a higher probability of speaking the truth that determines the quality of the evidence. Nevertheless, Weizman and Keenan realize there is a further (and risky) step that needs to be taken when oral testimony is being replaced by an object. Unlike a witness's testimony, which can be directly heard, the forensic object of evidence needs a

¹⁵ Eyal Weizman: *Forensic Architecture, Notes from Fields and Forums*, dOCUMENTA (13): 100 Notes, 100 Thoughts #062 (Ostfildern: Hatje Cantz, 2012), pp. 5-6.

¹⁶ Thomas Keenan and Eyal Weizman, “Mengele’s Skull,” *Cabinet* 43, “Forensics” (Fall 2011), accessed July 1, 2019 http://www.cabinetmagazine.org/issues/43/keenan_weizman.php.

mediator in order to bear witness. The forensic investigation requires, thus, either a voice or an image in order for it to be presented in court and/or to the general public. We can “never really overcome the complexities of the subject, the ambiguity of language, and the fragility of witness memory,”¹⁷ writes Weizman, and hence we end up once again within the complexity of testimony.

4. The Unraveling of the Legal in Art

At this point, the methodology I put forward at the beginning of this introduction comes into play. According to this, an investigation of art and of curatorial projects for their legal components is an alternative path that can be said to lie between the solutions to the crisis of witnessing as studied by Felman, and the movement towards the forensic as maintained by Weizman. I wish to position my research, as it is put forward in this publication, as a third option: a path that seeks to underscore the possibility of an artwork, or an art project, as holding and embodying legal grounds and qualities. It suggests that there is a need for a preliminary stage when considering the legal: a stage in which art is a source for the reflection and the creation of legal justice, rights, and institutions through artistic and curatorial theory and practice. This aspect is mostly neglected by both Felman and Weizman, as they fail, to my understanding, to consider art, and art practitioners, as having capabilities¹⁸ to create legal space and content on their own merits. As such, Felman and Weizman engage with art and the curatorial mostly as ancillary contributions and resources in any given legal context. Weizman acknowledges the role of art in questioning the concept of truth, but while he claims that, “We want to show another possibility of art—one

¹⁷ Eyal Weizman, *Forensis: The Architecture of Public Truth* (Berlin: Sternberg Press, 2014), p. 10.

¹⁸ I use here and in the rest of this book, as will be explained in detail in Chapter One, the term “capabilities” as a descriptive form similar to that suggested by Saskia Sassen, and not in the manner suggested in the capability approach of Martha Nussbaum. See: Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2008), p. 8.

that can confront doubt, and uses aesthetic techniques in order to interrogate,”¹⁹ in reality the use of art and the curatorial in Forensic Architecture remains instrumental.

In contrast to this, by juxtaposing a trial staged by Dada a century ago in Paris with an artistic congress created by Yael Bartana based on a fictive movement calling for the return of more than three million Jews back to Europe, Chapter Two of this publication aims at challenging our perception of legal justice as it is performed and manifested in art. It begins by underlining and contextualizing the artistic and historical landscape in which the Trial of Maurice Barrès came to fruition. Devoting significant contemplation to the influence the Dreyfus trial had on Dada, I have aimed at marking and underpinning the legal quality that surrounded the Dada trial and that was evoked by its initiator André Breton. Against this backdrop, I was able to critically confront two very different artistic means of expression and conduct. Identifying the legal influences of Dada as a connecting point with Bartana's Congress allowed me to explore both projects' interest in judicial activism and justice.

By doing so, I have chosen an experimental, at times perhaps even speculative, methodology of interpretation – one that reaches out and expands the initial artistic creation by shifting it onto new legal horizons not regularly imagined or assigned by the artist. The process of engaging the work of Bartana with real and fictive trials never before discussed in relation to her work had a surprising effect. Having worked with Bartana on several projects since 2007, I also served as an assistant director for a performance in 2010 that preceded the Congress. However, it was only a couple of years later, in the process of doing research for my dissertation, that I began to trace and acknowledge the overlooked significance of the historical trials of Alfred Dreyfus and Émile

¹⁹ Hili Perlson, “The Most Important Piece at documenta 14 in Kassel Is Not an Artwork. It’s Evidence,” *Artnet*, June 8, 2017, accessed August 5, 2017, <https://news.artnet.com/exhibitions/documenta-14-kassel-forensic-nsu-trial-984701>.

Zola on Bartana's performances. The legal undertones never before explored in Bartana's work assisted me in establishing a rooted historical and political comprehension and perception of the Congress as I linked it also to the writings of Jacqueline Rose, Hannah Arendt, and Bernard Lazare. In the chapter dedicated to this exploration, I set in motion a discovery of legal characteristics and capabilities from Dada to Bartana in order to cultivate a legal positioning of art that may hold a realization that escapes the capacities of both witness testimony and the forensic object. The research presented herewith brings art to the forefront, as I question and extract artistic capabilities to change and re-imagine justice and the legal system.

5. The Unraveling of Art Through the Legal

Dwelling on possible hidden legal components in the artistic and the curatorial leads to the second phase of the suggested methodology: the unraveling of art through legal scholarship. This stage complements the first one, as it further emphasizes the legal capabilities embedded in art. It also demonstrates the shortcoming of artistic capabilities, and especially of political and social art, when the legal remains marginal, unnoticed, and discarded. I aspire to do so mostly in Chapters Three and Four through engaging with the work of such artists as Jonas Staal, Mierle Laderman Ukeles, Ruti Sela, and Lawrence Abu Hamdan, along with the writings of legal scholars. In Chapter Three, it is especially the groundbreaking essay by legal scholar Catharine A. MacKinnon with which I attempt to approach Jonas Staal's New World Summit (NWS) and its exploration of terror and of the legal and political condition of the stateless. The linking suggested by MacKinnon, between women's rights and the "war on terror" following the events of 9/11, provide me with profound insights into Staal's engagement and intervention in the autonomous region of Rojava. The legal sphere is not foreign to Staal, who has been working

regularly with legal practitioners since the first summit of the NWS, and beforehand.²⁰

Nevertheless, the proposed juxtaposition of Staal's work with legal theory shall provide new elements for interpreting his political and artistic action in the context of international law and human rights.

In the case of Mierle Laderman Ukeles, the legal work of scholars William L.F. Felstiner, Richard L. Abel, and Austin Sarat has provided me with a legal methodology and terminology through which to suggest the capability of an artwork to name, blame, and claim justice. Their theory on the emergence of disputes encouraged me to investigate whether the framing they proposed can be implemented in art as well. The process they established in the perception of individuals towards experiences of injustice resonated with me when I began to research the work of Ukeles. From her manifesto for maintenance art from 1969 to her residency at the New York City Sanitation Department, I questioned whether one could link her act of naming of her injurious position as a maintenance artist to a legal theory of dispute. Working as part of a statutory bureaucratic environment was the initial motivation that drew me to further investigate Ukeles' work. Finding that her decades of work as part of the New York municipality did not yield a legal interest in Ukeles, similar to what I saw in art and legal scholarship, provoked me to attempt to formulate an entry point into this for myself. A recently published work by legal scholar Itamar Mann on a relatively new field of legal research – the right of the encounter – turned out to be a fruitful entry point to assessing Ukeles' oeuvre. The notion of the encounter, which has also been explored by art scholars, as in the work of Griselda Pollock that I discuss in this chapter, further

²⁰ In his new essay for the *OnCurating* issue that I edited, Staal writes about his first encounter with the Dutch legal system following charges against him filed by Geert Wilders, leader of the Dutch ultranationalist Freedom Party (PVV). See: Jonas Staal, “Law of the State, Truth of Art. Two Case Studies of Art as Evidence,” *OnCurating* 28, *Imagine Law* (January 2016).

connected Ukeles' work to that of Ruti Sela and Lawrence Abu Hamdan. The demand that arises in the event of the encounter, and the duty one has when facing the other, is discussed at length in Chapter Four as I endeavor to underscore the right of the encounter as a mutual ground for both art and law.

The above-suggested unraveling and interpretation of law *in* art is indebted to earlier influential accomplishments that began in the 1970s with the establishment of the field of law and literature. To my understanding, Shoshana Felman's use of literature as an entry point to the law cannot be fully contextualized without acknowledging James Boyd White's publication from 1973, *The Legal Imagination*. White is "arguably the modern law and literature movement's founder,"²¹ and it is intriguing to note, especially in the context of art, his attempt to establish imagination as a vital component of legal theory and practice. Trying to break away from the common dichotomy of law as either a set of rules or a set of policies, White argues that law's power is to be found in its language. He goes further to state that, "For me the law is an art, a way of making something new out of existing materials – an art of speaking and writing [...] this book accordingly addresses its law student reader 'as an artist.'"²² White's research has led to the evolution of a movement in which law *in* literature and literature *in* law have been the main two trajectories of interest of scholars of both literature and the law. Through concepts of theoretical interpretation, storytelling, and narrative, a flourishing common ground that connects from within the two fields has been recognized and studied.

²¹ Robin West, "Communities, Texts, and Law: Reflections on the Law and Literature Movement," *Yale Journal of Law and the Humanities* 1 (1988): 129. For further reading on earlier research on law and literature, see, for example: John Hursh, "A Historical Reassessment of the Law and Literature Movement in the United States," *GRAAT On-Line* 14 (June 2013).

²² James Boyd White, *The Legal Imagination* (Chicago: The University of Chicago Press, 1985), xiv.

To continue momentarily with White, one cannot escape the realization that at times his arguments of law as a field, in which differing voices, languages, and cultures must integrate through the legal text, seem naive and even misleading. In my recent curatorial practice, to which Chapter Five is devoted, I have related to White's writings by giving the encounters I initiated between legal and art practitioners the title of "Towards Legal Imagination." It was an attempt to re-think White's legal imagination by acknowledging what numerous scholars poignantly demonstrate, that is, it is oftentimes that the language of the law hides more than it wishes to expose. Bruno Latour eloquently stated that law is manifested through an abundance of texts that "are omnipresent, and the subject matter is invisible."²³ It is in the language of the law, argues lawyer and activist Avigdor Feldman, where voices outside of the closed circle and class of legal practitioners are constantly being eliminated. His essay, discussed in Chapter Four, was translated into English for the first time on the occasion of Issue 28 of *OnCurating* that I edited in January 2016 as part of my research.²⁴ I will be following Feldman's understanding in relation to the work of Lawrence Abu Hamdan, as he demonstrates how "rules of relevance, laws of evidence, and inadmissibility of hearsay" are all part of the "acoustic insulation"²⁵ that, along with the architecture of the court space, eliminates the voices of those located on the margins of society.

6. Legal Imagination and Artistic Imagination – On the Side of the Countryman

²³ Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Cambridge, Malden: Polity Press, 2010), p. 129. In *Humor, Irony and the Law*, Gilles Deleuze poignantly writes: "Clearly THE LAW, as defined by its pure form, without substance or object or any determination whatsoever, is such that no one knows nor can know what it is. It operates without making itself known." Gilles Deleuze, *Masochism: Coldness and Cruelty*, trans. J. MacNeil (New York: Zone Books, 1991), p. 83.

²⁴ See Appendix.

²⁵ Avigdor Feldman, "The Sirens' Song: Speech and Space in the Courthouse," *OnCurating* 28 (January 2016): 64.

Hence, between White and Latour, Felman and Feldman, I aspire in this publication to walk in the shadows of the seen, just as in the margins of the hidden, as I account for the ideological apparatuses that shape our consciousness and our perception of law, justice, and art. In the suggested methodology, in which one reads and activates art through the lens of the legal, I seek to open new corridors through which knowledge and practice from both fields can intersect. It is a game of attraction and repulsion that exists between the law and art, as legal scholar Sabine Mueller-Mall suggests.²⁶ Mueller-Mall's examination deliberately calls for a confrontation between the law and art from which mutual and reciprocal attributes arise from within, thereby providing a route for artistic and legal imagination to be manifested. The seeming separation between law and art, broken only rarely by scholars and mostly in relation to literature, theater, and film, is thus being contested and challenged by expanding the scope of research into the realm of contemporary visual art. Second, the pendulum movement suggested in this study – a movement from law to art and back to law – is directed towards the act of imagining from within, alongside, beyond, outside, and without existing legal institutions. The entanglement of law and art is intended to envision law beyond both the repressive and ideological legal apparatuses.

In this context, I wish to briefly conclude by considering Franz Kafka's story "Before the Law" published in 1915, which continues to be relevant in terms of our perception of the law to this very day. I will return to this story in Chapter Five, but for now it is sufficient to contemplate Kafka's man from the country who wishes to enter the law, but ends up for the rest of his life remaining before the law. When voicing a request to enter the law, the man is confronted with a doorkeeper who, if following Louis Althusser's notion of ideology, can be said to represent the repressive state apparatus. No measures of force need to be implemented from the doorkeeper's

²⁶ Sabine Mueller-Mall, "LAW/ART: Constructive Interferences," *OnCurating* 28 (January 2016): 6-13.

side, as it is clear that the ideological state apparatus has already interpellated the man from the country. The man from the country is a subject of the law, since “ideology has always-already interpellated individuals as subjects, which amounts to making it clear that individuals are always-already interpellated by ideology as subjects, which necessarily leads us to one last proposition: individuals are always-already subjects.”²⁷ This is evident because even when the law is invisible – represented in the story only via a gate – and even when the gate of the law remains clearly open, the man from the country obeys the gatekeeper as he awaits his time to enter the law. This indicates the force of the law, since even when living in the country, where the law does not seem to hold a physical presence, state ideology controls the man who is subject to the rule of law prior to his actual standing before the law. “The law, he thinks, should surely be accessible at all times and to everyone,”²⁸ writes Kafka, providing the reader with an insight into the thoughts held by a man who has been interpellated to become a subject of state ideology and its hegemonic power. As a result, his conviction in the accessibility of the law will be held by him to his death even when never being granted entry to the law.

Jacques Derrida, in a lecture dedicated to Kafka’s story, draws our attention to the title of the story in which, according to his reading, being *before* the law suggests being *outside* of the law as well. Derrida claims that the position of being before the law, or outside of the law, is an

²⁷ Louis Althusser, *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 1971), pp. 175-6. A similar conclusion can be reached by following Jacques Derrida's understanding of the enforceability of the law. “The word ‘enforceability’ reminds us that there is no such thing as law (*droit*) that doesn’t imply in itself, a priori, in the analytic structure of its concept, the possibility of being ‘enforced,’ applied by force.” See: Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld, David Gray Carlson (New York: Routledge, 1992), p. 6.

²⁸ Jacques Derrida, “Before the Law,” in *Acts of Literature*, trans. Avital Ronell and Christine Roulston, ed. Derek Attridge (New York: Routledge, 1992), p. 183.

indication that, “He is neither under the law nor in the law. He is both a subject of the law and an outlaw,”²⁹ which is similar to the conclusion that can be reached by Althusser's study of ideology. Moreover, writes Derrida, this condition is true to both the doorkeeper and the man. Both are before the law, or might we say outside of the law. Yet, the two do not seem to be able to share an alliance, since the gatekeeper, even when remaining outside of the law, serves the repressive state apparatus. Through Derrida's reading of Kafka, we are left to assume a full surrender on the part of the man from the country when standing in relation to the law. As the story goes, not only will he end up never being admitted into the gate of the law, but before his death he will learn that the gate he waited before was meant especially, and only, for him to enter. Before he dies, the man from the country is left only to hear the gatekeeper telling him that, “I’m going now to close it.”³⁰

The cruel ending of the story prompts the reader to contemplate whether the lifelong waiting before the law was entirely in vain. This position leaves little, or none whatsoever, chance to think or imagine a state of being *after* or *beyond* or *without* the law. Yet, what if we read an active resistance to the law in the life of the man from the country? What if the life and the endless waiting of the man were not only a purposeless exercise of power? By this, I wish to add the possibility of an action that might come as the outcome of the man's initiative to stand before the law. In this, I follow Giorgio Agamben's reading of the story, and his disagreement with Derrida regarding the interpretation of the ending of the story. According to Agamben, the closing of the gate does not necessarily indicate an event that did not happen. Rather, he suggests, the insistence of the man to sit before the law, and even to die before the law, should be seen as a planned

²⁹ Jacques Derrida, *Acts of Literature*, p. 204.

³⁰ Franz Kafka, “Before the Law,” trans. Ian Johnston, accessed August 3, 2017, <http://records.viu.ca/~johnstoi/kafka/beforethelaw.htm>.

strategy in its own right. The closing of a gate, which Kafka writes “stands open, as always,”³¹ is perceived by Agamben as an active intervention through which the man is able to “interrupt the law's being in force.”³² With the possibility of this interpretation in mind, I wish to suggest the reading of the following research as a contribution to the realizations of strategies of interrupting and intervening in the law in an attempt to imagine a time and place with, beyond, and after the law. I endeavor to do so through the intersecting of law and art, as I attempt to diverge and expand the road paved by scholars of law, literature, art, philosophy, and sociology. It is an attempt that does not overlook its preliminary and fundamental limitations, yet continues to struggle for justice in positioning itself on the side of the man from the country who sacrificed his life in order to think, imagine, and experience institutions that are serving justice after and beyond the law of the nation-state and its prevailing ideology.

³¹ Jacques Derrida, *Acts of Literature*, p. 183.

³² Giorgio Agamben, “The Messiah and the Sovereign,” in *Potentialities: Collected Essays in Philosophy*, ed. Daniel Heller-Roazen (Palo Alto, CA: Stanford University Press, 1999), p. 174.

Chapter One: From Visual and Judicial Activism to Artist Organizations: Justice in Times of Globalization

1.1 Between Visual Activism and Judicial Activism

The April 2016 issue of the *Journal of Visual Culture*,³³ which followed a symposium at SFMOMA in March 2014,³⁴ was dedicated to the term “Visual Activism.” In an art world saturated with debate and action aiming at the political and the social, the symposium and publication were an attempt to offer new terminology and definitions, while also proposing some sort of unification of ideas and concepts. In the introduction to the journal, the editors – Julia Bryan-Wilson, Jennifer González, and Dominic Willsdon – clarify that they have borrowed the term from the South African photographer Zanele Muholi.³⁵ In her renowned work, photographing herself alongside her partner, Valerie Thomas, in a setting that exudes a mundane domesticity, she invokes us to reconsider how we define both visual and activism. Considering the segregated history of South Africa, the photo series *ZaVa* (2013-) of black and white women sharing daily, intimate moments in the private surrounding of their bedrooms, the editors argued for a new, more subtle reading of activism.³⁶ They endorse a wide range of interpretations for visual activism, seeking to connect the abundant uses of “social practice” or “socially engaged

³³ Themed Issue on Visual Activism, *Journal of Visual Culture* 15(1) (April 2016).

³⁴ “Visual Activism,” Symposium at SFMOMA, March 14-15, 2014.
<https://www.sfmoma.org/event/visual-activism>.

³⁵ “We take the term visual activism directly from Muholi, and we credit her for inventing this phrase as a flexible, spacious rubric to describe her own practice, which documents and makes visible black lesbian communities in South Africa.” Julia Bryan-Wilson, Jennifer González, and Dominic Willsdon, Editors’ Introduction to Themed Issue on Visual Activism, *Journal of Visual Culture* 15(1) (April 2016), p. 7.

³⁶ “A different modality of visual activism – one perhaps less immediately readable as ‘activism’ in a narrow sense[...].” Ibid., p. 6.

art” with a term that connects activism with the visible. Maintaining a sense of openness and ambiguity that does not examine activism based or depending on an end goal, the editors advocate a visual activism as all non-neutral art directed towards tackling economic, social, and political matters; an attempt to redefine and re-establish the limits and scales of both activism and the visual.³⁷

An essay by T.J. Demos published as part of the journal³⁸ further clarifies the term “visual activism,” claiming that it “refers to politically directed practices of visibility aimed at catalyzing social, political, and economic change.”³⁹ The pairing of the visual with activism, argues Demos, also contains within it a certain amount of unease. It is especially true in our times, in light of “mediatized social fragmentation, migrant images capable of endless reformatting, and compromised arenas of presentation (especially commercial galleries and corporate websites) riven by conflicting interests.”⁴⁰ In the current situation in which one can either join the neoliberal economy or attempt to leave it completely, states Demos, visual activism runs the risk of being an empty rationalization of any possibility of achieving or prompting social justice. Demos ends his essay by quoting John Jordan, who is one of the initiators of The Laboratory of Insurrectionary Imagination (Labofii).⁴¹ Jordan poses a relevant question, to my understanding, for curators, activists, and artists alike: “Are museums public spaces that can become alternative common spaces of debate and action planning to reclaim the rights of the city, or are they palaces carefully

³⁷ Ibid., p. 8.

³⁸ T.J. Demos, “Between Rebel Creativity and Reification: For and Against Visual Activism,” *Journal of Visual Culture* 15(1) (April 2016).

³⁹ Ibid., p. 86.

⁴⁰ Ibid., p. 87.

⁴¹ <http://www.labofii.net>.

engineered for us to play the fool in, whilst outside the kings and queens continue to play Russian roulette with our future whilst enriching theirs?”⁴² Jordan's question resonates with me, as I shall continue in the following pages to contemplate and expand the notion of visual activism in relation to large-scale exhibitions and biennials that have been dramatically growing in numbers worldwide in the last couple of decades.⁴³

Yet, shortly before doing so, it is worth noting that to legal practitioners the term visual activism might bring to mind a much debated legal concept – judicial activism. Not unlike the term used in the art world, the legal one also requires further clarification, as oftentimes its meaning is disputed and misunderstood. The term was coined by the American historian Arthur Schlesinger, Jr. in 1947, who did not offer a clear definition.⁴⁴ This did not deter the term from powerfully emerging so as to hold ground to this very day, shaping much of the discourse regarding judicial power and influence. Since its first use in 1959 in a judicial opinion by a United States federal judge, the term continues to draw differing opinions. As legal scholars have shown, the ambiguity of the term allows both liberals and conservatives a broad interpretation that culminates in an overuse and abuse of the term.⁴⁵ The suggested analogy between judicial activism and artistic

⁴² Ibid., p. 98. Taken from John Jordan, “Part 1 - A is for Artwashing, B is for Bicycle, C is for Commune, Art & Activism in the Age of the Anthropocene,” *Films for Actions*, October 8, 2014, accessed June 13, 2017, <http://www.filmsforaction.org/articles/art-and-activism-in-the-age-of-the-anthropocene/>.

⁴³ For more on the subject: Tim Griffin, “Global Tendencies: Globalism and the Large-Scale Exhibition,” *Artforum* 42(3) (November 2003).

⁴⁴ See: Craig Green, “An intellectual History of Judicial Activism,” *Emory Law Journal* 58(5) (2009): 1200–09; 1195.

⁴⁵ As stated by Corey Rayburn Yung, “The term normally has been overwhelmingly loaded with negative connotations.” They also quote Chief Judge Frank Easterbrook referring to it as “that notoriously slippery term” ending with the fact that, “The concept has not been effectively measured and studied throughout the federal court system.” See: Corey Rayburn Yung, “Flexing Judicial Muscle: An Empirical Study of Judicial Activism in the Federal Courts,” *Northwestern University Law Review* 105(1) (2011): 7-8.

activism holds, in my opinion, a promise for the future, as it demands us to recalibrate whether and how these categories might still be essential to both contemporary law and art. “Activism is a helpful category in that it focuses attention on the judiciary institutional role rather than the merits of particular decisions. Activism goes to essential questions about the role of the judge in our democratic order.”⁴⁶ In a similar manner, I shall be devoting much attention in this chapter to the position of the art institution and of the artist in an attempt to portray an overall picture of visual activism in our time. By suggesting a constant and reciprocal exchange and immersion of legal terminology, concepts, and scholarship into the artistic and the curatorial and vice versa, I shall attempt to broaden the scale of reference and offer new perspectives on a much debated concept. Identifying and proposing new meanings and relevance to activism in art through linking it to law and the legal sphere articulates the need to reassess artistic activism, as it exposes a legal dimension in art rarely conceived of. The quest to find the space, or perhaps the gap, between legal and artistic activism might begin by realizing that both are multidimensional. Both are “failing to follow textual meaning, departing from history or tradition [...] using broad remedial powers [...] issuing an opinion inconsistent with prior precedent [...] creating new rights or theories, altering prior doctrines or interpretations, establishing substantial policy, and failing to use an accepted interpretative methodology.” These are some of the most essential components of judicial activism according to Corey Rayburn Yung.⁴⁷ After deducing some specific legal elements from the expanded list given by Yung, such as “overruling actions by other federal branches,” or “failing to follow an originalist view of the Constitution,” one begins to notice possible shared categories for identification between the two sorts of activism. A subsequent

⁴⁶ Ibid., p. 9.

⁴⁷ Corey Rayburn Yung, “Flexing Judicial Muscle: An Empirical Study of Judicial Activism in the Federal Courts,” p. 10.

statement by Yung further clarifies this reading: “Judges are activists when they substitute their judgment in place of that of other significant actors. When judges do not follow prior precedent, they are placing their judgment above that of prior courts. When judges strike down legislation, they are similarly placing their judgment above that of legislators. And when judges seek to achieve certain policy results regardless of doctrine, they put their judgment about what is ‘right’ above what various other actors believe the law to be.”⁴⁸ Is that not what artists and curators are attempting to achieve in their political and/or social work? Are they not constantly being criticized for taking upon themselves the role of governments, social institutions, or NGOs? Are they not oftentimes perceived as forcing their judgment above that of others? One might agree or disagree with the merits or legitimacy of this tendency, yet one cannot ignore the expansion of art into the political and legal spheres.

Visual and judicial activism can be fruitful keys through which art and legal practitioners may challenge history and tradition, cultivate and imagine new means of power, and break from previous structures by manifesting new means for the making of judgments and by creating new legal rights. Judicial and visual activism confront existing laws, rituals, doctrines, and policies as they prompt new interpretations of the political, social, and economic. Catalyzing social, political, and economic change, either through artistic or legal practice, perpetuates a struggle to construct new paths for thought, speech, imagination, and action. Activism in law and in art maintains that both fields have the ability to break away from existing norms when confronted with injustice, inequality, or injurious circumstances. The upcoming chapters will be devoted to exposing, mapping, and examining spaces and sites from which visual and judicial activism can be operating based on mutual positions. I shall argue that when law and art actively make a

⁴⁸ Ibid., p. 12.

commitment to social justice, they attempt to occupy a space previously maintained by other actors. It is a space in which visual activists or judicial activists seek to position their work, views, or judgment above, beyond, and after that of prior generations of people and institutions. When visual activism joins forces with judicial activism, even on limited grounds and for a limited time, it may hold a substantive subversive power with regard to the law, the legal system, and justice. The realization of that “which operates without making itself known,”⁴⁹ as Gilles Deleuze defined THE LAW (capital letters in the original text), suggests that the visual may place itself above the law, above the legislator, above prior precedents, above previously made judgments, and above existing policies, once it begins to realize the need to make the legal known, to make the legal visible, to mark its significance in what Hannah Arendt defined as the space of appearance that “comes into being wherever men are together in the manner of speech and action.”⁵⁰

1.2. The 7th Berlin Biennale: Between Debate and Action

Now, let us return to John Jordan's criticism of art institutions. I find that it is poignant and relevant in the case of the 7th Berlin Biennale, as the Biennale was premised on an exploration of artistic activism from within a political sphere. In the following pages, I will explore whether it was able to turn itself into a space for debate and action or, rather, to use Jordan's metaphor, it maintained the role of the fool. My suggested reading of the Biennale, its ambitions and failures, will assist me in proceeding to explore questions of law and justice in the era of globalization in relation to contemporary developments in both curatorial and artistic platforms.

⁴⁹ Gilles Deleuze, in *Masochism: Coldness and Cruelty* (New York: Zone Books, 1991), p. 83.

⁵⁰ Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1998), p. 199.

It is widely agreed that the curators⁵¹ of the Biennale positioned their curatorial endeavors as part of an overall attempt to support and play an active role in the global movement for social change.⁵² Conceived during the volatile time of global demonstrations that were demanding in-depth reforms in politics and the economy, spanning from the Arab world to the Middle East, Europe and North America, the Biennale opened its main space at the KW Berlin to a number of Occupy Movement members and other affiliated organizations.⁵³ Under the title “Forget Fear,”⁵⁴ the curatorial team led by Artur Żmijewski manifested a determination to engage in political actions through art. It began with several preliminary projects that took place ahead of the opening of the Biennale, and continued throughout the months of the Biennale in selected venues around Berlin. The motivation of the Biennale can be summarized using the words of the curators as an intention to “present art that actually works, makes its mark on reality, and opens a space

⁵¹ Artur Żmijewski invited associated curators Warsza, Oleg Vorotnikov (a.k.a. Vor), Natalya Sokol (a.k.a. Kozljonok or Koza), Leonid Nikolajew (a.k.a. Leo the Fucknut) and Kasper Nienagliadny Sokol from Voina, to work in collaboration with him on the Biennale.

⁵² It is worth mentioning that, in July 2012, just as the Berlin Biennale came to its conclusion, Carolyn Christov-Bakargiev, the artistic director of *dOCUMENTA (13)*, also decided to welcome the local Occupy movement representatives and their tents into the main square of documenta in Kassel. Yet, in contrast to the Berlin Biennale, the separation between the curated exhibition and the Occupy group was strongly maintained. “dOCUMENTA (13) Artistic Director Welcomes the ‘Occupy’ Movement,” dOCUMENTA (13) News Archive, July 8, 2012, http://d13.documenta.de/#/press/news-archive/press-single-view/?tx_ttnews%5Btt_news%5D=159&cHash=e26d0c1a6f7cd3f67904003cbb2aeb33.

⁵³ “...the grand non-project of the Biennale—Indignados | Occupy Biennale—that is, the presence of members of Occupy, 15M, as well as other movements in the exhibition hall of KW [...]” See Artur Żmijewski, “7th Berlin Biennale for Contemporary Politics,” <http://blog.berlinbiennale.de/en/allgemein-en/7th-berlin-biennale-for-contemporary-politics-by-artur-zmijewski-27718>.

⁵⁴ The notion of forgetting as a structural curatorial proposal is worth further research, which is beyond the scope of this thesis. Only recently, curator Adam Szymczyk also proposed forgetting and unlearning as keys to understanding and experiencing *documenta14*. See Hili Perlson, “The Tao of Szymczyk: documenta 14 Curator Says to Understand His Show, Forget Everything You Know,” *artnet news*, April 6, 2017, <https://news.artnet.com/art-world/adam-szymczyk-press-conference-documenta-14-916991>.

where politics can be performed.”⁵⁵ This was manifested by inviting artists alongside representatives of the Occupy Movement to exhibit and to physically be present at the main venue of the Biennale. Utilizing the space of the KW in a manner that allowed art objects to be exhibited along the ongoing presence of “Occupy” activists, the Biennale was an attempt to position artists and activists on mutual shared ground.

Yet, this effort is especially questionable when one realizes that there was a de facto clear separation throughout the Biennale between the “Occupy” activists and the “artists” in terms of discourse, space, and action. Situated in the main ground floor space of the KW in Berlin the “grand non-project of the Biennale —Indignados | Occupy Biennale,” “members of Occupy, 15M, as well as other movements”⁵⁶ were invited to use the space as they, presumably, saw fit. From possible contemplation to engagement with visitors or simply among each other, the curators announced in advance their intention to maintain a non-interference approach. For them, the mere presence of Occupy in the Biennale defied any exhibition logic and forms of curating.⁵⁷ According to Żmijewski, “Out there, among the people discussing their participation in the Biennale, radical democracy, based on participation, is already taking place.”⁵⁸ For him, what should be cherished as the main goal of the curatorial effort was the effort “to open access to performative and effective politics that would equip we ordinary citizens with the tools of action and change.”⁵⁹ Art, he proclaimed, should be understood and consequently used as one of the

⁵⁵ Artur Żmijewski, “7th Berlin Biennale for Contemporary Politics.”

⁵⁶ Ibid.

⁵⁷ “Their presence goes beyond the logic of the exhibition. It is a situation that we don’t curate, supervise, or assess.” Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

available tools for creating and advancing transformative change in society today. Furthermore, the epilogue text of the Biennale as it appeared on its website suggested that its greatest success was in the fact that it has sparked an unprecedented amount of debate. “More discussion than even before”⁶⁰ announced the headline, highlighting an aim to achieve political influence through long-lasting processes in which the Biennale is only serving as a first or rather partial platform for further reflection and action. Yet, and to go back shortly to Jordan's question, was the Biennale able to link debate with action? In other words, can museums, or biennials, or other large-scale exhibition formats flourishing worldwide bring together debate and action in a political sense, or are we doomed to play the fool in the hands of “the kings and queens”?

I am of the opinion the Biennale failed in being a political platform that enhanced visual activism due to the fact that the notion of justice was not seriously tackled and implemented. The question and demand for social justice was the point of departure for the Biennale, yet a thorough acknowledgment of the part of justice in “social justice” was not observed. I argue, along other critics, that the structural division constructed by the Biennale between participants of the Occupy Movement and the visual artists prevented any debate from elevating into possible action. Critic Ana Teixeira Pinto asks the question, “If true art is the art of direct action, why are the ‘activist’ artists neatly distinguished from the ‘artist’ artists? Why is it that the logic of distribution of ‘speech’ and ‘noise’ inside the biennial so clearly dovetails with the logic of power outside the biennial?”⁶¹ The split between the “artists” and the “occupy” resulted not in negation of the establishment, she states, but rather the opposite. It is a confirmation of existing power structures and not a call against them as, “The exhibition leaves everything in its proper place:

⁶⁰ “The 7th Berlin Biennale—More Discussions Than Ever Before,” <http://blog.berlinbiennale.de/en/1st-6th-biennale/7th-berlin-biennale>.

⁶¹ Ana Teixeira Pinto, “7th Berlin Biennale,” *art-agenda*, April 27, 2012.

speech and noise, power and protest, cruelty and kitsch [...] incapable of begetting political articulation, and, if anything, it reinforces the established order, or what Rancière called the order of the ‘police.’”⁶² It has proven how an invitation by a biennial culminates in a powerful castration effect of all parties involved. The invitation of the “Occupy” group into the exhibition space of the KW ended up narrowing, if not completely eliminating, the political and social outreach of the movement. As noted by Steven Henry Madoff, the result was “transforming the actualization of politics embodied by the real actors of the Occupy movements into play acting, into—in the well-worn phrase—the aestheticization of politics.”⁶³ No sign of art’s “tools of action and change” against governments and institutions is to be found in the Biennale according to Madoff. No sign for a revolution besides as a slogan welcoming visitors into the space of the KW. According to Madoff, “What Żmijewski serves us is the opposite of radical provocation,”⁶⁴ as instead of radical thinking he surrenders to the same economy and *en vogue* curatorial practices he claims to be against. In the self-imposed comparison offered by the Biennale between the “artists” and the “Occupy” movement, Madoff finds the Biennale to be just “armed but not dangerous,” as no artwork presented holds “societal impact [...] equal to the Occupy movements or the revolutions of the Arab Spring.”⁶⁵ The potential in fostering a bond between Occupy and art by the Biennale failed, or perhaps was never taken as a serious proposition by the curators.⁶⁶

⁶² Ibid.

⁶³ Steven Henry Madoff, “Armed, But Not Dangerous: The Berlin Biennale’s ‘Forget Fear’ Exhibition is Fearfully Forgettable,” *Modern Painters* 24(7) (2012): 92.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ “Forget Fear ‘a disaster’ based on a curatorial that took its cue from the Occupy and the Los Indignados movements, holding BB7 up as proof that art is incapable of extending or facilitating the development of political movements. Rather, art had capitalized on politics instead, reducing Occupy to a fetish object uncomfortably reinforced in the camp’s placement at the rear basement of the KW Institute of

By considering the relation between the visual and the judicial, between art and justice and the legal system, I wish to propose a manner in which art holds equal ground with the political. I shall demonstrate in this chapter and in the following ones that without a thorough acknowledgment of the legal sphere, most, if not all, political action or debate runs the risk of falling short. Without considering the possible link between visual and legal/judicial activism, most, if not all, curatorial attempts to define and demand political artistic activism will fail to deliver on its initial promises. Examining the Biennale through judicial-visual activism shall direct us toward realizing that the separation is not a symptom but the issue itself.

1.3. The Three Dimensions of Justice

Taking the Biennale as a case study, the first step should be addressing the fact that social justice was understood in its narrow sense. More accurately, I argue that thinking through and with judicial-visual activism demands us to begin with a broader understanding of the meaning of justice. I find that Nancy Fraser offers one of the more intriguing readings of justice as she has expanded her own initial definition of it in recent years. If, in the past, Fraser advocated for a two-dimensional justice, in recent years she has written extensively on the need to redefine justice as a three-dimensional concept. Justice, states Fraser, is the ability to participate and interact in all aspects of social life. Injustice, thus, can be overcome when institutionalized barriers in the form of maldistribution and/or misrecognition are dismantled. The problem of maldistribution is the economic dimension of justice rooted in the social class structure.

Misrecognition, on the other hand, is the cultural dimension of justice that stems from the status quo. The two dimensions of justice – recognition and distribution – correlate, yet Fraser now

Contemporary Art.” See: Stephanie Bailey, “The Fear of Failure,” *Metamodernism*, July 24, 2012, http://www.metamodernism.com/2012/07/24/the-fear-of-failure-on-politics-and-non-politics-in-the-7th-berlin-biennale-and-documenta-13/#_ftnref.

comes to the conclusion that each alone, or together, cannot give a whole account of justice. In relation to the Biennale, I find that the separation between the artists and Occupy was an attempt to provide the latter with recognition (by a major art platform and affiliated institutions, direct interaction and participation with new publics, press, etc.) and new means of distribution (financial funding from the Biennale, free space for activities, press and publications, etc.). In other words, the Biennale provided the Occupy with new economic and cultural structures, as justice is perceived as a two-dimensional concept.

Nancy Fraser admits in her book, *Scales of Justice*, that for quite some time she was convinced that these two dimensions of justice were sufficient to “supply the necessary levels of social-theoretical complexity and moral-philosophical insight.”⁶⁷ Nowadays, states Fraser, there is a need to reassess our notion of justice, and as a result she has begun to advocate for the necessity to add a third dimension to it – the political. In the following pages, I will go further into the reasons for this change; however, for my discussion here on visual and judicial activism, and without diminishing the political aspects of distribution and recognition, it is worth noting that with the third dimension Fraser added the level of jurisdiction to the discussion: “I mean political in a more specific, constitutive sense, which concerns the scope of the state's jurisdiction and the decision rules by which it structures contestation.”⁶⁸ According to this, questions of distribution and recognition are decided upon and are played out in the frame constructed by the political dimension, which Fraser identifies as the dimension of representation. Matters such as exclusion from the political community, an equal voice, and the opportunity to take part in public decision-making are all issues of representation considered by Fraser under the political dimension of

⁶⁷ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2010), p. 17.

⁶⁸ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, p. 17.

justice. Therefore, concludes Fraser, there is “no redistribution or recognition without representation.”⁶⁹ Adding the political to justice as a dimension of representation is both the concern of the visual and of the law. Two projects that premiered during the Biennale will lead us from the curatorial to art projects as case studies for questions of representation, justice, and the legal sphere.

1.4. Artist Organisations International: Two Case Studies

Against the backdrop of the criticism I expressed regarding the Biennale, two projects in particular, which were based outside of the main venue of the Biennale, prove to hold a key to cultivating a political synergy between debate and action, between the visual and the legal, between justice and representation. These two long-term projects, on both of which I will elaborate extensively in Chapters Two and Three, were invited and hosted by the Biennale for the very first time, and were presented at two different theaters in Berlin.⁷⁰ The paths they proposed shed light on the Biennale's shortcomings, while also on the immense potential held initially by the Biennale. The projects are Yael Bartana's First Congress of The Jewish Renaissance Movement in Poland (JRMiP), and Jonas Staal's New World Summit (NWS).⁷¹ Both also had a visual presence at the KW venue of the Biennale; however, their actions took place in theatrical spaces. The Congress and NWS were curated as part of the Biennale's satellite events that took place a week apart. Both were described by the Biennale as a “contribution to the culture of political debate” as part of the Biennale's line-up of events dealing with influencing reality and

⁶⁹ Nancy Fraser, *Reframing Justice* (Assen: Uitgeverij Van Gorcum, 2005), p. 51.

⁷⁰ Both Congress and NWS had visual presentations at the KW venue of the Biennale; however, their actions took place in theaters away from it.

⁷¹ I will be discussing the NWS more in-length in the next chapter.

society.⁷² While I am surely in agreement on the shared sense of political debate found in Bartana's Congress just as in Staal's NWS, in the following I intend to examine how the artists' intentions and actions go beyond a mere debate, as they seek justice through a re-imagining of the legal frame, and the re-constitution of existing laws. I will demonstrate how these artists have been aiming, each in her/his differing terms and structures, for the creation of artistic and political legal organizations and spaces that challenge existing structures of the nation-state and its legal structures in time of globalization. Whether creating a movement, congress, or a summit, Bartana and Staal manifest an interest in reformulating the relation between art, politics, and the legal realm, albeit using rather different methods. I shall argue that they reach beyond the Biennale's premise as they expand the notion of the visual through what I identify to be judicial-visual activism. The Biennale's curators acknowledged, of course, the political intentions of these projects, but as I will show in the following, they fell short of placing them in a new frame of politics, justice, and law.

However, before offering an analysis of Bartana and Staal's projects, I must position them as part of what I perceive to be a current transitional tendency in which visual activism is being created and operated through the space and format of artist-made and run organizations. My claim follows Sven Lütticken's reading of "social art practices"⁷³ as aiming "to recompose art's relationship to its social basis and organisational structures."⁷⁴ According to Lütticken, recent

⁷² "The 7th Berlin Biennale—More Discussions Than Ever Before," <http://blog.berlinbiennale.de/en/1st-6th-biennale/7th-berlin-biennale>.

⁷³ For a short survey of social art practices from the "new genre public art in the 1990s" to "new communities" of the early 21st century, see: Nina Möntmann, ed., *New Communities* (Toronto: Public Access, 2009), pp. 11-19.

⁷⁴ Sven Lütticken, "Social Media: Practices of (In)Visibility in Contemporary Art," *Afterall* 40 (Sept. 2015).

developments in the art world mark a clear departure from artists' engagement in Institutional Critique as we have known it from the 1960s toward forming "organisations that are (at least partly) based in the art world and its institutional structures, but that are not *art organisations* or *art institutions* — not even alternative ones, in the sense of artist-run spaces."⁷⁵ Contemporary artists, according to him, are formulating an aesthetic practice that allows them to work from "within" via a new mechanism. Unlike before – whether it be "avant-garde attempts to merge art with life and, or on the other hand, Institutional Critique's insistence on operating immanently and critically within the institutional structures of art"⁷⁶ – their presence is from "within" organizations specifically formed to carry out their artistic and political aspirations and actions.

Against this backdrop, a relative recent example of the growing interest by artists in organizations can be found in a conference titled "Artist Organisations International" (AOI).⁷⁷ Initiated by two curators – Florian Malzacher and Joanna Warsza – and an artist, Jonas Staal, it took place in January 2015 at the Hebbel am Ufer Theater in Berlin.⁷⁸ AOI can be perceived as a curated

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Alongside AOI, it is worth mentioning another recent curatorial example: *Making Use – Life in Postartistic Times* is an exhibition curated by Sebastian Cichocki and Kuba Szreder at the Museum of Modern Art in Warsaw (February – May 2016). The exhibition was a large-scale effort to gather in one place over 70 artists, collectives, and social movements, under the title of "pata-institutions." These institutions, according to the curators, are "springing up all over the world like mushrooms after rain. Experimental cooperatives, flying universities, artistic collectives, grass-roots think tanks, hacker coalitions, and so on, encircle the globe in a loose network of connections." The notion of "pata-institutionalism," the curators share with us, is derived from a fictional discipline outlined in the nineteenth century by the French symbolist writer Alfred Jarry. "It is highly likely that today we are no longer dealing with art. We simply overlooked the moment when it transformed into something entirely different, something that already escapes our capacity to name it. Beyond any doubt, what we are dealing with today has a greater potential." "Making Use: Life in Postartistic Times," Muzeum: Museum of Modern Art in Warsaw, <http://artmuseum.pl/en/wystawy/robiac-uzYTEK>; <https://makinguse.artmuseum.pl/en/>.

⁷⁸ Artists Organisations International, <http://www.artistorganisationsinternational.org>.

platform during which, over the course of three days, more than twenty international organizations founded by artists were presented. From “Chto Delat,” founded by a group of artists and writers in Saint Petersburg in 2003, to the Office for Anti-Propaganda founded by Marina Naprushkina in 2007, to the Institute for Human Activities (IHA) founded in 2010 by artist Renzo Martens, to Yael Bartana's Jewish Renaissance Movement in Poland (JRMiP) initiated in 2007, the AOI aspired to demonstrate the phenomena of a growing number of artists, scholars, and activists engaged in a variety of modes of self-created and formed organizations.

The audience who entered the theater were introduced to slogans written in black on a white background adorning the large stage. “Artists Organisations Choose the Form of The Organization,” along with “Artist Organisations Seek Structural Engagement with Social and Political Issues” were some of the banners hanging atop the stage, where representatives from a wide range of organizations spoke, performed, discussed, and argued about the very premise of such a conference and its overly constraining title – “Artists Organisations International.” Thus, if in the case of the Berlin Biennale, it was mainly the job of the Occupy group to define the space, here we have an example of a space being occupied by its curatorial team, in that they welcomed the artists and the public into an ambivalent curated space of politics and propaganda through which the curatorial team manifested a call to catalyze political change through means of visual activism. Unlike the Berlin Biennale, which kept power structures intact, the curatorial decisions – from the conference's title to its logo, banners, chosen phrases, and color design – indicated a desire to create a space reflecting antagonistic positions, creating a temporary space for “agonistic” confrontation. This went on to be the case in the opening remarks of Jonas Staal. In his words, he put forward the question of “Why do or should artists organize themselves?” Connecting recent boycotts initiated by artists from the 19th Sydney Biennale (2014), to

Manifesta 2014 in St. Petersburg, and the call of artists participating in the 31st São Paulo Biennial to withdraw funding received from the state of Israel. According to Staal, these actions come to prove the possibility of artists influencing “institutions to adapt their ethical stances to those of the artists and not the other way around.”^{79, 80} Furthermore, Staal described a recent shift that he and the curatorial team of the conference observed, in which artists are determined to work not on temporary projects, but rather on long-lasting and sustainable infrastructures. He mentions four main characteristics of this rather new artistic phenomenon:⁸¹ 1) artists’ organizations are founded by artists; 2) artists’ organizations choose the form of the organization, which is perceived by Staal as a mechanism that allows for the longevity of the organization beyond and further from the initial idea of the artist him/herself; 3) artists’ organizations seek structural engagement with social and political issues; 4) artists organizations propose social and political agendas. According to Staal, this perceived shift “means that the artist in the first instance no longer makes him or herself dependent on the cultural institutions but first of all organizes him or herself as an institution in its own right.”⁸² He underlines the historical connection of such a shift to Institutional Critique, already proposed by such artists as Andrea Fraser, as he states that the new positioning “is a tool to regain control of the means of

⁷⁹ For a video documentation of the opening of the conference, see: <https://vimeo.com/117264568>.

⁸⁰ Sergio Edelsztein in his article, “Are Boycotts the New ‘Collective Curating’?,” sees in the growing number of recent boycotts a reaction to the growing influence of corporate financing in the art world. Edelsztein denotes boycotts as “nothing more than a withdrawal and is decidedly not a form of activism.” Sergio Edelsztein, “Are Boycotts the New ‘Collective Curating’?,” *OnCurating* 26 (October 2015), <http://on-curating.org/index.php/issue-26-reader/are-boycotts-the-new-collective-curating.html#.VvFnFkewXb0>.

⁸¹ Most of the participants of the conference represented organizations created in the last two decades. Concerned Artists of the Philippines (CAP) is a veteran organization among the rest, founded in 1983.

⁸² From a video documentation of the opening of the conference, see: Artist Organisations International, *Artist Organisations International.1. Propaganda and Counter-propaganda (Part 1)*, January 9-11, 2015. Vimeo video, 1:39:09, 2015, accessed August 8, 2017, <https://vimeo.com/117264568>.

production, distribution, and dissemination of art. It imagines not only an artwork, but it imagines the world in which the artwork ideally operates...it makes a world.”⁸³ One should, of course, ask what sort of a world is Staal suggesting to us? And what world is being imagined by artists’ organizations? The escalating differences among the participants of the conference indicated that in order to imagine and operate in this world, and turn against existing hegemony, there is a preliminary need to confront and accept the antagonism that structures the politics of the different organizations. Unlike the Berlin Biennale, during the three days of the conference, conflicting and opposing voices and forces had a space in which to erupt and engage in a vivid exchange.

From the opening words of Staal to the final debate led by Charles Esche, it was clear that much division and unease existed among the participants of the event. Regardless of the mutual shared title of the conference and the wishes expressed by Staal to find comradeship and exchange among the participants, the difficulty in finding common ground for further collaboration could not be avoided. Esche acknowledged straight on the difficulty of moderating the last session, expressing that his task was “to try and see whether we can come to some sense of exchange...of inevitably different positions.” Wishing not to be deterred by conflicts, he expressed a need, in the spirit of the writings of Chantal Mouffe, to “live within the conflict and see whether the conflict itself can be productive.”⁸⁴ He seemed to have echoed Mouffe's argument against our era of the “post” in favor of taking a stand and establishing what she describes as a “chain of equivalence” among differing parties. In a democracy, Mouffe argues, one should not strive for a

⁸³ “To make a world” is also the title of three-part essay written by Staal between 2014 and 2015 for *e-flux*. For Staal's opening speech, see: Artist Organisations International, *Artist Organisations International.1. Propaganda and Counter-propaganda (Part 1)*

⁸⁴ All quotes are from the video documentation here: Artist Organisations International, *Artist Organisations International. 6. Final Debate*, January 9-11, 2015, Vimeo video, 2:45:40, 2015, accessed August 8, 2017. <https://vimeo.com/118486463>.

simplistic notion of consensus, or for the mere maintaining of the status quo. Rather, one must realize that antagonism is part of the political and its institutions. In this spirit, Esche was determined not to shy away from disagreements and conflicts, or in other words fitting to Mouffe, he opened an agonistic public space during the AOI. “The task for democratic theorists and politicians should be to envisage the creation of a vibrant 'agonistic' public sphere of contestation where different hegemonic political projects can be confronted.”⁸⁵ It is in this sort of created sphere, argues Mouffe, that politics strives and prospers, as it allows differing opinions between adversaries to be confronted as part of a shared democratic frame and platform.

A significant part of the conflicts voiced during the conference derived, according to Esche, from the fact that the artists' organizations presented are diverse and significantly different in their ideology and means of practice. Going back to what he perceives as the conference's organizers' starting point, Esche made clear that the conference itself should only be taken as a (curatorial) proposition. As such, it does not (yet) exist as an organization by its own means, for “there is no membership, there is no organization, there is the potentiality of an organization [...]” In doing so, Esche attempted to respond to those voices that feared that the conference itself wished to become an overall umbrella uniting all artist-run organizations, or even worse – taking over as a superstructure institution. According to Esche, the focus of the discussion should not remain on the level of the conference proposal, but rather on debating what the intention of finding common ground between the differing institutions is: “Is it a ground which would influence the art world, which would influence the structures of the art world, or is it a common ground which will influence the world?” In prompting these questions, Esche refers directly to the need to reflect

⁸⁵ Chantal Mouffe, *On The Political* (London and New York: Routledge, 2005), p. 3.

and operate on the political structure, in which antagonistic dimensions shape the order of politics and its manifestation among the organizations attending the conference.

Alongside this, however, the tension erupting at the conference, in my view, signals a need to go further than this. As much as it can be mediated according to Mouffe's understanding of the political and of politics, and on the phenomenon of artists' organizations itself, it should be perceived as a call to re-investigate the frame itself. And by this, I ask to return once again to Nancy Fraser's definition of justice. As mentioned above, in her more recent research Fraser has argued for the expansion of the scope of justice into a structure made of three dimensions: recognition, distribution, and representation. With the entry of representation into the equation of justice, Fraser is able to address two forms of political injustice of misrepresentation. The first one concerns electoral systems and questions of the parity of minorities, gender quotas, etc. In her writings, Fraser does not elaborate at length on these issues, which she names ordinary-political misrepresentation, or ordinary-political justice.⁸⁶ According to her, the first level is played within the boundaries of the nation-state, or what she calls the Keynesian-Westphalian state. The second level becomes more intriguing as, according to Fraser, it is a form of misrepresentation that goes deeper, requiring a reassessment of the frame of the nation-state itself. Fraser describes this form as "misframing" that touches upon all matters of social justice. Injustice in the case of misframing, or of frame-setting, concerns members, non-members, and those excluded from any given political community. Hannah Arendt's "the right to have rights" is, of course, acknowledged by Fraser, but she argues that we are now confronted with a new phase in the face of globalization. According to Fraser, "It is the misframing form of misrepresentation

⁸⁶ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, p. 19.

that globalization has recently begun to make visible.”⁸⁷ Unlike distribution and recognition, which address the nation-state as the “appropriate unit of justice,” misrepresentation identifies the Keynesian-Westphalian frame as “a major vehicle of injustice, as it partitions political space in ways that block many who are poor and despised from challenging the forces that oppress them.”⁸⁸ It is the frame and the misframing that are called upon for reconsideration in the time of globalization. As I will be demonstrating in Chapters Two and Three, the world in which Yael Bartana and Jonas Staal operate, just as much as representatives from other organizations on various levels, cannot be understood without taking into account the effects of globalization on what Fraser identifies as post-Westphalian order. It is no longer the nation-state at which these artists are aiming, but rather a transnational structure calling for new political formulation and action. And this, to answer Charles Esche’s questions, is the ground that connects artists’ organizations of our time as they aim to tackle both the art world and the world in general. The proposals for new social and political agendas are made by artists who create and run organizations that for the most part operate through a transnational global structure as they take aim at the injustice of misrepresentation derived from misframing.

The tension and process of misframing in a globalized context can be clearly pointed out in Bartana's JRMiP movement.⁸⁹ It was especially poignant in the Congress of Bartana's movement to which delegates from around the world assembled in order to actively engage in worldwide politics. Her meticulous and devoted exploration of the political landscape of the State of Israel

⁸⁷ Nancy Fraser, *Fortunes of Feminism: From Women's Liberation to Identity Politics to Anti-Capitalism* (London: Verso, 2013), p. 197.

⁸⁸ *Ibid.*, p. 20.

⁸⁹ Bartana's next large-scale live performance project “What If Women Ruled the World?” (2017) continues her investigation into global speculative issues as suggested by its title. Here Bartana calls upon a diverse group of women actors and experts to collaboratively solve a global emergency.

since the beginning of her artistic career has grown into a global scale and frame. From her first work titled *Profile* (2000), a one-channel video centered around the profile of one female Israeli soldier's shooting drills, Bartana went on to creating *Trembling Time* (2001) dealing with the moment of silence commemorating Israeli soldiers. Up until 2007, with the making of *Mary Koszmary*, Bartana made more than a dozen other videos, mostly in Israel, which dealt predominantly with the nation's identity in a time of great social and political upheaval. One may claim that Bartana's work, including the *Polish Trilogy*, continues to deal almost exclusively with the Israeli nation.⁹⁰ Nevertheless, it is of importance to note that a shift occurred in Bartana's work since the making of the first video of the *Polish Trilogy*. It marked a transition in her artistic and political aspirations, in which a global, politically active agenda regarding Poland, the Middle East, and Europe as a whole has gradually been brought to the forefront.⁹¹

A similar parallel can be drawn between Bartana and Staal, as he, too, began his artistic work by creating a series of site-specific installations dealing with local Dutch right-wing politician Geert Wilders.⁹² Stepping into the volatile discourse in Dutch society regarding the current state of

⁹⁰ Ariella Azoulay and Adi Ophir's essay is one example of an explicit link made between Yael Bartana's *Polish Trilogy* and the Israeli-Palestinian wars and conflicts. "This is Not a Call to the Dead," <http://yaelbartana.com/text/continuing-to-think-1>.

⁹¹ Following the *Polish Trilogy* of films, Bartana created works such as "Inferno" (2013) about the construction of a third Jewish Temple in São Paulo Brazil, "True Finn" (2014) about Finnish identity, and most recently "What if Women Ruled the World?" (2017), a performance attempting to solve global problems by a group of eleven women.

⁹² The Geert Wilders works (2005-2008) were a series of twenty-one installations mounted in public spaces in the cities of The Hague and Rotterdam. Centered around the image of the populist politician, who became a household name in the Netherlands due to provocative statements made against what he viewed as the "Islamisation of the Netherlands." Staal created installations that can be perceived as anything from a memorial to a space of worship. Anonymously affixing dozens of portraits of Wilders to trees, Staal created a mosaic piece containing all but Wilders's face and upper body. Underneath this image, Staal adorned the ground with a framed photo of Wilders, white flowers, candles, and also a teddy bear. Link: http://www.jonasstaal.nl/tekst/wilderswerkentekst_en.html.

politics brought Staal's installations to the attention of the public, and also a determined reaction by Wilders himself. Fast forward a few years to the creation of the New World Summit, this project — perceived by Staal as an artistic and political organization — continues Staal's political involvement, yet this time on a transnational scale and frame. Financed and supported by, among others, Dutch foundations such as the Mondriaan Foundation, and by such local Dutch institutions as the Museum De Lakenhal in Leiden, or BAK in Utrecht, the concern, motivation, and outreach of The New World Summit now exists by far on a global level. The recent development, as it has been identified by Staal in the creation of the conference Artist Organizations International (AOI), or by Sven Lütticken regarding the transition of artists from short-term projects to creating and establishing their own institutions, must therefore be reflected upon and explained in relation to globalization, which is the most powerful process taking place in this age and time.⁹³ The Summit in Berlin was followed by other summits that took place in Leiden, Kochi, Brussels, Utrecht, and Rojava, the Kurdish autonomous region in Northern Syria. In Rojava, Staal's New World Summit evolved into what Staal depicts to be a public parliament. In the city of Derîk, the artist and his team of collaborators and supporters constructed and offered together with regional and Dutch politicians “a parliament for the Rojava Revolution.”⁹⁴ According to Staal, due to the fact that “Rojava is and wants to remain stateless, it made sense to think of a permanent parliament rather than a temporary one: a parliament for a stateless democracy,”⁹⁵ on which I will expand at length in Chapter Three.

⁹³ I will be especially interested in the effect globalization has had and continues to hold with regard to justice as I follow Nancy Fraser's exploration of justice in a globalized world.

⁹⁴ More on this in Chapter Three. For further general info on the Rojava project, see: <http://www.newworldsummit.eu/wp-content/uploads/2015/10/Project-Statement.-New-World-Summit%E2%80%93Rojava-Part-I-spreads.pdf>.

⁹⁵ Domeniek Ruyters, “Democracy Without the State: Jonas Staal Builds Parliament in Northern-Syria,” *Metropolis M*, Oct. 17, 2015, <http://metropolism.com/features/democracy-without-the-state/>.

Back to the AOI conference, it is worth noting that Esche does not specifically use the word “global.” Yet, he does state that the conference and the attending organizations formulated a quest to find out whether “we have a willingness to build a common ground beyond our specificities.” Climate change, noted Esche, might serve as one example of a critical collective challenge seeking a local and beyond response. He finds another example in the Institute for Human Activities (IHA) by artist Renzo Martin centered around economic inequality in the Congo. For Esche, the “global segregation” brought up by Martin questions whether we can put “aside our differences...and build a common center” for further shared exchange and action. Furthermore, an overview of the organizations participating in the conference shows how many of them are positioned in between the local and the global; in between finding ways to work within and affect local structures, while at the same time operating on a wider, connecting global reach and scale. It is perhaps what the organizers intended when adding “international” to the title, but as I have shown and will continue to do, *global* might be the more fitting term and definition to capture this unique moment and configuration. While the conference stated clearly that it aims to explore “a current shift from artists working in the form of temporary projects to building long-term organisational structures,” it did not pose one crucial question – why now? Why now do we find this movement and change in the motivation and practice of artists as they react to what they perceive to be “today’s crises in politics, economy, education, immigration and ecology.” An answer to “Why now?” cannot be found in the tendency to explain urgent matters as an outcome of a time of “crisis.” As noted by Esche in his opening words of the final debate, there is nothing new in the use of the word crisis. As far as he recalls, the word has been in constant use since he made his first steps in the art world in the 1990s. Yet, the strategies and mechanisms through which artists’ thinking is operating nowadays show an inclination towards a new sort of

organizational structure. Posing the question of why this phenomenon is taking place now can help us, I shall argue, to not only differentiate between the different organizations and deduce more about their motivations, but also mark some common ground between the organizations presented in the conference and beyond it. Based on this exploration, I will be aiming in the following chapters to examine how the current change offers new means of reacting to and shaping our political and legal systems through the creation of new organizations, spaces, and structures for artistic imagination and action.

1.5. Capabilities in a Globalized World

In order to give an account of this, I refer to the work of sociologist Saskia Sassen, especially through a reading of her extensive research on the global and on legal rights.⁹⁶ According to Sassen, we must pay close attention to the transformation that globalization has brought to and continues to hold on the nation-state. The perception offered by Sassen strongly binds the global to the national, as it “is taking place inside the national to a far larger extent than is usually recognized.”⁹⁷ Researching how the global is constituted and emerges from the national, Sassen is advocating against a position in which the relation between the national and the global are portrayed as binary, arguing instead that it is based on continuous interference and power struggles. The dynamic between the two is derived from the tension of denationalization brought upon by globalization, while at the very same time the global “continue[s] to inhabit the realm of what is still largely national.”⁹⁸ This dual existence is what needs to be further analyzed, and to

⁹⁶ Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2008).

⁹⁷ *Ibid.*, p. 2.

⁹⁸ *Ibid.*, p. 1.

some extent unmasked, she claims, since the process itself is often times obscured through entanglement.⁹⁹ It is through creating new mechanisms and a new kind of global logic within the national that allows the global to flourish. “The institutional and subjective micro-transformations denationalization produces frequently continue to be experienced as national when they in fact entail a significant historical shift in the national.”¹⁰⁰ Hence, what Sassen suggests is a study of denationalization in the face of global transformation. It is vital to detect these changes that take place often from within the national while bypassing international treaties, civil society, local legislation, and the executive branch as they establish a new global logic. “Examples are cross-border networks of activists engaged in specific localized struggles with an explicit or implicit global agenda, for example, human rights and environmental organizations.” Sassen, just like Nancy Fraser and other fellow social, legal, and political scholars, does not in any manner discuss art institutions or artists, nor the possibility of visual activism in this context. However, based on the reframing of the nation-state due to globalization, in the following chapters I will suggest ways through which to perceive current developments in the art world as being influenced by and influencing, being shaped by and shaping the changes described by Sassen and Fraser.

“Territory,” “Authority,” and “Rights” (TAR) are three “transhistorical” concepts researched by Sassen in her discussion on the global. These are not inclusive terms for the analysis of the global in relation to the national, and I will add “Justice” and “Law” to them. According to Sassen, “Across time and space, territory, authority, and rights have been assembled into distinct formations within which they have had variable levels of performance.”¹⁰¹ Her main concern is

⁹⁹ The notion of unmaking can be related to Nancy Fraser's reframing terminology. I will be using both as interchangeable in the following pages.

¹⁰⁰ Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages*, p. 2.

¹⁰¹ *Ibid.*, p. 5.

on cultivating methods to study transformations of complex systems.¹⁰² These transformations, according to Sassen, can be identified and explained when one traces certain capabilities that are shared by different systems even as their objectives shift through time and space. In any given system, capabilities change and take on new objectives when a “foundational reorientation in existing systems must occur.”¹⁰³ Along with capabilities, Sassen makes use of two other terms that are tipping points, as well as organizing logics. The use of these terms assists Sassen in focusing not on an outcome, but rather on a critical event/moment/situation capturing the evolution of globalization from within the nation-state. What is crucial to underscore is that a system does not change completely, nor does an order end and a new one begin, but an important point occurs that changes the ongoing system, which still continues to exist. In other words, shifts in capabilities gradually accumulate into a tipping point leading to the creation of a new organizing logic. To put it another way, this investigation is concerned to a large extent with the new organizational logic, or new frame, of justice and law taking place based on certain tipping points due to shifts in capabilities.

Time and again, what is essential for Sassen is to show how globalization as we know it today has achieved its enormous impact due to capabilities of the nation-state. According to Sassen, the authority of the nation-state has been based on legal capabilities, which are not dismissed by globalization, but rather are used to advance a new organizing logic in which national economies are opened up to the global economy. The use of given capabilities, such as the rule of law, in establishing a new organizing logic also needs to be addressed in order to answer a simple yet lingering question – why now? Or, as Sassen puts it, “why the current assemblage did not emerge

¹⁰² Ibid., p. 6.

¹⁰³ Ibid., p. 7.

at the earlier time since key capabilities for global operations were present then. Is it a matter of tipping points?"¹⁰⁴ In general, and certainly in the context of this publication, it is of importance to highlight Sassen's claims regarding the changing capabilities of the law and the legal system. There have been crucial developments since the 1980s, in which there has been "a significant shift of power to the executive, a loss of lawmaking capacities and public oversight [...] partly as a result, a new critical role for the judiciary in both public scrutiny of executive action and lawmaking."¹⁰⁵ The new roles of the legislative branch, the judiciary, and the executive are based, however, on earlier capabilities. As Sassen tells us, the fact that the global is rooted in the national demonstrates how certain capabilities move through time and reconfigure into a new logic, in the way that it is evidently "happening in the current global age when state capabilities historically constructed for the pursuit of national goals today get reoriented toward global projects."¹⁰⁶ Hence, one need not assume that earlier capabilities are overcome, destroyed, or simply erased, but rather the opposite. There has been and continues to be a constant "reorientation of existing capabilities." It is what has enabled the shift into a new logic, leading the denationalization of the nation-state and its capabilities "toward the implementation of global projects."¹⁰⁷

Thus, when we position Sassen's and Fraser's critical analyses in relation to art, we find that the foundational transformation of the art world into a global-scale system is a redefinition of earlier capabilities now gaining new objectives. As I will show in the following chapters, it is not

¹⁰⁴ Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages*, p. 16.

¹⁰⁵ *Ibid.*, p. 17.

¹⁰⁶ *Ibid.*, p. 28.

¹⁰⁷ *Ibid.*, p. 32.

sufficient to analyze how art institutions and artists are working in a globalized world, but it is necessary to engage in a critical manner with the effects of globalization as it redefines and gives new meanings to original artistic capabilities. Art practitioners are a vital part of this transnational structure, which re-directs their capabilities into a tipping point leading to a new organizing logic of their activities in the twenty-first century. As part of this new order, Sassen mentions NGOs and human rights organizations, with which the newly created artists' organizations have significant common ground. In the changes taking place in the executive branch, just as in the legislative branch and the judiciary, Sassen recognizes the formation of new cross-border regimes. It might very well be that artists, along with NGOs and other transnational organizations, are forming new classes of people entitled to specialized statutory and legal protections foremost with regard to a common struggle for justice.¹⁰⁸

Regardless if art practitioners will gain new legal rights or not in any new global logic, it is certain that artistic and curatorial capabilities are being reformulated toward new objectives in which some are directed towards the legal sphere and concepts of justice. Undoubtedly, in recent decades we have witnessed an ever-growing interest and engagement among art practitioners in social, political, and economic terrains and causes. With the crucial judicial transformation and reframing, and the re-reading of justice indicated by Sassen and Fraser, I argue for a tipping point in which the legal system gains further interest and action through artistic and curatorial practice and research. As I have started to indicate and will develop further in Chapter Two, in the case of Yael Bartana's Congress, legal issues are already being tackled, even if mostly indirectly. Also, curatorial platforms in which the political, social, and economic take center-stage while the

¹⁰⁸ For a further debate on this volatile and debated resemblance and connection, please see Chapter Four.

judicial aspect remains neglected, such as the 7th Berlin Biennale,¹⁰⁹ the legal sphere's proximity to all political, social, and economic issues makes a demand on art practitioners of all sorts. As I have begun to show and will develop further in the following, legal matters are already embedded within the artistic and the curatorial, yet they maintain a state that I consider to be one of hibernation. If art wishes to continue and maintain an interest in tackling everyday life,¹¹⁰ it cannot abandon and ignore the legal system that has its roots and branches entangled already within it.¹¹¹ The least art can do is mark law's transparency, its invisibility to opacity, thus enabling a critical approach towards the law.¹¹²

To achieve this, in the following chapters I will explore the unique positioning and the possible opportunities that await art practitioners when working with, or when interpreted through, legal theory, structures, and perceptions. Keeping Sassen's and Fraser's theories as a backbone for my

¹⁰⁹ In the 7th Berlin Biennale's accompanying publication, "Forget Fear," just as in other textual materials, the terms "law" or "legal" or "legality" appear very seldomly and mainly in relation to Jonas Staal's Summit and Khaled Jarrar's *State of Palestine*, which is a declarative project in which the artist created a Palestinian stamp. This was then used to stamp official passports, thus making a claim for Palestinian sovereignty. This is not to say that there are no examples of exhibitions and curatorial endeavors tackling legal issues. My claim is that any platform or project examining political, social, and economic matters cannot exclude a critical examination of legal aspects in relation to art.

¹¹⁰ "Artists now place themselves in the midst of the traffic of everyday life. They can no longer afford to isolate themselves or presume that they are ahead of the changes that are occurring in the world. Their art is formed in the process of working with others and within the institutions of everyday life." See Nikos Papastergiadis, *Spatial Aesthetics: Art, Place, and the Everyday* (Amsterdam: Institute of Network Cultures, 2010), p. 8.

¹¹¹ In her essay for issue 28 of *OnCurating*, Sabine Mueller-Mall discusses what she names the "reciprocal attraction of law and art." Sabine Mueller-Mall, "LAW/ART: Constructive Interferences," *OnCurating* 28 (Jan. 2016), accessed August 8, 2017, <http://www.on-curating.org/issue-28-reader/lawart-constructive-interferences.html#.WH5tnVxMYRY>.

¹¹² Zygmunt Bauman suggested this method with regard to intellectuals "to make this transparency opaque and hence visible and open to scrutiny." See Zygmunt Bauman, *Legislator and Interpreters: On Modernity, Post-Modernity and Intellectuals* (Cambridge, UK: Polity Press, 1987), p. 6.

research, my approach envisions contemporary art research and practice as one that engages with justice and law from within existing institutions and structures while creating new alternative ones. In a world that is shifting direction towards a new organizing logic and a new frame of justice, I disagree with creating a division between operating from within or outside of the nation-state's institutions. I endorse a multivalent standpoint in which artists challenge the framing of existing nation-state institutions through working within them, and through envisioning new structures, frames, and terminology for new institutions and long-term projects to come. In light of the enmeshed relations between the local and the global, and the reformulation of previous capabilities, I find there is no need to take a stance such as Chantal Mouffe, who argues in favor of artistic operations within existing institutions. Posing the question "Should critical artistic practices engage with current institutions with the aim of transforming them or should they desert them altogether?",¹¹³ Mouffe goes against an artistic tendency she observes, in which a withdrawal from working with art institutions is taking place. According to her, there is no way of exiting since "our world" is always constructed through hegemony, since "every order is the expression of a particular structure of power relations." Mouffe has been a longtime advocate for the creation of agonistic spaces, which according to her need to be formed from within existing institutions in order to counter their hegemony. She concludes her argument by declaring that, "Critical artistic practices, in whatever form they are conceived, are no substitute for political practices and [...] they will never be able, on their own, to bring about a new hegemonic order." Also, Mark Fisher and Nina Möntmann argue in relation to Mouffe's essay that the question

¹¹³ All of the following quotes by Mouffe are from: "Chantal Mouffe: Strategies of radical politics and aesthetic resistance," *herbst. Theorie zur Praxis*, September 8, 2012, accessed August 8, 2017, <http://truth.steirischerherbst.at/texts/?p=19>. .

posed by Mouffe is “crucial” especially in times of austerity after the 2008 financial crisis.¹¹⁴

They also support Mouffe’s position when they claim that there is no way out of hegemony, since even such a claim turns quickly into a hegemonic one in the art world. For Fisher and Möntmann, the call to withdraw from institutions eventually plays only into the hands of neoliberals.

Furthermore, they argue that the financial crisis of 2008 has left political parties and ideologies in disarray, which makes them a fertile ground to work within and with, rather than creating opposing institutions. What they suggest is the organization of transnational art networks into “cultural hubs” created and supported by small institutions in order to breathe new air into a “currently decadent parliamentary machine.” They envision a “translocal alternative to capitalist globalization” through the use of an already existing, they argue, critical vocabulary derived from the recent decade of art institutional engagement with political movements, along with ideas formed through “institutional critique” and “new institutionalism.”

The question of whether to work from within or to withdraw will continue to inform, challenge, and disrupt my analysis in the following chapters. Yet, I will argue that Mouffe, Fisher, and Möntmann continuously lean on the past instead of searching for, if not new institutions, then new fields of knowledge and practice that have been traditionally neglected by the art field. One such field is the legal. This is not to suggest that it is the only field that needs to be further examined in relation to art, nor that it may bring with it all the desired solutions. However, the proximity, tension, attraction, negation, and relevancy of the field of law to the field of art need at least to be thoroughly acknowledged and investigated. The observation of the shift in the legislative and executive branches and in the rule of law may serve as far more fertile ground for judicial-visual activism. I argue for the possibility that emerges from new artistic objectives when

¹¹⁴ Mark Fisher and Nina Möntmann, “Peripheral Proposals,” in Emily Pethick, ed., *Cluster: On a Network of Visual Arts Organizations* (Berlin: Sternberg Press, 2014), pp. 171-182.

intertwined with the changing landscape and perception of the legal system. I will suggest that art practitioners who are seeking out visual and political activism – or what Mouffe, Fisher and Möntmann, and others identify as “artivism” – need to formulate new ways to engage with the legal system in order to advance a new political order. Up until this moment, most arguments regarding artistic or aesthetic strategies of resistance to hegemony have overlooked and neglected the potential of a scholarly, reciprocal, multilayered relation between law and art. The upcoming chapters shall seek to demonstrate and at times to speculate on constructive paths for judicial-visual engagement and interventions through artistic and curatorial theory and practice.

Chapter Two: Performing Justice – Between the Dreyfus Affair, Barrès Trial, and Yael Bartana’s JRMiP Congress

2.1. Introduction

The “Trial of Maurice Barrès,” created by Dada in Paris in 1921, represents a significant moment in avant-garde art. Bridging the legal and art, the Barrès trial serves as an early example of pioneering experimentation with the creation of a space in which the intertwining of the legal with art constructs a political space of what I call judicial-visual activism. In the following chapter, I will explore the trial on its legal and artistic merits in order to relate it to our time, and to the question of the reciprocal relation between the fields of law and art. In order to do so, I have chosen to focus on the first Congress of “The Jewish Renaissance Movement in Poland” (JRMiP) created by Yael Bartana in 2012 in the framework of the 7th Berlin Biennale of Contemporary Art. I shall demonstrate how the juxtaposing of the Barrès trial and Bartana’s JRMiP Congress reflects the spirit of thinking of the French Dadaist André Breton, who claimed “that work perceived by its makers to be an experimental failure in its own time (like the Dada Season of 1921) may nevertheless have resonance in the future, under new conditions.”¹¹⁵ The positioning of the Barrès trial in relation to a contemporary art event could be seen as elusive and baffling at times. However, I draw inspiration from scholars such as Shoshana Felman, who has shown us the relevance and importance of a pendulum movement between times, trials, and works of art.

¹¹⁵ Claire Bishop, *Artificial Hells: Participatory Art and the Politics of Spectatorship* (London: Verso, 2012), p. 7.

Felman discusses the historical trials of Adolf Eichmann and O.J. Simpson, in a similar manner to the way in which she tackles Leo Tolstoy's fictitious trial of Pozdnyshev in *The Kreutzer Sonata*.¹¹⁶ Elizabeth Benjamin's recent publication *Dada and Existentialism*¹¹⁷ adds partially to the research on the Barrès trial, on which the amount of research has been relatively scarce,¹¹⁸ ignoring for the most part its artistic and legal aspects. Benjamin also uses a fictional trial – of Meursault in Albert Camus's *The Stranger* – to give an account of the Dada trial that lends resonance to Breton's prediction. In the following, I aspire to enlarge our perception, demonstrating how vital it is to unfold the Dada trial in relation to other notable and influential trials of the era. The Alfred Dreyfus and Émile Zola trials will allow me to better comprehend the motivation of the Dadaists in staging their own version of a trial calling for justice through legal instruments and space. On a similar note, by paying close attention to the political and social consequences that the Dreyfus trial has had and still holds, I will devote time to analyzing Bartana's Congress and its call for justice in Europe, Poland, and Israel. The general research on Dada and Bartana ignores for the most part the crucial influence the Dreyfus trial and related affairs have had. In bringing this to the forefront as a connecting missing link, I will demonstrate,

¹¹⁶ As Shoshana Felman's book title indicates – *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* – it revolves around two themes: trials and traumas. Being aware of the much researched and debated aspect of trauma in the work of Bartana, my research directs its focus onto legal matters rarely discussed in her work. Thus, my focus will be on the aspect of trials in Felman's work rather than on trauma.

¹¹⁷ Elizabeth Benjamin, *Dada and Existentialism* (London: Palgrave Macmillan, 2016).

¹¹⁸ In her introduction to the collection of essays *The Dada Seminars* published in 2005, Leah Dickerman points out the lack of research on the Dada movement, unlike extensive research done on Russian Constructivism and Surrealism. "There have been relatively few sustained efforts to examine the premises of Dada practice in broad view, to understand either its structural workings or the significance of its activities within a historical field." See: Leah Dickerman, Matthew S. Witkovsky, ed., (Washington, *The Dada Seminars*, Center for Advanced Study in the Visual Arts, National Gallery of Art, 2005), p. 1.

with the support of the writings of Hannah Arendt and Jacqueline Rose, the manner in which Bartana has taken on a role in the struggle for justice through judicial-visual activism.

2.2. The Barrès Trial: Background and Motivations

Taking place on Friday May 13, 1921 in Paris, the Trial of Maurice Barrès was held at the Salle des Sociétés in Paris, revolving around the accountability of Barrès' metamorphosis from being an influential revolutionary thinker to becoming a politician advocating in favor of nationalism. Announced in several newspapers as a prosecution of the writer-turned-politician, the Maurice Barrès trial was assembled by members of the Dada group (directed by poet and writer André Breton) around a court-like performance. Made to resemble a French court tribunal, the performance brought Dada members to the stage along members from the audience acting as defense attorneys, prosecution counsel, a judge, two assistant judges, and a president of the court. According to Claire Bishop, the trial should be read as part of the second phase of Dada. In a radio interview in 1952, André Breton identified it as a development of the "lively agitation" of the first phase, yet now "more groping [...] through radically renewed means' phase."¹¹⁹ Bishop writes that, "The Barrès Trial was advertised as a hearing of the author Maurice Barrès (1862–1923), whose book *Un Homme Libre* (1889), had been a great influence on Breton and Aragon in their youth."¹²⁰ The aim of the trial was, in Breton's words, "to determine the extent to which a man could be held accountable if his will to power led him to champion conformist values that diametrically opposed the ideas of his youth."¹²¹ The charges brought against Barrès during the

¹¹⁹ Bishop, *Artificial Hells: Participatory Art and the Politics of Spectatorship*, p. 66.

¹²⁰ Ibid., p. 72.

¹²¹ T.J. Demos, "Dada's Event: Paris, 1921," *Communities of Sense*, ed. Jaleh Mansoor et al. (Durham, N.C.: Duke University Press, 2010), pp. 141-2.

trial were summed up in a Dada manner as consisting of “committing an attack on the security of the mind.”¹²²

Scholars such as Bishop and James M. Harding¹²³ begin their exploration of the trial by positioning this act as part of a European modernist period through which the nation-state's legal and administrative institutions were being reinvented and re-examined anew. Coming against the bourgeois idea of art as autonomous and separated from life,¹²⁴ this time period “is marked by a self-conscious exploration of the forms of artistic expression,”¹²⁵ as evident in Breton’s re-instrumentalization of the courtroom as a platform for an artistic intervention. According to Harding, there is a strong duality to be found in this process, as it wanders between achieving remarkable innovation and yet struggling with “forms that seem no longer capable of sustaining them.”¹²⁶ The modernist ambition to find new cultural meanings and a new language to express them led to the re-examination of existing formats, such as the courtroom and the legal system. “The staging of Western modernism was frequently tied to a fundamental search for untapped and fresh venues [...] intertwined with a basic rethinking of the very language that constituted the stage.”¹²⁷ An earlier known example of this quest, prior to the utilization of the court and the legal

¹²² Ibid., p. 142.

¹²³ James M. Harding, *The Ghosts of the Avant-Garde (s)* (Ann Arbor: The University of Michigan Press, 2013).

¹²⁴ “The European avant-garde movements can be defined as an attack on the status of art in bourgeois society. What is negated is not an earlier form of art (a style) but art as an institution that is unassociated with the life praxis of men.” See Peter Bürger, *Theory Of the Avant-Garde* (Minneapolis: University Of Minnesota Press, 1984), p. 49.

¹²⁵ Ibid., p. 28.

¹²⁶ Ibid., p. 28.

¹²⁷ Ibid., p. 28.

sphere, can be observed in the Dadaists' reuse of the format of the cabaret and the creation of Cabaret Voltaire during the years 1915-1917 in Zurich, which was a "mixed bills of performance, music and poetry."¹²⁸ Later on, in what will come to be known as the "1921 Dada Season,"¹²⁹ the Dada group will search for spaces considered by them as having "no reason to exist [...] only areas considered not picturesque, nonhistorical [...] and unsentimental would qualify [...]."¹³⁰ The season was also a moment in which Dada began a process of reflection on how it might be reinvented before deteriorating into a routine.¹³¹ All in all, the examination of the court system by Dada is strongly linked to the avant-garde criticism of its own operations in the art world, along with being self-conscious of social, political, and economic power structures.¹³² The Barrès trial, being one of the season's essential components, was part of Breton's attempt to conquer new physical and mental terrains for Dada's actions. Harding points out that the artistic experimentation characterized by the early Dadaist revitalization of theatrical formats through the use of popular cultural venues led to a gradual greater interest in the social and political sphere, to which I shall add an interest in the legal system as the trial suggests. The innovation of Dada springs from a double-edged position, explained by Harding as being posited under "the ideological guise of a forward-looking, self-reflective, and radical exploration of new modes of

¹²⁸ Bishop, *Artificial Hells: Participatory Art and the Politics of Spectatorship*, p. 66.

¹²⁹ In "Artificial Hells," André Breton recalls the background leading to Dadaist events, mentioning April 14, 1921 as the beginning of the "Dada Season." See, André Breton, "Artificial Hells. Inauguration of the '1921 Dada Season'," *October* 105 (2003): 140.

¹³⁰ Demos, "Dada's Event," p. 135.

¹³¹ Harding explains, "Dadaist performances were patterned after cabaret shows;" yet the lack of creative innovation eventually left its practitioners "discontented, hardly proud of the pitiful carnival ruses," *The Ghosts of the Avant-Garde (s)*, p. 138.

¹³² Toby Avard Foshay, *Wyndham Lewis and the Avant-Garde: The Politics of the Intellect* (Montreal: McGill-Queen's University Press, 1992), pp. 15-16.

performance [...] was almost always haunted by a conservative shadow.”¹³³ The ambiguity of Dada lies exactly here – between the new and the old, in a struggle between the quest for a new set of values while still being engaged with already existing formats. Criticized for not having a clear standpoint during the trial, Breton insisted that, from an historical perspective, the strength of the trial would be recognized through its ability to cultivate an open, non-restrictive platform, in which a variety of interpretations is encouraged.¹³⁴

2.3. Dada and the Dreyfus Affair

I wish to further argue that, in order to better comprehend the Dadaist interest in the format of the trial, one must also pay close attention the historical trials that had a lingering effect on the Dada movement. Specifically, I shall be bringing into my argument one of the most influential and controversial trials that, according to Shoshana Felman, can be considered the “trial of the century.”¹³⁵ What has become to be known as the Dreyfus Affair, beginning in Paris in 1894 only to be resolved in 1906, had an immense political, legal, and social impact in France during those years and beyond. The atrocity and the fragility of the French Republic and its legal system had been brutally exposed following the Dreyfus trial, up to the exoneration of French officer Alfred Dreyfus. The debate surrounding the false allegations against the Army Captain Dreyfus severely divided public opinion, evoking issues such as anti-Semitism, nationality, and cultural identity.

¹³³ Harding, *The Ghosts of the Avant-Garde (s)*, p. 29.

¹³⁴ Breton, “Artificial Hells,” p. 143.

¹³⁵ “What makes it a landmark trial of historical significance are three profound features: (1) its complex traumatic structure; (2) its cross-legal nature, or the repetition it enacts of another trial; and (3) its attempt to define legally something that is not reducible to legal concepts.” Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), page 61.

The first trial of Dreyfus opened on December 19, 1894, at the end of which he was found guilty of treason. On January 5, 1895, “At a ceremony in the courtyard of the École Militaire, Dreyfus was publicly stripped of his rank and was sentenced to life imprisonment in solitary confinement in an ex-lepers’ colony on Devil’s Island off the coast of French Guyana.”¹³⁶ Dreyfus faced public humiliation as he was degraded before an enthusiastic crowd yelling “Jew” and “Judas” at him, while he continuously declared his innocence. The public scene of the once celebrated army captain losing his military rank was to become a symbol of a time of decay. Reminiscent of the long forgotten public tortures of medieval Europe, “It took place in the immediate shadow of the monument of modernity, the Eiffel Tower, then six years old [...] The very improbability of such an act’s happening at such a time—to an assimilated Jew who had mastered a meritocratic system and a city that was the pride and pilothouse of civic rationalism—made it a portent [...] The Dreyfus Affair was the first indication that a new epoch of progress and cosmopolitan optimism would be met by a countervailing wave of hatred that deformed the next half century of European history.”¹³⁷ The Dreyfus trial, and his imprisonment on what was later proved to be unfounded evidence, led to several other related court trials and public turbulence, including a trial against Major Esterhazy as the actual perpetrator of the act of treason, and another against the writer Émile Zola, who in 1898 published an open letter in defense of Dreyfus in *L’Aurore* newspaper under the headline “J’accuse...!”. As a result, Zola needed to flee to England, as he was found guilty of libel, never to witness the tremendous effect of his civil action. Zola's open letter to the President of France is considered today as the “birth of the intellectuals.” The day after the publication of “J’accuse...!”, the same newspaper went on to publish a statement in protest of

¹³⁶ David Drake, *French Intellectuals and Politics from the Dreyfus Affair to the Occupation* (New York: Palgrave Macmillan, 2005), p. 13.

¹³⁷ Adam Gopnik, “Trial of the Century,” *The New Yorker*, September 28, 2009.

“the judicial irregularities of the 1894 trial and ‘the mysteries surrounding the Esterhazy affair.’”¹³⁸ This measure became to be known as the “Manifesto of the Intellectuals,” as it “was signed by over a hundred leading figures in the fields of letters, science and education and marked the entry en masse of ‘the intellectuals’ into politics, in the sense that they were stepping outside their spheres of expertise and were publicly and collectively taking a position on a political (and also moral) issue.”¹³⁹ In this respect, it is worth noting the importance Shoshana Felman imparts to Zola not only as an intellectual, but furthermore as an artist. According to her, it is nothing less than an “historically unprecedented” act, since for the first time “the artist made – at his own cost – a revolutionary intervention in the legal process [...] The writer chose politically to make creative use of the tool of law in order to break open the closed legal frame.”¹⁴⁰ Zola, as an artist and intellectual, risked his own artistic and legal status in order to force the re-examination of the Dreyfus case.

It was Zola’s criminal trial for libel that led to a concrete and immediate impact on French law and society, attracting immense attention from the general public. It seemed that everyone wanted to get involved in the trial against the famous author: “Never had such a numerous, more passionately agitated crowd invaded the Assises chamber. Lawyers were piled on top of each other, some clinging to the high ramparts surrounding the reserved enclosure or to the window sills; and mingling with them, crushed to suffocation point, in the emotion of the spectacle absorbing the whole world’s attention, elegant ladies, journalists, officers, men of leisure, actors,

¹³⁸ Drake, *French Intellectuals and Politics from the Dreyfus Affair to the Occupation*, p. 21.

¹³⁹ Ibid.

¹⁴⁰ Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* p. 116.

‘Everybody who was anybody—all, the cream, of Paris’.”¹⁴¹ The unprecedented engagement of artists, intellectuals, and the general public in the trials that followed the Dreyfus trial certainly played a pivotal role in changing and reforming artistic involvement in the years to follow. Léon Blum, who later became the first socialist and Jewish premier, perceived the Dreyfus Affair to be “as violent a crisis as the French Revolution and the Great War,”¹⁴² leading him as well towards active participation in French politics. Maurice Barrès, the French novelist and journalist-turned-politician who will be the target of the later-to-come Dada trial, is also considered one of France’s leading intellectuals upon whom the Dreyfus trial had an immense influence.

In Jacqueline Rose’s exploration of great writers and scholars such as Marcel Proust, Samuel Beckett, and Sigmund Freud, she focuses mostly on the Dreyfusards, those who stood in support of Dreyfus. Rose does not, however, discuss at much length the position of the anti-Dreyfusards, such as Barrès, for whom the Dreyfus trial had marked a dramatic ideological change in the direction of nationalism. Yet, I wish to emphasize that it was the Dadaists, more than twenty years following the Dreyfus Affair, who decided to bring to justice the case of Barrès by accusing him of moral betrayal for “committing an attack on the security of the mind.”¹⁴³ The research on the Dada trial for the most part does not pay attention to the reasons behind the decision to put Barrès on trial as opposed to any other living or dead or fictional leading figure.¹⁴⁴ However, I

¹⁴¹ Jacqueline Rose, *Proust among the Nations* (Chicago: The University of Chicago Press, 2011), p. 26.

¹⁴² *Ibid.*, p. 5.

¹⁴³ Demos, “Dada’s Event,” p. 142. In Beret E. Strong’s words: “Crimes against the Security of the Human Spirit.” Beret E. Strong, *The Poetic Avant-Garde: The Groups of Borges, Auden, and Breton* (Evanston: Northwestern University Press, 1997), p. 259.

¹⁴⁴ Elizabeth Benjamin’s book *Dada and Existentialism* published in August 2016 is an exception to this rule, as I will discuss

in the following pages.

argue that dwelling on why Barrès became Dada's target shall yield fruitful and relevant new perceptions on past and present artistic and legal intertwining leading to political activism and justice. As I will show, this decision by Dada attests to the remarkable influence Barrès continued to have in France, especially for the younger generation of French intellectuals, artists, and politicians such as André Gide, Louis Aragon, and Blum himself. As the historian Zeev Sternhell states in his essay on the rise of the right wing in France following the 1870 war and France's defeat by Germany: "Barrès was for the men of his generation the model of the engaged intellectual and the *philosophe*, in the eighteen-century French meaning of the term."¹⁴⁵ Sternhell further argues that for most of today's scholars, Barrès plays a negligible role, but that in the context of his own time and means of influence, Barrès must be considered a modern intellectual: "His conception of the nature of political struggle in a liberal democratic system reveals an acute understanding of the imperative of politics in modern society [...] reflected the changes in occurring then in the European intellectual climate which amounted to a veritable intellectual revolution."¹⁴⁶ In what Sternhell perceives to be outstanding political intuition, he demonstrates how Barrès was able to present nationalism as a fulfillment of socialism, as it ensures first and foremost the state's commitment to its citizens as "nationalism, Barrès claimed, 'is deeply concerned with establishing just relationships among all Frenchmen'."¹⁴⁷ This manner in which Barrès impressively juggles to intertwine right and left politics amounted to a new trajectory during the trial of Dreyfus. Allowing a fertile ground for anti-Semitism during the trial, "Barrès went on to elaborate this nationalism of the 'little man', of all those who had nothing but their

¹⁴⁵ Zeev Sternhell, "National Socialism and Anti-Semitism: The Case of Maurice Barres," *Journal of Contemporary History* 8:4 (1973): 47.

¹⁴⁶ Ibid., p. 48.

¹⁴⁷ Ibid., p. 56.

rootedness, their Frenchness [...]. For Barrès, it was a political conception, not mere hatred of the Jew; it had its task to fulfill on the flanks of socialism. It was a progressive notion – Barrès was addressing himself to republicans and democrats meant to serve as the groundwork for a mass movement.”¹⁴⁸ The figure of Barrès, holding a frightful resemblance to leading political representatives of our time, thus captures the ambiguity of Dada. Incoherent, untamed, provocative, and open to varied interpretations from the left just as from the right, Barrès is the perfect figure to be brought into a Dada trial.

2.4. The Barrès Trial – A Participatory Political Space

The attempt to capture the masses and to engage in a new participatory dynamic of politics and debate as executed by Barrès can, to some degree, be perceived as shared by both politicians and artists of that time period. In order to further shed light on the notion of the participatory as a crucial part of the Dada trial, I must again refer to Bishop and her book, *Artificial Hells*.

According to Bishop, Breton’s interest in the public sphere led him to consider the format of the trial as a space for Dadaist experimentation. She states that, “By spring 1921 [...] the group decided to take performance out of a cabaret context and into extra-institutional public space.”¹⁴⁹

Directing her investigation towards the participatory aspects of Dada, Bishop includes the trial event as part of the Dada manifestations of April and May 1921, which “sought to include the Parisian public through ‘Visits – Dada Salon [...] Summons – Accusations Orders and Judgements’.”¹⁵⁰ Furthermore, the open call to the public to participate in the trial as part of the

¹⁴⁸ Ibid., pp. 57-58.

¹⁴⁹ Bishop, *Artificial Hells*, p. 66.

¹⁵⁰ Ibid.

jury proved to be, according to Bishop, a step towards further inclusion of the public in Dada's performances.

The shift in Dada towards a greater engagement with the public sphere, institutions, and audiences could also explain why Barrès was chosen as the target of the trial. In the volatile political atmosphere of the French Third Republic, as France was healing its wounds from its defeat in the Franco-Prussian War, Barrès adopted a new way to conduct politics. During this "profound crisis in French democracy,"¹⁵¹ Barrès had also exercised a move into direct contact with the general public in a call against the establishment, a move to be interrogated by Dada in the years thereafter: "Against the institution which was the embodiment of parliamentary democracy, Barrès appealed directly to the people; as against the parliamentary circus he called for direct action, and with the ample evocation of revolutionary imagery, sought to mobilize against the triumphant bourgeoisie the most deprived social levels."¹⁵² Barrès, who at first belonged to the political ranks of the liberal left, is perceived by historians such as Sternhell to be an intriguing case study for the ideological changes that began to form in France after 1870, in which the vocabulary of the left continues to be used by right-wing figures such as Barrès, while distorting any significance of its prior meaning. "Against parliamentarism, Barrès set the cult of the leader [...] and in place of capitalism, he called for reforms whose essence was protectionism."¹⁵³ Sternhell concludes with the realization that "in a given situation, the masses could easily give their support to a party which had borrowed its social values from the left and

¹⁵¹ Sternhell, "National Socialism and Anti-Semitism: The Case of Maurice Barres," p. 48.

¹⁵² Ibid., p. 51.

¹⁵³ Ibid.

its political ones from the right.”¹⁵⁴ Encapsulated in Dada's words, the political and legal establishment was proven to be “committing an attack on the security of the mind.” This manipulative transformation from left-wing values to right-wing politics, as in the case of Barrès, was the essence of the Dada trial.¹⁵⁵

The Dada trial was set up to confront the loss of values and the corruption of state institutions by deconstructing the courtroom in an alternative legal space. Breton's motivation was to challenge, prosecute, and seek justice from a person once considered by him and the rest of Dada as a beloved hero and respected ally. In order to be able to judge and bring about justice, a full-fledged court was what Breton needed. Hence, unlike earlier events by the Dada group, the trial was straightforwardly conceived to replicate a real courtroom.¹⁵⁶ From the very title to the red, white, and black clothes worn by Dada participants in accordance with the official French Court of Justice, it abandoned much of the Dadaists' absurd performances as they headed into re-imagining the public sphere. It is agreed upon by most researchers that the trial redirected the Dada movement in new directions, and mainly towards surrealism. Moreover, the turning to the construction of a courtroom by Dada signals “the most significant shift [...]. Dada now presumed to judge rather than simply to negate; in other words, it attempted to find a position rather than offering an a priori rejection of all positions.”¹⁵⁷ It is a position of varied possibilities and

¹⁵⁴ Ibid.

¹⁵⁵ In replying to criticism against the conduct of the trial, Breton writes that they seemed “not to have understood that our interest in this problem lay in the possibility of interpreting it variously, and that we were inclined to nothing so little as cohesion.” See Breton, “Artificial Hells,” p. 143.

¹⁵⁶ Demos states that Breton invested time and effort attending hearings at the Palais de Justice prior to the mock trial “to study the procedural aspects of litigation.” Demos, “Dada's Event,” p. 142.

¹⁵⁷ See Bishop, *Artificial Hells*, p. 73.

interpretations, as Breton tell us, but it can also be seen as an artistic intervention in the spirit of Zola.

As T.J. Demos puts it, following Rancière's idea of the political, Dada "realizes its 'moral directions' by both transgressing and perpetuating the division between aesthetic autonomy and social practice."¹⁵⁸ The shift by Dada from rejection to a judgment that claims to bring justice where state institutions and courts have failed can be understood as part of a radical intent to "dissolve the division between the life of art and the art of life."¹⁵⁹ If, in the early stages of the Dada group, it was important to appropriate existing spaces and transform them into spaces immersed with Dada content and values, it was now the time to move further in other directions and make use of the public space, and to engage in a new relation with the general public. Using the "real life" format of the trial into which Dadaist content is inserted demonstrates the ability of Dada to swing between art and life, and thus produce their own politics. Therefore, what is crucial to remember when analyzing the Dada trial is the constant ambivalent tension between being a parody of the law, while at the same time handling it wholeheartedly in earnest. The presumably mock trial, writes Beret E. Strong, was taken seriously by Breton.¹⁶⁰ The trial offers us a break from the habitual distinction between life and art. Dada appropriates the format of the trial for the creation of an intervention in the public space that breaks down the barriers "between artistic performance and social process, resulting in a new kind of assertion of art's autonomy—not as a self-contained ideal realm of aesthetic experience, but rather as an autonomous form of

¹⁵⁸ See Demos' discussion of an earlier Dada event and the visit to Saint-Julien-le-Pauvre, "Dada's Event," p.141.

¹⁵⁹ Ibid., p. 140.

¹⁶⁰ See Beret E. Strong, *The Poetic Avant-garde: The Groups of Borges, Auden, and Breton*, p. 259.

social experience.”¹⁶¹ The trial serves as an excellent example of Dada’s ability to tap into the tension between life and art. By trying a living politician, the Dada trial managed to blur all distinctions between the real and the imaginary in a manner that cannot be more relevant to today’s artistic intertwining between art and the legal system.

2.5. The Barrès Trial – Legal Form and Content

Given this backdrop, the Barrès trial can be perceived as a pivotal moment in which the contradictory mechanism of Dada reveals itself: “Appropriating as it did the legal structures of the courtroom is a gesture aimed at securing political and cultural values from a perceived corruption and demise [...] it served as the point of departure for the fleeting infatuation with legal constructs that swept the Parisian avant-gardes in the early 1920s.”¹⁶² Moreover, staging a performance within the framework of a trial offered a mantle of legitimacy and a sense of truth, objectivity, and unbiased authority.¹⁶³ Along with this Dadaist fascination with legal matters, the trial stands out as even more vital when considering Breton’s failure in assembling the “The Congress of Paris” later on, or in light of several lawsuits that were part of the growing rivalry between Breton and Tristan Tzara. “The Trial and Sentencing of Maurice Barrès by Dada marked the beginning of a circuitous chain of events,”¹⁶⁴ all of which exposed the divergent rhetoric of Dada, as well as their interest in breaking into new formats of artistic interventions in the public space. Without going any further into the stormy relations between Breton and Tzara,¹⁶⁵ two

¹⁶¹ Ibid., p. 141.

¹⁶² See Harding, *The Ghosts of the Avant-Garde (s)*, p. 29.

¹⁶³ Demos, “Dada’s Event,” p. 35.

¹⁶⁴ Ibid., p. 30.

¹⁶⁵ “The Dada Season...denotes a period of fracture within the group; specifically, it testifies to increased tension between Breton, Tzara and Francis Picabia.” Bishop, *Artificial Hells*, p. 67.

central figures of the Dada group, it is generally agreed that the trial marked a split within Dada that led to the emergence of surrealism.¹⁶⁶

What is central to my argument is a reflection on the trial as a format that captures within it diverse artistic and legal rhetoric and capabilities.¹⁶⁷ I perceive the trial of Maurice Barrès to be the culmination of a Dadaist use of an existing state apparatus structure to which they were able to inject new rhetoric and anti-traditional concepts. It may have been that the trial was related to inner struggles for power and authority within the ranks of Dada; nevertheless, it succeeded in staging the old in close proximity to the new. It appropriated a state-organized format for the creation of a new performance that excoriated both the past and the vanguards. It is, in a sense, an internal critique that questions the Dada mechanism itself. The trial's duality is embedded within it. On the one hand, it aims to outrage its audience and public, while at the very same time it is concerned with confronting its own authenticity. The façade of the accused Barrès, once an ally and close visionary, was taken down to reveal his true face as a right-wing conservative politician. In the same manner, the trial is an alarming signal indicating the danger that also awaits Dada itself, that of becoming reactionary, nationalist, and bourgeois.¹⁶⁸ It is the analogy between Dada and Barrès that symbolizes the innate, inner, and outer struggles between the reactionary and the progressive, which may explain Breton's wish for the death penalty for Barrès.

¹⁶⁶ See Harding, *The Ghosts of the Avant-Garde (s)*, p. 30.

¹⁶⁷ "...looking backward and forward simultaneously [...] openly committed to a backward-glancing project of recovery and preservation, i.e. to a project of rescuing youthful, revolutionary ideas from the ageing, increasingly reactionary, and nationalistic hands." Ibid.

¹⁶⁸ As Harding states, although "the question of whether Dada actually has exhausted itself was taken for granted and never addressed [...] it constructed an analogy between Barrès and Dada." Ibid., p. 35.

The ability to judge and render a verdict is essential to Breton. Can there be a trial in absentia of the accused, who left Paris on that day only to be represented in the trial in the form of a mannequin?¹⁶⁹ I agree with Elizabeth Benjamin when she claims that the absence of Barrès “make[s] us wonder whether justice is always decided in the absence of the accused.”¹⁷⁰ As she points out, much was done in absentia, or rather, not in accordance with the official legal system, such as witnesses giving testimonies written in advance, or others asked to judge based on little knowledge on the work and life of Barrès. On the other hand, unlike Benjamin, I argue that it is significant to consider that, in contrast to the absent Barrès and certain legal procedures, the tribunal was fully rendered, as it was composed by “a judge, two assistant judges, the prosecution, and two counsels for the defense [...] all of whom treated the proceedings with the utmost seriousness [...] and accompanied by a phalanx of witnesses who testified to the public danger of the accused.”¹⁷¹ And not only did all seem true and real in the conduct of the trial, for Breton, according to his biographer, “This was no parody, but the real thing—or as close as his lack of judicial authority would allow.”¹⁷² In the absence of the defendant, the only opposition to the trial was expressed by Tristan Tzara.¹⁷³ This outstanding move can be understood as part of the mistrust that had formed in the volatile relationship between Breton and Tzara. However, the statements made by Tzara during the trial proved that it extended beyond mere personal

¹⁶⁹ “The defendant Barrès was invited but unable to attend, as he was already committed to a prior engagement in Aix-en-Provence, where he was to discuss ‘The French Soul during the War’.” Demos, “Dada’s Event,” p. 142.

¹⁷⁰ Elizabeth Benjamin, *Dada and Existentialism* (London: Palgrave Macmillan UK, 2016), p. 116.

¹⁷¹ Harding, *The Ghosts of the Avant-Garde (s)*, p. 37.

¹⁷² Demos, “Dada’s Event,” p. 142.

¹⁷³ As Elizabeth Benjamin tells us, Tzara's testimony was the longest of all six testimonies, also noting that “it also goes the furthest to break down the event, erode any serious tone the trial may have been aiming for, and has the widest-ranging consequences for Dada.” *Dada and Existentialism*, p. 109.

disenchantment. Before leaving the stage and heading into the streets, Tzara claimed to have “absolutely no confidence in justice even if that justice is enacted by Dada.”¹⁷⁴ Nevertheless, the trial went on and ended with Barrès being found guilty based on testimonies given against him. Barrès was not sentenced to death, as requested by Breton, but to twenty years of hard labor. This verdict left both Barrès and Dada somewhat alive, since perhaps the fact that Tzara left the event ignited a sense that, after all, “Beneath the façade of avant-gardism, The Trial was thus embedded in a discourse that cultivated conformity and that did so under the aura of establishing, indeed in securing, objective truth and order.”¹⁷⁵ The departure of Tzara can be perceived as his own interpretation of what it meant to engage with the masses. It can be proclaimed that while Tzara called for direct engagement with the public by heading into the streets, Breton proposed or called upon the creation of an alternative legal system to serve the public. To him, it was clear that ever since the Dreyfus Affair, the judicial system had proven to be corrupt and malfunctioning, also proven by the fact that a figure such as Barrès should continue to escape any kind of conviction in the existing legal system.

All in all, the influence of the Dreyfus Trial and related affairs on French society cannot be ignored when analyzing the Barrès Trial.¹⁷⁶ All this suggests that perceiving the Barrès Trial through the prism of a mere mock trial or parody is strongly insufficient. I argue that the historical background of the Dreyfus Trial along with the artistic intervention by Zola in a legal

¹⁷⁴ See Harding, *The Ghosts of the Avant-Garde (s)*, p. 38. Elizabeth Benjamin translates Tzara's statement: “I have no confidence in justice, even if this justice is carried out by Dada,” *Dada and Existentialism*, p. 109.

¹⁷⁵ Harding, p. 39.

¹⁷⁶ In Elizabeth Benjamin's book, the historical background is only briefly mentioned. The Dreyfus Affair is explained in a footnote, while she gives closer attention to the definition of the crime, and of the witnesses brought by Breton to the trial.

procedure as distinctly portrayed by Felman¹⁷⁷ suggest a need to contextualize the Barrès Trial both with and beyond the prism of previous Dada events. In the spirit of Dada, the Barrès Trial needs to be read with Dada and simultaneously against it; within an existing legal system and opposing it. Doing so brings to the forefront an early example of how artists engaged with the legal realm, while also rejecting it; how Dada appropriated the court system while also reinventing it. Dada not only “opposes the system of justice in its own right, as is particularly clear through its mock trial of Maurice Barrès,”¹⁷⁸ but it also proposes alternatives constructed from within the legal system's own relics. This can only be achieved through a constant self-re-examination. The Dada trial – a constant questioning of Dada and of justice – is an experiment proving that all judicial systems must operate from a place of inner examination and critical self-awareness. Justice is not abandoned by Dada; much to the contrary. Accusing Barrès in what can be perceived by some as “a fictional crime,”¹⁷⁹ Dada requests a re-articulation, a re-naming, of what crime is, and what injustice is. This is why I argue that we need to walk a fine line in which the Dada trial is not simply an “absurd spectacle,”¹⁸⁰ but an attempt to conquer dualities, differences, variations, irrationalities, and contradictions, and to place them in a newly reinvented legal system, in an old/new frame of a trial. The mock element of the trial does not overshadow or precede other elements such as reality or justice; the flaws exposed during the trial are those of Dada just as they are of Barrès and of the judicial system, all at once, which makes the trial as much anti-Dada as it is Dada. Through Barrès being the hero and anti-hero, being a mock version of an earnest politician, being able to incorporate in one body both left- and right-leaning

¹⁷⁷ Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*.

¹⁷⁸ Elizabeth Benjamin, *Dada and Existentialism*, p. 89.

¹⁷⁹ *Ibid.*, p. 100.

¹⁸⁰ *Ibid.*, p. 103.

ideologies and politics, the trial reflects upon the flaws as well as the strengths of both Dada and the legal system.

2.6. The First Congress of The Jewish Renaissance Movement in Poland (JRMiP) – Between Congress and a Trial

Shoshana Felman draws correlations between the Eichmann trial on one side, and the O.J. Simpson trial on the other. Elizabeth Benjamin links the trial of Albert Camus's Meursault in the novel *The Stranger* to the Barrès trial. In the following, I shall make an attempt to broaden this line of research by introducing an investigation between a trial on the one hand, and a non-trial on the other hand. By this, I am also taking a leap in time to 2012 to Yael Bartana's first Congress of the Jewish Renaissance Movement in Poland (JRMiP).¹⁸¹ Firstly, I should state that in Bartana's Congress one cannot speak of a direct visual interest in exploring the courtroom as a space for investigation as was the case in the Barrès trial. Nevertheless, although Bartana does not specify that the Congress function as a trial or a tribunal or a courtroom for that matter, I will demonstrate how she has engaged in a discourse of rights regarding Israel/Poland/the EU through speech, parody, and public participation exercised prior to and during the event. Also, and just as importantly, through exposing alternative views of being Jewish, she was able to construct a three-dimensional constellation of justice in line with Nancy Fraser's theory as illuminated in Chapter One. I will demonstrate how in a globalized world in which the Congress is situated, Bartana tackles socioeconomic claims for redistribution, and for legal and cultural recognition. Furthermore, in the post-Keynesian-Westphalian, post-Cold War world, to use Nancy Fraser's terminology, Bartana includes the struggle for representation – the political dimension of justice.

¹⁸¹ Bartana's Congress was published as the first Congress of the JRMiP, however, as to this day no other JRMiP Congress has followed.

“No claim for justice can avoid presupposing some notion of representation, implicit or explicit [...]. The political dimension is implicit in, indeed required by, the grammar of the concept of justice. Thus, no redistribution or recognition without representation. In general, then, an adequate theory of justice for our time must be three-dimensional [...]. Incorporating the economic, cultural, and political dimensions, it must enable us to identify injustices of misframing and evaluate possible remedies.”¹⁸² I will claim that this was made possible through the mostly implicit linking of the legal with art through judicial-visual activism, creating a Congress in which claims for recognition, redistribution, and representation make up the core elements of a call for justice.

Furthermore, at first glance, the first Congress of the “Jewish Renaissance Movement in Poland (JRMiP)” organized by Bartana in Berlin in 2012 has seemingly little to do with the mock trial organized by Breton in Paris. Dealing for the most part with the history of the Zionist movement, Bartana had clearly titled the three-day event, which was part of the Berlin Biennale and held at the Hebbel am Ufer theatre, as a “Congress” in direct reference to the first Zionist Congress, held in Basel, Switzerland in 1897.¹⁸³ Bartana’s project, which began in 2007 with a video titled *Mary Koszmary*¹⁸⁴ (*Nightmares*), culminated by the time of the JRMiP Congress in Berlin in a full-

¹⁸² Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009), p. 21.

¹⁸³ “The Congress, in which 197 delegates participate, accepts the Basel Program: Zionism strives to create for the Jewish people a home in Palestine secured by public law [...] Herzl writes in his diary: ‘At Basel I founded the Jewish State. If I said this out loud today I would be greeted by universal laughter. In five years perhaps, and certainly in fifty years, everyone will perceive it.’” From *The Zionist Archives* - <http://www.zionistarchives.org.il/en/dataset/Pages/Congress1.aspx>.

¹⁸⁴ *Mary Koszmary* was the first part in what is known as [the ~~The~~ Polish Trilogy](#), or also as *And Europe Will Be Stunned* project, dealing “with the Jewish Renaissance Movement in Poland, demanding the return of 3,300,000 Jews to Poland. The films *Mary Koszmary* (*Nightmares*, 2007), *Mur I Wieza* (*Wall and Tower*, 2009), and *Zamach* (*Assassination*, 2011) were chosen to represent Poland at the 54th Venice Biennale. From the Tel-Aviv Museum of Art website, accessed August 9, 2017,

fledged movement consisting of international registered members holding membership cards, a flag, an identifiable symbol, a declared manifesto, etc. Maintaining all along the way a blurred distinction between “real” and “fictional,”¹⁸⁵ Bartana was able to position the movement on the border between being a political engagement and being a fictional artistic project. The Congress, organized as a roundtable space bearing the symbol of the movement at its center, revolved around engaging with three main issues that were formalized as questions: “How should the EU change in order to welcome the Other?”, “How should Poland change within a re-imagined EU?”, and “How should Israel change to become part of the Middle East?”¹⁸⁶ Making an open call to the general public to join as delegates during the gathering of the Congress, it was declared on the Congress’ website prior to its opening that it seeks to “collectively imagine a new future and to formulate the concrete platform and demands of the movement.”¹⁸⁷

The Congress embarked on a public reading of a letter written by the late leader of the Movement, Sławomir Sierakowski.¹⁸⁸ The letter, it was announced, was found after Sierakowski’s

<http://www.tamuseum.org.il/about-the-exhibition/yael-bartana>.

¹⁸⁵ The consistent debate of whether the *Polish Trilogy* and Congress are real or unreal is evident in numerous articles all pointing to this space of contradiction emphasized by Bartana. See, for example, Robin Cembalest, “Let My People Go—Back to Poland,” *ARTNEWS* 18 (April 2013), and Laura Cumming, “Yael Bartana: And Europe Will Be Stunned; Elizabeth Price: Here – review,” *The Guardian*, May 13, 2012, accessed August 9, 2017, <https://www.theguardian.com/artanddesign/2012/may/13/art-exhibition>.

¹⁸⁶ “Congress in Berlin,” accessed June 29, 2019, <http://www.jrmip.org/>.

¹⁸⁷ Ibid.

¹⁸⁸ Sierakowski, who plays the protagonist in Bartana’s *Polish Trilogy*, is himself a Polish scholar and political activist and founder of the Krytyka Polityczna movement in Poland. In the first video, he delivers a speech calling for 3.3 million Jews to return to Poland. In the second video, *Mur i Wieża*, Sierakowski is already presented as a leader with followers erecting a wall and tower or Kibbutz in Warsaw, while the third video opens with Sierakowski’s funeral as a mass movement of people gathering from all over the world to attend his almost official state funeral.

assassination depicted in the third video of Bartana's *Polish Trilogy*, titled *Zamach* (*Assassination*). In this fictitious letter, Sierakowski calls for radical social change to be achieved by following the five proposals he designates at the end of his letter. Here already, I wish to stress how all of Sierakowski's proposals are clearly concerned with legal matters and with justice, as they advocate for the urgent need for a legal amendment of Polish, Israeli, and European laws and constitutions: "1. Polish citizenship to all immigrants! 2. Reintegration tax to cover the costs of moving 3.3 million Jews to Poland! 3. Hebrew as the second official language in Poland! 4. Dismissal notice of the Polish state concerning the concordat with the Vatican state—each religious institution should act on the same level! 5. Minorities House instead of Senate in Polish Parliament!"¹⁸⁹ In other words, the letter calls for representation (paragraph 1 and 5), for recognition (paragraph 3 and 4), and for redistribution (paragraph 2), and as such, Bartana's Congress can be read as a tribunal concerned with achieving justice. Identifying the artistic claims as legal, hence, has the capacity to turn the space of art into a political manifestation.

I wish to argue that an early legal foundation for the Congress can be found in the movement's Manifesto.¹⁹⁰ As the Congress and the JRMiP follow the Zionist movement all the way to the establishment of the State of Israel, one is able to draw similarities between the movement's Manifesto, and the Israeli Declaration of Independence of May 1948. Declaring a Jewish State in Mandatory Palestine, the legal status of the Declaration was not immediately recognized by the courts. Due to its declarative tone and character, an early Israeli court ruling from 1948 found that the document was an expression of the "spirit of the people," but was not legally binding.¹⁹¹

¹⁸⁹ "Congress in Berlin."

¹⁹⁰ For the JRMiP Manifesto, accessed June 29, 2019, <http://www.jrmip.org/wp-content/uploads/2011/10/Manifesto-Text2.jpeg>.

¹⁹¹ H.C. 10/48 Ziv v. Acting Commissioner for Tel Aviv Urban Area, 1 P.D. 85.

Nevertheless, in the following years, gradually the Israeli Supreme Court ratified the declaration, and in 1994 affirmed it as part of the Basic Laws of Israel.¹⁹² The shared characteristics of a declaration and a manifesto with that of a constitution allow them “to be primary devices with which to construct new political communities.”¹⁹³ Certainly, the JRMiP Manifesto can be read as one powerful and lengthy declarative demand encapsulated in its opening sentence: “We Want to Return!” Taking its tone and direction from the Israeli declaration, both are an attempt to reinforce the right of return. Whether to Poland or to Israel, both documents’ main theme and purpose is to declare and root a Jewish right of return based on historical, spiritual, or religious grounds. This is reflected also stylistically, as both use a legal declarative format by opening most paragraphs with “We Declare,” “We Appeal,” or “We Extend” (in the Israeli declaration), and “We wish,” “We welcome,” or “We direct” (in the Manifesto). All ten paragraphs of the Manifesto begin with the word “We,” thus showing to have more in common with the declarations of independence of states,¹⁹⁴ rather than, for instance, with the Dada Manifesto by Hugo Ball (1916).¹⁹⁵ Based on this premise, along with the letter by the movement’s founding father, the delegates proposed, outlined, and voted on the future JRMiP agenda during the three-day event, oftentimes through raising the issue of legal demands. The practicality of the execution

¹⁹² HCJ 726/94 Clal Insurance Company Ltd v. Minister of Finance, IsrSC 48(5) 441. For a discussion on the shift from having no constitutional statute to being recognized by international law, one can turn to the US Declaration of Independence. See among others: David Armitage, “The Declaration of Independence and International Law,” *The William and Mary Quarterly* 59:1 (Jan. 2002): 39-64.

¹⁹³ Stacy Douglas, “Constitutions Are Not Enough: Museums as Law's Counter-Archive,” in *Law, Memory, Violence: Uncovering the Counter-Archive*, eds. Stewart Mortha and Honni van Rijswijk (London: Routledge, 2016), p. 141. I will return to Douglas' essay in Chapter Five.

¹⁹⁴ *United States Declaration of Independence*, accessed June 29, 2019, <https://archive.org/stream/unitedstatesdecl00001gut/when12.txt>.

¹⁹⁵ Hugo Ball, *Dada Manifesto*, July 14, 1916, accessed June 29, 2019, <http://www.391.org/manifestos/1916-dada-manifesto-hugo-ball.html#.WHRIsIw5MRY>.

of those legal proposals did not seem to concern Bartana or the delegates summoned to the Congress, just as the invitation set by Breton for a trial of Maurice Barrès was made regardless of whether an official legal framework actually existed or not. In both cases, participants were engaged in and with legal formats and themes, while simultaneously creating the premises for legal declarations and interventions.

Marrying an unclear dichotomy between life and art, reality and fiction, both the Congress and the Barrès trial could be perceived as “a dissolution that also led to the interpenetration of aesthetics and politics,”¹⁹⁶ as argued by Demos in relation to the Dada trial. Held ninety-one years apart on the very same day (the Barrès trial on the 13th of May, while the Congress closed on the 13th of May), the two events have more in common than meets the eye, not only in what they leave open, blurred, or unraveled, but also in their goals and aspirations. Taking into account the obvious obligatory differences, and of the clear, estranged gap existing between two events taking place in different centuries, surroundings, and contexts, I argue and shed light on their intriguing commonalities (without overlooking their differences), and by doing so, offer a new examination of the past and current artistic fascination and engagement with legal spaces. A first step in the route to establishing similarities shared by the two projects can be traced to their original motivation. For Breton, the writer Maurice Barrès was “one of the heroes of his adolescence”¹⁹⁷ who betrayed their shared beliefs and goals. Barrès’ political activism shifted from an early support in “anarchism, freedom and total individualism,” to an active involvement in right-wing politics, especially following the Dreyfus Affair, as he “changed his colours and turned right-

¹⁹⁶ Demos, “Dada’s Event,” p. 138.

¹⁹⁷ Wayne Andrews, *The Surrealist Parade* (New York: New Directions Publishing Corporation, 1990), p. 38.

wing, nationalist and bourgeois.”¹⁹⁸ Bartana, on the other hand, has been described as acting as if she was a betrayed lover of Zionism.¹⁹⁹ Pointing a blaming critical finger towards Israel’s current state of affairs, Bartana’s post-Zionist²⁰⁰ approach in her films cannot be ignored. Appropriating Zionist ideals and propaganda in “a kind of reverse Zionism,”²⁰¹ Bartana described herself as coming from a “very Zionist”²⁰² family. She has created her films, such as the *Polish Trilogy*, in a way that can be perceived as anti-Zionist; however, she states that one should “be very careful about using the term anti-Zionist; maybe anti-Israel is a better way to say it.”²⁰³ Hence, both the Dada trial and the Congress are motivated by their creators’ wish to tackle the fallout of ideologies and the consequent reactionary developments, and to demand justice from those they once perceived as open, liberal, and progressive. Determined to examine, with the participation of the general public, the change that occurred and the responsibility this entails, both events can be described through the manner in which Breton explained the trial as a way “to determine the

¹⁹⁸ See Bishop, *Artificial Hells*, p. 72.

¹⁹⁹ In an article published in Hebrew in the *Ha’aretz* newspaper on April 18, 2008, under the title “Leni Riefenstahl, just the other way around,” Bartana is described as holding a position towards Israel of a disappointed lover, and she is quoted saying she is not “an Israeli hater [...] and I do things out of love for this country [...] with all the criticism that I have this place remains my homeland.” (translated by the author).

²⁰⁰ Post-Zionism emerged in the end of the 1980s mostly among Israeli academics and writers as a criticism directed towards the ideology of Zionism and its implications during the first decades of the State of Israel.

²⁰¹ Roberta Smith, “Yael Bartana: And Europe Will Be Stunned,” *New York Times*, April 18, 2013, accessed June 29, 2019, <http://www.nytimes.com/2013/04/19/arts/design/yael-bartana-and-europe-will-be-stunned.html>.

²⁰² Adam Chandler, “Israeli Artist Yael Bartana in Denmark,” *Tablet*, August 24, 2012, accessed June 29, 2019, <http://tabletmag.com/scroll/110143/israeli-artist-yael-bartana-in-denmark>.

²⁰³ Tracy Zwick, “Return: An Interview with Yael Bartana,” *Art in America*, April 4, 2013, accessed July 14, 2017, <http://www.artinamericamagazine.com/news-features/previews/return-an-interview-with-yael-bartana/>.

extent to which a man could be held accountable if his will to power led him to champion conformist values that diametrically opposed the ideas of his youth.”²⁰⁴ From Breton to Bartana, the latter has throughout most of her artistic career been invested in regaining access to what is perceived to be the ideals of socialism in Israel, all the way back to universalist and humanist “phantasmagorical”²⁰⁵ values of Zionism.

Moreover, the demands made by the delegates emerge from the past, but only in order to make clear claims for the future as enshrined in the movement's manifesto.²⁰⁶ While some have raised territorial demands for the “EU to expand until it includes China,” many of the demands are based around the three dimensions of justice (recognition, redistribution, and representation): “Polish citizenship to all immigrants; reintegration tax to cover the cost of moving 3.3 million Jews to Poland; the state of Poland should devote 15% of its annual budget to culture and arts [...]”²⁰⁷ The direction of the Congress, from the reading of the “last words” written by the movement’s late leader, to the demands made during the three-day event, can be defined by the same words used by art historian and critic Demos with regard to the Barrès trial: “It transferred the forms of aesthetic creativity into legal affairs, so that an intellectual's political developments and ensuing contradictions could be publicly debated and the offender held accountable within an unconventional courtroom that was *sui generis*.”²⁰⁸

²⁰⁴ Bishop, *Artificial Hells*, p. 72.

²⁰⁵ “We are revivifying the early Zionist phantasmagoria [...] We long to write new pages into a history that never quite took the course we wanted.” *JRMiP Manifesto*, accessed August 8, 2017, <http://www.jrmip.org/wp-content/uploads/2011/10/Manifesto-Text2.jpeg>.

²⁰⁶ “We reach back to the past [...] in order to shape a new future [...] The Kibbutz apples and watermelons are no longer as ripe.” *JRMiP Manifesto*.

²⁰⁷ Yael Bartana, *Wenn Ihr wollt, ist es kein Traum* (Vienna: Revolver Verlag, 2013).

²⁰⁸ Demos, “Dada’s Event,” p. 143.

The broad reading of the Congress through a legal prism is derived from the overarching dimensions of the Congress itself. As such, Bartana's project should be understood as constituting a strategy of imagination beyond the initial scope of the Congress. These overarching attributes have been strongly established in the movement's ambitious manifesto, which calls for the inclusion of "all those for whom there is no place in their homelands – the expelled and the prosecuted. There will be no discrimination in our movement. We shall not ask about your life stories, check your residence cards or question your refugee status [...]"²⁰⁹ And although these embracing arms may seem a mockery of the nation state or a parody on the current state of anti-refugee acts and laws in Europe just as in Israel, I suggest applying a more complex view of Bartana's project, in the manner I proposed with regard to the Barrès trial. The political stances taken by Bartana are fruitful exactly because she maintains an ambivalent position between the serious and mockery, between real life and art. Similarly to Dada, Bartana's utilization of the Congress offers a rearrangement of existing legal and political formats, which opens possibilities for "reconfiguring art as a political issue, or asserting itself as true politics."²¹⁰ From the first video in the *Polish Trilogy* to the Congress, Bartana asserts her aim towards a reconfiguration of the space between art and life, the real and the imaginary. Releasing the JRMiP movement and its first Congress from the immediate concerns of whether it is real or fictive opens a possibility of being neither true nor fictional. The perplexing thoughts and emotions evoked by Bartana's videos and Congress confirm the objection of preconceived borders between a legal discourse and an artistic practice.

²⁰⁹ *JRMiP Manifesto*.

²¹⁰ Demos, "Dada's Event," p. 141.

Long after the Dada trial claimed ownership of the format of the court by “joining aesthetic to ethical judgment and reinforcing it with (pretend) legal authority,”²¹¹ the JRMiP Congress continues to experiment with the artistic ability to transfer aesthetics into the legal realm and leading into a political sphere of action. Positioning the Congress as a space in which to discuss focal questions relating to the future of Europe and the Middle East has enabled it to become a platform for public debate, where legal and artistic alternatives are intertwined and imagined even when presumably being far-fetched and unconventional. I argue that Demos’ statement regarding the Dada trial is also valid for Bartana’s conduct, in which “the aesthetic regime introduces continuity between art and politics, such that aesthetics exceeds the realm of art by endowing the political world with visible forms.”²¹² Creating a platform, like in the Barrès trial, in which tensions go hand-in-hand productively, the Congress’ impact is gained through its fluctuating movement between aesthetics immersed with the legal, and the judicial with visual activism, evolving into a space for politics.

2.7. The Dreyfus Affair and Bartana’s JRMiP Congress

Against this backdrop, I hereby attempt to further link the Barrès trial to the JRMiP Congress and to the Dreyfus Affair. The latter is usually mentioned as part of the prerequisite historical background of the Zionist narrative, but until now it hasn’t held much ground in the analysis of the Congress by Bartana or of Bartana’s *Polish Trilogy*.²¹³ I find it intriguing and of much help to

²¹¹ Ibid., p. 143.

²¹² Ibid.

²¹³ On Yael Bartana’s website, one finds a number of texts by distinguished scholars such as Juli Carson, Ariella Azoulay and Adi Ophir, Jacqueline Rose, Joanna Mytkowska, and Boris Groys, all devoted to the *Polish Trilogy*. I found that only Juli Carson’s text (translated also into German) mentions the Dreyfus trial. She does so only in relation to the effect the trial famously had on Theodor Herzl. I will also note this; however, my argument is the first to expand on the effect the Dreyfus trial holds in relation to

return to the Dreyfus Affair by further exploring it, as I did previously in relation to Dada.

Mentioning Proust and Barrès earlier as two prominent figures for which the Dreyfus trial was a determinant turning point, I wish to include in this list a young journalist by the name of Theodor Herzl, for whom the Dreyfus trial left an equally indelible mark. Reporting from Paris on the Dreyfus Trial for the Austrian newspaper *Neue Freie Presse*, Herzl is better known as the founding father of Zionism. What began as an observational report on the trial of Dreyfus gradually led Herzl to organize the first Zionist Congress in Basel in the following years, which, as mentioned above, provides the basis for Bartana's Congress. Moreover, I shall argue that, from a contemporary standpoint, the Dreyfus Affair's influence should be further emphasized when dealing with Bartana's Congress. Just as the Dreyfus Affair had a tremendous long-lasting effect in France, it also holds a profound, ongoing legacy and relevance in contemporary Israel, as demonstrated by Jacqueline Rose. She eloquently describes the involvement of Proust in the Dreyfus Affair and the impact his writing has had on French and European culture. However, she does not halt there, as her journey from Dreyfus, Proust, and Freud leads her to Israel and to the Israeli-Palestinian conflict, "from the heart of Europe at the turn of the twentieth century to the Middle East, where the legacy of Dreyfus is still being played out to this day."²¹⁴ Later in her book, Rose further states that, "There is a line, we are often told, that runs from the Dreyfus Affair to the creation of Israel as a nation."²¹⁵ This can already be found in Hannah Arendt's *The Origins of Totalitarianism*, in which she states that the immediate effect of the Dreyfus Affair "was that it gave birth to the Zionist movement."²¹⁶ Therefore, since Bartana's work from early in Bartana's work.

²¹⁴ Jacqueline Rose, *Proust Among the Nations* (Chicago: The University of Chicago Press, 2011), p. 10.

²¹⁵ Ibid., p. 60.

²¹⁶ Hannah Arendt, *The Origins of Totalitarianism* (New York: A Harvest Book, 1979), p. 120.

her career, and certainly in the *Polish Trilogy* and Congress, revolves a great deal around the history of the establishment of the State of Israel, I argue that one needs to pay close attention to the Dreyfus Affair and its undeniable impact.

The Congress created by Bartana does not give in to the notion that with the establishment of the Zionist movement by Herzl following the Dreyfus Trial, the idea of Jewish emancipation came to an end. There is a sense of truth in drawing a line from the Dreyfus Trial to the establishment of a Jewish state in Israel; however, as Rose also states, this is not the only valid narrative. Instead, she claims we should “take from Dreyfus a warning—against an over-fervent nationalism, against infallible armies raised to the level of theocratic principle, against an ethnic exclusivity that blinds a people to the other peoples of the world, and against governments that try to cover up their own crimes.”²¹⁷ Following my short introduction to Herzl, it is now worthwhile to bring yet another figure into the discussion – that of Bernard Lazare. Lazare’s unique personality and philosophy sheds a new light on the variety of impacts the Dreyfus Affair had among Jewish and Zionist scholars and activists. The two distinguished voices of these personalities have already been examined by Hannah Arendt in a number of publications. In the comparison that Arendt draws between the two who “had witnessed the Dreyfus trial, and both were profoundly transformed by the experience,”²¹⁸ she writes that they “were turned into Jews by anti-Semitism [...] For them their Jewish origin had a political and national significance,”²¹⁹ yet it came to be that “Herzl’s views dominated twentieth-century Zionism whereas Lazare had become a pariah

²¹⁷ Ibid., p. 61.

²¹⁸ Richard J. Bernstein, *Hannah Arendt and the Jewish Question* (Cambridge, MA: The MIT Press, 1996), p. 46.

²¹⁹ Hannah Arendt, *The Jewish Writings* (New York: Schocken Books, 2007), p. 338.

among his own people, dying in poverty and obscurity.”²²⁰ It is a historical fact that the first Zionist Congress was initiated and presided by Herzl, but I argue that it is more the voice of Lazare that Bartana has been channeling in hers.²²¹ Although Lazare was not mentioned in the *Polish Trilogy*, the Congress, or in writings about Bartana's work, with Lazare we can better comprehend how Bartana deconstructs the Zionist Congress. It is with Lazare, I will show, that a clear quest for justice can be constructed and realized throughout the Congress of Bartana's initiated Jewish Renaissance Movement in Poland.

2.8. On Being Jewish and On Justice

As speculative and baffling as the JRMiP Congress might seem to be in its intersection of truth and fiction, of legal matters and imagination, Bartana's artistic maneuver is based on creating and facilitating a frame in which differing or even negating powers and ideologies can form an encounter.²²² In the most immediate way, one can say that Bartana appropriates Herzl's first Zionist Congress in order to bring divergent views into it.²²³ One example of this is the turning of the Congress to an all-inclusive event dealing with universal and global issues to which not only

²²⁰ Richard J. Bernstein, *Hannah Arendt and the Jewish Question*, pp. 46-7.

²²¹ In this sense, Yael Bartana can be said to be following the early writings of Hannah Arendt. Adi Armon argues that the influence of Bernard Lazare, whose name first appears in the Arendt essay “From The Dreyfus Affair to France Today” in 1942, can be traced in Arendt's “biography on Varnhagen, in her articles on Zionism in the 1940's, and in *The Origins of Totalitarianism*” linking all these writings together. Armon ends his essay with the claim that, “Hannah Arendt is the adoptive daughter of Bernard Lazare.” Adi Armon, “The Origins of the Origins: Antisemitism, Arendt, and the influence of Bernard Lazare,” *Tabur* 7 (2016): 66, 75. (In Hebrew, translated by the author). <http://tabur.huji.ac.il/sites/default/files/tabur/files/armon7tabur.pdf>.

²²² More on the event of the encounter in Chapters Four and Five of this book.

²²³ Here again, one notices a similar artistic act shared both by Bartana and Dada. Bartana begins from the Zionist Congress in order to exhaust it and to pour into it newly imagined content, just as Dada did with the format of the court, or the French tribunal.

Jews were invited. Titled the *Jewish Renaissance Movement* in Poland, by the time the Congress took place, it was clearly stated that the movement was open to all nationalities and religions, just as to all refugees and to stateless people. This ambivalence, on one side the movement keeping the “Jewish” in its title, while on the other side defining and providing a framework open to all,²²⁴ is crucial to the understanding of the aim of justice called upon by the Congress. I will argue that the perception of the Congress by Bartana as a space demanding legal justice offers us a path to understanding part of the ambiguity of the Congress, which lies precisely in the tension between Jewish and non-Jewish; between being inclusive to being exclusive. In order to achieve this, I shall further link, as promised earlier above, the Congress to the Dreyfus Affair, and more precisely to Bernard Lazare.

In her writings, Hannah Arendt considers Lazare the epitome of a “conscious pariah”²²⁵ alongside other notable figures such as Heinrich Heine, Rahel Varnhagen, and Franz Kafka. According to Arendt, it was Lazare who translated the position of the pariah into a political discourse: “Living in the France of the Dreyfus affair, Lazare could appreciate at first hand the pariah quality of Jewish existence.”²²⁶ Furthermore, Arendt argued that Lazare was aware that a solution to Jewish persecution could not be dealt with in isolation, as Herzl advocated, but through building alliances with other minorities and prosecuted people: “The emancipated Jew must awake to an awareness of his position and, conscious of it, become a rebel against it—the champion of an oppressed people.” In doing so, and by entering the space of politics, “Lazare’s idea was,

²²⁴ From the JRMiP Manifesto: “We direct our appeal not only to the Jews. We accept into our ranks all those for whom there is no place in their homelands – the expelled and the persecuted. There will be no discrimination in our movement.”

²²⁵ Hannah Arendt, *The Jewish Writings*, p. 274.

²²⁶ *Ibid.*, p. 283.

therefore, that the Jew should come out openly as the representative of the pariah [...] He wanted him to stop seeking release in an attitude of superior indifference or in lofty and rarefied cogitation about the nature of man per se.”²²⁷ Another important essay by Arendt to be mentioned in the context of Bartana’s Congress is titled “Herzl and Lazare.” In describing the different positions that each of the two prominent figures took following the Dreyfus trial, Arendt stresses that when hearing the mob crying “Death to the Jews!”, Lazare “realized at once that from now on he was an outcast and accepted the challenge.”²²⁸ In contrast to Herzl, for whom the event prompted him to write his book *The Jewish State*, where he argues for the need for a particular state dedicated only to the Jewish nation, Lazare directed his efforts in a more universal direction “as a conscious Jew, fighting for justice in general but for the Jewish people in particular.”²²⁹ Herzl planned an “escape or deliverance in a homeland,” while for Lazare “the territorial question was secondary.”²³⁰ Unlike Herzl, whose interpretation of the Dreyfus trial has been in seeing anti-Semitism as a deeply rooted, not-to-be-solved problem, Lazare sought to find in France and in the rest of Europe “real comrades-in-arms, whom he hoped to find among all the oppressed groups of contemporary Europe.”²³¹

Almost completely ignored by France’s Jewry and failing to reach out to others in Europe, Lazare was unable to embark on his mission to find allies among the weak and the persecuted. Yet, Lazare’s aspirations eagerly inhabit, more than a century later, Bartana’s project and its

²²⁷ Ibid., p. 284.

²²⁸ Ibid., p. 338.

²²⁹ Ibid.

²³⁰ Ibid., p. 339.

²³¹ Ibid., page 339-340.

accompanying manifesto as it proudly declares, “We shall be strong in our weakness.”²³²

Moreover, "We Shall be Strong in Our Weakness. Notes from the First Congress of the Jewish Renaissance Movement in Poland"²³³ was also the name of a performance directed by Bartana in May 2010 at the Hebbel am Ufer, the same theatre that would host her Congress two years later. This performance, for which I served as assistant director and contributing writer, was a sort of preview of the Congress. From its title to the speech given by actress Susanne Sachsse, it evokes similarities both in vocabulary and actions to be traced in the thinking of Lazare. The solo performance was an early call by Bartana for a Jewish Renaissance in Europe. Much in the spirit of Lazare, it was a call not to the Jewish community but to all “Fellow Europeans!” to join forces as comrades. On an empty stage, dressed in a black suit and wearing a white shirt, Sachsse's performance was in the format of a public “larger than life” speech accompanied by vibrant pulsing music. Her image was projected onto the background of the stage along with the emblem of the JRMiP movement dominated by a lighting design of black, red, and white colors. Holding white paper on which the symbol of the movement was also printed, Sachsse can be perceived as conjuring²³⁴ the words of Lazare: “In the name of JRMiP, I call upon all those of you who are free in spirit and of independent mind to join us...to achieve a mutual goal – A true Jewish

²³² *JRMiP Manifesto*.

²³³ For more information about the performance that opened the Polski Express Festival, please see “Polski Express III – Programme,” Goethe-Institut website, accessed August 8, 2017, <http://www.goethe.de/ins/pl/lp/prj/cit/the/tpe/pep/enindex.htm>.

²³⁴ Volker Pantenburg denotes the development in the work of Bartana from her video *Summer Camp* (2007) to the *Polish Trilogy* as a move from documentation to conjuration. Volker Pantenburg, “Loudspeaker and Flag: Yael Bartana, from Documentation to Conjuration,” *Afterall: A Journal of Art, Context and Enquiry* 30 (Summer 2012). accessed June 29, 2019, <http://www.afterall.org/journal/issue.30/loudspeaker-and-flag-yael-bartana-from-documentation-to-conjuration>

Renaissance. We need you from all different backgrounds, religions and faiths, to help us evolve from the shadows of the past into a concrete new chapter of the future.”²³⁵

In the case of Lazare, not only did he fail to succeed in forming an alliance among Jews and Christians in Europe during his time, he has also been cast into an ultimate oblivion. At the final footnote of Arendt’s article on Herzl and Lazare, she mentions the contribution of the French writer, poet, and Dreyfusard Charles Péguy, who wrote a memoir titled *Le portrait de Bernard Lazare*, which saved Lazare’s memory from fading away with no return. Interestingly enough, Lazare’s writings and ideas are gaining new recognition and new followers. Jacqueline Rose, for instance, describes Lazare as “a key player and for me a hero of this drama.”²³⁶ Although not focusing her investigation on Lazare, Rose identifies him as “the first public defender of Dreyfus.”²³⁷ Rose’s reading of the Dreyfus Affair through his contemporaries, such as Freud and Proust, offers an insight into the way the Dreyfus Affair was crucial to the intellectual development of European writers and scholars at that time, and all the way to our days. More importantly, Lazare is acknowledged by Rose as a remarkably prophetic political thinker who had the capacity to envision in a different way the significance of the anti-Semitism erupting in France during and following the Dreyfus Affair to the one offered by Herzl. Born to a Jewish family in the southern part of France, Lazare’s upbringing and education did not have much to do with forming a Jewish identity.²³⁸ As observed by Arendt, Lazare was forced to be confronted with being Jewish during the Dreyfus trial in the same manner as Herzl. The hatred showed by

²³⁵ *A Cookbook for Political Imagination*, Sebastian Cichocki and Galit Eilat, eds. (Warsaw and Berlin: Zachęta National Gallery of Art and Sternberg Press, 2011), pp. 133-136.

²³⁶ Jacqueline Rose, *Proust Among the Nations*, p. 10.

²³⁷ *Ibid.*, p. 57.

²³⁸ *Ibid.*, p. 58.

the masses to Jews sent him down this path; however, for him it meant that “I am a Jew and I know nothing about the Jews.”²³⁹ According to Rose, “For Lazare, therefore, being a Jew did not mean an exclusive ethnic identity. It was more like a project, an identity to be discovered and forged against hatred, as well as a form of continuous self-education.”²⁴⁰ Since Lazare understood himself to be a Jew without religious conviction, the question that remained open to probing was—how and what can be the content of his non-religious faith? His answer, as quoted by Rose, was, “I belong to the race of those [...] who were first to introduce the idea of justice into the world. [...] All of them, each and every one, my ancestors, my brothers, wanted, fanatically, that right should be done to one and all, and that injustice should never tip unfairly the scales of the law.”²⁴¹ In the words of Léon Blum introduced by Rose at the opening of her book, “Just as science is the religion of the positivists, justice is the religion of the Jew.”²⁴² From this idea of understanding being Jewish as justice, the parallel I draw to Bartana’s project becomes evident. Defending her position as not anti-Zionist, Bartana quite similarly to Lazare, who was a Zionist and worked at the beginning alongside Herzl, sets to bring into a Zionist platform—the Congress—voices long forgotten, such as that of Lazare. Through a contemporary investigation, Bartana invites us to imagine the Zionist movement anew. And she does this very much in accordance with Lazare, as it is safe to say that each of them embarked on a quest to uncover and bestow new content and relevant meaning on what it is to be Jewish just as much as on what it is to seek and perform justice.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid., p. 59.

²⁴² Ibid., p. 21.

Chapter Three: New World Summit – Terror, Gender, and an (Old) New Right of Intervention

3.1. Introduction

This chapter is dedicated to a closer observation of the work of artist Jonas Staal, and in particular the New World Summit he established in 2012. As I began to discuss in Chapter One, The New World Summit (NWS) embarked in 2012 as part of the 7th Berlin Biennale. An ongoing work of Staal's, it has to this date converged eight times in various locations from Leiden (the Netherlands) to Kochi (India). Proclaimed from its early foundation as an organization identified as being both artistic and political, it is concerned with the creation of alternative spaces for other organizations “excluded from democracy.”²⁴³

According to Staal and the NWS, these organizations are facing a state of “democratism” in which Western hegemony is expanding its rule and influence in the name of democracy.²⁴⁴ “The War Against Terror” is one recent and critical manner of “democratism” that the NWS seeks to confront through artistic imagination, speech, and action. One aspect of this war, which the NWS has been studying closely since the first summit, is the “designated lists of terrorist organizations.”²⁴⁵ Mostly represented by lawyers, or figures previously de-listed from being

²⁴³ New World Summit - About, accessed June 29, 2019, <http://newworldsummit.org/about/>.

²⁴⁴ As Judith Butler states: “We can note from the start that the struggle over ‘democracy’ as a term actively characterizes several political situations. How we name that struggle seems to matter very much, given that sometimes a movement is deemed antidemocratic, even terrorist, and on other occasions or in other contexts, the same movement is understood as a popular effort to realize a more inclusive and substantive democracy.” See: Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, MA: Harvard University Press, 2015), p. 2.

²⁴⁵ Perhaps best known are the lists published by the Bureau of Counterterrorism in the US Department of State, but other countries from the UK to Israel list and de-list foreign organizations according to local legislation.

considered part of a terror organization, the Berlin summit's first day, titled "Reflections on the Closed Society," was dedicated to giving a voice and to listening to the various groups' representatives. These reflections strongly signaled the aim of the summit to alter and reconstruct the common public image of terror and of terrorists in a manner fitting what has been established in this publication thus far as visual activism.

As I will continue to demonstrate, Staal and the NWS visual activism began with the act of listening, continues with creating a new image of terror, and ends in the creation of a permanent active space as part of the Rojava revolution in the north of Syria. In analyzing and reflecting on the work of Staal and the NWS, I shall be following a similar methodology to the one I used with regard to the work of Yael Bartana in Chapter Two. My interest and motivation lie in a determination to expose legal aspects that are usually hidden, neglected, or underrepresented. This is in light of the dominant discourse in the art world in recent years, which has been narrowed to dedicating and devoting resources and much attention to whether art is political, or to the conditions that make art political. While I surely agree that these are all pivotal questions, and my research is indebted to the knowledge and expertise cultivated from this particular discourse, my direction is focused towards the law and justice, as I seek to discover and shed light on legal perceptions we tend to overlook. Their meaningful existence and profound potential and relevance to both politics and art will be demonstrated in this chapter mainly through the legal and gender-based reading of Catharine A. MacKinnon. Her original and insightful writing, along that of Susan Sontag, captures an essential component of women's rights after and in relation to the events of September 11, 2001, crucial in my view to establishing a critical discussion on terrorism, gender, the nation-state, art, and law in our times. The chapter will

conclude with the third step in my proposed methodology, in which the Right of Intervention is proclaimed through judicial-visual activism.

3.2. Inside the New World Summit – Aesthetics and the Law

As mentioned above, the first New World Summit (NWS) took place in Berlin in 2012 as part of the 7th Berlin Biennale. From its early stages, the NWS advocated an interest in constructing a new concept and relation towards terrorism in Western democracies. Signs of the Summit's visual activism began already in the entrance leading to the hall in which the Summit's two-day assembly unfolded. Just as in the case of the AOI discussed in the first chapter, one can trace here the visual and political language of Jonas Staal, aiming to immerse the general public in an environment embodying a clear sense of visual activism. This was manifested right from the start in the reversing of roles and in shifting the perception of members of the public, who upon entering the Sophiensaele Theater were asked to show identification cards. The preliminary knowledge of the public – that inside the hall terrorist representatives were assembled – turned this small, and almost mundane, gesture of identification into an event demonstrating the transparency of power relations and of acts of control asserted under the rule of law. The mere request to present an ID card at a theater in Germany is a rare enough matter to have raised some eyebrows. Moreover, and in a very subtle manner, perhaps even unintentionally, it marked the audience as a possible threat and blurred the line between them and those listed as terrorists. The request to present an ID card, with which European citizens are able to exercise the basic human right of free movement within the EU, was a reminder of how easily it is revoked and denied to others by the same regimes.²⁴⁶ The space inside continued this play between friend and enemy,

²⁴⁶ The freedom of movement is recognized by nation-states' constitutions and international law as a basic human right. It is a right that needs constant support, as "Both performance studies and disability studies have offered the crucial insight that all action requires support and that even the most punctual and

familiar and unknown, by means of visualization and the architectural plan of the space. Entering the space to take a seat, the audience needed to pass through a round curtain structure circling an inner arena. The double-faced construction, which brought to mind the movement of a weathervane, stood as if a filter between what remained outside the hall, in the shadows, and what waited inside, exposed under the light of the theater. Using the colorful flags of the varied terror organizations as a buffer zone, it turned what could be perceived as the unsettling content of the flags into a sort of a protective shield. It isolated the audience from the world outside, while at the same time provided a secure space for the voices of the representatives of organizations listed as terror groups to be heard. In this way, the flags of the organizations, usually associated as a threat to Western democracies, were acting as harmless symbols of representation, while they were at the same time defining and creating the structure in which to assemble.

As I learned later in a conversation I had with Staal, the reason for creating this sort of partition made of flags of the organizations listed as terrorist organizations had more than an aesthetic double-meaning declarative impact. Staal informed me that the idea of a summit hosting and giving a space and voice to so-called terror organizations put the Biennale at financial risk and possible cancellation. Being supported by the German Federal Cultural Foundation (Kulturstiftung des Bundes), the Summit seemed to have posed a legal problem for the Biennale organization. As a foundation established by the German federal government, the endorsement of the NWS as part of the Berlin Biennale propelled a legal challenge. This was due to the fact that,

seemingly spontaneous act implicitly depends on an infrastructural condition that quite literally supports the acting body. This idea of ‘support’ is quite important not only for the retheorization of the acting body, but for the broader politics of mobility,” argues Judith Butler in “Rethinking Vulnerability and Resistance,” in *Vulnerability in Resistance*, Judith Butler, Zeynep Gambetti, and Leticia Sabsay, eds. (Durham and London: Duke University Press, 2016), p. 19.

according to German law, it is forbidden to fund or support an organization listed as a terror group.²⁴⁷ It turned out to be that the crossbreeding of visual activism and terror organizations accumulated into an action of standing up against the existing political and aesthetic order via the field of art. In other words, the NWS created an artistic action that was political exactly because of its intervention “in the general distribution of ways of doing and making as well as in the relationships they maintain to modes of being and forms of visibility,” as argued by Jacques Rancière.²⁴⁸ Or, in other words and in following the concept of judicial-visual activism, Staal's NWS catalyzes an active resistance to the existing legal and political order.

The spiral structural arrangement of the flags must have been satisfactory, as the federal foundation did not withhold its support of the Biennale. Yet, the question of whether a change in design placated the foundation, or there were other conditions demanded or not, is secondary to the question of whether or not the mere idea of a summit, created by an artist for an art institution, could jeopardize the legality of the conduct of Germany's largest and most prestigious cultural foundation. Furthermore, even if the foundation had no or little knowledge of the summit and its contents, one may ask from a legal perspective whether the Summit created an intervention, or a space of exception, in German and/or European law.

3.3. From Berlin to Kochi – The Legality of the NWS Questioned, Again

In 2013, a year after the Summit in Berlin, the legality of the NWS was brought more explicitly and publicly into question in India. It was the third edition of the NWS, planned to take place by

²⁴⁷ For general information on Germany's Anti-Terrorism legislation see: Jenny Gesley, “Global Legal Monitor,” Library of Congress, July 10, 2015, accessed August 11, 2017, <http://www.loc.gov/law/foreign-news/article/germany-new-anti-terrorism-legislation-entered-into-force/>.

²⁴⁸ Jacques Rancière, *The Politics of Aesthetics* (London: Bloomsbury Academic, 2013).

invitation of the Kochi-Muziris Biennale. With clear resemblance to the architectural design of the Summit in Berlin, the space constructed in Kochi was designed as an open-air triangle surrounded once again by flags. This time around, in order to further relate to the local space in which the Summit took place, half of the flags were of “banned organizations in India, the other half organizations from abroad, thus placing India’s policies of political exclusion in an international context in which occupation plays a central role.”²⁴⁹ Following the local and global intrinsic relations I noted in previous chapters, the now global action of the NWS facilitated a space for debate touching upon local Indian political matters. This action landed the Summit in controversy once again, situated on the blurry line between law and politics. The daily newspaper *Indian Express* reported that a row was sparked due to Staal's plan to present Indian and international organizations banned as terrorist groups. The newspaper went on to indicate that the police had been closely inspecting the space of the planned Summit with its colorful constructed pillars of flags representing the variety of international and local banned organizations. Interestingly enough, unlike the first Summit in Berlin, for which, to the best of my knowledge, the legality of its premise and conduct were never openly discussed, neither by Staal and the NWS, nor by the critics or the press, Kochi's Police Commissioner M R Ajith Kumar was quoted by the newspaper as confirming that the NWS installation was under full police and legal investigation. “We will take action if his [Staal's] installations are against the law [...] Appropriate action will be taken if the event is illegal.”²⁵⁰ The complexity of existing relations between art and politics was further revealed when the newspaper informed its readers of a number of high-

²⁴⁹ New World Summit,” accessed June 29, 2019, <http://newworldsummit.org/locations/kochi/>.

²⁵⁰ Shaju Philip, “Kochi Biennale: Dutch artist plans a summit of terror outfits, sparks row,” *The Indian Express*, Dec. 30, 2012, accessed June 29, 2019, <http://archive.indianexpress.com/news/kochi-biennale-dutch-artist-plans-a-summit-of-terror-outfits-sparks-row/1051936/>.

ranking political figures, such as the Kerala Home Secretary and former Kerala Chief Secretary, who were serving as members of the Kochi's Biennale trust. In a true twist of irony, the 2012 Kochi-Muziris Biennale curator's note commenced with a declaration that, "There couldn't have been a better space than Kochi for symbolic free speech."²⁵¹ Yet, as indicated on the NWS website, local law enforcement had other plans in mind. According to the NWS, after a raid by the Kochi City Police, the flags in dispute were painted over by staff members of the Biennale itself, who also removed the wall text announcing the Summit. Furthermore, legal action was taken, as charges were brought against Staal and three other members of the NWS under the Unlawful Activities (Prevention) Act Section 10 (4). "This is the very same act that is used to ban the organizations that the New World Summit aimed to host."²⁵² In between the "Our summit is legal" statement by Staal, as quoted by the local newspaper, and the Kochi-Muziris Biennale's promise "to open a new discourse, one that will explore a new, hitherto unknown language of narration," law enforcement had the upper hand. "Blurring the boundaries," as called for by the curators, could not be achieved as long as the board of the Biennale consisted of "senior government advisors," was the NWS's reaction to the experienced turmoil.

3.4. From Kochi to Rojava – Action, Debate, and Justice

Up until this point, I have shown how the NWS ignited legal challenges and questions as part of what I consider to be its judicial-visual activism. As I have argued in previous chapters, the legality, or the legal issues, in the work of Staal – just as in the work of Bartana – seems on the surface to be rather a by-product to of the work itself. Nevertheless, it is my intention to continue highlighting these aspects, creating greater awareness of them in order to expose, mark, and

²⁵¹ "New World Summit – Kochi," accessed June 29, 2019, <http://kochimuzirisbiennale.org/concept/>.

²⁵² "New World Summit."

underline their legal importance, originality, and significance especially in the struggle for justice. In doing so, I argue for a more intensified, nuanced, and layered perception of the practices and knowledge gained by artists. I further argue that judicial-visual activism is positioned and expressed in the realm of politics and law based on previously acquired artistic capabilities. Art, law, and justice are inherently intertwined, and any “attempt to redeem the social value of art repeats the false assumption that art, politics, and ethics are already external to each other.”²⁵³ However, the task of identifying those spaces in which art actively intersects with law becomes more and more complex at a time when politics and law seem to be blending into one “fuzzy middle zone,”²⁵⁴ as the example discussed in the case of the Summit in Kochi suggests. Thus, my investigation is concerned with revealing sites and establishing paths in which art positions law away from being “a mere instrument of political power” on the one hand, or, on the other hand, of being a mere “ideological mask for the machination of politics.”²⁵⁵ The artistic relationship to law and legal matters will hopefully be further uncovered through dedicating the rest of this chapter to an even closer observation and analysis of yet another NWS summit.

3.4.1. Impressions of the New World Summit – A Critical Reading

This particular summit, which took place at the autonomous region of Rojava in northern Syria on October 16 and 17, 2015,²⁵⁶ brings with it, I shall claim, yet another perspective on judicial-

²⁵³ Nikos Papastergiadis, *Spatial Aesthetics, Art, Place, and the Everyday* (Amsterdam: Institute of Network Cultures, 2010), p. 19.

²⁵⁴ Matthew Stone, Illan rua Wall, Costas Douzinas, eds., *New Critical Legal Thinking: Law and the Political* (Abingdon: Birkbeck Law Press, 2014).

²⁵⁵ *Ibid.*, p. 1.

²⁵⁶ A second summit in Rojava is being planned, but has yet to take place at the time of my writing. In the meantime, the NWS has been engaged in opening the Rojava Embassy in Oslo, Norway. The temporary Embassy was opened on November 26-27, 2016 at the Oslo City Hall. This is the second Embassy opened by the NWS for representatives of “stateless” organizations following the opening of a temporary

visual activism situated on the borders of law and politics. Unlike previous summits that were mostly hosted and supported by local institutions, the one in Rojava marked a significant change in the practice of Staal and the NWS. In short, by utilizing temporary spaces for the assembly of representatives from a variety of worldwide organizations, it signaled a shift toward the establishment of a permanent space for a designated local community in the form of a public parliament constructed in the city of Derîk. But first, as I did not attend this summit (unlike the one in Berlin), I need to begin by giving a descriptive introduction to a video titled *Impressions of the New World Summit – Rojava Part I*²⁵⁷ (2015) sent to me by Staal following the summit. Following that, I will offer a few possible ways to approach and analyze the video and the summit with the support of two films by Jean-Luc Godard and his filmmaker collaborators.

The video opens with a yellow slide, on which appears – next to the words “New World Summit” and “Rojava” in Latin and Arabic lettering – the coat of arms of Rojava with its three stars in blue, red, and white along with the Rojava flag’s distinctive colors of yellow, red, and green. Over the background of what appears to be Kurdish traditional music, the video depicts the arrival of twenty-seven delegates to the Democratic Self-Administration area of Rojava. Large white trucks are seen crossing a bridge over a river, while smiling people seem to be at an early stage of getting to know one another. Without words, while instrumental music plays to which singing voices join, we are introduced quickly to local people and sites during the opening minute of the video. The camera lingers on the tricolor flags of Rojava adorning public squares and boulevards before taking us indoors with images of musical bands, people dancing, the playing of

Embassy of Azawad Utrecht in September 2014. I will not be able to elaborate on these actions and platforms within the scope of this book. Link: <http://newworldsummit.org/news/new-world-embassy-rojava>; <http://newworldsummit.org/news/new-world-embassy-azawad>.

²⁵⁷ New World Summit. 2015. *New World Summit: Rojava - International Delegation*, Vimeo, 07:13, November 6, 2015, accessed June 29, 2019 <https://vimeo.com/144890359>.

instruments, and talking. In between these images and sounds, we can also observe the presence of soldiers at a checkpoint, reminding us that we are situated in one of the most war-stricken areas in the world. The presence of armed soldiers is made even more evident when the video presents the entrance to the Tev-Çand Cultural Center in the city of Derîk, as soldiers gather in front of the building and on its rooftop. In this space, the first part of the NWS in Rojava will soon take place, but not before more local flags will be arranged and hung along the center's fence, and across the street as well. Finally, the gate of the center opens, through which one sees only women entering after being closely examined by female soldiers for security reasons. After about two minutes of an exposé into the background of the summit and its geopolitical complexities, Jonas Staal takes the stage and opens the fifth NWS. One cannot miss the remarkably different setting in which Staal and the subsequent speakers are situated. It is not unusual for Staal to be assuming the task of the host and welcoming figure, which he has done in all previous summits. Through this declarative and representative act, he has maintained his position as founder of the NWS, taking on "the responsibility" as he stated in his opening speech in the summit in Berlin.²⁵⁸ Yet, while in earlier summits Staal and the rest of the speakers were invited to stand and talk from clean-cut wooden podiums, in Rojava Staal is seated next to a male interpreter with no less than nine microphones cast in different positions in front of him on the table. "Welcome friends" are the first words uttered by Staal, who seems more anxious about this summit than he was during previous ones. One cannot but dwell on the differences between previous summits in relation to the one in Rojava, taking into account the extreme conditions in which the latter is taking place. The four cantons that make up the autonomous region of Rojava

²⁵⁸ In comparing this to Yael Bartana's position regarding the JRMiP Congress, one needs to notice the very different approaches of both artists. While Staal is visible to the viewer and takes a vocal and written position throughout the summit (and also before and afterward), Bartana is nowhere to be seen or heard on stage.

gained their autonomy in 2013 as a result of the Syrian civil war and armed conflicts that spread in the area beginning in 2011. These extraordinary developments were mostly ignored by the international press.²⁵⁹ I will elaborate on the lack of attention and interest on the part of Western media later; at this point, it is important to note that only the siege of the canton of Kobanî, and the massacre committed by the Islamic State of Iraq and the Levant (ISIS), was able to bring widespread attention to the killings and constant threat endured by the people of the region.

Staal's noticeable excitement about the accomplishment of organizing a summit in an isolated, marginalized, and bloodshed-filled region cannot be ignored or belittled. The vision of free, equal, and self-governing communities who are ruled through direct democracy cannot but inspire us when listening to the local speakers following Staal's welcoming words. "We regard democratic confederalism as the best suitable model for this region," declares Amina Osse from the Democratic Unity Party (PYD). She continues, saying that, "We are building a society on the basis of equality and friendship [...] A society where laws are ethical and just." Osse will be followed by Akram Hesso, Prime Minister of the Cizîrê Canton, further stressing the democratic, self-administrated order brought by the Rojava revolution, which he hopes will serve as an example to the whole of Syria. The next speaker appearing in the video, the political writer Janet Biehl, will bring the name of Murray Bookchin into the discussion, whose writings are perceived

²⁵⁹ In an opinion column by David Graeber published in *The Guardian* in October 2014, he comes out against the disregard of the international community for the "remarkable democratic experiment" taking place in Rojava. David Graeber, "Why is the world ignoring the revolutionary Kurds in Syria?," *The Guardian*, October 4, 2014, accessed June 30, 2019, <https://www.theguardian.com/commentisfree/2014/oct/08/why-world-ignoring-revolutionary-kurds-syria-isis>. Almost five years after Graeber's article was published, the question why Rojava is being ignored by the media is still relevant as an article in *Ha'aretz* asks "Why is no one talking about Rojava?," see Dor Shilton, "In the Heart of Syria's Darkness, a Democratic, Egalitarian and Feminist Society Emerges," *Ha'aretz*, June 9, 2019, accessed June 30, 2019, <https://www.haaretz.com/middle-east-news/.premium.MAGAZINE-amid-syria-s-darkness-a-democratic-egalitarian-and-feminist-society-emerges-1.7339983>.

as having made a major contribution to the structuring of the ideology of the Rojava revolution.²⁶⁰

Biehl assured the listeners of the influence of the American socialist and anarchist whom she thinks “would have been gratified to see these developments in both parts of Kurdistan,” just as she was.²⁶¹ Further declarations on the importance diversity, local art, culture, and education seem to be shared by all participants regardless of gender, ethnicity, or religion. As the female co-mayor²⁶² of Derîk, Dejde Hamo stated that the “goal that brings us together is building a democratic system, in which everyone can express her or his cultural identity.”²⁶³ Seated next to her co-mayor Hussein Adam, Staal talks about the life that has been sacrificed by those who died for the revolution as he goes on to say that, “(W)e could not have an international conference like

²⁶⁰ A personal account by Wes Enzinna as a teacher in Rojava, to which I will return later, was published in *The Times Magazine* in 2015, in which he identifies Biehl as Bookchin’s partner and assistant. Wes Enzinna, “A Dream of Secular Utopia in ISIS’ Backyard,” *The Times Magazine*, November 24, 2015, accessed June 30, 2019, <http://www.nytimes.com/2015/11/29/magazine/a-dream-of-utopia-in-hell.html>.

²⁶¹ It is commonly agreed that Abdullah Öcalan’s interest in Bookchin began at the moment of his arrest by Turkey in 1999. In the third part of his series of articles published between 2014 and 2015 by *e-flux* under the title “To Make a World,” Staal portrays Öcalan’s rise to power, and the changes that occurred in the PKK especially in relation to the Kurdish Women’s Movement. According to Staal, Öcalan was reading Michel Foucault and Noam Chomsky in prison, but it was through Bookchin that he found a way to re-examine his own absolute power, and re-structure the rigid hierarchical structure of the PKK. This had been achieved, as stated by Staal, through the incorporation of Bookchin’s paradigm of the “ecological society” and its interpretation by Öcalan into what he perceived to be “democratic confederalism.” Based on Bookchin’s principles of “communalism,” “confederalism,” and “direct democracy,” Öcalan proposes a form of autonomy through practice, a series of interlinked structures of self-governance that operate independent of, but parallel to, existing states. The objective of the PKK thus switched from attaining recognition by Turkey and the international community, to self-recognition through practice.” Jonas Staal, “To Make a World, Part III: Stateless Democracy,” *e-flux Journal* 63 (March 2015), accessed August 12, 2017, http://www.e-flux.com/journal/to-make-a-world-part-iii-stateless-democracy/#_ftnref34.

²⁶² In the system established in Rojava, “Political positions, such as that of the mayor, were now required to have both a male and a female representative operating on the basis of absolute equality—a concrete achievement of the newly autonomously organized Kurdish women’s movement.” Jonas Staal, “To Make a World, Part III: Stateless Democracy.”

²⁶³ New World Summit. 2015. *New World Summit: Rojava - International Delegation*, Vimeo, 07:13, November 6, 2015. <https://vimeo.com/144890359>.

this without the sacrifices that have been made.”²⁶⁴ Also in the video are words of solidarity with the Rojava revolution by international supporters from the Democratic Movement of the Philippines, the Scottish National Party (SNP), the Popular Unity Candidacy of Catalonia (CUP), and the Feminist Initiative (F!) in Sweden. These speeches will culminate in Staal reappearing in order to close the summit and to announce the cooperation between the NWS and the Democratic Self-Administration of Rojava towards the building of the anticipated parliament in the city of Derîk. Upon this announcement, the attendees are all invited to join and visit the space of the new parliament. Sounds of Kurdish traditional music return, and the video ends with a festive gathering around tables with an abundance of food in celebration of the construction of the parliament. At the end, we are exposed to the empty construction site, which is enclosed by two sets of reinforced steel pillars resembling the *Maman* (1999) spider sculptures of Louise Bourgeois. The words “Self –Defense” is engraved in four different languages on one of them.

3.4.2. On the Kurdistan Workers' Party (PKK) and Terror

The above-described artistic endeavor by a Western artist taking place in the Middle East in the midst of a revolution immediately draws intense and varied reactions. The video, which can be argued to be a crossbreeding between a propaganda film and a national promotional video with its blending of flags, soldiers, and local music, can also be seen as part of a long-running Western voyeurism, or artistic “tourism” into areas of conflict and devastation. Yet, taking into account the consistent ignoring of the revolution in Rojava by Western media, one must look with care into Staal’s work in this region hovered over with conflicts and wars. “Why is the world ignoring the revolutionary Kurds in Syria?” asks David Graeber, pointing the blame not only at the press, but towards the international community and large parts of the “international left” as well. Graeber,

²⁶⁴ Ibid.

who visited Rojava in December 2014,²⁶⁵ argues that an answer can be found in the fact that the Rojavan Revolutionary Party (PYD) collaborates with the Kurdish Worker's Party (PKK), which is listed as a terror group.²⁶⁶ Graeber's statement leads us, once again, to the designated international terrorist lists, which have been on the agenda of the NWS since its first summit in Berlin in 2012. Graeber, similarly but independently from Staal and the NWS, perceives a dramatic change in the PKK based on the shift in ideology by its founder and leader Abdullah Öcalan. According to Graeber, whose insights into the Rojavan revolution are very much in line with Staal and the NWS, "The Kurdish struggle could become a model for a worldwide movement towards genuine democracy, co-operative economy, and the gradual dissolution of the bureaucratic nation-state."²⁶⁷

²⁶⁵ Graeber visited the canton of Cizîrê in Rojava independent of Staal and the NWS. An interview with Graeber is also published as part of the NWS Reader on Rojava. More on Graeber's position on the subject can be found here (accessed June 29, 2019): <https://zcomm.org/znetarticle/no-this-is-a-genuine-revolution/>.

²⁶⁶ To be clear, the Kurdish Worker's Party (PKK) remains to this day on terror lists of governments such as the US, the UK, and Australia. "Foreign Terrorist Organizations," U.S. Department of State, accessed June 30, 2019, <https://www.state.gov/j/ct/rls/other/des/123085.htm>. "Proscribed Terrorist Organisations," UK Home Office, accessed June 30, 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795457/Proscription_website.pdf. "Listed Terrorist Organisations," Australian National Security, accessed June 30, 2019, <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>. In light of the war against ISIS, scholars such as David Phillips and Kelly Berkell make an argument in favor of delisting the PKK from the terror list. Based on the two ceasefires of 1999 and 2013 between the PKK and Turkey, they underline that official Turkish representatives have met with Öcalan and recognized his leadership. In 2014, they mention, more than 33,000 scholars and politicians signed a petition calling for the US government to remove PKK from the list of international terrorist organizations. See David Phillips, Kelly Berkell, "The Case for Delisting the PKK as a Foreign Terrorist Organization," *Lawfare*, February 11, 2016, accessed June 30, 2019, <https://www.lawfareblog.com/case-delisting-pkk-foreign-terrorist-organization>.

²⁶⁷ Graeber, "Why is the world ignoring the revolutionary Kurds in Syria?"

In the Reader titled “Stateless Democracy” published in 2015 by the NWS and made in collaboration with the Kurdish Women's Movement,²⁶⁸ Dilar Dirik, one of the Reader's co-editors, further argues that it is the “solid ideological base”²⁶⁹ of the Rojava revolution rooted in Öcalan’s writings that unmask the failure of Western political, social, and economic structures and policies. This ideology is based on Öcalan's manifesto titled “Declaration of Democratic Confederalism in Kurdistan,” introduced in 2005. In a nutshell, the Declaration is considered a pivotal turning point in the politics of the PKK. In it, Öcalan has articulated that a solution to the “Kurdish problem” is not to be directed towards an independent state, but rather to the creation of local assemblies united into a confederation – “democracy without the state.”²⁷⁰ Along the idea of a stateless democracy or a “democratic confederalism,” a “Social Contract” was collectively written by the representatives of the different groups of people living in Rojava. As I will show in the following, it is also through the positioning of women at the forefront that Staal and the NWS provide a critique and an alternative to the nation-state and its legal institutions.²⁷¹ Staal and the NWS demonstrate the need to redefine and recreate rights from within the nation-state that go beyond the exclusivity of the nation-state, in the manner suggested by Saskia Sassen and described in Chapter One.

3.5. Stateless Democracy, Terrorism, and Gender Equality

²⁶⁸ Renée In der Maur, Jonas Staal, Dilar Dirik, eds., *Stateless Democracy*, New World Academy Reader No. 5, BAK, basis voor actuele kunst, 2005, accessed June 30, 2019, <http://newworldsummit.org/wp-content/uploads/2015/06/NWA5-Stateless-Democracy.pdf>.

²⁶⁹ Ibid., p. 48.

²⁷⁰ Wes Enzinna, “A Dream of Secular Utopia in ISIS’ Backyard.”

²⁷¹ “The contribution of women frontliners to resistance is usually invisible to outsiders and for the most part goes mostly unnoticed, but it exhibits a great deal of power and resilience,” Nadera Shalhoub-Kevorkian, *Militarization and Violence Against Women in Conflict Zones in the Middle East* (Cambridge: Cambridge University Press, 2009), p. 1.

The charter that constitutes the foundation of Rojava's administration guarantees “a secular political system; full autonomy for each of the three cantons; the minimization of centralized rule and maximum agency for local councils and cooperatives; the implementation of quotas guaranteeing a minimum of 40 percent political participation by both women and men; and a common commitment to developing a new ‘social ecology’.”²⁷² The NWS Reader includes the charter, and just like the summit in Rojava, it revolves around the two main elements of the Rojavan ideology – the concepts of the stateless and of gender equality are enshrined in the charter. These two elements can also be traced from the first Summit in 2012 onward, as it has maintained a consistent tying of the question of stateless democracy, in defiance of the nation-state, to gender and women’s rights. The particular study of the PKK and the Rojava case and Summit makes it possible to broaden the discussion on the role and function of democracy in our time in light of the emergence of stateless regions in which gender equality plays a vital role.

I shall argue that this should come as no surprise when considering the contribution of gender studies to our perception of terror and the “war on terror” dominating international law and politics since the events of September 11, 2001. Although Catharine A. MacKinnon’s groundbreaking essay, “Women's September 11th: Rethinking the International Law of Conflict,”²⁷³ was not mentioned at the Summit or in the Reader, I suggest bringing it into the discussion. This extraordinary article is an original and insightful contribution, in my view, to any discussion on terror after 9/11, due to its core argument regarding the connection between terror, non-state actors, and gender. In the case of Rojava, where terrorism, human rights, gender

²⁷² The full version of the Social Contract can be found in In der Maur et al., *Stateless Democracy*, pp. 131-158.

²⁷³ Catharine A. MacKinnon, “Women’s September 11th: Rethinking the International Law of Conflict,” *Harvard International Law Journal* 47, 2006.

equality, and the question of the state/non-state are deeply intertwined, MacKinnon's words resonate in their fullness. Asking what the connection is between 9/11 and women's rights, MacKinnon demonstrates how a new international order has formed since 2001, giving new meaning to any international armed conflict. According to international law, "If states are not the units or focus of the fighting, the conflict may not qualify"²⁷⁴ as an armed attack. With this in mind, MacKinnon address the events of 9/11 by pointing out two crucial facts: first, Al Qaeda is a non-state actor, a private network established by Osama bin Laden who was a private citizen himself, and second, the World Trade Towers were legally located within the United States, but were a civilian target in which private citizens were working for mostly private corporations. "On September 11th non-state actors committed violence against mostly non-state (nongovernmental and civilian) actors,"²⁷⁵ therefore the UN Council resolution implying that the events are an "armed attack" is *not* in accordance with international law. The attack on the Towers, states MacKinnon, should have been "pursued judicially,"²⁷⁶ but instead, "NATO invoked collective defense for the first time in its history." An international "war on terror" began regardless of the fact that "international law does not have a conflict like this primarily in mind [...]"²⁷⁷ Identifying the attacks of 9/11 as "armed attacks" in order to legitimize an international "war on terror" is for MacKinnon an extraordinary example of how international law can be manipulated and implemented according to changing needs and circumstances. Yet, the "playfulness" of the law, as MacKinnon brilliantly establishes, is gender restrictive. MacKinnon demonstrates how, in the case of violence against women, in which both the victims and the perpetrators are private

²⁷⁴ Ibid., p. 5.

²⁷⁵ Ibid., p. 10.

²⁷⁶ Ibid., p. 10.

²⁷⁷ Ibid., p. 11.

persons, a war is hardly to be imagined. MacKinnon does not call for any sort of war, but instead calls us to stop and think of both September 11th and violence against women as gender-based “acts by formally nonstate actors against nonstate targets.”²⁷⁸

The analysis offered by MacKinnon demands us to address the same hypocrisy Dilar Dirik addresses when she states: “Patriarchy is much older than the nation-state, but nation-states have adopted its mechanisms.”²⁷⁹ Paraphrasing Virginia Woolf’s *Three Guineas*, MacKinnon states that, “Women have no state, are no state, seek no state.” Thus, violations against women are not considered terror, but a cultural matter of everyday life. On the other hand, attacks against men are perceived as terrorist acts against “their” states, “seen to form a politics, on the way to having human rights.”²⁸⁰ Once again, when women are attacked, the matter is dealt with locally or on a national level; however, when men are attacked, “particularly certain men,”²⁸¹ international law is redefined, and it “becomes a war – complete with war crimes, military tribunals, potentially justified acts of self-defense, and prisoners of war.”²⁸² Interestingly, as MacKinnon points out, no “special ad hoc tribunals or truth and reconciliation commissions”²⁸³ were installed or even proposed in the case of male violence against women. Following MacKinnon’s reasoning, one can argue that the Kurdish people of the Rojava revolution share a similar position with women as they as well “have no state, are no state, seek no state;” Similarly to MacKinnon, the Kurdish revolution demonstrates the failure of the nation-state from a gender perspective and critique. In

²⁷⁸ Ibid., p. 19.

²⁷⁹ In der Maur et al., *Stateless Democracy*, p. 38.

²⁸⁰ MacKinnon, “Women’s September 11th: Rethinking the International Law of Conflict,” p. 17.

²⁸¹ Ibid., p. 17.

²⁸² Ibid., p. 11.

²⁸³ Ibid., p. 13.

the case of the Kurdish people, their alternative to the nation-state is a source of fear and anxiety and even an attack on “particularly certain men.”²⁸⁴ One big difference remains in the fact that violence against women is not considered an attack on the nation-state, while the utopian ideas at the core of the revolution are considered as such. At the end of the day, the determinations used by the nation-state are similar to the ones described by MacKinnon after the events of 9/11 resulting in identifying the PKK and the Kurdish revolution as terrorists and terror acts.

Exposing, through MacKinnon, the manipulation of international law by patriarchy and gender-biased politics provides, hence, a path to addressing Staal's work and the NWS' actions in support of the Rojava revolution and its stateless democracy based on gender equality. Nevertheless, one can still question the political, legal, and ethical actions in Rojava by a Dutch-based artist such as Staal and his Western-supported and European-based organization. Can the establishment of a parliament in Rojava by the NWS be further explained and supported through the frame provided to us by MacKinnon? Does the NWS propose and create a new right of intervention in international law and politics as part of a struggle for justice? Hito Steyerl echoes these questions in her contribution to the NWS Reader on Rojava, as she asks us to ponder, “What is the task of art in times of emergency?”²⁸⁵ Therefore, even when possibly agreeing with MacKinnon on the need to take action in times when the nation-state fails to do so, the question remains regarding the role of art and artists in a revolution, emergency, or time of war. It is especially relevant when

²⁸⁴ For further reading, see, for example, Edward Hunt, “Trump Is No Friend of the Kurdish Struggle,” Jacobin, June 26, 2019, accessed June 30, 2019, <https://www.jacobinmag.com/2019/06/trump-rojava-turkey-syria-kurds>. Also, the US has been continuously reluctant to support the Kurdish fighters, but the Trump administration has indicated that it is inclined to arm Kurdish fighters combating the Islamic State. See Michael R. Gordon and Eric Schmitt, “Trump to Arm Syrian Kurds, Even as Turkey Strongly Objects,” *New York Times*, May 9, 2017, accessed June 30, 2019, <https://www.nytimes.com/2017/05/09/us/politics/trump-kurds-syria-army.html>.

²⁸⁵ Hito Steyerl, “Kobanê Is Not Falling,” *e-flux*, October 10, 2014, accessed July 15, 2017, <http://www.e-flux.com/announcements/30525/koban-is-not-falling/>.

considering critically the past and present involvement of Western artists and intellectuals in such cases. Is it sufficient to claim and prove that the urgency of the cause is enough to support Staal's intervention? Is it enough to argue and show that, through the work of Staal and the NWS, the Rojava revolution gains extensive international attention by the media and the international community? Is it enough to claim and demonstrate that Staal's actions provide us with the space to stop, think, and act against the injustice and atrocities inflicted upon the Kurdish people? “There is nothing wrong with standing back and thinking. To paraphrase several sages: ‘Nobody can think and hit someone at the same time’” is what Susan Sontag wrote in her seminal book *Regarding the Pain of Others*.²⁸⁶ For Sontag, the American intellectual and filmmaker known for her own journeys to conflict areas such as Sarajevo and Jerusalem, the involvement of an artist in war zones is inevitable. Maintaining an outsider's position of a spectator, Sontag argues, ends in a patronizing and privileged view that only Western people can afford to hold. It results in ignoring and belittling the effect of images of suffering diffused to us by those artists who do take part in reality. “In fact, deriding the efforts of those who have borne witness in war zones as ‘war tourism’ is such a recurrent judgment that it has spilled over into the discussion of war photography as a profession,”²⁸⁷ states Sontag.

3.5.1. Artists and the Revolution: The Case of the Film *Letter to Jane*

Against this backdrop, in an attempt to propose at least some reflections, and possible answers on the matter, I turn to two films from the 1970s that tried to tackle, or to begin to chart, some possible strategies and methods for dealing with the question of the role of art in a time of emergency. It is my attempt to go beyond an argument in favor or against the Rojava revolution,

²⁸⁶ Susan Sontag, *Regarding the Pain of Others* (London: Penguin Books, 2004), p. 106.

²⁸⁷ *Ibid.*, p. 100.

and its relation to the PKK and possible terror groups, in order to possibly answer Steyerl's haunting question, "What is the task of art in times of emergency?" We might learn very little if nothing at all from history, but bringing revolutions in Vietnam and Palestine into the discussion through the observation and work of celebrated filmmakers, I intend to identify several points of connection and offer further possible readings of the NWS and of the role of the artist in our time in relation to what I perceive to be judicial-visual activism. The first film that comes to mind on the subject matter is *Here and Elsewhere* directed by Jean-Luc Godard, Jean-Pierre Gorin, and Anne-Marie Miéville, which also received renewed attention in the art world when an exhibition on contemporary art in the Arab world opened in 2014 at the New Museum in New York with the film's title as its own.²⁸⁸ Yet, before discussing this film dedicated to the Palestinian revolution, and before positioning it in relation to the NWS video from Rojava, I turn first to an earlier and lesser known film by Godard and Gorin.

The 1972 film titled *Letter to Jane* revolves around the Vietnamese revolution, and has generally received little attention from audiences and researchers. Nevertheless, it provides a unique background and understanding of the work of Godard, and of the role of artists in a time of a revolution, war, or emergency in general. Perceived as an essay film for being personal, subjective, and relating to social history,²⁸⁹ the film's expressive analysis of social and political positions found in a single photo is a manifesto on the role of "intellectuals"²⁹⁰ as they are

²⁸⁸ *Here and Elsewhere*, New Museum, Past Exhibitions, accessed June 30, 2019, <http://www.newmuseum.org/exhibitions/view/here-and-elsewhere>.

²⁸⁹ Paul Arthur, "Essay Questions: From Alain Resnais to Michael Moore," *Film Comment* 39, no. 1 (2003): 58.

²⁹⁰ I will dedicate more attention in this chapter to the role of the intellectual, which also has a particular French context and meaning. Nevertheless, it is safe to claim already at this preliminary stage that Godard's interest is in art and artists who are perceived as intellectuals.

referred to by the directors of this ambivalent film. What part should cinema play in the development of revolutionary struggles, or, in other words, what part should intellectuals play in the revolution? These are the main questions and staggering themes that unfold in this film. These questions asked by the directors capture, as far as they are concerned, the essence of their film, and are highly relevant, as I shall claim, to the work of Staal and many of the current artworks framed as political or social art. Let us first detect how these questions are unpacked through a meticulous observation and analysis of one photo of an actress known at that time as “Hanoi Jane.”²⁹¹ As suggested by its title, the film begins as if in the format of a letter with the words “Dear Jane” and is concerned with one particular photo of Jane Fonda taken during her visit to Vietnam in July 1972. The picture shows Fonda solemnly directing her gaze towards a person, though we see mostly his hat (or perhaps it is his helmet), and hardly a glimpse of his face. Between Fonda and this unidentified person, another person directs his gaze directly into the camera. He is standing in the background of the photo, without a hat or other garment or instrument. The image of his agonized face, of the quiet presence of an anonymous Vietnamese citizen, will be probed by the directors in contrast to the central and dramatic image of Fonda. Nevertheless, it is the gaze of Fonda, beyond looking and perhaps disregarding the person caught by the camera between her and a possible soldier, which holds the answer to the question regarding the role of the intellectual in a given revolution.

The manner in which this answer is brought forward through the photo is what primarily concerns the two directors. According to them, any immediate answer ignores other relevant

²⁹¹ For Godard and Gorin, Fonda, who comes from a celebrated Hollywood cinematic family, represents first and foremost American imperialism and capitalism. Fonda's visit to Vietnam was seen by some as an act of treason, and its controversy remains to this day. In 2011, Fonda published the public post “The Truth About My Trip To Hanoi” on her website with the wish of further clarifying the facts surrounding her visit. In 2014, a play, *The Trial of Jane Fonda*, premiered at the Edinburgh Festival Fringe, with shows that ran in London during the summer of 2016.

questions that need to be asked and addressed. Therefore, the answer provided by this photo unveils at the same time the problem of the image as a whole, and the error of Fonda and all other artists and intellectuals when intervening in war zones. In their opinion, as it is expressed in the film, it is rather by *not* answering the question directly wherein the strength of their feature film *Tout Va Bien* lies. The task, as understood by the directors, is to learn how to ask new questions and reinvent new forms of practical action. Unlike both Fonda and the North Vietnamese National Liberation Front (Việt Cộng), which, according to the directors, invited Fonda in order to seek immediate answers in response to their political situation, the directors on the other hand wish to raise new questions and new forms of activism. “How can cinema help Vietnamese people win their independence?”, ask the directors. This question is connected to the photo of Fonda and of intellectuals in the revolution when one realizes, as the directors claim, that the main objective of the photo was achieved through the vast exposure the photo gained via worldwide publications. The importance of the photo to its makers is in its practical results, which the directors see as a problem of expression, for it was conceived and made with the sole intention of disseminating it.²⁹² The directors are of the opinion that this quick and practical answer avoids the complexity of the situation in a world that is far from clear. Hence, it also reduces the role of the intellectual and of cinema and of other forms of art just as much. Quoting

²⁹² In the film, the directors voice the difficulty of choosing the image of Fonda rather than one of a politician or a male actor. According to Godard and Godin, the fact that the photo was made to be published and ignited a worldwide commotion turns the photo into a special case, while Fonda was also immediate to them due to her role in their previous film. Moreover, in an interview in 1973 they dismiss the possibility of using an unknown person: “The North Vietnamese don’t need unknown Americans to say ‘peace in Vietnam.’ They need very well known people because Nixon is not an unknown American. The star system is very important.” (from: David Sterritt, ed., *Jean-Luc Godard: Interviews* (Jackson, University Press of Mississippi, 1998), p.63). Nevertheless, the directors’ explanation and call to Fonda to respond to their letter and to talk to them in readings planned in the US does little to diminish Godard’s misogyny as expressed in his use of images of women throughout his artistic career. For further reading: Colin McCabe with Mick Eaton and Laura Mulvey, *Godard: Images, Sounds, Politics* (Bloomington: Indiana University Press, 1980), pp. 79-104.

Fidel Castro, who said that “for revolutionaries there are never any obvious truths,” the directors’ intention is to delve into the non-obvious. In a state of uncertainty with no obvious truths, they argue, there is a need to make an effort and to ask questions differently. In a time of struggle, one should not rush to find answers, but rather invest the time and resources into observing the way in which people express their struggle. New questions, new paths of expressing them, and new answers to come are what is requested at the time of a revolution.

Thus, the directors emphasize the lack of attention given in the photo, and in the descriptive text by the press accompanying it, to the local people. The people, to their understanding, are situated in the background, while it is the militant who is positioned in the foreground along with the actress. The text that appeared next to the photo stated, according to the directors: “Jane Fonda is questioning the people of Hanoi,”²⁹³ but what are the questions asked and what are the answers given? It is utterly important, they argue, to make the distinction between talking and listening, which is not only ignored by the actress, but also overlooked by the press, which is even more troublesome. It is within the magazine’s duty and responsibility to look further, beyond the mechanism initiating the photo, in order to interrogate it, to question its premise. In the eyes of Godard and Gorin, the caption is basically a lie, and the magazine is able to lie because of such a photo.²⁹⁴ “How can we really help Vietnam?”, the directors retort. “Peace in Vietnam” is too quick of an answer, argue the directors, as they express their divergence from Western Communist allies just as from organizations such as the UN or the Red Cross. According to them, help can be provided by reversing the narrative, in accordance with the local cause and struggle.

²⁹³ “Jane Fonda talks with Vietnamese people during a trip to Hanoi in 1972” is commonly the English translation of the description of the photo taken by Joseph Kraft.

²⁹⁴ These arguments seem incredibly timely in a post-Trump world of fake news; however, in the context of this publication, I will not be able to address this much further.

New questions and new answers mean coming to a realization that changes in Vietnam should direct a change in our own world. For Godard and Gorin, it is clear – the image of an actress, of a Hollywood star in Vietnam, mainly harms the cause of the local people in the long run. It is, according to them, only an empty gesture in the service of capitalism. For them, the same is true for all photos representing places of struggle and disaster – empty expressions of empty faces waiting to be filled by capitalism. “How can one fight against this situation?” the directors ask. The answer they give – not by banning publication of such photos, but “by publishing them differently.” Subsequently, they claim, a new and important role will be given to actors and intellectuals in times of emergency. Moreover, the answer to what, precisely, the role of an artist is can be found, they suggest, in the face of the Vietnamese man directing his gaze to the camera while remaining in its shadow. His day-to-day struggles are what one recognizes in his face. His face holds a message that needs no caption. Unlike Fonda's face that can be diverted into endless meanings from daily life to an acting scene in a Hollywood film, his face, argue the directors, even when isolated from the rest of the photo, holds a powerful particularity. His struggle as a Vietnamese man is immediately identified, and it is to him that one needs to listen before talking or questioning. Listening, to conclude this aspect of the film, is the role of the intellectual in a time of a revolution.

3.5.2. Artists and the Revolution: The Case of the Film *Here and Elsewhere*

The act of listening returns as an essential component in a later film directed by Godard and Gorin, this time created together with Anne-Marie Miéville. Released in 1976, *Here and Elsewhere* began filming in Jordan in 1970 through the invitation of Fatah (the Palestine

Liberation Organization).²⁹⁵ What was supposedly intended to become a film in support of the Palestinian fight for independence changed course internally, through an investigation into the position of the filmmaker/artist coming from “Here” (First World/Europe/France) while wishing to investigate and represent “Elsewhere” (Third World/Middle East/Israel/Palestine).^{296, 297} “In 1970, this film was called '*Victory*'. In 1974/5, it is called '*Here and Elsewhere*'”²⁹⁸ – the same voice-over sentences are heard at the beginning and at the end of the film. The voice of a man opens the film indicating the year 1974, while at the end of the film the year changes to 1975. What process took place that maneuvered the film from a self-declarative “Victory” to a more benign interest in a geopolitical study? What does the year gap between the opening and the ending of the film represent? Or perhaps a better question might be, what can be learned from the six-year gap from its early days of filming to the final product?

It is known and well-researched that the film’s initial intended title was “Jusqu’à la Victoire” (Until Victory), but due to the events of Black September in Jordan the filmmakers were unable to complete the film as first planned, and changes were required. I will return to these events, but beforehand, and before answering the above questions (beyond the historical events that shaped them), I wish to contextualize the film *Here and Elsewhere* in relation to the work of Staal.

Without disregarding, or ignoring, the obvious differences in time and place, it is intriguing to

²⁹⁵ Terri Ginsberg and Chris Lippard, *Historical Dictionary of Middle Eastern Cinema (Historical Dictionaries of Literature and the Arts)* (Plymouth, UK: Scarecrow Press, 2010).

²⁹⁶ Irmgard Emmelhainz, “From Third Worldism to Empire: Jean-Luc Godard and the Palestine Question,” *Third Text* 23:5 (September 2009): 649-656.

²⁹⁷ *Here and Elsewhere*, New Museum website, Past Exhibitions, accessed June 30, 2019, <http://www.newmuseum.org/exhibitions/view/here-and-elsewhere>.

²⁹⁸ *Here and Elsewhere (Ici et ailleurs)*, directed by Jean-Luc Godard, Jean-Pierre Gorin, and Anne-Marie Miéville (1976; Gaumont), 35 mm film.

dwell on some similarities that nevertheless accumulate once these works are brought into a shared interrogation. In a rather similar method and spirit of the analysis as the one I suggested in Chapter Two, dedicated to Yael Bartana's Congress and its intertwining with the Dada trial, in the case of Staal and Godard the time frame has narrowed, and with it the differences in motivation and points of departure. One pivotal argument for bringing Staal's NWS, and especially the summit in Rojava, together with the film *Here and Elsewhere* becomes apparent when one understands the role of women in both the NWS in Rojava and in the film on the Palestinian revolution. Just as in the video I described earlier regarding the Rojava revolution, the importance of women in the Palestinian revolution is made clear from the very beginning of the film, as we are introduced immediately to an image of a female Palestinian soldier holding a rifle. Against the backdrop of pine trees and a blue sky, she is practicing how to grasp her weapon, turning it from side to side while a fellow male soldier stands next to her. In the Palestinian revolution, as it is depicted throughout the entire film, women play a major and crucial role. In the film, they consistently reappear as strong and independent, as this first image indicates – a young woman practicing her military skills while her head is loosely covered with the Arabic Keffiyeh, a symbol for the Palestinian fight for independence. Shortly after, in a section titled “Political Work,” a woman dressed in traditional Palestinian dress, a rifle leaning against the wall behind her, is reciting a text as part of her political education: “The most important result of the armed Palestinian revolution is the direct participation of the Palestinian woman in the revolution, in order to play her part side by side with the Palestinian man.” The ending of the text is no longer heard via the voice of the Palestinian woman, but through the film’s female voiceover. The film's section has also changed, and it is now titled “Prolonged War.” Along with this shift, new images

appear, this time of young girls dressed in military uniforms standing in organized rows taking part in a military parade along with young boys.

Just like in *Letter to Jane*, the film emphasizes its aim to connect to the local people and to follow their steps in their own revolution. It is the people and “The people's will” that they seek, declares the film's voiceover, which the directors and their camera unfold through the role of women in the revolution. It is those young women portrayed during training, patrol, loading of ammunition, reading, or marching as part of the “armed struggle, the people's war” that claims center stage.

When the voiceover declares that “this is what was new in the Middle East” while showing images of young and determined Palestinian girls dressed in uniform, the message of what is new is heard and seen. The resemblance of Staal's video and collaboration with the NWS to the Kurdish Women's Movement cannot be ignored. Yet, rather quickly, the film steps into its next phase, in which images and sounds are contextualized and analyzed through categories of “Here” and “Elsewhere,” as the title of the film indicates, and which the NWS video seems to lack. The film informs its viewers that these sounds and images were taken “Elsewhere” in 1970 – meaning in Jordan, Lebanon, and Syria. It happened “Elsewhere,” and was paid for and supported by the Fatah's Information Department, clarifies the voiceover. This was “Elsewhere,” but at one point the directors returned home to recover and reflect. “Here,” in France, the time passed, and with it emerges the difficulty in realizing what happened and was experienced during the time spent “Elsewhere.” Confronted with France's and Europe's social, political, and economic problems, as well as with the banal and the mundane actions of everyday life, the directors are puzzled, sending their work “Elsewhere” into a long hiatus. The events that will be known as “Black September,” during which an armed conflict between the Palestine Liberation Organization (PLO) and the Jordanian Armed Forces resulted in the death of thousands of people, marks yet

another staggering setback. A film that set out to portray the Palestinian revolution is forced into a rethinking and renewed evaluation, as the directors realize that many of the people filmed were killed during the deadly events of September 1970. No less horrific is the realization that during the filming the actors were under constant danger of death. In sharp contrast to the filmed images and recorded sounds of the people of the revolution, the presence of death escaped the detection of the directors and their film in its elusive silence.

Images and sounds evade silence. Silence is maintained and intensified through images and sounds that fail to capture death. The emphasis on silence brings me back to the aforementioned questions regarding the six-year gap needed to finalize the film. With respect to all of the above, the silence marks an unbridgeable gap between the images of “Elsewhere” especially when they are consumed “Here.” The images and sounds filmed and recorded in 1970 “Elsewhere” cannot grant the film the title “Victory,” or a resolution of a triumph when watched and heard “Here.” It would be too simple, explain the directors, to arrive at quick conclusions, or to pass judgment. It is not that the cause of the Palestinian is not just or one that does not deserve attention and support, as the footage and sounds in the film clearly indicate. Yet, similar to their request of Jane Fonda in the film *Letter to Jane*, the directors argue that one needs to begin his or her journey at home/“Here” and not “Elsewhere,” otherwise one ultimately ends up simplifying all matters to a division between the good and the bad. This ultimate realization is delivered in the last sentences of the film: “Learn to see here, in order to hear elsewhere. Learn to hear yourself speak to see what others do. Others are the ‘Elsewhere’ to our ‘Here.’” It is “Here,” in one’s familiar surroundings, depicted throughout the film through an incarnation of a typical French family sitting in front of the TV, where one has the ability to learn how to see before being able to hear “Elsewhere.” The face of the Palestinian woman, just like the face of the man in the frame with

Fonda, remains in the shadow of images and sounds that end up only further concealing the reality of things. Listen before talking or questioning, suggested the directors to Fonda. In *Here and Elsewhere*, they add to this the importance of the locality, of the space from which one needs to start listening in order to eventually be able to see the other.

3.6. Back to Rojava

The impossibility of capturing silence, and the failure to acknowledge the immanent presence of death, brings me back to Rojava and to Wes Enzinna's article published in *The Times Magazine* at the end of 2015.²⁹⁹ It is a personal account of Enzinna's encounters during his stay in Rojava, where he was invited to teach journalism at the newly formed Mesopotamian Social Sciences Academy. Enzinna captures daily and academic life entangled with politics, ideology, propaganda, and war. Against the backdrop of very limited exposure and a lack of serious treatment by Western media and scholars³⁰⁰ of the revolution of Rojava,³⁰¹ the wide scope of his essay finally brings the ideology of the people of the region in their fight for freedom to the Western media's attention. As any outsider's perception might be, Enzinna's view is not devoid of what can be considered an Orientalist³⁰² perspective, as he admittedly shares the difficulty in grasping the breadth and depth of the political and social revolution manifested in Rojava. In

²⁹⁹ See Wes Enzinna, "A Dream of Secular Utopia in ISIS' Backyard."

³⁰⁰ The first book on the Rojava revolution was probably published in English in 2016 translated from German and revised by Janet Biehl. David Graeber contributed the foreword to the book. Michael Knapp, Anja Flach, and Ercan Ayboga, *Revolution in Rojava* (London: PlutoPress, 2016).

³⁰¹ See Graeber, "Why is the world ignoring the revolutionary Kurds in Syria?"

³⁰² As an Orientalist perspective, this discourse transforms men and women into faceless, voiceless, and a-historical subjects who lack agency and who are in need of "modernization" to raise them up from their "uncivilized" state. For further reading: Lisa Hajjar, "Militarization and Violence against Women in Conflict Zones in the Middle East: A Palestinian Case Study Nadera Shalhoub-Kevorkian," *Journal of Middle East Women's Studies* 7:1 (2011): 120-123.

order “to see this strange political experiment for myself,” Enzinna travels to the region and produces a thought-provoking essay. Enzinna does not mention Staal or the construction of a parliament by the NWS in Rojava, thus allowing me yet another perspective on the Rojava revolution.³⁰³ Also, his report does not conceal the armed escort he received nor the frequent checkpoints he encountered upon his arrival. Enzinna’s skepticism towards the possibility of a Rojavan utopia is clearly indicated as he describes flags hanging in memory of hundreds of martyrs, some of whom are young adults; the culture of worship of Öcalan; voices of local opposition; and the criticism raised by Human Rights Watch and Amnesty International regarding war crimes committed by the Rojava ruling regime. At the same time, Enzinna cannot disregard the achievements of the revolution in theory and in practice. Aware of the complexity and contradictions posed by a time and place of war, his teaching position informs him of the importance placed, even during a time of war, on “the future intellectual leaders of Rojava,”³⁰⁴ male and female alike. Some presented themselves to him as secular and atheist, while all seem to be connected by Öcalan’s philosophy, and the immanent presence of war. For a Yazidi student, who was saved by women fighters, the experience of war reshaped his perception of women. Studying Öcalan at the academy operating in a refugee camp, he was able to further learn of the importance of gender equality to Öcalan and the revolution, which found its official recognition as part of the Social Contract of Rojava.³⁰⁵

³⁰³ Unlike other writers and scholars like David Graeber, Dilar Dirik, and Janet Biehl, Enzinna did not take part in any NWS or its related projects, as far as I know.

³⁰⁴ Wes Enzinna, “A Dream of Secular Utopia in ISIS’ Backyard.”

³⁰⁵ Article 28 of the Social Contract states: “Men and women are equal in the eyes of the law. The Charter guarantees the effective realization of equality of women and mandates public institutions to work towards the elimination of gender discrimination.” Accessed August 10, 2017, <http://kurdstrat.com/2015/03/11/the-constitution-of-the-rojava-cantons>.

In returning to the issues raised in *Here and Elsewhere*, I found it intriguing to read how, as argued in the film, it is the constant fleeting presence of death, to which neither sound nor image can fully give account, which is striking and overwhelming to Enzinna. The unknown future of his students easily escapes his thoughts, as death and violence become a routine encounter during his stay in Rojava. Enzinna is clearly caught between the two extreme ends of life in Rojava. This is indicated through an early question by a student, “How do you deal with the constant fear of dying?”, to an encounter with yet another student who claims no fear, quoted towards the end of Enzinna's report. For her, “Being a martyr is the best thing possible. [...] Fighting is ugly,” she added. “But fighting for this is beautiful. Fear is for your Western women in their kitchens.”³⁰⁶ Questions of death and fear come together yet again as a bundle of gender and politics. “Ideas, like people, die if we don’t fight for them,” is how Enzinna's essay ends. In comparison, it can be noted, between listening and death, Staal and the NWS give much less emphasis to the latter. As I have written earlier, starting from the NWS’s first Summit in Berlin, the act of listening has been professed and directed toward those listed as terrorists, and to those who as a consequence are denied basic human rights, such as the freedom of speech and movement. From dedicating the first day of the two-day Summit in Berlin to listening without questioning, the NWS was a space advocating for the need to listen to those identified by the nation-states and the media as a threat. However, the development of the NWS makes clear that the interest of it lies beyond the act of listening. There is a need, claims Staal, for active artistic and political action in a time of emergency. For him, I argue, visual activism in the time of globalization demands that art take action. It is an action accomplished by uniting the local with the global, working together with local communities in a fight against forgetfulness, and furthermore it is an act of visual-judicial

³⁰⁶ Ibid.

activism. In his article for the Reader, Staal identifies the “lack of political memory tied to the history of colonialism and military intervention”³⁰⁷ as the source that binds both the international community and the Rojava revolution. In Staal's view, this particular revolution goes beyond an armed struggle, as he observes how even fighters are obligated to take a month of ideological training before joining the armed struggle. It is a revolution rooted in ideology, as even when faced by the immediate ongoing threat of ISIS, a shared basic terminology connects all people involved. “Democratic confederalism, democratic autonomy, communalism, women’s liberation, cooperatives, councils”³⁰⁸ are the forces that drive the revolution beyond a military struggle. Hence, Staal's answer to Steyerl’s question is found exactly where *Here and Elsewhere* suggests it would be, as it takes it into action: by listening to local artists and to the themes and subjects that motivate and inspire them in their fight against the erasure of a long history, and through the creation of a representative space for assembling, as depicted in the construction of a parliament. Abdullah Abdul, a local artist, paves the way for Staal through his creation of a museum dedicated to the civilization of Mesopotamia. This action, along with many other artists and their work that takes place even in times of war and emergency, is a testimony to the importance of fighting suppression and of “retriev[ing] the remnants of a colonized history of art and culture.”³⁰⁹ Taking an active part in commemorating, while at the same time re-imagining and re-inventing, an identity and culture based on the idea of stateless democracy is the task of art in times of emergency, according to Staal.

³⁰⁷ In der Maur et al., *Stateless Democracy*, p. 234.

³⁰⁸ Ibid., p. 237.

³⁰⁹ Ibid., p. 242.

But what about photography and the image that, as Susan Sontag writes, contrary to Godard, have been holding “company with death”³¹⁰ since the invention of the camera in 1839? And what about art in the name of ideology in face of the lessons offered by the 20th century? Can the global political, social, and economic crises be enough to establish a role for the artist as part of a new revolution, and a new ideology? Is it not just a phase, and before we know it artists will once again end up drawn toward totalitarian or fascist regimes? An image, wrote Jean Genet, “is the only message from the past that's managed to get itself projected into the present,”³¹¹ yet he needed more than ten years before he was able to write about his own experience with the Palestinian revolution in his book *Prisoner of Love*. “I am drawn to people in revolt [...] because I myself have the need to call the whole of society into question,”³¹² Genet is quoted to have said in an interview in the 1980s. Genet's spirit can be traced just as much in Staal's actions and writings: “Rojava’s stateless democracy proposes a political horizon that concerns us all.”³¹³ Yet, perhaps we need more time? Perhaps we need further distance and reflection before committing art and artists to a revolution? Or maybe, just like Genet, one can only join and support a revolution, however, by keeping a sense of non-belonging, thus, ending up eventually betraying it?

3.7. The (Old) New Right of Intervention

In order to address some of these questions and concerns, I wish to take on Steyerl’s question – “What is the task of art in times of emergency?” – and bring it together with the question “What

³¹⁰ Sontag, *Regarding the Pain of Others*, p. 21.

³¹¹ Ahdaf Soueif, “Genet’s Palestinian Revolution,” *The Nation*, February 6, 2003.

³¹² Ahdaf Soueif, introduction (edited version), to Jean Genet, *Prisoner of Love*, trans. Barbara Bray (New York: New York Review of Books, 2003), accessed online June 30, 2019, http://www.ahdafsoueif.com/Articles/Genet_In_Palestine.pdf.

³¹³ In der Maur, et al., *Stateless Democracy*, p. 244.

part should intellectuals play in the revolution?” posed in *Letter to Jane*. Both the artist and the intellectual have been brought into a similar discourse and critique for more than a century. Moreover, the rise of modern art and of the modern intellectual can both be traced to the end of the nineteenth century. As discussed in Chapter Two, Emile Zola's open letter in defense of French Captain Alfred Dreyfus ignited the “birth of the intellectuals.” Zola's public letter was followed by the “manifesto of the intellectuals” signed by over a hundred leading French figures of that era. The word “intellectual” began to be used as a noun during that time in order to describe the willingness of established writers, such as Zola, André Gide, and Marcel Proust, to take a stand and make a political intervention.³¹⁴ It can be said that the notion of intervention connects artists and intellectuals as does their being predominantly marginal, independent, and critical. Jean Baudrillard pointed out that, at least with respect to France, intellectuals “have inherited a great deal from the artists of the nineteenth century.”³¹⁵ Although Baudrillard himself comes down strongly against the politicization of intellectuals, he agrees that there are occasions, rare as they might be, in which intellectuals might operate not only in opposition, but in a constructive “positivity.” When asked about Jean-Paul Sartre and intellectuals of the “age of Enlightenment,” he sees them as “lucky,” for they lived in a time in which a “new system of values was there, waiting, about to happen.”³¹⁶ In his time, as far as he is concerned, no new alternatives exist or await, and therefore, intellectuals are doomed to remain in opposition as “carriers of negativity.”³¹⁷ With that in mind, I suggest taking yet another look at our time, thirty

³¹⁴ Jeremy Jennings, Tony Kemp-Welch, eds., *Intellectuals in Politics: From the Dreyfus Affair to Salman Rushdie* (London: Routledge, 1997), p. 7.

³¹⁵ Mike Gane, ed., *Baudrillard Live: Selected Interviews* (London: Routledge, 1993), p. 75.

³¹⁶ *Ibid.*, p. 77.

³¹⁷ *Ibid.*, p. 75.

years after Baudrillard's statement. Might there be, in the second decade and onward of the twenty-first century, a greater common ground between artists and intellectuals, artists as intellectuals?³¹⁸ What might have changed, and what new values or alternatives might be awaiting artists as intellectuals nowadays? At a moment in time in which scholars such as Shlomo Sand are claiming that the idea of the "French intellectual" seems to have evaporated forever,³¹⁹ is it not worth it now more than ever to pay attention to artists and their research and interventions in public affairs? According to Zygmunt Bauman, being an intellectual "is to rise above the partial preoccupation of one's own profession or artistic *genre* and engage with the global issues of truth, judgment, and taste of the time."³²⁰ The works of artists such as Bartana and Staal represent, time and again, an inclination to reformulate the role and position of the artist beyond a given frame in the quest and commitment to take on urgent global matters.

As discussed in Chapter One, globalization is unarguably one of the major changes extensively shaping behavior and consciousness in the last couple of decades. There is no need to repeat what was established earlier on in this book, but it is important to recall that globalization and the nation-state, according to Sassen and Fraser, should not be understood as binary. Sassen suggests seeing the relationship between the nation-state and the global as a continuous process in which

³¹⁸ The debate surrounding the relationship between art and research, or art and science, is extensive and has proliferated greatly in recent years. For more reading on the subject: Julian Klein, "What Is Artistic Research?," published in German in *Gegenworte* 23, Berlin-Brandenburgische Akademie der Wissenschaften (2010), English version accessed June 30, 2019, <https://www.researchcatalogue.net/view/15292/15293>; Efva Lilija, "Art, Research, Empowerment: The Artist as Researcher," *Ministry of Education and Research, Sweden*, 2015, accessed June 30, 2019, <http://www.government.se/contentassets/7c02c282af4a43fc9c3623b7d9a9089e/art-research-empowerment---the-artist-as-researcher>.

³¹⁹ Shlomo Sand, *La fin de l'intellectuel français? De Zola à Houellebecq*, trans. Michel Bilis (Paris: La Découverte, 2016). For an interview with Sand on the recent publication, accessed June 30, 2019, see <http://www.versobooks.com/blogs/2818-shlomo-sand-there-s-no-more-great-thinkers-in-france>.

³²⁰ Zygmunt Bauman, *Legislators and Interpreters* (Oxford: Polity Press, 1987), p. 2.

the global emerges from the nation-state while maintaining strong ties and relations with it, and Fraser emphasizes the reshaping of the frame of conduct. In these times, defined and affected by a constant state of transition, one might not immediately find new values or a new “glorious alternative, a critical and glorious alternative,”³²¹ as suggested by Baudrillard, but tipping points leading to a new organizing logic, a new frame of relevancy. This might very well be due to the fact that the way globalization structures new transformations beyond local governments, international treaties, and civil society and evolves into a new global logic, is complex and yet to be fully grasped by us, according to Sassen.³²² However, there are capabilities that can originate from an early system and be transferred into a new frame. Tracking down a capability allows us to observe how a system does not go through a complete change, but rather uses an “old” capability that at a certain tipping point creates a new organizing logic as it gains new meanings. Based on this and in a reply of sorts to Baudrillard, one can claim that searching for “glorious” new values or alternatives is, thus, misleading in our time. Instead of doing so, one should carefully observe existing capabilities and the moment in which a tipping point (an event/moment/situation) occurs, providing old capabilities with new meaning or function and eventually leading to a new order under a new frame.

One capability I now wish to examine more closely is that of “intervention,” previously mentioned a couple of times. As mentioned above, it is the capability to intervene that is part of what connects both artists and intellectuals beginning from at least the nineteenth century

³²¹ Gane, ed., *Baudrillard Live: Selected Interviews*, p. 78.

³²² Sand also connects his thesis on the end of French intellectuals to globalization. According to him, “France is undergoing globalization, and it is reacting awkwardly to it, with a totalitarian image of its traditional culture. But it is not producing any new symbiosis.” “Shlomo Sand: ‘There’s no more great thinkers in France’,” Verso blog, accessed June 30, 2019, <https://www.versobooks.com/blogs/2818-shlomo-sand-there-s-no-more-great-thinkers-in-france>.

onward. In the following, I will also refer to it as the “right of intervention,” bringing the legal aspect of such a right into the discussion. It will allow me to examine the work of Staal and of the NWS in Rojava through an alteration of Steyerl’s question, or better yet, by proposing a new question – how did the capability of “intervention” transform,³²³ and how can it be used in a new way by artists? The (new) right of intervention was examined by one of the more renowned intellectuals in the time of Baudrillard. By this, I am referring to Michel Foucault, who according to Baudrillard himself was the most suited for a political intervention, and whom Shlomo Sand considers to be the last of the French intellectuals. Baudrillard describes Foucault as wanting to become a “political consultant at the highest governmental level,”³²⁴ but failed. Baudrillard is not alone in criticizing Foucault’s concept of the right of intervention, which came rather late in his life and scholarly research. At the UN in Geneva in 1981, he gave a short speech titled “Confronting Governments: Human Rights.”³²⁵ In this speech, Foucault advocated a new right, which Jessica Whyte claims was formulated against the backdrop of millions of Vietnamese refugees leaving their country from 1975 on.³²⁶ This new right was understood by Foucault as the right to intervene in “international policy and strategy,” in which a “right no longer appears as an instrument or mask of domination but, rather, as that which enables ‘the will of individuals’ to

³²³ In 2004, Nato Thompson curated an exhibition titled *The Interventionists: Art in the Social Sphere* at MASS MoCA. This exhibition and the catalogue edited by Thompson and Gregory Sholette offered a survey of artistic practices of interventions in view of the growing use of the term beginning in the 1990s. In this chapter, unlike Thompson and Sholette’s view of intervention as a tactical creative disruption, I will attempt to position the right of intervention through and in a legal context in order to expand its scope and judicial-visual potential.

³²⁴ Gane, ed., *Baudrillard Live: Selected Interviews*, p. 77.

³²⁵ Michel Foucault, “The rights and duties of international citizenship,” *Open Democracy*, accessed June 30, 2019, <https://www.opendemocracy.net/can-europe-make-it/michel-foucault/rights-and-duties-of-international-citizenship>.

³²⁶ Jessica Whyte, *Human rights: Confronting Governments? Michel Foucault and the right to intervene, Law and the Political*, Matthew Stone, Illan rua Wall, Costas Douzinas, eds. (London: Routledge, 2012).

wrench from governments the monopolization of the power to effectively intervene.”³²⁷ Whyte also points out that the new right of intervention suggested by Foucault contradicts an earlier lecture he gave in 1976 titled “Right in the West is the King's right.” In this, Foucault previously described his research as “an attempt to reverse the mode of analysis of the discourse of right in order to show that right is itself an instrument of domination.” If that is the case, then the new right proposed by him, as a capability entrusted to organizations and NGOs such as Amnesty International, requires further explanation. Considering Foucault's realization that rights and discipline operate together and not in opposition, a possible solution can only be found if the new right to intervene can be both anti-disciplinary and independent of sovereignty. Yet, Whyte does not find such a possibility to be at hand, as attempts to save lives and support human rights by humanitarian organizations since the 1960s resulted, according to her, in breaching the sovereignty of states along with the prolongation of conflicts rather than bringing them to an end. Moreover, the right of intervention executed by NGOs has been appropriated and mobilized, claims Whyte, by the nation-state. In addition, “Today, the doctrine of humanitarian intervention is a key legitimating discourse for state militarism,”³²⁸ emptying the right of intervention of its humanitarian origin.

Nevertheless, and although Whyte states that Foucault cannot, of course, be held responsible for these consequences by claiming a right of intervention,³²⁹ can we still find a way to defend the right to intervene? Can we save this right from being abandoned or simply turned over into the hands of the “international community” and the world order and structures that this implies? Can

³²⁷ Ibid, p. 13.

³²⁸ Ibid., p. 29.

³²⁹ Whyte cites as an example Foucault's refusal to sign a petition in 1983 calling for the French government to act against Muammar Gaddafi in Libya.

a right intended to address the suffering of humans be re-envisioned through visual activism and not be based on only pity towards bare and sacred life? If we take into account the right of intervention as a capability that has been transforming, for the frame of this discussion, from Foucault to Staal, from the nation-state into the logic of a new, globalized order and frame, I wish to claim that one should allow artists to examine, experiment with, and execute this right. The tipping point that we might be experiencing now is the one I have identified in Chapter One through the change in artistic practice from short-term projects to artists' political organization. This is a new phenomenon, which can fail just as it can also succeed, but the fact that it is new requires that we provide it with time and space for experimentation, research, and further development.

Catharine A. MacKinnon's reading of international law after the events of 9/11 also support this. According to her, and supported by other scholars since September 11, 2001, a significant shift has been made in which non-states are treated as states as part of an international "war against terror."³³⁰ This, suggests MacKinnon, as I have shown above, is a radical change in international law, which has brought with it tremendous changes in the policies and conduct of the international community. Following this change, one can claim that what Staal and the NWS are doing is an artistic appropriation of the amendment in international law. In other words, what

³³⁰ "Practice indicates that the influence non-State actors exert in the development of traditional law-making instruments has been increasing, but also that the degree is still subject-matter dependent. Though non-State actors' influence is mostly indirect, they have taken on a significant role. The origins of this development can be explained by an ever-increasing awareness of the need for co-ordinated responses to global problems. The result however is a development towards a diverse range of actors contributing to a decentralized form of law-making within the international community [...]. Furthermore, it remains to be seen how the legal system will be able to cope with this added multi-layered complexity and dispersion of authority. This may in the long run lead to a transformation vis-à-vis the requirement of legal capacity for actors on the international plane, a transformation that international law practice and scholarship has yet to take full account of." See: Markus Wagner, *Non-State Actors*, Max Planck Encyclopedia of Public International Law, Rüdiger Wolfrum, ed. (Oxford: Oxford University Press, 2009).

Staal and the NWS are claiming is that if the international community and bodies such as the UN and NATO legitimate a fight against non-state actors, let us take this further and be part of such non-state actors, i.e., Rojava as an actor claiming to be stateless (or, in MacKinnon's terminology, a non-state). If the international community recognizes non-state actors in order to fight them, why could it not just as well recognize them the other way around in order to make peace? While the international community went to war against non-state actors considered terror groups, Staal and the NWS require us to ponder – what happens in the case in which a non-state actor exists, but not as a terror group? If the logic of the new order played down by the international community since 9/11 accepts fighting against non-state actors, should it not accept non-state actors as allies in peace in the same way? Here, I must again return to MacKinnon's reading and the gender perspective she offers to us regarding the events that followed 9/11. We again need to pay attention to her harsh probing questions, one of which I quote in its entirety:

Why did the condition of Afghan women, imprisoned in their clothes and homes for years, whipped if an ankle emerged, prohibited education or employment or political office or medical care on the basis of sex, and subjected to who yet knows what other male violence, not rank with terrorism or rise on the international agenda to the level of a threatening conflict? Why were those who sounded the alarm about their treatment ignored? Why, with all the violations of international law and repeated Security Council resolutions, was their treatment alone not an act of war or a reason to intervene (including, yes, militarily) on any day up to September 10, 2001?³³¹

It is not that the right of intervention does not exist, or has ceased to be executed, as MacKinnon meticulously argues, and as I have discussed above. As we are all well aware of by now, the right of intervention has been activated since 9/11 on non-state actors based on a gender-based, biased logic. Thus, it should come as no surprise that both MacKinnon and Sontag refer to Virginia Woolf and her book on war, *Three Guineas*, published in 1938. It is, points out Sontag, one of

³³¹ MacKinnon, “Women’s September 11th: Rethinking the International Law of Conflict,” p. 20.

Woolf's less read books. This might be due to the fact that Woolf perceives, as Sontag did until her death in 2004, and as MacKinnon continues to do in her writings and women's rights advocacy, "that the killing machine has a gender, and it is male."³³² Staal realizes this as well, working in collaboration with the Kurdish Women's Movement from the very first Summit in Berlin to the one in 2015 in Rojava. His work is a call for the re-appropriation of democracy from the hands of the international community, which turns a blind eye to recurrent human rights violations under the guise of the "war on terror." Staal and the NWS tell us that when women claim their own equal space and role in a revolution, artists must formulate and execute a capability in the format of a right as was advocated by Foucault. Artists, according to this position, need to recognize that a tipping point directs us nowadays towards a new global frame and logic in which an (old) new right of intervention that has been long shared by intellectuals and artists alike calls their attention and demands their action. If not, if artists choose to remain outsiders, or mere spectators in their "well-off countries," as argued by Susan Sontag, they end up acting with truly "breathtaking provincialism."³³³

An artistic right of intervention as proposed by Staal and the NWS serves as one example of how artists provide a further step in relation to state intervention and NGOs. In face of globalization, as discussed in Chapter One, Staal's NWS is to be perceived as part of an ongoing development in which "transnational coalitions of human-rights activists are seeking to build new cosmopolitan institutions [...]."³³⁴ However, unlike such institutions as the International Criminal Court, Staal in his judicial-visual activism, positions us toward a new trajectory of possible

³³² Sontag, *Regarding the Pain of Others*, p. 5.

³³³ *Ibid.*, pp. 98-99.

³³⁴ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009), p. 14.

transnational and local institutions, thus rejuvenating our concept of democracy in these times. In a recent statement composed by a group of 150 Syrian intellectuals, known for opposing the Assad regime for many years now, they “condemn the Russian and US approach of intervening in our internal Syrian affairs. At least since 2013, these two powers have been working to co-opt the Syrian liberation struggle under the rubric of the ‘war against terror.’ This is a war that has failed to score a single success since its outset, and has led instead to the destruction of a number of countries.”³³⁵ They disapprove completely of both American and Russian intervention and perceive it as unjust and immoral. Similar to Staal and the NWS, they “see democracy in retreat around the world, while surveillance, control, and fear are rife and advancing. We do not believe that our fate is defined by these conditions, but rather that these are a result of dangerous choices taken by dangerous political elites [...]”.³³⁶ The devastating destruction of Syria is, according to them, “a symbol of the state of the world today,” claiming that “This world must change,”³³⁷ leading us to need to “make a world,” in the words of Staal. These globally known figures – democratic and secular writers, artists, scholars, and journalists – do not make a claim against the right of intervention itself, but rather against the international community and its lack of humanity. In the context of violence against women, MacKinnon continues to address us with vital questions, ones that should spark creativity and imagination also in relation to other causes ignored by the international community: “Why does no international model – not war, not criminal law, not yet even human rights – intervene effectively in this anywhere? Why does

³³⁵ “Syrian Writers, Artists, and Journalists Speak Out Against US and Russian Policy,” *The Nation*, September 21, 2016, accessed June 30, 2019, <https://www.thenation.com/article/syrian-writers-artists-and-journalists-speak-out-against-us-and-russian-policy/>.

³³⁶ Ibid.

³³⁷ Ibid.

finding effective modes of intervention raise no international sense of urgency?”³³⁸ Any possible answer, as this chapter indicates, should include and be based on artistic capabilities of models of interventions.

³³⁸ MacKinnon, “Women’s September 11th: Rethinking the International Law of Conflict,” p. 22.

Chapter Four – Art and Law: Disputes, Encounters, and Justice

4.1. Introduction

Following an exploration in the previous chapter on the right of intervention, this chapter seeks to further investigate the emergence of rights through disputes in the event of an encounter. I begin with two cases of artists working as part of governmental institutions, in the attempt to infuse a legal reading and underline its implicit, or explicit, effect on their creative work. The influential legal essay on how disputes emerge by William L.F. Felstiner, Richard L. Abel, and Austin Sarat serves as a legal textual source and format through which I will articulate and critically examine mainly the work of artists Mierle Laderman Ukeles and Ruti Sela. Ukeles is a renowned example of an early interest among artists in governmental and administrative institutions. Sela, along with the work of Artist Placement Group (APG), to which I will attend as well in this chapter, are further attempts at what was called the “Incidental Artist” by APG. Bearing in mind restrictions that are part of any artistic residency within a governmental environment, the work of Sela in the midst of a legal department is very much related to the overall motivation of my research.

Following that, I will delve into yet another, more recent legal publication by Itamar Mann on the right of the encounter. This will provide me with further conceptual means to engage with the work of artist Lawrence Abu Hamdan.³³⁹ By adding the work of Abu Hamdan into the discussion, I shall examine yet another manner in which a contemporary artist is invested in working with legal matters as part of his artistic research and practice. The intersection between law and art, in what I have defined in previous chapters as judicial-visual activism, enables art, I will argue, to

³³⁹ Lawrence Abu Hamdan contributed his work “Testimony” (2013) to the *OnCurating* 28 edition I edited (January 2016). I also presented his video “Rubber Coated Steel” (2016) in an exhibition I curated at transit.sk Bratislava titled *Playing Hide and Law* (March-May 2017).

claim a political dimension of justice. From Ukeles to Forensic Architecture, I will argue that, through an encounter, rights emerge that are constructed in judicial-visual activism. The legal component in artistic creation underlined in this chapter allows us to further comprehend how the three dimensions of justice suggested by Nancy Fraser – recognition, redistribution, and political representation – come to fruition.

4.2. Mierle Laderman Ukeles – Naming Maintenance as Art

Beginning her work in the 1960s, Mierle Laderman Ukeles' artistic œuvre has in recent years been receiving much deserved attention and broad recognition by museums worldwide.³⁴⁰ In order to fully understand the innovation of Ukeles' work, I must begin by reviewing her own biography, as it deliberately stands at the core of her practice and research. Born in Denver, Colorado, in 1939 to a Jewish family in which the father was a rabbi,³⁴¹ she grew up in the US of the 1950s. It was a period described by Ukeles as being “a really weird time especially for a woman.”³⁴² The constraints and limitations endured by her as a woman during those days proved to be the very thing that later nourished her creative work. Wishing to break away from her parents' home and immediate surroundings, she moved to New York City and began her studies

³⁴⁰ One recent example is the expansive survey conducted in 2016 by the Queens Museum in NYC. See “Mierle Laderman Ukeles: Maintenance Art,” Queens Museum, accessed August 11, 2017, <http://www.queensmuseum.org/2016/04/mierle-laderman-ukeles-maintenance-art>. It follows extensive solo exhibitions at the Marabouparken Art Gallery in Sweden in 2015; at the Institute of Modern Art (IMA) in Australia in 2014; and a large-scale solo exhibition organized by the Grazer Kunstverein and Arnolfini Bristol in 2013, curated by Krist Gruijthuijsen.

³⁴¹ Patricia C. Phillips notes the landscape and weather of Colorado as being influential on Ukeles's art, but it is her Jewish family, with its commitment to religion and secular studies alongside a strong connection to community work, that had an even greater influence on her. See: Patricia C. Phillips, “Making Necessity Art,” in *Mierle Laderman Ukeles: Maintenance Art*, Patricia C. Phillips, ed. (New York: Queens Museum, Prestel, 2016), pp. 28-29.

³⁴² “Mierle Laderman Ukeles talks about Maintenance Art,” Artforum Videos, 2016, accessed June 30, 2019, <https://www.artforum.com/video/id=63533&mode=large>.

at the Pratt Institute. Influenced by teachers (all male) such as the artists George McNeil and Robert Richtenburg, Ukeles recalls Richtenburg's lectures at Pratt Institute on art as freedom. "I just flipped, that is what I wanted,"³⁴³ yet due to conflicts with the institute's administration, Richtenburg was fired; Ukeles subsequently left to study at NYU.³⁴⁴

Ukeles' strong sense of freedom and self-empowerment through art endured within her. They also came into conflict with her personal life when she became a mother. A feeling of an inner split between her love for her daughter and simply being bored by the need to care for her had been difficult to overcome. She began to comprehend that she was losing her position as an artist and with it her sense of freedom. Moreover, this understanding came along with the recognition that she stood in this position alone, without those, such as her teachers, whom she previously considered to be her artistic role models and sources of inspiration. Her teachers, just as other leading artists whom she names in the interview – such as Jackson Pollock, Marcel Duchamp, and Mark Rothko – were all white male figures. In the conflict she experienced between her personal and professional life, she began to realize that unlike her they had never needed to attend to a crying baby. Before giving up and surrendering to the feeling that "my brain is going to blow out of the top of my head," she gradually developed a realization that her household work was her art.³⁴⁵ As a consequence of that, the pivotal moment arose when she was able to name her maintenance work as art. To Ukeles, as she explains in the video interview, it was a matter of

³⁴³ Ibid.

³⁴⁴ "In 1974, after transferring to New York University, Ukeles wrote a 229-page master's thesis titled 'An Analysis of Maintenance Art: Inquiry and Creative Process,'" Lucy R. Lippard, "Never Done," in *Mierle Laderman Ukeles: Maintenance Art*, p. 16.

³⁴⁵ As Lucy R. Lippard writes: "The origins of Ukeles's Maintenance Art Works (which preceded the West Coast's 1972 Womanhouse) were conceptual, private performance pieces in which the artist's children were dressed, fed, diapered, and walked." See: Patricia C. Phillips, *Mierle Laderman Ukeles: Maintenance Art*, p. 15.

juxtaposing a Western notion of freedom with a non-Western notion of repetitiveness. The possibility that occurred to her of combining maintenance with art was a defining moment, as she achieved personal and artistic freedom through the act of naming. For Ukeles, as she explains it, her action is yet another chain in the process of discoveries in the history of modern art. It is another chain in the heritage of naming given to us by Duchamp who realized the power to name and re-name things.³⁴⁶

Some years later after Ukeles' actions, the powerful act of naming was also researched and recognized as a vital component in the field of law. The essay "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming..." published in 1980 by William L.F. Felstiner, Richard L. Abel, and Austin Sarat, is one of the most read and cited legal scholarly work of recent decades. In referring to this essay in relation to Ukeles and the process of naming in art, I aspire to offer a reflection on the evolution of an artistic claim through legal terms in order to prompt a critical discussion on the reciprocal relation between law and art. In continuation with the case of Jonas Staal, I argue that the legal terminology and formulation offered through this sort of reading is particularly vital for a broader perception of the work of such artists as Ukeles, whose long-term efforts have been in directing their artistic knowledge and practice towards a critical examination of the power of the nation-state and its administrative and legal institutions. I argue that the exchange between the two fields, often times left unnoticed or dismissed, is what allows art to shape and take part in politics.

4.3. Justice and the Evolution of Disputes

³⁴⁶ "In these terms, the ready-made must be considered not only as the recontextualization of a material object, but also as an overly linguistic act – specifically, an act of naming." *Visual Culture in Twentieth-Century Germany, Text as Spectacle*, Gail Finney, ed. (Bloomington: Indiana University Press, 2006), p. 75. On naming and Duchamp in relation to Slavoj Žižek, see Robert Kilroy, *The Sublime Object of Iconology: Duchampian Appellation as Žižekian Interpellation* (Montreal: Seachange, 2015), pp. 129-157.

I argue that any thorough understanding of the work of Ukeles needs to grasp its quest for justice, oftentimes also in a legal context. In order to better trace and analyze this in her work, it is worth briefly noting the three dimensions of justice as they are argued by Nancy Fraser. According to Fraser, in face of globalization, which utterly changes the frame of justice from that of a nation-state based to that of transnationality,³⁴⁷ we need to reconsider justice as made not only of two dimensions – recognition and distribution – but need to also add its third dimension – the political.³⁴⁸ By this, Fraser indicates that any theory of justice must include “the political dimension of representation alongside the economic dimension of distribution and the cultural dimension of recognition.” In the following pages, I will be looking into the work of Ukeles through the prism of the theory of disputes, along with underscoring the dimensions of justice (and injustice) in the work of Ukeles, bearing in mind Fraser's idea of justice. It is important at first to note that, by understanding disputes about injustice as social constructions, Felstiner, Abel, and Sarat shifted the research from the institutions in which disputes are conducted and settled to the individual, in that they argued that “a significant portion of any dispute exists only in the minds of the disputants,”³⁴⁹ which necessitates researching the preliminary stages of disputes. In a manner similar to Ukeles, whose groundbreaking work resulted from her own

³⁴⁷ As discussed in Chapter One, my study takes the position of a non-binary relation between the nation-state and the global; a relation in which the global stems from the national and for the time being continues to hold a reciprocal relation with the nation-state. This formulation allows me to reframe the discussion on justice as endorsed by Nancy Fraser, while intertwining it with that of Saskia Sassen.

³⁴⁸ “Of course, distribution and recognition are themselves political in the sense of being contested and power-laden; and they have usually been seen as requiring adjudication by the state. But, I mean political in a more specific, constitutive sense, which concerns the scope of the state's jurisdiction and the decision rules by which it structures contestation. The political in this sense furnishes the stage on which struggles over distribution and recognition are played out [...] the political dimension of justice specifies the reach of those other dimensions: it tells us who is included in, and who excluded from, the circle of those entitled to a just distribution and reciprocal recognition [...] the political dimension of justice is concerned chiefly with representation.” Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009), p. 17.

personal experience, they demonstrated the importance of observing social conditions and directing our attention to the individual perception of grievances, injury, conflict, and injustice. Instead of beginning with legal institutions (or in the case of Ukeles, with art institutions), Felstiner, Abel, and Sarat maintain that, “People make their own law,”³⁵⁰ and therefore, our analysis of conflicts and disputes must involve them. If we take Ukeles as an example, then according to Felstiner, Abel, and Sarat, what she did first was perceive her problems and distress as part of everyday life. They argue that a dispute does not emerge in most of the cases. Even when injustice or injury occurs, as human beings we are asked to tolerate them as part of our life experience. As such, being a mother and showing love to her child through constant household maintenance was at first tolerated by Ukeles and perceived as a force of nature. Ukeles, just as generations of women before her, invested her efforts in tolerating a state of mental distress and pain. What Felstiner, Abel, and Sarat, began to show is that “any experience that is disvalued by the person to whom it occurs”³⁵¹ might be considered an injurious experience. Yet, one must go through a process of transformation from a state of unperceived injurious experience (unPIE) to a perceived injurious experience (PIE), in order to first claim justice in its two dimensions of recognition and redistribution.

Felstiner, Abel, and Sarat also tell us that the feeling of injustice or of injury is not universal; thus, the same unperceived injurious experience will be valued and perceived differently by different people even when under the same circumstances. The crucial individual change from

³⁴⁹ William L.F. Felstiner, Richard L. Abel, and Austin Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...,” *Law & Society Review* Vol. 15, No. 3/4, Special Issue on Dispute Processing and Civil Litigation (1980 - 1981): 631-654.

³⁵⁰ Ibid., p. 633.

³⁵¹ Ibid., p. 634.

unPIE to PIE begins with the act of naming. In the case of Ukeles, the realization of her own capabilities³⁵² can be perceived in the act of naming her maintenance household work as art. Ukeles is aware that her act of naming could be considered “bullshit, but so what,”³⁵³ but in terms of her and Felstiner, Abel, and Sarat’s understanding, she has made the first critical step in the process of transforming her own perception. Now that Ukeles is aware of her capabilities and can name her injury, she experiences what Felstiner, Abel, and Sarat identified as a stage of grievance. It is the second step in their theory of disputes in which one is able to perceive a fault that was imposed and is then able to direct the grievance towards a specific person or institution. “The injured person must feel wronged and believe that something might be done in response to the injury, however politically or sociologically improbable such a response might be.”³⁵⁴ They call the move from PIE to grievance “blaming,” and it can be perceived in what Ukeles does. If before naming her injury – the lack of freedom, being constrained and discriminated against as a woman – her feelings were nonspecific and with no identified objective, in her manifesto for maintenance art written in 1969, one can trace the development into the step of blaming. Someone needs to clean the garbage the day after the revolution,³⁵⁵ Ukeles realizes as a consequence of her act of naming. “Maintenance is a drag; it takes all the fucking time,”³⁵⁶ she

³⁵² I use the term *capabilities* throughout this work in continuation and in accordance with Saskia Sassen, as discussed in Chapter One.

³⁵³ “Mierle Laderman Ukeles talks about Maintenance Art.”

³⁵⁴ Felstiner, Abel, and Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...,” p. 635.

³⁵⁵ In her Manifesto for Maintenance Art (1969), Ukeles wrote under idea B. “Two basic systems: Development and Maintenance. The sourball of every revolution: after the revolution, who’s going to pick up the garbage on Monday morning?” Mierle Laderman Ukeles, *MANIFESTO! MAINTENANCE ART 1969!*, accessed June 30, 2019, <https://www.arnolfini.org.uk/blog/manifesto-for-maintenance-art-1969>.

³⁵⁶ Ukeles, *MANIFESTO! MAINTENANCE ART 1969!*.

writes, but no one wants to deal with this fact. Writing a manifesto for maintenance, naming her maintenance as art, allows Ukeles to not only transform her own perception in order to regain her freedom and creativity as an artist, but to also identify those who have treated her unjustly.

Naming and then blaming opens up new transformational possibilities for Ukeles, as she realizes she is not alone, and forms a sense of solidarity with other maintenance workers, which like her earn little respect and no money.

In other words, the naming of her household work as art allows Ukeles to blame society for the injustice towards all those who are under the “lousy status of maintenance jobs = minimum wages, housewives = no pay.”³⁵⁷ Yet, as Felstiner, Abel, and Sarat state, the blaming requires a clear respondent, which can also be traced in the case of Ukeles. She starts her manifesto with general abstract ideas of life and death instincts, and of separation versus unification. Before identifying those whom she could blame, she points out the systemic failures in our development, maintenance, and cultural systems. However, soon afterward, with the introduction of art into the discussion, Ukeles is able to make her complaint specific by directing it towards the art institution. It is, at this stage, not a demand against Western culture, or American society as a whole. Rather, it is an articulated demand for justice directed towards existing art institutions and against their wrongdoing in repressing and avoiding the importance, relevance, and influence of maintenance in and on their institutions just as in everyday life. Ukeles’ naming of maintenance as art, hence, allows her to formulate her transformation and blame art institutions for reinforcing the marginalization of female artists within the art world, just as of women in society at large.

The third stage in an emergence of a dispute according to Felstiner, Abel, and Sarat's theory is the act of claiming – seeking a remedy to one’s grievance or injury. In a legal context, this can lead to

³⁵⁷ Ibid.

an engagement with the court, and in the art world, at least in the manner Ukeles formed it, to an exhibition; already her manifesto encompasses a proposal for an exhibition to be titled: *Care*. Ukeles' manifesto, in that sense, embodies within it already all three components of a dispute. It unites the naming-blaming-claiming into an appeal for a structured exhibition during which all levels of maintenance will be brought out of the abyss of oblivion. Ukeles demands to present in a museum context and space the daily routine of maintenance in order to retrieve for herself the role of an artist and to mark her daily household work as art by the art establishment. In her wish to form a coalition with fellow maintenance workers, Ukeles also demands in her manifesto that a significant part of the exhibition be devoted to interviews exploring the theme of maintenance, alongside a space dedicated to containers delivered to the museum with the contents of one sanitation truck, to be maintained throughout the duration of the exhibition. Yet, Ukeles does not use legal terminology or perceptions of justice. The lack of use of a legal structure, or of a call for multidimensional justice, as I am suggesting here, is what also prevents her actions from reaching further fruition.

In 1971, Ukeles' manifesto is published in *Artforum*, which prompts her to send the proposal, her claim, for an exhibition to the Whitney Museum of American Art. In a conversation with Tom Finkelpearl,³⁵⁸ Ukeles recalls how her approach to the museum was dismissed, as she was advised that she should first try out her ideas in the context and space of an art gallery.³⁵⁹ Following Felstiner, Abel, and Sarat, the museum's rejection of Ukeles is the event in which a dispute can be fully elevated into a claim, or if, following Fraser, in which the political dimension of justice is

³⁵⁸ Tom Finkelpearl, *Dialogues in Public Art* (Cambridge, MA: The MIT Press, 2001).

³⁵⁹ Patricia C. Phillips writes that Ukeles sent her manifesto also to the American Craft Museum, to no avail. Patricia C. Phillips, "Making Necessity Art," in *Mierle Laderman Ukeles: Maintenance Art*, Patricia C. Phillips, ed. (New York: Queens Museum, Prestel, 2016), p. 41.

being contested. One is also reminded by Felstiner, Abel, and Sarat that only rarely will the action of naming-blaming-claiming mature into a full-fledged dispute, for this depends much on one's own social and personal background. Ukeles' education and socioeconomic position, and also the historical time period of student protests, might explain why the museum's rejection did not deter her motivation to elevate maintenance into an art form. According to her, she realized that they "misunderstood. You see, I felt that it was the museum that could be the site where the public comes to understand itself."³⁶⁰ In other words, she sees the site of the museum as the place to claim justice and her rights. If we compare and use legal terminology, then what happened to Ukeles, as often is the case in a legal procedure as well, is that her standing was not recognized.³⁶¹ Naming maintenance as art, articulating her grief in the form of a complaint, and voicing her claim offered Ukeles confirmation of her invisibility in relation to the museum, and her struggle for recognition. We can only speculate about what might have happened if she had formulated her arguments in the form of a legal dispute. However, what is clear is that Ukeles does not translate her claim into a struggle for justice, nor does a legal claim emerge. She has lost her freedom, she has been discriminated against, and yet her standing, or *locus standi* in legal terms, is rejected by the same museum establishment that has historically and systemically contributed to her injustice.

³⁶⁰ Tom Finkelpearl, *Dialogues in Public Art*, p. 306.

³⁶¹ The determination of standing before a court varies in different jurisdictions based on local legislation and constitutions. In short, "Litigants must demonstrate they have suffered an injury-in-fact that is caused by the defendant's conduct and is likely redressable by a grant of the plaintiff's prayed-for relief. Many a challenge to government action has been turned away because the plaintiff, though able to demonstrate a violation of legal rights, lacked sufficiently 'imminent' or 'concrete' injury, or failed to convince the court in pretrial proceedings that the requested relief would be sufficiently likely to remedy the alleged injury." See: Evan Tsen Lee and Josephine Mason Ellis, "Standing's Dirty Little Secret," *Northwestern University Law Review* 107: 1 (2012): 170-171.

Consequently, Ukeles, as she tells Finkelppearl, had decided to embark on other routes while not giving up on maintenance art. She arranged for her maintenance work to be shown in the format of performances in different exhibitions and locations, giving maintenance work a presence in the context of art institutions. Finally, in 1976, six years after her manifesto was published, Ukeles was invited to show at a satellite branch of the Whitney Museum at 55 Walker Street in NYC. In her conversation, Ukeles talks in detail about the extraordinary opportunity with which she was presented, in which she was able to work with 300 maintenance workers. Her agony and refusal from being shown previously in the museum seem to have drifted away. Being accepted into the realm of the museum does not, at least not consciously, disturb Ukeles, or play a role in her work.³⁶² Instead, as the museum's branch was located in a skyscraper that also hosted other institutions, it was a chance for Ukeles to engage with a large number of people working on the ongoing daily routine of maintaining such a building. In this, Ukeles expressed a wish “to turn the tables,”³⁶³ by joining forces with the building's maintenance workers in a mutual effort to turn their work into art. In other words, she intended for them to experience the act of naming she had experienced herself about a decade earlier. Realizing that those workers rarely enter the museum's exhibition space as viewers, but usually only to execute maintenance tasks, she invited them to create an art piece in collaboration with her, to be exhibited as part of the exhibition at the Whitney. Ukeles left it to them to decide whether to take part in the piece or not, and to decide whether their maintenance work was art, or not. She documented the process with her Polaroid camera, and while she claims no one ever refused to be photographed, one cannot go without

³⁶² According to Patricia C. Phillips, Ukeles' participation in the exhibition was not through a direct invitation by the museum. Rather, Ukeles participated in an exhibition titled *Art < > World* arranged by the students of the museum's Independent Study Program (ISP), September 16 to October 20, 1976. See Phillips, “Making Necessity Art,” p. 80.

³⁶³ Tom Finkelppearl, *Dialogues in Public Art*, p. 308.

contesting this process on sociological, economic, and political grounds.³⁶⁴ Besides being the one initiating the collaboration as expected by the institution, Ukeles is the one naming the piece and the one who comes from a privileged position of power that allows her to be able to articulate, even if only partially, her injustice in the frame of a dispute. As Ukeles herself attests, she needed to gain the trust of her collaborators, many of whom were immigrants worried about their legal statuses being exposed, or others being suspicious of whether she might be working on behalf of the building's management. Gradually Ukeles gained their trust, and her art piece titled *I Make Maintenance Art One Hour Every Day* became a tapestry of 700 Polaroid pictures.³⁶⁵

As I have explored above, the dispute emerges by Ukeles gradually, only to be blocked at first by the museum. As the years passed, she is recognized and invited into the museum space, but if we judge this process only from the representation of her work, we shall end up with a very limited story. In the frame of the naming-blaming-claiming dispute theory, we can say that Ukeles might have presented her workers/collaborators with a few tools in order to support an act of naming; however, the blaming and certainly the claiming are hardly able to be voiced by them in the frame she constructed. The lack of formulation by Ukeles of her work as part of a struggle for justice in which recognition, distribution, and representation are bound together leaves her work, in my opinion, a far distance from the goals she set out to reach in her 1969 manifesto. The 700 photos hanging on a wall do not emerge into a dispute, or, in other words, it does not entitle her, or the maintenance workers/collaborators, to any rights to blame and further claim justice. The

³⁶⁴ Lucy R. Lippard, in her catalogue essay for Ukeles' exhibition at Queens Museum, sees the naming by the participants of their work as maintenance art or maintenance work as a "voluntarily" act; however, I suggest one needs be more critically suspicious of such possibility.

³⁶⁵ Patricia C. Phillips states that, "Almost everyone complied." She sees the action of Ukeles as almost automatically giving the employees the status of "co-creators and decision-makers with agency and autonomy to identify their activities as either 'work' or 'art'." See Phillips, "Making Necessity Art," p. 82.

dimension of recognition has been achieved by Ukeles by being invited to show her work at the museum. Yet, when justice is perceived as three-dimensional, we can say that the dimensions of redistribution and the political have not been reached. Thus, the question of whether there can be another way to read or to imagine Ukeles' work and its contribution to the discourse of rights is necessary. Offering a reflection on this may also lead to some new consideration of the role of artists in the claiming and the construction of rights. For Ukeles, her naming of maintenance as art and the writing of a manifesto allowed an understanding to arise regarding the existing relations of power, and her struggle – on the one hand, between her position as a woman and as a mother, and on the other, between being a household worker and connecting to other maintenance workers beyond her private realm. All are part of the same class, as she noted earlier in her manifesto. They are all united under the umbrella of no wages, or a minimum-wage, underpaid salary. She realized the political dimension by uniting women and service workers, as they are the majority of the world. Yet, she also witnessed the failure of what she perceived to be “a revolution linking up feminism with service workers, crossing gender with economic class.”³⁶⁶

³⁶⁶ Tom Finkelpearl, *Dialogues in Public Art*, p. 311.

4.4. Sanitation Department: First Encounters

After a review on her work at the Whitney was published, suggesting that the NY Sanitation Department increase their budget through characterizing it as performance art, Ukeles decided to expand the scope of her work and break away from the art institution. Adding the newspaper's review to her letter to the Sanitation Department commissioner, Ukeles was invited over for a talk during which she was encouraged by the commissioner to get to know the department by talking with the employees. In other words, he offered for her to use the method of an encounter – to create a face-to-face event with the workers. Neither he nor Ukeles uses the term “encounter,” but I will argue for the necessity to go beyond what Ukeles describes as talking and “bumping into people.”³⁶⁷ To begin with, the definition that the Merriam-Webster dictionary provides for the term “encounter” is revealing: “To meet an adversary or enemy; to engage in conflict with; to come upon face-to-face; to come upon or experience especially unexpectedly.”³⁶⁸ When Ukeles embarks on her mission to meet the workers of the department, she encounters harsh feelings of neglected people united by a deep feeling of being invisible amid their surroundings. She might feel solidarity with the working class, but in too many ways she is certainly not part of it. The mistrust already expressed by the workers during the preparations for the Whitney exhibition repeats itself here. In that sense, Ukeles and the workers stand on two different sides of the barricade. They are adversaries meeting in an unexpected space and under particular conditions. According to Ukeles, the working environment she had encountered was one of abandonment, taking place in poor and “utterly disgusting places.” The workers were doing away with garbage, she recalls, but garbage is the image that sticks with

³⁶⁷

Ibid., p. 312.

³⁶⁸ Merriam-Webster online dictionary, s.v. “Encounter,” accessed June 30, 2019.

them. They are in charge of such an important part of the city's life and health, but they are hated and looked down on by people. They share with her the fact that people identify them with maids or mothers, and are dismissive of them. Through this, they also underline both what connects them and separates them at the very same time, for they are men perceived as doing a woman's job, not to be seen outside the territory of the household. For Ukeles, the feeling of invisibility of these people whose work is distinguishably done in the public eye – the sense of split between inside and outside, between what is spoken and what is denied – made it a perfect ground on which to conduct an intervention. Subsequently, Ukeles' work at the department began with the work "Touch Sanitation" – the creation and manifestation of an ongoing encounter. During this, Ukeles shook the hands of every one of the thousands of workers of the department, telling them "Thank you for keeping New York City alive." Other works followed, such as "Transfer Station Transformation," which incorporated a ballet choreographed by Ukeles for "six garbage barges and two tugs."³⁶⁹

Since 1977, and up to this very day, Ukeles remains an artist-in-residence at the Department of Sanitation, which remains an unpaid and non-funded position. Tom Finkelpearl argues that this position offers Ukeles "the opportunity to chart her own course, to claim the whole city as her site,"³⁷⁰ providing her with unbounded artistic freedom. However, is this not the same mechanism of unequal payment that triggered Ukeles to write her manifesto and name her maintenance household work as art at the first place?³⁷¹ Is it not yet another demonstration of the consistency

³⁶⁹ Tom Finkelpearl, *Dialogues in Public Art*, p. 315.

³⁷⁰ Ibid., p. 295.

³⁷¹ It is worth noting that in Ukeles' first letter to the Sanitation Department Commissioner, she did propose a mechanism of payment, which was never implemented. "Perhaps we could work out a complete switch with you applying directly to N.E.A. grant for yourselves and me applying directly for a federal grant in maintenance-research systems (or some such animal)." See Phillips, "Making Necessity Art," p. 89.

of injury and injustice as the dimension of redistribution that is overlooked or declared as irrelevant? What was missed in the exchange and encounter that her work prompted among maintenance workers? What from Ukeles' journey into maintenance as art has been lost, thereby hindering a revolution from happening? At this point, returning to current legal research yields new ways of re-imagining contemporary artistic interventions woven into legal and political actions. Rarely considered as relevant as compared to other scholarly resources, the appeal to the legal can help suggest means of creating rights and of fighting injustice. As I have demonstrated in previous chapters, the intertwining of art with law makes it political, as it allows art to define injustice and claims for rights. Interventions based on artistic capabilities activated in the event of an encounter can be perceived as standing at the core of Ukeles' work, just as in the work of legal scholars of our time. In articulating Ukeles' work within the framework of legal scholarship on human rights, I argue for the possibility of positioning it as a source for the creation of rights, paving the way for more diverse and firm claims by artists in relation to law. Patricia C. Phillips writes that the unpaid position of Ukeles needs to be newly considered.³⁷² Bringing law into the discussion, I will argue, is one necessary way to re-think Ukeles' model in order to invent new ones for future judicial and visual activism.

4.5. The Right of the Encounter in Law and in Art

As stated above, Ukeles embarked on her creative work at the Sanitation Department through creating a physical interaction with the employees that I suggest calling an encounter also in the sense of meeting an adversary, an enemy, or engaging in direct and unexpected conflict. Meeting them at their work location, she was able to experience the poor working conditions and hear

³⁷² Patricia C. Phillips, "Making Necessity Art," p. 25.

their stories of neglect and shame. “It’s a dump. It’s awful here,”³⁷³ is what the workers told her, as she contemplated how to change their self-esteem and understanding of their power, and to instill in them a sense of pride and purpose. According to Ukeles, what seems to be dictating her work is a duty, as an artist, to provide them with the visibility that they have been denied. In Ukeles’ words, “My job is to take this deep-inside 1:1 exchange and make it public.”³⁷⁴ As such, in spite the fact that she is not working in an artist studio, and although her materials are non-traditional art resources, Ukeles remains firm in the conviction that art serves mainly, if not ultimately, as a representation. Needless to say, I do not seek to deny the importance of art as also being a source of representation. It is, nevertheless, intriguing to ponder how a revolutionary act of naming maintenance as art stops at that and does not trigger and develop into a further inquiry of the role of art itself in our society as part of a struggle for justice. I argue that leaving art at that alone undermines, in the end, the critical overall political dimension that can be found in the work of Ukeles. Challenging Ukeles’ critical act of naming with the support of legal constructions of disputes and struggle for justice allows me to delve into the sort of blindness she possesses in the event of the encounter. I will demonstrate how, on the one hand, she wishes to share with the workers the possibility of naming that she has herself achieved, while on the other hand she does not find the manner in which to assist or support them in the next two steps in the transformation of a dispute (blaming and claiming), and in helping to develop the emergence of rights.

In a recently published book titled *Humanity at Sea: Maritime Migration and the Foundations of International Law*, Itamar Mann brings the right of the encounter into the forefront in the framework of international law. While he discusses the concept of the encounter in relation to

³⁷³ Tom Finkelpearl, *Dialogues in Public Art*, p. 315.

³⁷⁴ *Ibid.*, p. 318.

maritime migration, he nevertheless gives us a vivid tale of how advocating for representation as an outcome of an encounter is oftentimes a limiting and unsatisfactory response.³⁷⁵ In my forthcoming analysis, I do not attempt to, nor do I have a wish to, indicate a correlation between maritime migrants and sanitation workers, which for evident reasons face different circumstances.³⁷⁶ My intention is to enlarge our perception of what an encounter is between differing unequal sides, learning from developments in contemporary legal scholarship. The undertaking I propose is done with the awareness of the evolving interest and research in the art field regarding the notion of the encounter.³⁷⁷ In her book, *New Encounters: Arts, Cultures*,

³⁷⁵ It is worth noting that, the notion of the “encounter” can be found also in the later writings of Louis Althusser. Although not to be found previously in his writings, and still being evaluated by scholars, according to Althusser “before the formation of the world” two basic items existed – atoms and a void. In this basic stage, in which no meaning, nor cause, nor end, nor reason, nor unreason exists; a “swerve” may occur “producing an 'encounter' between an atom and its neighboring atom. As a consequence a 'world' may arise.” The creation of this world “depends on whether the encounter 'lasts' [...] it endows the atoms themselves with their reality, which without swerve and encounter, would be nothing but abstract elements lacking substantiality and existence [...]”. See Louis Althusser, *Philosophy of the Encounter: Later Writings, 1978-87*, trans. G. M. Goshgarian (London: Verso, 2006), pp. 169, 260-261. According to Wal Suchting, in Althusser's theory, “Atoms have properties prior to their encounters with one another,” and that these properties delimit or constrain the possible outcomes of encounters. Suchting explains this seemingly contradictory realization by using the example of letters of the alphabet, “which have their primary existence only in the words which they make up, though they may be, for certain purposes, considered in isolation from those words. That is, letters may be regarded, metaphorically, as linguistic atoms.” See Wal Suchting, *Althusser's Late Thinking About Materialism, Historical Materialism* (Leiden: Koninklijke Brill, NV), volume 12:1, pp. 3-70.

³⁷⁶ Ukeles is aware that many of the maintenance workers at the downtown Whitney had a migration background and were suspicious of her due to unclear statuses. However, the link to the right of the encounter does not necessarily rest on this fact, as it is also not a major focus for Ukeles.

³⁷⁷ The inclination towards the use of the concept of the “encounter” can be also perceived in other fields of research and practice in addition to those of law and art. One example can be found in Human-Animal Studies for which the encounter, or rather the diminishing of encounter, serves as a mechanism through which relations between humans and non-humans is examined and contested. “Animal Encounters” was the title of an international conference on Human-Animal contacts held in November 2016. Animal Encounters: Human-Animal Contacts in the Arts, Literature, Culture, And the Sciences, International Conference at the University of Erlangen-Nuremberg, Department for German and Comparative Studies, accessed August 11, 2017, <http://animal-encounters.de/en/home/>.

Concepts, Griselda Pollock brings to the forefront the idea of the “encounter.” After the “theoretical turn” of the 1970s-1990s, Pollock argues that it is not that the need for theory has ceased to exist, but rather what is needed instead is finding ways to engage anew in transdisciplinary encounters.³⁷⁸ To this end, she gives as an example the establishment of the Centre for Cultural Analysis, Theory, and History in 2001 at Leeds University, which initiated a series of encounters. From artists to historians, from architects to psychologists and sociologists, all mentioned by Pollock as invitees, law practitioners and legal scholars have been absent, as is often the case. The study offered in these pages, thus, suggests filling the gap in transdisciplinary encounters and theory with Mann's ambitious goal to construct a new theory of human rights based on the right of the encounter. As such, it provides me with a framework to further ponder the work of Ukeles and other artists such as Ruti Sela and Lawrence Abu Hamdan who will be discussed in this chapter, who are contributing to the discourse on what I formulate as judicial-visual activism.

Mann's exploration of the encounter in the frame of international law and human rights is, in many ways, rooted in Emmanuel Levinas' theory of the face-to-face experience.³⁷⁹ The unique ethical event that emerges in the moment when human beings are facing each other is understood by Mann as the backbone of human rights. As such, “Being bound by human rights means experiencing this presence of other persons as projecting a certain kind of imperative.”³⁸⁰ Mann will proceed to show us that this imperative, thus, represents a quality within the other that

³⁷⁸ Griselda Pollock, *New Encounters: Arts, Cultures, Concepts* (London: I.B Tauris & Co, 2013).

³⁷⁹ Mann acknowledges Levinas' influence on the right of the encounter, but argues in difference with him on the ground that refugees or migrants possess agency, which Levinas' “Other” does not. Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (Cambridge: Cambridge University Press, 2016), p. 159.

³⁸⁰ *Ibid.*, p. 12.

demands our attention and recognition. It requires us to shift our perception of the other as being weak and powerless, and to be receptive to the demands the other person conveys to us through the encounter. In the discussion on law and the origin of human rights, Mann identifies circumstances in which an encounter forces us to acknowledge possible duties towards the other that are derived neither from nation-state governments nor from transnational organizations.³⁸¹ In applying Mann's ideas to Ukeles and her work with maintenance workers (applicable, in my opinion, to many other art projects involving underprivileged persons and environments), we need to identify the demand of the other, and the capabilities brought by the other to the encounter. In the context of Mann's research, migrants are reaching the shores of Europe and bringing our legal system into a state of bafflement, and as Mann identifies it, a state of embarrassment. In risking their lives and sacrificing their most treasured and beloved possessions, migrants challenge both nation-state sovereignty and transnational powers. Mann argues that we need stop portraying migrants only as bare life, and instead begin to realize the strength and revolutionary capabilities with which they are equipped. Unwilling, or unable, to live in their countries of origin, migrants and refugees demand that we re-think and re-imagine our deepest convictions regarding nation-state sovereignty, transnational frameworks, and international law. Boats cramped with people escaping their homelands, or the lines of human beings dangerously crossing national borders, attest to the failure and the breakdown of existing national and legal systems of sovereignty and power. Mann's research begins with Jewish refugees on board the boat of the *Exodus*. The *Exodus*, which gained stardom when in 1960 the

³⁸¹ This is also in line with Nancy Fraser's idea of justice. In the time of globalization, our concept of justice changes and we can no longer talk only about citizens bound by a modern territorial state (the Keynesian-Westphalian frame, in Fraser's words). This fact also changes the two main claims of justice – redistribution and recognition. In a post-Cold War globalized world, claims Fraser, actions and decisions taken by states and international corporations and organizations change the frame of justice as we have known it. As a result, we need a new theory of justice that needs to be three-dimensional, as discussed in this chapter.

story was adapted into a Hollywood film starring Paul Newman, is only one example out of many of the struggle of stateless people in search of a safe haven. Mann examines the story of the *Exodus* from the perception of an encounter going beyond the customary reading as a tale about the protection of international organizations, the creation of the Jewish state, and of the power of sovereignty. Instead, Mann emphasizes the moral and political dilemmas cultivated by the encounter forced upon the nation-state and its legal system by refugees and migrants from the *Exodus* to our time. The critical point, according to Mann, is in the fact that the encounter with migrants and refugees embarrasses our legal systems.

In the encounter between Ukeles and the workers, the power relations are fairly clear. Although Ukeles' act of naming begins with her own identification as a mother and a housewife, and thus with the working class as mentioned in the outset of this chapter, her background and socioeconomic status differ from that of the workers whom she encounters and collaborates with in her exhibitions, performances, or at the Sanitation Department residency. As elaborated above, she articulated her injurious experience, and the injustice she suffered in a manner that the collaborating workers could not achieve. In this sense, the encounter that is experienced between Ukeles and the workers is one between the powerful and the powerless. Thus, and in accordance with Mann's theory, we need to ask: what is the agency of the maintenance workers? What might there be in their presence that demands our recognition? And through these questions – what rights are involved in the encounter between the powerful and the powerless? Can a dispute emerge – the act of naming and transforming into a grievance, which is elevated into a claim? And how can all dimensions of justice be reached? One must be attentive to the details of the first encounter between Ukeles and the workers, and especially to the working conditions and environment that Ukeles encounters for the very first time in her life. The Sanitation Department

commissioner, as I mentioned above, encouraged Ukeles to go and talk with the workers as a starting point for her residency at the department. One of the pivotal realizations by Ukeles following these meetings and encounters was that she was the only woman around. The other women who shared the space of her encounter with the workers were of a pornographic nature – images of women covering the walls of the sanitation garage. Ukeles tells Finkelpearl that she experienced this as “a very hard, ugly environment, very unforgiving, so that these men would fill up entire walls with images of women who were soft, yielding, and available.”³⁸² Demeaning images of women, notes Finkelpearl, as Ukeles goes on to explain how the sanitation facilities at that time were located in abandoned city jails and firehouses. Ukeles interpreted these conditions as intentional by the city in order to position the workers as nothing more than the garbage they were collecting. Identifying herself as a feminist, the environment put her into a conflict. Even more perplexing for Ukeles was the realization that, for the men she encountered, the thought that she might be insulted or embarrassed by the pornographic images seemed to be utterly irrelevant. “It was so split, Tom, so alienated, so sick,”³⁸³ and yet she felt determined to take on the residency, and to make the encounter with the workers the basis of her first performance and project. Reading Ukeles’ action of touching, shaking hands, and facing the sanitation workers, one cannot underestimate the correlation to Mann’s reading of the right of the encounter based on the writings of Levinas regarding the face-to-face encounter. In the midst of an inner conflict of her own identity and values, Ukeles recognized the demand brought upon her by the encounter with the workers, which led to acknowledging her duty. Emphasizing the need to meet each and every one of the workers, she was determined to create again and again a face-to-face encounter

³⁸² Tom Finkelpearl, *Dialogues in Public Art*, p. 312.

³⁸³ Ibid., p. 312.

with those with whom she could at first find little in common, those treated by their own society as waste.

In a sense, it is the feeling of unease with her own convictions as a feminist that also brought Ukeles into a state of an embarrassment of sorts. It triggered her to take on the residency at the sanitation department, and to perform the ongoing act of an encounter. In doing so, she manifested the need to talk about the human rights of the sanitation workers. She did not wait for the employer (the sovereign) or another national (or international) intervention and support. Her ongoing “Touch Sanitation” action encompasses all that is problematic when we are facing a state of emergency. “What is the task of art in times of emergency?” was the question brought to us by Hito Steyerl discussed in Chapter Three. Positioning Ukeles work in relation to Mann's analysis of the right of the encounter suggests that further understanding and action is needed by artists, just as by legal practitioners. What Mann encourages us to further realize is the power and capabilities that migrants and refugees possess even at their most vulnerable level of existence. Just as the sanitation workers are more than the garbage they collect, or the garbage they are perceived to be by their employers and the rest of society, so are refugees and migrants more than only bare life. Expanding our understanding of the moral and operational demands brought upon us by migrants and refugees as shown to us by Mann, sheds light just as much on other encounters as presented to us in the art world. Mann advances from the state of embarrassment to political and legal action, advocating for the power of the encounter even when it takes place between two very unequal persons or entities. In other words, by recognizing the agency of the powerless, the encounter accelerates a representation of the powerless and affirms the political dimension of justice. It is an encounter which brings with it new legal resources and tools that are neither derived from sovereignty, nor from transnational governance.

The inability to recognize or give space to the agency of those she encountered led Ukeles to remain in the realm of artistic representation, without a political dimension. The ability to unite law and art exposes, as a result, what was missing in the work of Ukeles, in my view. By bridging legal and scholarly research with that of art, we do not eliminate art from the equation but rather propose a political stratum that enhances artistic intervention based on artistic capabilities: judicial-visual activism. In order to make this point even clearer, let us remain for a while with Mann and with the rights of the encounter. What Mann requires of us is to not to disavow rights rooted in sovereignty and transnational governance, but rather to position the rights of the encounter as primary to any other rights.³⁸⁴ The encounter between the powerful and the powerless embarrasses the powerful exactly because of the “existential challenge it presents,”³⁸⁵ caused by the creation of a presence in the form of an encounter. This presence, which does not always have to be in the form of a body, testifies, according to Mann, that human rights “originate from outside of the state” and “stem from the existence Hannah Arendt labeled *bare life*.”³⁸⁶ But where Mann differs from Arendt lies in his argument that bare life existence also holds within it legal rights and political power. Mann gives an example for this with respect to illegal migration of Southeast Asians – known as the “boat people” of the post-Vietnam war period. Their claim for human rights and their struggle for survival and freedom ended with

³⁸⁴ In a sense, Mann is hinting against structures such as a radical democracy as advocated by Laclau and Mouffe, in which all conflicts or struggles are part of a chain of equivalence. There is, he tells us, a need to prioritize rights. Other scholars, such as Drucilla Cornell, maintain a similar argument. According to Cornell, Laclau and Mouffe moved away from socialism in the name of radical democracy, and with it lost their criticality in the struggle to overcome capitalism due to its antithetical base. “At the very least, we need to set up a profound tension between the right to private property and other socio-economic rights, such as the right to housing, education, and so on.” Drucilla Cornell, “Law and Revolution,” in *South Africa: uBuntu, Dignity, and the Struggle for Constitutional Transformation* (New York: Fordham University Press, 2014), p. 37.

³⁸⁵ Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 54.

³⁸⁶ *Ibid.*, p. 59.

many of them being resettled in such countries as the US, Canada, and Australia. This achievement must be seen, according to Mann, as a direct outcome of their struggle. Without the encounter they initiated, no sovereignty or transnational governance would have offered them an alternative political membership. Moreover, the “boat people” demand of us something that is beyond their mere survival. For them, it not only a wish to remain alive, but it is a claim “rooted in their own agency and in a demand for freedom.”³⁸⁷ According to Mann, it is the agency expressed by the powerless in the event of an encounter that we tend to overlook. In line with Arendt, Mann recognizes human rights as stemming from a bare life condition, but unlike Arendt, he argues that they cannot be formulated and claimed without the claim of agency by the powerless.³⁸⁸ Just as in the case of obtaining political membership,³⁸⁹ the actions of migrants – whether by forming an encounter at sea or by crossing ground borders – are those that trigger action and influence a change on transnational level as well. We are, thus, called upon by Mann to reverse our view of those seeking the protection of human rights as passive victims to those having an active role in changing laws of sovereignty and of transnational governance.

Establishing the right of the encounter and the agency of the powerless, does not, however, guarantee that we fully capture the significance of the event, as we witness in the case of Ukeles.

As Mann states, “The place where we stand when the human rights encounter occurs is not naturally given. It is manufactured by political and economic power, history, culture, and

³⁸⁷ Ibid., p. 79.

³⁸⁸ According to Mann, Arendt's essay “We Refugees” holds that refugees hold no political power. Yet, the end of the essay, in which Arendt suggests that refugees should not conceal their identity, signals some entry for the refugees into the political sphere.

³⁸⁹ In the context of my argument, it is sufficient to just note that by placing Arendt into a contrasting position with Thomas Hobbes, Mann claims that: “The moment of passage from the state of nature to civil society allows us to conceptualize bare life as a political category that encapsulates a fundamental form of political action.” Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 90.

technology [...]. Addressing these structural conditions requires a shift in focus.”³⁹⁰ He suggests adopting an external position in which we pay considerable attention also to those encounters that did not take place.³⁹¹ It is a position that does not see a commitment to the powerless only derived from positive law, but also by stressing that, “The human rights encounter is a fruit of the political imagination.”³⁹² Through this, Mann argues, we can expand our notion of positive law, and thrive for the creation of a duty towards those in need.

Bringing the work of Ukeles back into the discussion, there is no doubt that she acted to the best of her knowledge and awareness when encountering the workers of the Sanitation Department. However, when contrasting Ukeles’ actions with Mann’s arguments, I cannot but suggest that what is missing is an understanding by Ukeles of the agency of the workers. As Finkelpearl suggests, “Ukeles’s presence at Sanitation is a complex fusion of outsider (independent artist) and insider (long-term fixture in the Department).”³⁹³ However, only through a union with law could Ukeles achieve a political dimension in her work, and by this I mean justice based on recognition, distribution, and representation through the agency of the workers. There is no doubt that Ukeles established a unique model for artistic operation from within a municipal bureaucratic/administrative system. If articulated through the theory of naming-blaming-claiming, one can say that investing a great deal of time and creativity in learning about the work of the department and meeting personally with each of the workers must have contributed to her sense of naming and, to a lesser degree, to that of the workers as well. Yet, an early vital

³⁹⁰ Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 163.

³⁹¹ This is especially important nowadays, due to advanced technology often making a physical human rights encounter impossible.

³⁹² Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 188.

³⁹³ Tom Finkelpearl, *Dialogues in Public Art*, p. 298.

contradiction arises from the fact that Ukeles remains an unpaid functionary for almost four decades. In many ways, it seems that her unpaid position is celebrated in publications and interviews as part of her invaluable dedication.³⁹⁴ A sanitation officer is quoted by Finkelppearl as perceiving Ukeles as “a pain in the ass,”³⁹⁵ however, when reading further one cannot ignore the conclusion that, more than anything, Ukeles has contributed to the status quo of the department and its workers, and less to a cause of justice. In her conversation with Finkelppearl, Ukeles gives a heartfelt monologue on the background motivations to her manifesto, and on the failures she found in the feminist movement of the 1960s. She concludes by agreeing that although things did improve, the revolution failed due to its inability to make the connection between feminists and service workers, between gender and economics: “Instead we got partial and mainly middle-class measures: health clubs, preventive maintenance, flextime. There was no major reorganizing.”³⁹⁶ Again, without diminishing the achievements of Ukeles, when reading these lines, I cannot but bring them into relation with her work at the department and argue that by not transforming her work and relation with the workers further in the direction of formulating a blame and a claim, she directly and indirectly contributed to dampening dissemination and the partial obliterating of her own cause. Her ongoing focus on representation and visibility, obtaining funds from outside the department to support her projects, and improving the furnishings of the department’s offices and maintaining new bathrooms cannot but end up sounding like the same “middle-class

³⁹⁴ One, of course, can argue that she has gained substantial financial means from her work in the department through exhibiting her work in art institutions, and by being represented by a renowned art gallery. In the PDF found on the website of the Ronald Feldman Gallery, who has been representing Ukeles for decades now, one finds 58 pages of group and solo exhibitions, artist’s texts, honorary doctorates from two universities, grants, fellowships, and awards from the early 1970s, and so on. Accessed June 30, 2019, https://feldmangallery.com/assets/pdfs/artistCV/Ukeles-current-bio-letterhead-use-this_190406_190141.pdf.

³⁹⁵ Tom Finkelppearl, *Dialogues in Public Art*, p. 298.

³⁹⁶ *Ibid.*, p. 311.

measures” she herself criticized as denying the possibility of a revolution. It might very much be that the tireless efforts to get better sanitation facilities for the sanitation workers for which she “sweated blood [...] The bureaucracy was dragging its heels on this one,” Ukeles intended to provide the workers with the possible ground for naming their condition of injury and injustice. It could also be that in the process of becoming part of the bureaucratic system, Ukeles ceased to maintain the position and endurance needed for the formulation of a next step towards justice, in the formulation of blame.

4.6. From the Sanitation Department to the Legal Department

Now, I wish to further extend my argument on the use of a legal frame in relation to artistic practice and research, and to use this to illuminate a more recent project that also took place within a governmental institution. “The City Artist” project was a short-lived curatorial endeavor to bring artists to work within the Jerusalem Municipality in 2012. The main outcomes of this curatorial project were two separate video works by artists Tali Keren and Ruti Sela. From the two, I will discuss the one created by Sela in detail, as it took place at the municipality’s legal department and therefore sheds light on the administrative work of legal practitioners. My view shall be articulated through an analysis of the video *For the Record* (2013) presented by Sela as the outcome of her residency. Giving an account of the work of Sela in the offices of the legal department, I wish to begin by noting the differing translation between the video's Hebrew and English opening disclaimer. According to the English translation, the video “is the result of a painting commission by the municipality of Jerusalem,” while in the Hebrew version the same sentence states that “the video was created in the frame of a residency for painters at the Jerusalem Municipality.” The rest of the translation is more or less similar; however, these differences in the translation provide us with a first clue into the complicated relation depicted in

the video still to come. Whether the video is a result of a *painting* commission or a residency *for painters* at the municipality is yet to be clear at this stage. Keeping in mind Mann's exploration of an encounter, these differing translations provide a preliminary perspective into a state in which one is confronted with an uneasy or unclear situation. What is agreed upon in both Hebrew and English is that the video is a result of an engagement with the Jerusalem Municipality as part of the “The City Artist” umbrella project. Nevertheless, the artist does not inform us about the nature of the project, who initiated it (the artist? the municipality? a museum? a curator?), or in which circumstances and context it has been executed. The uncertainty affixed to the making of the video can also be traced in the differences expressed in its title. “For The Record” is the title in English, while in Hebrew the title “למען הרישום” indicates a double meaning, and an inclination of the artist towards what can be translated as “For the Drawing,” and also “For the Registration” (in Hebrew the word for drawing and for registration are written similarly and sound alike). The title appears in both languages following a short exposition in which we see the artist drawing a portrait of a lawyer working at the Attorney General Department.³⁹⁷ Both Hebrew and English readers can make the assumption that the video is dealing with both the act of drawing and of a possible registration. Yet, the English title certainly draws attention to a more official or even legal procedure in which “facts must be known and made public,” while the Hebrew title sends a notion of a sort of a struggle between the artistic act of drawing and the idea that something needs to be registered in memory. This is also due to the fact that the phrase “for the record” in its Hebrew translation as suggested by Sela is seldom used, unlike the English phrase, which is common and is customarily used. Hence, on the one side a multitude of meanings, while on the other side vagueness and obscurity, which

³⁹⁷ It is declared in the opening captions that all participants are lawyers at this department.

might be an indication of the difficulties or possible embarrassment attached to an event of Sela's encounter with the lawyers of the department.

The video *For The Record* takes place solemnly in the spaces of the offices of the Attorney General's Department in Jerusalem. The lawyers are seated in their everyday workspace behind their desks, computers, and pile of files. On the other side sits the artist, directing her observing gaze at the lawyers as she draws their portraits on a white block of paper attached to a pedestal. The setting of the office seems to be left untouched; natural daylight enters through the building windows, and sound is heard coming from neighboring offices. Aware of these surroundings, we are able to observe both the lawyer and the artist in action through a camera located behind and on the side of the artist. The use of basic elements and a direct and unapologetic camera has characterized Sela's method of working since an early stage of her artistic career. In situations described as social antagonism, she creates everyday interactions, of which she and her camera form an almost single unit.³⁹⁸ In *For the Record*, Sela continues to use the format of a documentary used by her in the past as she follows the daily routine of the lawyers in their offices. Simultaneously with her own presence, along with her painter's pedestal and video camera, Sela manages to create an unsettling intervention into the space. Unlike the more active role usually played by Sela in her earlier videos, where she is known to be creating "constructed situations, i.e. moments of life, a concretely and deliberately constructed game of events,"³⁹⁹ in *For The Record* the game of events, i.e. the work of the lawyers, is left untouched by the artist,

³⁹⁸ Ruti Sela, together with Maayan Amir, gained international acclaim with video works such as the trilogy *Beyond Guilt* (2003-5). Taking place in the bathrooms of a nightclub or in a hotel room, both the artists and their protagonists often address the camera directly as it documents an environment of intensive verbal and interactive encounters.

³⁹⁹ "'Ruti Sela: For the Record' – at tranzitdisplay," ERSTE Stiftung, accessed June 30, 2019, <http://cz.tranzit.org/en/exhibition/0/2013-06-20/ruti-sela-to-the-recorded-pro-zznam>.

as Sela's presence remains mainly detached. Also, unlike previous works by Sela, in which she directs and stages situations, here she plays a much more passive role.

4.7. The City Artist and The Artists Placement Group (APG)

As mentioned above, Sela's video was a result of "The City Artist" project, an endeavor arranged under the auspices of the Jerusalem Season of Culture 2012. It was a curatorial project curated by Israeli curator Gilly Karjevsky and co-curator Hila Cohen-Schneiderman.⁴⁰⁰ In their introduction, the curators describe "The City Artist" as "a project that introduces artists into the work of the municipality. For the first time in the history of art and local government in the State of Israel, artists took up residency in various departments of the municipality for three months (May-July 2012). They got to know the employees, how the departments function and developed, together with the employees and the management, works that draw on the municipality's functional infrastructure."⁴⁰¹ The motivation to have artists residing in local governmental institutions brings to mind the work of Ukeles, but also the work of the Artist Placement Group (APG). Established in 1966 by John Latham and Barbara Steveni, APG was seeking to "rethink the artist's role in society."⁴⁰² Creating platforms through which artists are invited to work from within and as part of industrial and governmental institutions, APG held that art-making in those cases is secondary to the human interaction propelled by the artists during their period of residency.⁴⁰³ Contacting organizations to have them invite artists for

⁴⁰⁰ For more about the project, see Hila Cohen-Schneiderman, "Along the Law," *OnCurating* 28 (2016).

⁴⁰¹ "The City Artist 2012: Under the Mountain," accessed June 30, 2019, <http://en.mekudeshet.com/archive/2012-season/the-city-artist/>.

⁴⁰² Claire Bishop, *Artificial Hells*, p. 163.

⁴⁰³ Trained and active as artists, it is interesting to point out that Latham and Steveni's artistic work in the constellation of APG can also be perceived as those of curators, perhaps an early sign and stage in a curatorial practice as it is known to us nowadays. For more on the position of the curator, also in relation

placements, Latham and Steveni advised the companies to see the process of the residency as "having the benefit of a creative outsider in their midst,"⁴⁰⁴ or, as it was subsequently coined, an "Incidental Person." Aiming to bridge and promote a mutual exchange, APG embarked on a complex engagement in which they conducted research on interested companies, negotiated artists' fees, arranged contracts and legal matters between the parties, and also curated exhibitions as part of the last phase of the artists' placement. From 1969 onward, placements of British artists (all male, as noted by Bishop, working in typically male-dominated organizations) took place in companies such as British European Airways, Scottish Television, the National Coal Board, the British Steel Corporation, and others.

With this in mind, and returning to Sela's work as part of the City Artist Project at the Jerusalem municipality, it is worth mentioning that although the project in Israel was short-lived and only engaged two artists, both were female, and instead of working with industry or national companies, it shared its goal with APG regarding the role and position of the artists in relation to governmental institutions. The intentions of the curators in Jerusalem were in line with those of APG and Ukeles by emphasizing the potential of facilitating collaborations and exchange among artists and civil service employees.⁴⁰⁵ The curators of the Jerusalem project aspired to initiate a permanent position for a "city artist" based on and functioning in the same manner of other governmental positions such as city geographers or city planners. Yet, as with other previous projects sharing similar aspirations, it seems that the idea of having a fully paid and well-

to Ukeles work, see Hila Cohen-Schneiderman, "Along the Law."

⁴⁰⁴ Bishop, *Artificial Hells*, p. 164.

⁴⁰⁵ In a text published only in Hebrew that I presented as part of an exhibition I curated at FKSE Budapest in 2013, they further align their work with that of APG just as with Ukeles, Jill Magid, and Olafur Eliasson, whose Institut für Raumexperimente offered a fellowship to a politician from Berlin for a period of six months as part of the 7th Berlin Biennale in 2012.

acknowledged position for an artist in the public service is far from being attained. As noted above, even the work of Ukeles, which began in 1977, remains an unpaid position unlike, of course, the municipality's lawyers, city planners, and other office workers, and she also remains the only artist in residence in the history of the New York City Department of Sanitation.⁴⁰⁶

However, this is not revealed or discussed during the video, and so I wish to go back again to the encounter between Sela and the lawyers of the legal department. In one of the more elaborated scenes, one of the lawyers seems to be genuinely interested in Sela's opinion as he reads aloud to her paragraphs from the municipality's book of regulations concerning opening hours during religious holidays. It is a unique event in the video, as previously no dialogue or conversation between the artist and any of the lawyers is established. From the first lawyer filmed typing on his computer, avoiding eye contact with Sela, to the next lawyer who seems to feel obliged to inform Sela briefly of the passing of a file to a colleague, Sela's presence is mostly ignored or politely tolerated. Although the work of Sela does not intend to be a "true" representation of the encounter she has had with the lawyers, the narrative of the video suggests a gradual growing interest from the side of the lawyers towards the artist, with an emphasis on her presence as partly shifting between transparency to elevated recognition. Through a little verbal interaction, Sela draws us into her encounter with the manager of the department, dedicating most of the video to it. At first, just like in earlier parts of the video, the artist is seated in front of a lawyer

⁴⁰⁶ In 2015, it was announced that artist Tania Bruguera would be the first artist in residence at the New York City Mayor's Office of Immigrant Affairs (MOIA). The press announcement stated that, unlike Ukeles, Bruguera's residence would be paid not by the city, but by funding of the Shelley & Donald Rubin Foundation. The press release mentions Ukeles' residency as a successful model for the new planned residency. Press Release, New York City Mayor's Office of Immigrant Affairs, July 14, 2015, accessed June 30, 2019, http://www.nyc.gov/html/dcla/downloads/pdf/dcla_moia_air_annct_july_2015.pdf?epi-content=GENERIC. In the scope of my research I did not have the means to sufficiently investigate this process and possible outcomes.

who wishes to go on with his daily routine. The manager, whose name remains anonymous just like the rest of the workers, begins by saying, "I'll keep working and you do what you have to," but this time around it is not what Sela is aiming for. Unlike before, Sela directs her gaze towards him. In this particular encounter, she is interested in learning more about his incentive in taking part in the project, what was intriguing about it for him, and why he agreed to it (this is also how we learn that he holds a managing position). And through this, while she goes on drawing his portrait, i.e. continues with her "classic" role of the painting artist, she is able to ask questions and share more details with the viewers regarding his thoughts on both the fields of art and law.

The exchange between the two exposes mostly the basic assumptions that most of us share when it comes to the law and its practitioners. The lawyer wishes to gain something "practical" from the collaboration with the artist; something that can be translated into a sort of a value to the department, while he also acknowledges that, "Art is valuable in itself." Law is like magic, he tells her, and she responds intriguingly by saying that "magic is an illusion." Law is "the art of the impossible," he retorts, accompanied with a grin. He emphasizes the limit of the law and the need to work inside a regulated frame, which also restricts the ability to be truly creative. The collaboration with the arts, he claims, can bring the possibility of a new interest in the field of law, but he does not elaborate on this further. The conversation goes on between the two, demonstrating the differences between them, the artist's perception of the law as a fictive construction, while all along a clear and inherent mutual suspicion divides them. "Can they (the lawyers) sue me later?" asks Sela, while he on his side has allowed the video documentation of the project, but is worried about the consequences of such an act. He is obviously careful with his words, while she admits to her feelings of entering a new unknown territory and "almost opposite" field. She sees the role of the artist as negating the law: "Being an artist means wanting

to be beyond the law or not to believe that there is a law," she says to him. In other words, and as it is boldly presented in Sela's video, the encounter between the artist and the lawyer is one based on unequal terms, a meeting of adversaries. Suspicion, fear, and differences based on status and differing backgrounds feed into it.

The unequal terms of conduct have also been the subject of criticism towards the work of the APG. As such, the "Incidental Person" is the artist who enters the unknown terrain of the industry, while not much attention is given to the process of change or development of the people working in the industry. It is, of course, declared by APG on several occasions that, "APG exist to create mutually beneficial associations between artists and organizations...an attempt to bridge the gap between artists and people at work,"⁴⁰⁷ but as the critic Peter Fuller has pointed out, "The system of collaboration proposed between APG and corporations was flawed from the start since power relations were stacked against the artist."⁴⁰⁸ Fuller argues against APG's management-level approach and their contractual promise not to harm the host companies, "which removed the artist's right to find fault."⁴⁰⁹ On the other hand, trying to rescue APG from its own weakness, Claire Bishop claims that while Fuller's criticism is warranted to a certain extent, it "completely misunderstands Latham's idiosyncratic artistic thinking [...]. For Latham, the artist as Incidental Person transcends party politics and 'takes the stand of a third ideological position which is off the plane of their obvious collision areas.'"⁴¹⁰ According to this, a "third ideological position" will be achieved through practical artistic imagination and verbal interactions in the context of institutions and organizations. Bishop, in her summary of the

⁴⁰⁷ Bishop, *Artificial Hells*, p. 170.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid..

⁴¹⁰ Ibid., p. 171.

achievements of APG, finds that although many times elusive and drenched with gray administrative and bureaucratic construction, “Its achievements were primarily discursive and theoretical,” and notes favorably APG’s “desire to put two different ideological value systems into constant tension.”⁴¹¹

As I have discussed with regard to Ukeles, maintaining only a discursive and theoretical position undermines the agency of the powerless party in the encounter. In the case of Sela, she is admittedly the weaker party in the event, if we go by the rule of the encounter. Yet, the right of the encounter was not the frame through which the residency at the municipally was perceived. In the essay by the project’s co-curator, Hila Cohen-Schneiderman for the journal *OnCurating*,⁴¹² one realizes that for her the presence of an artist in the legal department can be better described as a Trojan horse. She marks Sela’s position as one that began with a lie (is she a painter or rather a video artist?), and continues with Sela being interested mostly in the wrongdoing of the department, such as in the “cracks and contradictions within the system itself, alongside the loopholes through which one could promote a different agenda.”⁴¹³ Cohen-Schneiderman takes pride in Sela’s involvement with the lawyers, which almost “amounted to proposing a bill or an amendment that she herself formulated”⁴¹⁴ only to be prevented by the limited timeframe of the residency. As long as there is no long-term position for artists and curators within government institutions, she tells us, they will remain inclined to work against it and not in terms of re-formulating it. Overlooking the agency shown to us by Sela, the curator proves how difficult it is for one to name her own injustice. Even less than the artist who was an active part of the

⁴¹¹ Ibid., pp. 175-176.

⁴¹² I invited Hila Cohen-Schneiderman to contribute a text for the issue I edited of *OnCurating* (No. 28).

⁴¹³ Hila Cohen-Schneiderman, “Along the Law,” p. 58.

⁴¹⁴ Ibid.

encounter, the curator struggles to formulate her own agency, which cannot demand its place as long as what troubles her is in curating the project, i.e., will “we destroy his trust in artists? Will he, once again agree, to host another artist?”⁴¹⁵ In such situations, artists and curators remain powerless with respect to their capability to challenge the existing hegemony. Leaving the artist, be it Sela or Ukeles or APG, to possess only an “incidental” position underestimates and halts any true possibility for exchange or for long-term change. It denies the agency of the artist, blocking his or her way in formulating a possible claim, recognition, redistribution, and hence also a possible judicial-visual dimension. Felstiner, Abel, and Sarat show us the significance of learning and observing the preliminary stages of a dispute, as most cases of injustice or injury do not evolve into a full dispute due to personal, social, and institutional constructions that limit the possibility of agency for those who are only considered powerless in the event of an encounter.

The scene in Sela's video in which the lawyer is reading to her from paragraph five of the old bylaws is perhaps the most revealing when read through the lens of the encounter as suggested by Mann. The lawyer is facing Sela, who might have sat in front of him for quite some time as indicated when she flips her drawing notebook and we get a glimpse of a finished portrait of the lawyer. Sela seems undisturbed as she prepares to begin a new drawing, but she is obliged to face him since he continues reading her lines regarding regulations of opening and closing hours of places of business. The question, which at first might seem insignificant, touches upon the differences and tension in Jerusalem regarding differing regulations for Jews and non-Jews. The matter can be of marginal interest to Sela's research and work, or not; however, the short encounter – only forty seconds long in the video – manifests the power within an encounter. Here we are witnessing a face-to-face exchange of knowledge when the powerful side demonstrates an

⁴¹⁵ Ibid.

interest in the other side, in her knowledge, in her power of creativity and imagination. The lawyer does not act out of fear or suspicion but shows interest in a fellow human being with him – he is sharing the event of an encounter. It is very brief and cut short abruptly by Sela as she goes from this to the long conversation she has with the department's manager. We do not know the exact reason for this artistic decision, but we can assume that the transformation of the encounter to the agency of the artist has shifted the embarrassment onto her side. Being unprepared and caught off-guard and with no legal knowledge might have been the reasons behind Sela's decision to divert the video into a territory with which she is more familiar – the artist as an outsider, the artist as negating the law. This is also the manner in which this encounter has been perceived by Cohen-Schneiderman – a noteworthy experience that is more of the exception than the rule. It might be, however, that as legal scholars have begun to show us, the department's lawyer perceives the law as “an ongoing activity which depends on particular kinds of practices.”⁴¹⁶ As scholars such as Sundhya Pahuja and Itamar Mann demonstrate in cases of an encounter of differing practices, “We must choose our law, rather than assuming any one law is simply already there before we arrive.”⁴¹⁷ Yet, the premise of the curatorial platform has allowed little consideration of the possibility for a shared common ground between the artist and the lawyers. It might be, though never elaborated upon, that by entering into the encounter the lawyers declare their doubt in the power of law, and the artist rather declares her commitment to it. The encounter between the artist and the lawyer in the offices of a legal department is *a priori* a position of “breaking the rules,” or at least a partial suspension of them. And breaking the rules

⁴¹⁶ Sundhya Pahuja, “Laws of Encounter: A Jurisdictional Account of International Law,” *London Review of International Law* 1:1 (2013): 65.

⁴¹⁷ *Ibid.*, p. 92.

is the source of creation, as Zygmunt Bauman tells us,⁴¹⁸ for keeping with them means following a routine rather than creating something new. Perhaps this is what the department's leader means when he talks about magic? Creating something magical, outstanding, different out of existing law? Perhaps by working within the legal department, the artist had the desire to break from the conceptual routine of what she considers to be the law? Perhaps if we reshuffle preexisting conditions, Sela would have been able to further grasp the potentiality of creating a “judicial-visual activism” claim rather than putting it aside.

4.8. The Case of Forensic Listening

A third paradigm I wish to elaborate upon will further expand the argument to ways that artists, when engaged with the law, provide through an encounter a possibility for the recognition and formulation of a demand, of a dispute, and of a political dimension of justice. This time around, by bringing the work of artist Lawrence Abu Hamdan into the discussion, I will demonstrate how an artistic mechanism of working with the law while challenging our conception of it culminated in an artist serving as an expert witness. In my essay that accompanied image documentation of the work of Abu Hamdan for *OnCurating* issue 28,⁴¹⁹ I explored the historical progress of evidence in the courtroom since the end of the eighteenth century, and consequently on the role of the expert witness. Without wishing to go into details here, suffice it to say that it was a lengthy development during which the courts in Anglo-American legal systems learned to accept evidence based on technological discoveries and advancements in photography, and with these the need to invite experts with knowledge not held by the court in order to give testimony on their behalf. The work of Abu Hamdan, developed by him independently and as part of his PhD

⁴¹⁸ Zygmunt Bauman, *Liquid Modernity* (Malden, MA: Polity Press, 2000), p. 208.

⁴¹⁹ Avi Feldman, “The Artist as Expert Witness,” *OnCurating* 28 (January 2016): 45-9, accessed June 30, 2019, <http://www.on-curating.org/issue-28-reader/the-artist-as-an-expert-witness.html#.WFqrpVw5MRY>.

research at the Forensic Architecture agency,⁴²⁰ contributes, as I shall argue, to these developments in our time. In the realm of Forensic Architecture, Abu Hamdan's work follows the notion of *Forensis*, a Latin term reintroduced by Eyal Weizman in order to reunite law and science and give it political agency. If in the past we experienced a shift in evidence with the introduction of radiology, x-rays, and photography, and if we have more recently experienced the growing influence of the witness described by some scholars as the age, or era, of the witness,⁴²¹ Weizman claims that what we are experiencing nowadays is the “forensic turn.”⁴²² The turn to the forensic – “an emergent sensibility attuned to material investigation”⁴²³ – can be understood as a reaction to the era of the witness as we shift from human testimony to technological means of interpretation. Aware of the ambivalent use of forensics by the state apparatus, Weizman and the agency advocate for forensics as a “counter-hegemonic”⁴²⁴ practice. It sets out to provide evidence for claims and disputes for a wide variety of transnational and political organizations, while being at the same time a forum for the investigation of the production of evidence itself. In the frame of the dispute theory of Felstiner, Abel, and Sarat, I argue that Forensic Architecture provides means for the formulation of the act of naming by researching and creating evidence based on spatial analysis, which can later be used in the act of claiming.⁴²⁵ In the sense of the

⁴²⁰ Forensic Architecture is a research agency at Goldsmiths, University of London, led by Prof. Eyal Weizman. See: <http://www.forensic-architecture.org/>.

⁴²¹ Shoshana Feldman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (New York and London: Routledge, 1991).

⁴²² Eyal Weizman, introduction to *Forensis: The Architecture of Public Truth* (Berlin: Sternberg Press and Forensic Architecture, 2014), p. 10.

⁴²³ Ibid.

⁴²⁴ Ibid., p. 11.

⁴²⁵ The video titled *77sqm_9:26min* (2017) is the most recent example of evidence provided by the Forensic Architecture agency that supports a claim for legal justice. It is a forensic analysis of the murder of Halit Yozgat in an internet café in Kassel in 2006. Hili Perlson wrote: “The Most Important Piece at

right of the encounter, the agency of Forensic Architecture perceives itself as an active source aiming beyond a mere artistic/architectural presentation of injury or injustice. The material sensitivity advocated by the agency is the same position Mann discusses that one must hold in an event of an encounter towards the weak and the powerless. Transformations in materials, spaces, and humans are detected by the agency in order to support claims otherwise left unnoticed in the era, or post-era, of human witnessing.

Against this backdrop, I wish to delve into the work of Abu Hamdan and observe how his audio documentaries contribute to the process of establishing a dispute as part of an encounter. Works by Abu Hamdan such as *The Freedom of Speech Itself* and *The Whole Truth* (both from 2012 and part of his aural contract project),⁴²⁶ explore the vital role of sound and voice in Anglo-American legal systems. Editing an issue of *OnCurating* was an opportunity for me to add to the discussion an essay not previously translated into English, by Avigdor Feldman, an Israeli lawyer and activist. “The legal space is the sound box of legal speech,” claims Feldman in his 1991 essay, which is denoted in Abu Hamdan’s attention to the etymology of the term “jurisdiction.”

Dividing the term into “juris” and “diction,” Abu Hamdan affirms Feldman essay’s declarative opening sentence: “Law is composed of space and speech.”⁴²⁷ The exploration of the topic leads Feldman to explore the mechanisms in which law silences certain forms of speech and evidence, such as in the case of hearsay testimony. According to him, by doing so the court appears to be seeking truth, but in practice it is a legal instrument of control against “the voice of subversive documenta 14 in Kassel Is Not an Artwork. It’s Evidence,” *Artnet*, June 8, 2017, accessed June 30, 2019, <https://news.artnet.com/exhibitions/documenta-14-kassel-forensic-nsu-trial-984701>.

⁴²⁶ Abu Hamdan began the aural contract archive in 2010, and it is an ongoing research project in which – through exhibitions, performances, events, and workshops – he continually examines the role of listening and the voice in law.

⁴²⁷ Avigdor Feldman, “The Sirens’ Song: Speech and Space in the Courthouse,” *OnCurating* 28 (January 2016): 64.

speech groups located on the margins of the world of law, with their wonderful and terrible stories about what takes place in the courtroom and their gossip about judges, prisons, and jails.”⁴²⁸ Their voices and the knowledge they carry with them are determined to be foreign and unreliable to the courtroom and its inner circles, and thus must be blocked and eliminated by the rule of law.

Abu Hamdan marks the beginning of his research with a rather more concrete development. His Archimedean point is in the British 1984 Police and Criminal Evidence Act (PACE). What may seem at first glance like minor criminal legislation is recognized by Abu Hamdan as “a crucial and forensic shift in the conventions of testimony.”⁴²⁹ According to this new British legislation, which was later introduced into other legal systems, it required police interviews not to be textually transcribed but to be audio recorded. According to Abu Hamdan, the unperceived outcome was the birth of a new kind of evidence derived from the possibility of “actively listening to the process of speaking.”⁴³⁰ Feldman's argument regarding the guise of truth and objectivity under which the law operates in order to maintain further power and control can be noted just as much in the almost unnoticeable legislation of PACE. As Abu Hamdan tells us, the change from writing down statements during police interviews to audio recording them was deliberated as keeping with the truth, and as standing against falsification and alteration. Yet, as Feldman shows us, and as Abu Hamdan will further interrogate in his work, the end result “increased the use of speaker profiling, voice identification, and voice prints,” thus, further alienating social groups already suffering marginalization under the rule of law. The seemingly

⁴²⁸ Ibid., p. 64.

⁴²⁹ Lawrence Abu Hamdan, “Aural Contract: Forensic Listening and the Reorganization of the Speaking Subject,” in *Forensis: The Architecture of Public Truth*, p. 65.

⁴³⁰ Ibid., p. 66.

marginal technological shift from writing to recording goes hand-in-hand with what Weizman sees as the transformation of our legal system into the era of the forensic. Now, new methods of listening and of forensic voice analysis gain more influence and play a vital role in any legal and political system. In the case of forensic listening, voice analysis holds a unique position, as “the voice is at once the means of testimony and the object of forensic analysis,”⁴³¹ blurring borders between the witness and the expert, and between the witness and the object.

And it is the space where once again the right of the encounter comes to the forefront. Through his research, culminating in the audio documentary *The Freedom of Speech Itself*, Abu Hamdan exposes how voice evaluation of asylum seekers is used as a measure to deny the emergence of an encounter. Abu Hamdan invites us to learn about how nation-states, such as the UK, Australia, and Germany, use voice profiling in order to determine the futures of migrants. In what may seem like a harmless simple procedure, refugees and asylum seekers with no documents of identification are requested to call a private Swedish company of forensic phoneticians to determine their country of origin. It is a first step, as described by Abu Hamdan in his work and writings, in impeding the possibility of the refugees or asylum seekers to have a physical encounter with the nation-state, its territory, and its institutions. As a consequence, the demand and duty that Itamar Mann advocated through the right of the encounter is severely jeopardized, leaving the powerless in the state of bare life more than ever. This is the result, as Abu Hamdan argues, when the analysis of an accent of a person is done without the context of his or her life story. Voice profiling, Abu Hamdan shows us, empties the voice from all meaning, and often results in false calculations and injustice. It bars the refugee or asylum seeker from any possibility of a claim and of representation. “Since antiquity, political membership and political

⁴³¹ Ibid., p. 67.

freedom have been associated with the capacity for discourse,”⁴³² Mann tells us. However, with the development of voice profiling and surveillance technology, forensic listening is gradually being utilized by states in order to eliminate both the possibility of an encounter and the right to be heard. Lawrence Abu Hamdan goes further, to forcefully claim that the right of free speech is losing ground, as now it is not only what you say, but *how* you say it.

It is the body of the migrant nowadays that makes the demand for human rights, argues Mann. With the ever-growing numbers of migrants seeking a safe haven in Europe, we are more than ever aware that without any documents their body serves as the only platform carrying their claims for rights. In *The Freedom of Speech Itself*, described by Abu Hamdan as “a documentary about the politics of listening,” we are confronted with the fact that the human body, along with its voice and accent are shed of their agency through voice profiling. In a blunt, at times quirky, voiceover accompanied by sounds proclaiming an atmosphere of the early days of radio sketch, the first character we are introduced to by Abu Hamdan is Prof. Peter French. A forensic speech analyst, French is asked by Abu Hamdan to observe his own fluctuations of vowels and consonants. Putting himself in the place of the asylum seeker, Abu Hamdan emphasizes the need to see ourselves as the other, “The other who can also be myself,”⁴³³ in the words of Mann; the other, in the case of Abu Hamdan, is anyone of us who cannot be heard due to new developments in forensic listening. Talking over the background of disturbing sounds, Abu Hamdan confronts us with the fact that flourishing forensic listening has brought us to “a sorry phase where bad

⁴³² Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 161.

⁴³³ “The migrants' strategy is to push state agents to decide which task reflects a more fundamental commitment. Such a strategy is absolutely absent from Levinas's work. The actions of the Other (now capitalized) are strangely not accounted for. To amend this shortcoming in Levinas's philosophy, I have proposed to talk about the *universal boatperson* (who is an agent) as opposed to the Other (who is not).” Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, p. 159.

listening (and therefore bad evidence) is flooding the forum.”⁴³⁴ Abu Hamdan continuously plays with the distortion of sounds and voices in his work as a way of manipulating forensic listening, emphasizing its power and malfunctioning. He meticulously plays on both levels – on the one hand he is a knowledgeable forensic researcher, and on the other hand his own expertise enables him to damage and shatter the perceived scientific objectivity and reliability of forensic listening, as he does in the matter of voice listening. The vulnerability of migrants and the diversity of their accents is manifested by Abu Hamdan through the analysis of his own voice, and by proclaiming the history of voice analysis by researchers from other English-speaking countries all agreeably sharing the same language, even though differing heavily in accents and pronunciations.

When we come to hear the voice of Muhammad, the Palestinian asylum seeker who is the protagonist of the piece, it is only about ten minutes into the documentary, as Abu Hamdan emphasizes the need to listen first, and always within the context of historical and personal events and stories. The conversation between Abu Hamdan and Muhammad allows us to hear, in his own words, in English and in Arabic, his life circumstances in Palestine, leading to his voice profiling interview by the Swedish company of Sprakab conducted for the British immigration authorities. As Muhammad explains, his interviewer, whom he could not see but only hear his voice since they did not share a physical location, spoke Iraqi Arabic. This led to them not understanding each other, since just as the English-speaking world is vast and varied as presented by Abu Hamdan's documentary, so is the Arab world. However, this did not prevent the state from using the method for scrutinizing Muhammad's claim for asylum. The end report declared Muhammad to be Syrian and not Palestinian due to the way he pronounced the word “tomato” in Arabic. What sounds like a joke is a reality for many migrants, who are coming from areas in

⁴³⁴ Abu Hamdan, “Aural Contract: Forensic Listening and the Reorganization of the Speaking Subject,” p. 71.

which migration has been the rule for decades, and movement between countries is engraved in their different accents, personal biographies, and geopolitical events.⁴³⁵

In his audio documentary, Lawrence Abu Hamdan exposes us to the failure and injustice of the law when relying on voice analysis. It demonstrates through artistic research how the voice is used by the law as a mechanism of power and control in order to eliminate the agency of the powerless, just like any claim for recognition, redistribution, and political representation. In defiance of this, Abu Hamdan reimagines the possibility of an encounter even when the nation-state seeks to eliminate it. By demonstrating how one cannot come to make a judgment, Abu Hamdan forces the unruly need of the encounter back into the frame of human rights. Even when the event of the encounter is imagined “in the absence of physical proximity,”⁴³⁶ it always takes into account to the bodily sound of the powerless. In his audio work, Abu Hamdan makes a connection between law and art, as he demands that we recognize and give representation to the life story of Muhammad. In so doing, he fosters a three-dimensional structure of justice, and the possibility of maintaining a state of judicial-visual activism. He demands that we listen to what Avigdor Feldman called “the voice of subversive speech groups located on the margins of the world of law, with their wonderful and terrible stories.”⁴³⁷ Throughout his research, Abu Hamdan demonstrates time and again how the knowledge and expertise of an artist intertwined with law allow his work to have a political dimension. He uses his capabilities as an artist to formulate, in tandem with Muhammad, a dispute as part of a struggle for justice. The stages of naming-

⁴³⁵ On the concept of accents since biblical times as expressed by the term *Shibboleth* in relation to Abu Hamdan's work, see: Lawrence Abu Hamdan, Emily Apter, *Shibboleth: Policing By Ear and Forensic Listening in Projects* (Berlin: Sternberg Press, 2016).

⁴³⁶ Chantal Thomas, “Encounters and Their Consequences: A Review of Itamar Mann’s ‘Humanity at Sea,’ EJIL: Talk!,” August 3, 2017, accessed June 30, 2019, <https://www.ejiltalk.org/encounters-and-their-consequences-a-review-of-itamar-manns-humanity-at-sea/>.

⁴³⁷ Avigdor Feldman, “The Sirens’ Song: Speech and Space in the Courthouse,” p. 64.

blaming-claiming come to fruition in recognition of the agency of the powerless demanding an immediate action on our part. As Itamar Mann tells us, “When the encounter fails to appear, migrants and activists may press it back into experience.”⁴³⁸ This is becoming ever more acute due to enhanced technology used to by the nation-state to eliminate any physical encounter.

In 2013, Abu Hamdan was asked by a UK immigration and asylum tribunal to submit his audio documentary and testify as an expert witness.⁴³⁹ One way of contesting the elimination of the encounter by the nation-state is via the courts. Another way is through subversive use of the same technology used by the state and security agencies, as is manifested by Forensic Architecture as an agency engaged in creating and providing new means of evidence. Abu Hamdan serves as an example of how artistic knowledge and practice are capabilities that mark new opportunities for artists to counter hegemonic legal regimes of knowledge and expertise by working with the law. “The role of an expert or of a specialist may only arise under conditions where a permanent asymmetry of power aims at shaping or modifying human conduct,”⁴⁴⁰ Zygmunt Bauman tells us. In these times, as Abu Hamdan demonstrates in his artistic work, and as legal scholars such as David Kennedy propel us to realize, we need to devote further thinking to expanding our vision of what “expertise” is and to who is an expert. Kennedy urges us to not abandon decision-making to an “exclusive province of specialists or professionals.”⁴⁴¹ His research on the current regime of the expert is also in line with my earlier discussion of Saskia Sassen's reading of capabilities, as she recognizes the power and influence experts are having on

⁴³⁸ Itamar Mann, *Humanity at Sea*, p. 181.

⁴³⁹ Avi Feldman, “The Artist as Expert Witness,” pp. 45-9.

⁴⁴⁰ Zygmunt Bauman, *Legislators and Interpreters* (Oxford: Polity Press, 1987), p. 48.

⁴⁴¹ David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton, NJ: Princeton University Press, 2016), p. 3.

the nation-state in its current global conduct. Kennedy can be perceived as supporting Sassen regarding the complex relation between the nation-state and the global, which according to him is “managed, struggled over, and adjusted by experts.”⁴⁴² I agree with those who argue that “managerialism” fails especially when considered in the face of recent migration.⁴⁴³ Yet, managerialism, or “rule by experts,”⁴⁴⁴ which is already heavily supported by legislation, never stopped to consider new forms of expertise, or alternative bodies of knowledge and practice such as those offered by artists and curators. Mann begins to point to a possibility of reforming managerialism and the rule of experts by suggesting incorporating new forms of imagination into it. Stating that a “human rights encounter is not only a physical encounter but also an imaginary construct at the normative basis of legality,”⁴⁴⁵ Mann endorses to a certain extent the work of artists and curators as agents of artistic imagination, as it is embedded in their long-earned capabilities which I framed as judicial-visual activism.

In the next chapter, I shall elaborate on encounters I have facilitated during the last two years between law and art practitioners. The practice, part of my thesis, will serve, hence, as a form of conclusion, and as a call for further research and reflection on the reciprocal relation between art and law, and on the political dimension of justice embedded in this sort of a relation. The encounters to be illuminated in Chapter Five display judicial-visual practice as a space in between the forensic and the fragility of witnessing. It exposes and lingers on the complexity of language through performances dealing often with the rights of migrants. But, beforehand, I wish to conclude this chapter with the words of a visual artist, philosopher, and psychoanalyst, Bracha

⁴⁴² Ibid., p. 6.

⁴⁴³ Itamar Mann, *Humanity at Sea*, p. 192.

⁴⁴⁴ David Kennedy, *A World of Struggle*, p. 4.

⁴⁴⁵ Itamar Mann, *Humanity at Sea*, p. 194.

L. Ettinger who leads us to the intimate space of the encounter. Her words seem to elevate the concept of the encounter, which she has researched through the work of Emmanuel Levinas and *The Matrixial Gaze*.⁴⁴⁶ According to her, “The matrixial borderspace is a sphere of encounter-events...to become creative, the aesthetical transgression of individual borderlines, which occurs in any case with or without our awareness or intention, calls for the awakening of a specific ethical attention, responsibility and extension. In artworking it calls for generous self-relinquishment. In art, the aesthetical working-through bends towards the ethical with matrixial co-response-ability and wit(h)nessing.”⁴⁴⁷ Ettinger perceives art as a space of trust through “connections of ‘co-emergence’: ‘I feel in you,’ ‘you think in me,’ ‘I know in you,’ and so on, in which subjective existence is articulated through one another. Art alone can achieve such an encounter.”⁴⁴⁸ In words echoing Abu Hamdan and Mann, Ettinger states: “Breaking with the violent past demands paying intimate attention to its often erased figures. To not sacrifice yourself while not sacrificing the other — this is the challenge. And today we must take care of the other, the refugee. It doesn’t matter why and where; the refugee is your sister. She could be your mother; she can one day be you.”⁴⁴⁹ This is the essence of the right of the encounter, and the

⁴⁴⁶ Griselda Pollock describes Ettinger’s theory as a “radical psychoanalytical thesis of the Matrix and its indirect but pertinent perspectives on how we might move from the aesthetics of connectivity to the ethics of responsibility and thence to the decisions and agency of political action.” Griselda Pollock, *New Encounters: Arts, Cultures, Concepts* (London: I.B Tauris & Co, 2013), p. 15.

⁴⁴⁷ Bracha L. Ettinger, “Matrixial Trans-subjectivity in Problematizing Global Knowledge,” *Theory, Culture and Society* 23, Issue 2-3 (May 2006): 219.

⁴⁴⁸ In words evoking the right of the encounter as perceived by Itamar Mann and elaborated upon in this chapter, Griselda Pollock tells us that Ettinger “asks: what are the conditions, perhaps already engendered within subjectivity, that might make us able not only able to respond, but yearning to respond to the call of the other in their suffering as if this responsiveness were an originary condition of an already intimated co-human-subjectivity and not something to be fabricated through philosophical gymnastics?” Griselda Pollock, *New Encounters: Arts, Cultures, Concepts*, p. 16.

⁴⁴⁹ Brad Evans and Bracha L. Ettinger, “Art in a Time of Atrocity,” *New York Times*, December 16, 2016.

essence of art in our time when it comes to be realized as the political working with the legal.

There is no immediate act in which art influences politics and law, Ettinger tells us, but by insisting on the right of the encounter; on the right of intervention, by insisting on artistic capabilities in a time of transition between the nation-state and globalization, art when intertwined with, before, beyond, and after the law demands a shift into judicial-visual activism, creating a new formulation and new spaces for disputes, rights, and justice to emerge.

Chapter Five: Between Legal Imagination and Motions for the Agenda

5.1. Towards Legal Imagination: An Introduction

“Towards legal imagination is a series of planned encounters aimed at the creation of a space for critical thinking and action amongst curators, artists, and jurists concerning the relations between the field of art and the field of law. At its premise lies a realization that the legal system holds a wide and significant influence on all aspects of our lives; thus, it may serve as a fruitful ground for research and creation for curators, artists, and jurists alike. During the first encounter we will present and discuss a number of artistic research-based projects that provoke our immediate understanding of the legal system in relation to artistic imagination. Some of the themes on the agenda: creating legal alternatives through artistic imagination; artists and curators as expert witnesses; artworks as legal evidence; the statutory role of artists and curators. At the same time, the encounters are an open call to propose and suggest themes for further investigation, deliberation, and collaboration.”

With this short introduction, a professional and personal engagement began in which I invited a group of about twenty professionals to join me in law and art-themed encounters. In close collaboration with Vardit Gross, director of Artport Tel-Aviv,⁴⁵⁰ who invited me to conduct my research as part of Artport's annual activities, we embarked on personal and group meetings, phone calls, and extensive email correspondence with Israeli experts working in both fields. In the first meeting held in June 2015, we were able to assemble sixteen emerging and established artists, curators, and visual culture researchers, along with law professors, lawyers, and legal activists. I mention here only briefly the long weeks of preparations that led to a rather

⁴⁵⁰ Artport Tel-Aviv is a nonprofit art organization promoting and supporting Israeli and international artists and curators since 2011 through residencies and educational programs often in collaboration with local and international institutions.

enthusiastic gathering at Artport's offices, as it became clear to us that our task was anything but easy or obvious. Encounters, as I remarked in the previous chapter, by definition bring together the familiar with the unexpected, a sense of closeness with the hostile. Very early on, it became apparent to us that while artists and curators seemed eagerly inclined to come on board, legal practitioners were far more skeptical and reluctant to give their consent to take part in such encounters. We realized how much of a challenge it would be to find people both passionate and committed to a long-term, interdisciplinary project like the one we envisioned. From legal practitioners' work overload to their busy schedules, some have straightforwardly explained that, while heavily engaged in pro bono activism concerning social issues, art is just too far-fetched in the hierarchy of contributions one can make as a law professor. Overall, we had the impression that it would be more difficult to rely on the openness, collaboration, and support of the legal practitioners than on that of artists and curators. Given that both Vardit Gross and I studied law (I also practiced law for several years before diverting my path towards the art world), we were not fully surprised. Nevertheless, our shared background provided us with enough knowledge and experience to not give up, but instead to newly cultivate our personal contacts with former law professors and colleagues.

In the following pages, I do not intend to focus or linger much on the process leading to the encounters, nor on the methodology or structure according to which they were developed. While acknowledging the potential of analyzing the participants and the outline of the encounters, I have opted here to concentrate on the artistic and curatorial content of the encounters, rather than attempt to embark on what may be a sociological, psychological, or cultural investigation. I will be discussing some essential ideas that developed during the encounters in the following pages, but I will insist on a limited discussion of these, as otherwise I would need to divert my overall

research from its core structure. Furthermore, the encounters and the assembly of a group of law and art practitioners were not intended to form or resemble an academic think tank. My emphasis, thus, in this chapter, shall be on the accumulative nature of the informal meetings and exchange that eventually led to an exhibition and series of events. I will be mentioning the topics and discussions that took place during the encounters, but I will not be expanding on specific issues at length. Nor will I be critically analyzing the themes that were shared during the long conversations. My main intention was to allow an encounter, a face-to-face close exchange between people possessing different theoretical knowledge and practices, and to foster a space for a reciprocal discussion and possible collaboration. The following chapter will be devoted to some aspects of the preliminary encounters that led to an exhibition framed as part of a theoretical discussion of law and exhibitions as an archive. The space of law and the space of the exhibition will be juxtaposed in this chapter. If law is the archive, as suggested by Renisa Mawani and explored below, and if an exhibition space can be a place of political imagination similar to legal constitutions, as stated by Stacy Douglas and also to be discussed in the following pages, I will attempt to demonstrate ways in which the linking of the judicial with the visual, the law with the exhibition, can contribute to the creation of law's counter-archive.

5.2. Towards Legal Imagination: On Legal and Artistic Imagination

The first encounter of the “Towards Legal Imagination” group was structured around two talks – one by human rights lawyer and activist Michael Sfard, and the second by visual culture researcher Dr. Ruth Ginsburg. Sfard was invited to discuss two cases in which he collaborated with the Forensic Architecture agency, while in a preliminary private meeting Ginsburg suggested sharing her new research concerning the role of amateur civilian photography in the current Syrian civil war with the group. Interestingly enough, since the work of Sfard with the

agency is relatively unknown in Israel, both speakers brought new streams of thought and methods of action to the group. This proved to be captivating, since following each talk (about thirty minutes long) a lengthy and lively discussion emerged among the participants. The exchange between the group members went past the time frame planned for each talk, and continued way into the break. All talks and discussions, from the first encounter to the last, were planned to be as informal and intimate as possible in an environment that encouraged open and casual exchange, as all participants were seated around one shared table. After each talk, we would assemble around a large pot of homemade soup. There, everyone seemed to have gathered to agree or disagree on subject matters concerning the relationship between art and law, exposure and witnessing, evidence and the forensic. At the end of the first encounter, it became clear that, beyond the exchange of knowledge, it was the possibility of engaging in a passionate dialogue between art and legal practitioners that defined the added value of such meetings. After about five hours of heated debates, whether around a large table, in the courtyard, or in Artport's kitchen, there was unanimous agreement during the final summary session on the need to foster further encounters and discussions.

Following private one-on-one meetings that Vardit and I had with the different participants, a second event was scheduled. This time around, as a new exhibition *Decolonized Skies*⁴⁵¹ was planned to open at Artport, we invited one of the exhibition's curators – Yael Messer – to open the meeting with a “behind the scenes” tour. Taking advantage of the fact that the exhibition was still under construction and being installed, it allowed the legal practitioner in particular a peek

⁴⁵¹ The exhibition *Decolonized Skies* was curated by Yael Messer in collaboration with Gilad Reich as part of the High&Low Bureau. Reich was a regular participant in the group meetings of “Towards Legal Imagination.” *Decolonized Skies*, Curators: Yael Messer and Gilad Reich (High&Low Bureau). October 22, 2015 – January 16, 2016. Exhibition website, accessed June 30, 2019: <https://www.artportlv.org/blog/%D7%A9%D7%9E%D7%99%D7%99%D7%9D-%D7%9E%D7%A9%D7%95%D7%97%D7%A8%D7%A8%D7%99%D7%9D-decolonized-skies>.

into the process of exhibition-making. The artist Miki Kratsman, who participated in both the exhibition and in the first group meeting, was subsequently invited to give the main talk in order to further connect the exhibition to the themes of legal and artistic imagination. The exhibition and Kratsman's work, both dealing with methods of demilitarization of aerial views challenging the power of the state and large corporations through the use of cameras and new technology, inspired the participants to question and direct possible efforts towards mutual artistic and scientific tactics and measures of collaboration with regard to ethical and visual matters alike.

For the third encounter, I decided to go with the same format and once again invite a guest to open the meeting. Moish Goldberg, a filmmaker who created a television series titled *Files from the Public Defense*, was invited to share his personal experience working for five years documenting court trials from the point of view of the accused rather than that of the jurists. The decision to invite Goldberg was made together with the head of the Public Defense who was an active participant of our group. Established by the Israeli Ministry of Justice in 1996, the Public Defense provides legal representation in criminal proceedings to defendants and detainees without economic means. Since the statutory status of the head of the Public Defense is equal to that of the State Attorney, we were asked by him in advance not to record any of the discussions that took place during the meetings. This, of course, limited my access to the exchange between the participants, which was oftentimes very intense during the talks themselves. Nevertheless, I decided to agree to this in order to have him as part of the group, since he was the only civil servant agreeing to take part in our encounters. The opportunity to present and discuss footage of the daily routine of the Public Defense followed by a talk by the head of the department was a rare opportunity to have a close-up look into the legal apparatus of the state. If the previous meeting was constructed around an intimate visit behind the scenes of an exhibition linked with

artistic tactics of visualizing that which is hidden by the power of the state and global corporations, this time around it was the attorneys' offices, the corridors of the courts, the off-the-record chats between lawyers and their clients, and the personal stories of the life and legal experiences of the mostly unheard voices of defendants and detainees that took center stage.

The screening and discussion with the head of the Public Defense prompted us to seek further insight into the structures of the courts, and into spaces usually undocumented or unavailable to most members of our group. Therefore, Vardit Gross and I began to arrange for a tour for the group at the District Court of Tel-Aviv with the help of Ruti Direktor, curator of contemporary art at the Tel-Aviv Museum of Art. As a result, we managed to invite architect Amnon Rechter, who was in charge of the architectural plans of the court's new wing that opened in 2014. The son of Yaakov Rechter, one of the three architects who planned the original court building in 1966, the tour with Rechter afforded the participants both a historical overview and entry into judges' chambers and offices normally out of reach and out of sight. Together with the museum's curator, an emphasis was directed towards the geographical proximity between the court and the museum, as they both are connected by a public square designed by Yaakov Rechter. It was further discussed how the square is shared by two other major buildings – Beit Ariela Shaar Zion Library, Tel Aviv's central public library, and HaKiryat, the headquarters of Israel Defense Forces (IDF). The group noted and contemplated how this strategic location, which connects culture, politics, and power, had been mostly overlooked by Israeli artists and legal experts alike.⁴⁵²

⁴⁵² One notable exception can be found in the video *Marganith* (2012) by artist Tzion Abraham Hazan. Referring to the Marganit Tower located within HaKiryat, it depicts the urban architectural surroundings of the tower. I chose this image for the cover of the *OnCurating* journal issue I edited, Issue 28, published in January 2016.

The encounter outside of Artport's office and compound led to another new location – the legal department of the Hotline for Refugees and Migrants in Tel Aviv. We were invited by advocate Asaf Weitzen, head of the department and an active member of the group, and the idea was once again to expose the bureaucratic side of the law while conversing about the links between law and art. The visit to the court, just like the visit to the Hotline offices, offered a change of scenery, as well as a new sense of intimacy between the participants in the overcrowded and relatively worn-out offices of the Hotline. The talk with Weitzen, during which he introduced us to the work of the department, and we were able to learn close-up about his frustration with the current legal situation in Israel concerning refugees and migrants, ended with a direct and very personal call by him for action. Already in previous private meetings, he had time and again expressed an interest in finding ways in which to collaborate with art practitioners, since after five years in office he seemed to have reached a dead end in his capacity as a legal practitioner to bring change into the lives of migrants. Given a reality in which under 1% of migrants are recognized by the State of Israel as refugees, he was interested in finding new mechanisms for action beyond the legal sphere. His plea seemed to have signaled that it might be the right time and the right place to seriously begin to consider what the group's next step should be.

5.3. Towards an Exhibition: An Introduction

The call for action by the head of the legal department of the Hotline for Refugees and Migrants was received with utmost attention by the group members. As one might have noticed, in the initial call for participation we did not mention any defined expected outcome. Vardit and I also agreed that we should allow the encounters to form and develop without the pressure to produce any specific product. Although Artport operates an exhibition space, it does not function in a similar way to that of museums or galleries. There are no set dates for exhibitions, but rather a

use of the space in accordance with the changing necessities of the artists and curators in residency. With this in mind, and with the wish to take the group to the next phase, we invited the members to propose ideas and possible concepts for an artwork, project, event, talk, or exhibition. It was made clear that an exhibition was not necessarily the ultimate end goal, but rather that other formats and platforms were welcome to be envisioned.

As a result, we received six proposals, out of which five ultimately made it into the final exhibition. The one project that did not come to fruition was the one proposed by a jurist, while the rest were suggested by artists who were part of the group. To my understanding, the project by the jurist did not take off mostly due to personal reasons; however, it might also be that it lacked an artistic vision with which it could have better been connected to the artists in the group. Unlike the jurist's proposal, the artists had sketched quite a clear role for the jurists in their suggested projects. Also worth mentioning is that in private talks I had with members of the group, it became apparent to me that most saw it as the "duty" of the group's artists to take the lead and propose projects for further collaboration. The most common explanation I heard about this was that at the outset the meetings were initiated by the "art world," while others argued that they believed it to be the case because the realization of the project was part of the activity of an art institution.

The proposals received by the participants ranged from a performance dealing with the recruiting of soldiers by the Israeli Defense Forces (IDF) to the exploration of the relation between food and law. The variety of themes and mediums could be traced to the initial open invitation just as to the heterogeneity of the group itself. In order to allow a wide range of voices and ideas, we invited well-established, mid-career artists and curators to join, along with emerging ones working in video, cinema, performance, installation, and photography. Alongside PhD students

in law and law lecturers, the legal group was made up of associate professors, lawyers, and legal activists working in the fields of human and civil rights, labor and employment, anti-discrimination law, tort law, and criminal law. In terms of age range, the group of art and legal practitioners was made of participants in their early 60s to ones in their early 30s. Gender-wise, the entire group was made up of an equal number of female and male participants. Nevertheless, it is important to mention that although Israeli society is made up of 20% Arab citizens, and more than 20% Mizrahi/Arab Jews (Jews descended from Jewish communities of the Middle East and North Africa), the group had no Arab representatives and was underrepresented by Mizrahi/Arab Jews.⁴⁵³ The group also had a very low representation of religious participants from either the Arab or Jewish communities.⁴⁵⁴

⁴⁵³ This fact was directly addressed by one of the law professors attending the meetings. This also reflects the current growing debate and struggle in Israel regarding the rooted discrimination in the cultural fields towards Mizrahi/Arab Jews in the cultural field in Israel. In the context of this research, I cannot expand much on this topic, but I will mention Sarah Chinski (1951-2008) as an example of an Israeli pioneer researcher who brought to the forefront the systemic marginalization of Mizrahi/Arab Jews in Israeli art through essays such as “Eyes Wide Shut: The Acquired Albino Syndrome of the Israeli Art Field” (2002). In contrast to her, Israeli art historian and curator Gideon Ofrat claimed: “There are Mizrahi artists in Israel. There are works of art here that draw inspiration from the East. There are even works that affirm characteristics of alienation. But there is no ‘Mizrahi art’ in Israel, since the work of artists with a Mizrahi background is basically Western art – and as such does not extend beyond the Western character of Israeli art.” See: Iris Lana, “The Mizrahi Pioneers Who Transformed Israeli Art,” *Ha'aretz*, February 26, 2017, accessed June 30, 2019, http://www.haaretz.com/life/.premium-1.773780?=&ts=_1500502411713.

⁴⁵⁴ Gideon Ofrat stated that, “Israeli art was created and is continuously created by secular artists.” Translated from the Hebrew by the author from Gideon Ofrat, “The Israeli Art and the Jewish Tradition,” *Mahanayim* 11 (1994), accessed June 30, 2019, <http://www.daat.ac.il/daat/art/yahadut/haisraelit.htm>.

5.4. Towards the Space of Law and Art: On Violence

The outcome of the proposals by the members of the group “Towards Legal Imagination” was an exhibition and a series of events titled “Motions for the Agenda” that I curated in collaboration with Vardit Gross in May 2017.⁴⁵⁵ As the exhibition's title suggests, the organizing logic of the exhibition was formed around the notion of motions. In the Israeli legislative system, by placing “a motion for the agenda,” a parliament member can bring a matter to the attention of the plenum. The term “motion” is used also, for example, in American procedural law to describe a written, or in some cases an oral, application to the court to request an order or a ruling. In this sense, each work can be perceived as a sort of an independent proposal for the exhibition's agenda as it maintains and reflects the heterogeneity of the encounters at large. Since most of the motions, but certainly not all, were of a performative nature and dimension, an early set of questions was if, how, and to what extent can the exhibition as a platform and space link the different works? Beyond the common themes of migration and the military that were discussed in the preliminary meetings and that thereafter matured into some of the proposals, I was seeking a way for the exhibition to become a space in which performances, video, and sound objects could maintain an ongoing accumulative, multilayered presence in the space. How can the violence of the law as it is captured and contested in the different motions be contained in the space, conveyed to the general public, and how might alternatives to the existing legal system also be suggested?

The text I wrote to accompany the exhibition began with an exploration of the relation between law and art through the reading of Franz Kafka's short story “Before the Law.” I have also

⁴⁵⁵ *Motions for the Agenda: Performance, Video & Sound All About Law and Justice*, curated by Avi Feldman in collaboration with Vardit Gross, May 16 – June 6, 2017, accessed June 30, 2019, <http://www.artportlv.org/blog/motions-agenda>.

referred to Kafka's seminal story in the introduction to this book in relation to my earlier discussion on ideology. In relating to Kafka as part of the preface to the exhibition, I noted Kafka's invaluable contribution to our understanding of the law, and to the law and literature movement beginning in the 1970s dedicated to the study of the language of the law. The movement's pioneering publication is considered by most to be *The Legal Imagination*, written by James Boyd White, in which he analyzes law beyond a mere set of rules and policies. White is interested in the culture of law made out of "habits of mind and expectations [...]. It is an enormously rich and complex system of thought and expression, of social definitions and practices, which can be learned and mastered, modified or preserved, by the individual mind."⁴⁵⁶ As I already mentioned in the introduction to this book, White's strong conviction in law as "a method of integration, a way of putting together different voices, different languages, into a single composition; a way of comprehending two opposing sides and what can be said in favor of each"⁴⁵⁷ is oftentimes naive or even misleading, as the cases discussed throughout this book demonstrated time and again. In this sense, Kafka's subversive, critical, and often fatalistic approach to law seems to be able to unconditionally capture the failures and lacunae of the legal system. His determined insistence to draw our attention to law's overarching and abiding influence on all aspects of the human life might also hold within it a promise of the existence of an alternative to THE LAW (in capital letters as occasionally written by Gilles Deleuze⁴⁵⁸) as we supposedly know it. Kafka's deliberate infatuation with what may seem like insignificant details, from the fleas in the doorkeeper's fur collar to the shrinking size of the man from the country as

⁴⁵⁶ James Boyd White, *The Legal Imagination* (Chicago and London: The University of Chicago Press, 1985), p. xiii.

⁴⁵⁷ Ibid., p. xv.

⁴⁵⁸ Gilles Deleuze, *Masochism: Coldness and Cruelty*.

he grows older before the law, are possible hints, traces, and entry points through which one must act in defiance of the law.

How to stand next to and with the man from the country and envision a place beyond and/or after the law was one of the main concerns of the preliminary encounters and the exhibition that followed. Kafka's story suggests that one need first gain admittance to the law from the doorkeeper that stands before it. "The gate stands open, as usual," however, it is the figure of the powerful doorkeeper that is enough to deter one from stepping through. And as the doorkeeper assures the man from the country, he is only one of the least powerful of the doorkeepers. "From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him,"⁴⁵⁹ the doorkeeper tells the man from the country, who is faced with unexpected rigidity. The difficulties experienced by the man from the country encourage me at this point to expand on my text for the exhibition, in particular in relation to power and violence. As I have noted, the power upheld by the doorkeeper deters the man from the country from crossing the gate of the law without any use of violence at all. Violence, as a matter of fact, is never explicitly mentioned in Kafka's fable. The doorkeeper and his "colleagues" are described as powerful and terrible, but never as violent or forceful. Yet, violence is inherent to the law and the legal system. I will argue that in Kafka's story, just as in any discussion regarding the relation between law and justice, power and violence intertwine. It was Walter Benjamin who pointed out early on in the first sentence of his "Critique of Violence" that, "The task of a critique of violence can be summarized as that of expounding its relation to law and justice."⁴⁶⁰ Hannah Arendt argued in her writing on violence that, although power and

⁴⁵⁹ Jacques Derrida, *Acts of Literature* (New York and London: Routledge, 1992), p. 183.

⁴⁶⁰ Walter Benjamin, *Reflections* (New York: Schocken Books, 1986), p. 277.

violence “usually appear together,”⁴⁶¹ it is necessary to distinguish between them. The doorkeeper's warning to the man from the country regarding the presence of other doorkeepers is the exercise of power. If we follow Arendt's argument, then the doorkeeper's power is based on the human ability to act in concert, for “power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together.”⁴⁶² The man from the country obeys the instrumental violence of the doorkeeper who governs through collective power, as “no government exclusively based on the means of violence has ever existed.”⁴⁶³

At this stage, we can state that although Kafka mentions only the concept of power, one cannot ignore the notion of violence hovering and shaping the plot of his short story. I mentioned above Benjamin's determined investigation of law and justice through violence, but it is Jacques Derrida's writings that held the capacity to enrich the exhibition's text and critical thinking, as he allows us an insightful realization into the groundless violence that establishes the law's authority in the first place. According to Derrida, “Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground.” This conclusion leads Derrida to state that law is deconstructible and allows for the possibility of deconstruction. Justice, in contrast, is not deconstructible, which brings Derrida to claim that, “Deconstruction is justice.”⁴⁶⁴ I do not wish to go further into these ideas, some of which I have referred to in the exhibition's text. As I have

⁴⁶¹ Hannah Arendt, *On Violence* (San Diego, CA: A Harvest Book, 1970), pp. 51-52.

⁴⁶² Ibid., p. 44.

⁴⁶³ Ibid., p. 50.

⁴⁶⁴ Jacques Derrida, *Deconstruction and the Possibility of Justice* (New York and London: Routledge, 1992) pp. 14-15.

noted there,⁴⁶⁵ I am of the opinion that the mystical and fictional elements of the law, as described by Derrida, suggest and establish fruitful opportunities for the expansion of the relationship between law and art. However, at this point, I want to attempt to delve further into the notion of violence by asking what is that place of law of which Kafka imagines? In the exhibition's text, I followed Derrida's examination of Kafka's story as he inquires: "Did the man from the country wish to enter the law or merely the place where law is safeguarded?" Derrida does not leave this question open, but continues to quickly state that, "We cannot tell, and perhaps there is no choice, since the law figures itself as a kind of place, a *topos*, and a taking place."⁴⁶⁶ However, in conjunction with the text of the exhibition but also differing from it, and in accordance with the methodology I have proposed in this publication – linking law and art through legal interpretative methods in the reflective post-exhibition manner in which this chapter is written, I wish to linger on this particular place where law is safeguarded as I stress and connect it to the notion of the space of the exhibition.

5.5. Towards a Counter-Archive: Between the Space of Law and the Space of Art

What is it, then, that connects violence, the space of the law, and the space of the exhibition? Here, I wish to bring Stacy Douglas' exploration of the museum as the counter-archive of law into the discussion. Researching the relation between advanced political imagination and new constitutions adopted by such countries as South Africa (1996) and Egypt (2014), Douglas maintains that oftentimes these constitutions are limited in their capacity to endorse and sustain political transformation. It might be that they are drafted with an intention to prompt and secure a better, shared future, but "whether drafted in post-conflict times or otherwise, cannot help but

⁴⁶⁵ The catalogue of the exhibition *Motion for the Agenda* can be found in the appendix.

⁴⁶⁶ Derrida, *Acts of Literature*, p. 200.

delimit and legally ground political community.”⁴⁶⁷ As such, Douglas searches for other devices that may contribute to newly imagining sovereignty, and argues that museums might be sites in which political transformation can be achieved. “Museums, like constitutions, are a place for the launching of imaginations of political community.” Douglas is aware of the problematic manner in which museums historically contributed to the marginalization and discrimination of certain communities. However, she insists that while museums can act in what she perceives to be a monumental practice, they can also integrate counter-monumental practices that “destabilise smooth and secure conceptions of community.”⁴⁶⁸ As an example, Douglas mentions the District Six Museum in Cape Town, South Africa, as a museum engaged in the creation of new categories for the re-imagining of the complexity of race discourse and representation. For the sake of the discussion in this chapter, it is not necessary to elaborate on Douglas' examples, but instead I intend to draw attention to her statement that, “The museum can act as law's counter-archive, telling a story about political community that the constitution is unable to.”⁴⁶⁹ By law's counter-archive, Douglas follows a growing demand by scholars to open up the legal archive beyond official documents and materials towards “multiple forms, genres, sites and practices.” According to Stewart Motha and Honni van Rijswijk, “Counter-archives function as critical interventions within and beside legal processes. They challenge established forms of representing and responding to violence.”⁴⁷⁰ The archive “is central to both the content *and* definitional

⁴⁶⁷ Stacy Douglas, “Constitutions Are Not Enough: Museums as Law’s Counter Archive,” in *Law, Memory, Violence: Uncovering the Counter-Archive*, eds. Stewart Motha and Honni van Rijswijk (Oxon/New York: Routledge, 2016), p. 142.

⁴⁶⁸ *Ibid.*, p. 144.

⁴⁶⁹ *Ibid.*, p. 146.

⁴⁷⁰ Stewart Motha and Honni van Rijswijk, “Introduction, A Counter-Archival Sense,” in *Law, Memory, Violence*, p. 2.

boundary of law and the museum,”⁴⁷¹ argues Douglas, as she develops Derrida's notion of the archive into a site that connects museums, courtrooms, and parliaments alike.

Now, it is well established that Derrida's lecture from 1994, titled “The Concept of the Archive: A Freudian Impression”—later modified into a publication titled *Archive Fever*—is known in both academic and artistic circles. Yet, unlike the “feverish” growing interest in the archival promise in artistic research and practice,⁴⁷² law's archive and counter-archive still remain very under-researched and undervalued. Renisa Mawani argues that while in recent years historians, for one, have come to perceive the archive as “a dynamic, incomplete, and fiercely disputed site of knowledge production that carries profound implications for how we write history and approach and understand the past,” legal practitioners and scholars are “curiously silent”⁴⁷³ on the place and role of law's records and archives. According to Mawani, this stands in defiance of the well-established link made by Derrida between the law and the archive. At the very beginning of his exploration of the archive, Derrida marks this relation by arguing that the Greek word *Arkhe* “names at once the *commencement* and the *commandment*.”⁴⁷⁴ Mawani also refers to Cornelia Vismann as yet another example of how it has been demonstrated that “the history of the archive and the history of law are inseparable. The ‘transmitting, storing, canceling, manipulating, and destroying’ that has come to represent the archive also inscribes a history of

⁴⁷¹ Douglas, “Constitutions Are Not Enough: Museums as Law’s Counter Archive,” p. 153.

⁴⁷² Ariella Azoulay, “Archive,” *Political Concepts*, accessed July 30, 2017, <http://www.politicalconcepts.org/issue1/archive/>. See also: “How the Art World Caught Archive Fever,” *Artspace*, Jan. 22, 2014, accessed June 30, 2019, http://www.artspace.com/magazine/art_101/art_market/the_art_worlds_love_affair_with_archives-51976.

⁴⁷³ Renisa Mawani, “Law's Archive,” *Annual Review of Law and Social Science* 8:337-365 (December 2012): 339-340.

⁴⁷⁴ Jacques Derrida, *Archive Fever: A Freudian Impression* (Chicago, IL: The University of Chicago Press, 1998), p. 1.

law.”⁴⁷⁵ Based on this, Mawani goes further to claim that “law is the archive,”⁴⁷⁶ established on what she calls a “double logic of violence.” According to this, the legal system functions through “statutes and judgments that came before and by determining which are apposite, law cultivates its meaning and asserts its authority while at the same time concealing and sanctioning its material, originary, and ongoing violence.”⁴⁷⁷ Thus, the double logic of violence, described by Mawani, is derived from law operating as a self-referential system, and is most evident in the pivotal role precedents play in it. Statutes, judgments, and precedents make the law and its archive through a constant referential system safeguarded from external critical access by a double logic of violence.

In light of the above, and by following Mawani's concept of violence and law as archive, we can now make the claim for the possibility of envisioning Kafka's man from the country as standing before the law, as standing before the archive. When law is the archive, as Mawani suggests, their physical resemblance becomes more evident. Bruno Latour's inquiry of the essence of law demonstrated how jurists are preoccupied with texts that are omnipresent, but it is the “grey, beige or yellow, thin or thick, easy or complex, old or new”⁴⁷⁸ file that makes the passage of law visible. In a similar manner, Ariella Azoulay, in her exploration of the archive, also turns to the materiality of the archive made of “cards, forms to be filled, search engines, lists, code words, folders, clerks, laws, regulations, gloves, aprons, robes, brushes, chemicals [...],”⁴⁷⁹ which control

⁴⁷⁵ Mawani, “Law's Archive,” p. 340.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid., p. 341.

⁴⁷⁸ Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Cambridge, Malden: Polity Press, 2010), p. 71.

⁴⁷⁹ Azoulay, “Archive.”

and manage the way one handles the archive. In this sense, the methodology guiding this publication, and the exhibition *Motions for the Agenda*, should be perceived as carrying a double logic and operating simultaneously on two levels: on the one hand, as an attempt to penetrate into the law as an archive; and on the other hand, opening up possibilities for an alternative law, or the creation of a counter-archive through legal and artistic interpretative methods; through what in this book has been described as judicial-visual activism. Be it the projects examined in this publication, or the projects shown in the exhibition to be discussed herewith, a common denominator can be found in an interest in broadening our notion of law and of art; investigating en/counters that re-determine the role of art and legal practitioners. The interdisciplinary approach manifested in this publication and in the exhibition insists on the importance of intertwining and intersecting law in order to sustain a greater sense of inclusiveness and transparency. It is a call for action based on a cautious, gradual reconstruction of legal rights and justice.

5.6. Five Motions for the Agenda: Interventions in Law's Archive

Approaching law as archive draws and unravels relations between the space of the exhibition and of the law through the display of physical and visual objects accumulated and organized during the duration of the exhibition. I wish to emphasize that the intention of the exhibition *Motions for the Agenda* did not lie in further establishing the role of the curator as an archivist, nor in creating an archive out of the exhibition itself. Instead, it should be stated that investigating law's archive in an exhibition setting is a theoretical and practical method in which the works shown in the exhibition are directed towards an investigation of the law, its space, its language, its power, and its double violence. Some aspects of the notion of the archive are relevant to the exhibition and to the law; however, the objective has not been to perceive the exhibition as “a living

archive: a representation of the world that exists, as diffuse a membrane as possible between the outside world and the objects it produced,”⁴⁸⁰ but rather as a counter-archive consisting of motions for the agenda that suggest alternative ways to imagine legal subjects. These motions, directly and indirectly, endorse and manifest ways to challenge, rethink, and reconstruct law’s double violence through the excavation of legal documents and legal constructions hidden and concealed in forgotten and neglected archives.

5.6.1 Motion Number One: “Pragmatic Failure”

The first motion for the agenda to be discussed here⁴⁸¹ is “Pragmatic Failure,” a new performance by artist Einat Amir created in collaboration with psycholinguist Orly Idan, and with legal counsel by advocate Tali Kritzman-Amir.⁴⁸² The performance is the outcome of Amir’s participation in the meetings of “Towards Legal Imagination” and her two-year residency (starting in 2016) at the PICR Lab at The Interdisciplinary Center Herzliya, Israel. Exploring different aspects of human interaction mainly through performances, Amir dedicated her research in the lab to psychological experiments dealing with the manner in which emotions function in group interactions and states of conflicts. Wishing to expand her investigation further into the role of emotions into a legal context and frame, Amir constructed a real-time experiment during which the public’s emotional reaction towards the human and civil rights of refugees in Israel was questioned. Based on Benjamin Lee Whorf’s suggestion that language carves our thinking

⁴⁸⁰ Christine Y. Hahn, “Exhibition as Archive: Beaumont Newhall, *Photography 1839–1937*, and the Museum of Modern Art,” *Visual Resources* 18:2 (2002): 145-152.

⁴⁸¹ “Pragmatic Failure” was also the first motion in the exhibition. However, for the sake of the discussion here, I will be re-numbering the rest of the motions, grouping them in a different order according to themes, and not in order of appearance in the exhibition.

⁴⁸² All works in *Motion for the Agenda* were newly commissioned, performed or exhibited for the first time as part of the exhibition.

and consciousness, Amir and her collaborators invited the public to take part in a participatory performance that was at the same time a scientific psychological experiment examining the way distinct wording activates the emotion of anger. Israeli Supreme Court rulings regarding the legal status of refugees was the center of interest for Amir and her collaborators, which gradually developed into a selection of short texts in which noun versus verb labeling was examined. The self-referential, almost scientific, and often “esoteric language [...] and carefully cultivated modes”⁴⁸³ of argumentation of the court was examined by Amir in order to both criticize it and to suggest alternative word labeling. More specifically, in the context of the legal status of refugees in Israel, Amir asked how a difference in wording affects our emotional reaction to the rights of migrants, and how we can critically read and understand judicial judgments and verdicts that deal with controversial issues.

As four out of the five works in the exhibition dealt with some aspects of the legal status of refugees and asylum seekers in Israel, and the public debate surrounding this topic, it is vital to acknowledge that in the last decade Israel, similarly to other countries in the Middle East and Europe, has experienced an increase in refugees and asylum seekers from Africa crossing its Southern border with Egypt. According to the Israeli NGO The Hotline for Refugees and Migrants (HRM) founded in 1998, 40,000 asylum seekers now live in Israel; 92% of them are from Eritrea and Sudan where their lives were under constant threat, as they faced a brutal repression of their civil and human rights.⁴⁸⁴ The Convention Relating to the Status of Refugees that was adopted by the United Nations, also known as the 1951 Refugee Convention, is the legal

⁴⁸³ Latour, *The Making of Law*, p. 199.

⁴⁸⁴ The Hotline for Refugees and Migrants, Asylum Seekers page, accessed Aug. 9, 2017, <http://hotline.org.il/en/refugees-and-asylum-seekers-en>.

frame in which the rights of refugees and displaced people are examined and protected.⁴⁸⁵ The State of Israel complies with the Convention through what the Hotline describes as “a policy of temporary protection, also called by the State ‘temporary delay of deportation’ vis-à-vis most asylum-seekers in Israel.”⁴⁸⁶ One must remember that, a year before the UN ratified the Refugee Convention, the State of Israel had passed its own legislation: The Law of Return (1950). This law grants every Jew around the world the right to come to Israel and to almost automatically receive a visa, and subsequently Israeli citizenship, with few exceptions, such as in cases deemed as endangering the state or the Jewish people.⁴⁸⁷ In light of this law and the constitutional definition of Israel as a Jewish state,⁴⁸⁸ the Israeli government has refused almost completely to recognize non-Jewish asylum seekers as refugees, issuing them a limited visa until they can be deported. In the public debate, asylum seekers have been denoted as infiltrators, with parliament members such as Miri Regev (the current Minister of Culture and Sport) calling them during a 2012 demonstration “a cancer in our body.”⁴⁸⁹ According to the Israel Democracy Institute (IDI) 2012 Peace Index, “More than half (52%) of the Jews agree with the statement.”⁴⁹⁰ In the past several years, the legal statutes and the public debate regarding the rights of migrants in Israel has

⁴⁸⁵ “The 1951 Refugee Convention,” UNHCR, accessed June 30, 2019, <http://www.unhcr.org/1951-refugee-convention.html>.

⁴⁸⁶ The Hotline for Refugees and Migrants, Temporary Protection page, accessed June 30, 2019, <http://hotline.org.il/en/refugees-and-asylum-seekers-en/temporary-protection>.

⁴⁸⁷ The Law of Return 5710 (1950), accessed June 30, 2019, <https://www.knesset.gov.il/laws/special/eng/return.htm>.

⁴⁸⁸ The state of Israel does not have a constitution. However, the Israeli Supreme Court has ruled that the Declaration of Independence of 1948, in which the state was identified as a Jewish state, is a founding document and guiding legal principal. In 1985, the Parliament passed Basic Law: The Knesset (1985) in which the legal definitions of “democratic” and “Jewish” were enshrined. In 1995, Supreme Court Justice Aharon Barak interpreted and ruled that Israeli Basic Laws are to be perceived as constitutional laws.

⁴⁸⁹ Harriet Sherwood, “Israelis Attack African Migrants During Protest Against Refugees, *The Guardian*, May 24, 2012, accessed June 30, 2019, <https://www.theguardian.com/world/2012/may/24/israelis-attack-african-migrants-protest>.

severely deteriorated, as a recent Interior and Environment Committee suggests in convening to discuss “consolidating a policy to handle the problem of infiltrators in south Tel Aviv,” while preventing any asylum seekers' representatives from joining the discussion.⁴⁹¹ In July 2017, Radio France Internationale reported that the state of refugees and asylum seekers in Israel had “just gotten tougher”⁴⁹² as a new law would force them to deposit twenty percent of their income, to be returned only upon leaving the country.

With this in mind, I wish to return to Amir's work, which made use of the entire space of Artport's gallery. The public entered through two identical “waiting rooms” resembling that of a waiting space in governmental administrative offices. Twenty audience members were instructed by an usher to enter one of the two designated rooms, where participants received a link to an online questionnaire to be accessed via their mobile phones. The participants were requested to rate their level of agreement to five policy items regarding the issue of refugees in Israel. They were also asked to rate the extent to which they experienced anger towards the government, or feelings of anger/empathy/guilt towards the refugees. After finalizing their answers, participants were directed to the other half of the gallery space, where each was asked to individually enter one of four small rooms. Upon entering a room big enough for only two people, one would be greeted by a young woman who waited in the room. Directing her gaze to the person in the room, her task was to recite a variety of statements regarding refugees. It was planned that half of the audience members would be listening to statements using verbs – I am against *implementing* the

⁴⁹⁰ The Israel Democracy Institute (IDI), The Peace Index: May 2012, accessed June 30, 2019, <http://www.peaceindex.org/files/The%20Peace%20Index%20Data%20-%20May%202012.pdf>.

⁴⁹¹ Ilan Lior, “Asylum Seekers Prevented From Speaking at Knesset Hearing About Asylum Seekers,” *Ha'aretz*, June 21, 2017, accessed June 30, 2019, <http://www.haaretz.com/israel-news/.premium-1.797065>.

⁴⁹² Christina Okello, “It’s Just Gotten Tougher for Israel's African Migrants,” *RFI*, July 4, 2017, accessed June 30, 2019, <http://en.rfi.fr/africa/20170704-there-place-african-migrants-israel-eritrea-sudan>.

UN refugee conventions in Israel, while the other half would listen to statements incorporating nouns – I am against the *implementation* of the conventions of the UN refugees in Israel. To finalize the experiment and performance, from the small rooms the four young women came out to be revealed as two pairs of identical twins dressed in a similar manner. The young performers demonstrated to the audience the psycholinguistic premise on which the performative experience was based on through reading and performing actions based on the difference between the use of verbs and the use of nouns. The entrance of psycholinguist Orly Idan into the space marked the closure of the performance, and the mechanism and the methods implemented were fully disclosed.

The entrance into the realm of law through the examination of the language of court rulings exposes the archival layers upon which the law is constructed. In relation to Amir's work, which aimed at creating an art performance as a scientific experiment, it is worth mentioning Bruno Latour's comparison between the place in which the work of the law is done and that of a scientific laboratory. According to this, an outsider to the law can be part of some of the court's hearings, but will never be granted access beyond this. In contrast to this, "No area is barred to the authorized visitor" of a laboratory. "The two laboratories therefore have a very different relation between the public and private: although 'ignorance of the law is no excuse', the last stages of its flowering remain completely secret; by contrast, although laboratories are closed to anyone who is not an employee, in principle anyone could understand what goes on inside, which is no way mysterious: 'we have nothing to hide', they would say."⁴⁹³ As with the law, one needs to deal with that which is kept secretive, as Latour states, mystical as Derrida described it, or mythical, transcendental, and timeless as claimed by Mawani; Amir's performances would be

⁴⁹³ Latour, *The Making of Law*, p. 201.

better described as expanding the notion of laboratory in order to expose law's language through the reuse of archival material.

5.6.2. Motion Number Two: “5846, 5851, and 5852 v. the Population and Migration Authority”

Artist Hinda Weiss worked with advocate Asaf Weitzen to take a different approach in their motion, which also concerns law's language. Analyzing a decision of the Israeli Supreme Court together,⁴⁹⁴ they intentionally chose a text that could be perceived at first glance to be insignificant, bureaucratic, and doomed to be neglected in the law's unattended archive. The decision of an administrative Petition for Leave to Appeal by three asylum seekers is far from being one regarded by legal experts and scholars as being exceptional or holding any distinctive merit. The title of the work, “5846, 5851 and 5852 v. the Population and Migration Authority” (2017), also indicates Weiss and Weitzen's attempt to delve into law's archive and file classification. In their collaborative work, they activate the judicial alongside the artistic as they extricate a legal document from oblivion in the guise of numerical representation.

The contribution of Weiss and Weitzen to the exhibition came in the form of a one-channel video installation with sound. A thin black line marks the separation between the split screen, while the background colors change rapidly. On the right side of the screen, the Supreme Court's decision unfolds from beginning to end as it is read by one of the petitioners in Hebrew. The left side of the screen acts as the legend to deciphering the piece, displaying ten small squares, a digital sound bar, and a translation of the decision in English and Arabic. Each square has a different color and next to it indicators – Red for “Decision”; Orange for “Baseless Embellishment”; Purple for “Responders”; Violet for “Opinion”; Dark Purple for “Abdication”; Blue for

⁴⁹⁴ Weitzen was one of the two attorneys representing the petitioners.

“Authority”; Pale Blue for “Procedures”; Pale Green for “Petitioners”; Green for “People”; and White for “Human Rights.” With what seems a direct and simple intervention, the artist and lawyer were able to create a visual template rendering of a legal document – a new reading of an archival document beyond the encoded legal articulation. The changing visual palette provides accessibility to any layperson who may possess little knowledge of legal language and vocabulary. It has only been tested on a small number of legal documents, but the intention of Weiss and Weizen is that the color scheme and legend be made to fit other texts just as well. The simplicity of the rapidly changing bright colors in the background, at times dissolving from one sentence to another, provides immediate access to a seemingly administrative and even dull text. When the background changes into white, the judge is discussing a matter concerning human rights; when the background changes to red, one knows that one is dealing with the court's decision; when the background changes to deep purple, one is made aware of the court's abdication and reluctance to provide legal aid to those most in need; and when the background changes to orange, then it is made crystal clear that the judge is diverting our attention, or is concealing concrete facts with unnecessary adornment in a typical case of law's double violence – ratifying its own power while renouncing its obligations by hiding its sources. In the subtle yet ironic criteria of a counter-archive invented by Weiss and Weitzen, the orange color represents a baseless embellishment used in this case by the court to make an excuse regarding why it will refrain from intervening in a lower court's ruling. It is legal wording that leads directly to denying the petitioners' requests and to sentencing them to a bare life in a notorious detention center in the Israeli desert.

5.6.3. Motion Number Three: “Kafka for Kids” (work in progress)

The next and last motion for the agenda in the exhibition dealing with the issue of migrants in Israel was the new film and performance by artist Roece Rosen. “Kafka for Kids” (work in progress) is a cross-generic project dealing with the legal rights of migrants and minors in extreme political and legal situations. Rosen had only participated in the group's first meeting, as he was abroad during the other times, but he was kept informed of the developments and the planned exhibition. During our private talks, he had shared with me his long-time idea concerning a possible visual adaptation of Kafka's stories into children's tales. He had not truly begun to conceptualize these preliminary thoughts, but at the time of our first conversation an article in the newspaper *Ha'aretz* caught Rosen's attention. It was a report about a twelve-year-old Palestinian girl who was sent to jail at an Israeli prison. The headline announcing that the “youngest female Palestinian jailed by Israel [was] released two-and-a-half months after arrest”⁴⁹⁵ could not have been ignored, as we were contemplating issues concerning Kafka, the law, and children. It spurred Rosen to connect this devastating story to a questioning of the legal rights of minors under a state of occupation.

The newspaper's article indicated that minors under the age of fourteen are not incarcerated under Israeli law. So, how is it that a twelve-year-old can find herself behind bars? Was it only a case of discrimination against the young Palestinian under Israeli law, or also according to international law? How can a twelve-year-old girl be classified as a security risk? Are there other similar cases in Israel, or in other places in the Western world advocating for the incarceration of minors? What, if any, are the legal rights of minors when put in prison? What was the legal procedure, and what can be said of the civil and military legal system in light of the

⁴⁹⁵ Jack Khoury, “Youngest Female Palestinian Jailed by Israel Released Two-and-a-half Months After Arrest, *Ha'aretz*, April 24, 2016, accessed June 30, 2019, <http://www.haaretz.com/israel-news/.premium-1.716083>.

imprisonment of minors? These were some of the questions that Rosen decided to bring before a number of legal scholars whom he invited to take part in a panel discussion open to the public and filmed as part of the exhibition, which will become part of Rosen's upcoming film project. I suggested to Rosen that he use the exhibition's space as a film set for the panel, which was to be shot towards the end of the run of the exhibition. This way, the film would be able to depict some of the physical traces left by previous performances and artworks, while connecting them through the film to a new narrative and new imagery. Thus, the film would become yet another manner through which the law and the exhibition are treated as an archive while they are both being rearranged, reconstructed, and exposed via an artistic intervention.

In order to add another dimension to the work and to blur the boundary between fiction and reality, experts and performers, Rosen wrote a monologue for the actress Hani Furstenberg with whom he had collaborated for his video *Hilarious* (2010). In this new performance, Furstenberg was asked to play a legal scholar invited to give a public lecture on the case of the arrest of a twelve-year-old girl. Rosen titled the lecture "Explaining the Law to Kwame," which is an attempt to explain the Israeli legal system to a young migrant from Ghana in a future time and in a different place. In a manner not unusual for Rosen, he links the character of the lecturer and the twelve-year-old girl through their gender and sexuality. As Furstenberg reads her engaging lecture, it is gradually made obvious that something is distracting her. At first it might seem that it is the harsh question she raises concerning the legal definition of a minor that perplexes her. Childhood is a temporary state, and according to her, so is the law that concerns the arrest of a Palestinian minor. Through remarks on temporality, she questions both states as she emphasizes the fact that the laws implemented in the occupied territories were originally conceived as limited in time. She goes on to elaborate on the amendments made to those temporary laws,

describing a state in which childhood receives multiple meanings depending on nationality and citizenship. In between, the small breaks in her speech are evidently growing in frequency. The actress in the role of a legal expert seems to be troubled by an unidentified smell, as she sniffs more avidly searching for its source. While maintaining her posture and her talk on the liquidity of the legal terminology of childhood and minors, it becomes apparent that the disturbing smell must be her own body's odor. When she takes off her blazer near the end of her performance, large sweat stains can be noticed. Her talk becomes less coherent as she begins to interconnect the changes in body odor from adolescence to middle age to the importance of legal transparency. The exposure of her body, in what she describes as the rotting of the body, is linked to the vitality of legal transparency as she quotes the late Supreme Court Judge Haim H. Cohn who in 1961 wrote, "Legislation done in secrecy and kept in hidden archives is one of the identifying marks of a totalitarian regime, and is not in line with the rule of law."⁴⁹⁶ By quoting Cohn who was regarded as "a lifelong fighter for human rights, and a key figure in laying the foundations of the legal system of the state of Israel,"⁴⁹⁷ the monologue written by Rosen directs us to the foundation of justice. This ruling by Cohn is quoted in legal briefs and court rulings to this day. Aharon Barak, president of the Israeli Supreme Court (ret.), hero of judicial activism in Israeli court system, also referred to these words by Cohn. Praising Cohn's originality, courage, and fortitude, Barak declares Cohn's judicial position to be that of a reproving prophet demanding the securing and active advancement of human rights through judicial activism.

5.6.4. Motion Number Four: "The Interview"

⁴⁹⁶ Aharon Barak, "The Judge Haim H. Cohn: Prosecutor, Advisor, Judge, Scholar, and Mentor," *Mishpat Umimshal* 3, University of Haifa, Faculty of Law (1996): 389.

⁴⁹⁷ Mordechai Beck, "Haim Cohn," *The Guardian*, May 10, 2002, accessed June 30, 2019, <https://www.theguardian.com/news/2002/may/10/guardianobituaries.israel>.

If the motions mentioned above were developed around the language of law in relation to the legal status of migrants, “The Interview” (2017), a new performance by Public Movement, can be read as a motion seeking entry to and a contestation of a physical and emotional/mental archive. The starting point of the performance is a return to the first official encounter between young Israeli adults and the army. At the age of seventeen, all male Israelis (females to a much lesser degree) are summoned by the army to be interviewed for about twenty minutes to an hour by (mostly) female soldiers. This conversation is the main instrument through which the army penetrates into the mental and emotional world of the interviewee. The seemingly open and functional atmosphere in which the interview is conducted disguises the fact that one goes through a composed and well-formulated psychological observation. The goal of the interview, performed by well-trained soldiers, is to identify the suitability of each interviewee to serve in combat. The structure of the interviews used by the army was developed in the 1950s by Daniel Kahneman, then a young soldier and now a Noble Prize laureate (2002). Public Movement, thus, approaches the structure and method of these interviews as yet another device invented by the army for warfare purposes. As opposed to the production of weapons, this tool is devoted to conducting forced psychological tests, aimed at exposing the personality patterns and abnormalities of pre-recruited soldiers.⁴⁹⁸

At the end of each interview, a short confidential report is made summarizing the mental and behavioral categories that most fit the interviewee. As a result, an exceptional emotional/mental archive of almost all-male Israeli young adults since the 1950s is kept solely in the hands of the state. This archive and the method of interviews are regarded as extremely confidential, and they

⁴⁹⁸ Army service and reporting for registration are obligatory in Israel. See: Defence Service Law - Consolidated Version 5746-1986, accessed June 30, 2019, <http://www.mfa.gov.il/mfa/mfa-archive/1980-1989/pages/defence%20service%20law%20-consolidated%20version--%205746-1.aspx>.

are kept out of reach of any citizen. Public Movement and its performers expose the Israeli army's unique model, which consists of sixteen mental symptoms for men and nineteen for women. This is achieved during a performance divided into four parts, and a preliminary stage in which the public is organized according to those who will be interviewed and those who will be witnessing the interviews. The first part consists of a lecture about the historical background of the development of the army's method of interviews. The second part is the one in which the interview takes place in front of a limited number of viewers. In the third part, at the end of the interviews, the public is led into the “Layout Room” where along with refreshments and snacks they will be introduced to a wall of statistics presented in the form of colorful infographics. This wall is a representation of an alternative archive based on information and data collected by Public Movement about members of the public who participated in early rehearsals and in the live interviews. The whole event comes to an end in the fourth and last part, during which one of the performers dances the “Interviewer’s dance,” producing bafflement, confusion, and a physical breakdown of the role and image of a dignified “official” interviewer and of the participating public.

It is noteworthy to mention that, in the preliminary stages of research, Public Movement had worked with a leading Israeli law firm. The counseling of the firm was arranged especially for Public Movement’s needs in dealing with the IDF censorship and regulations, since the interview method is strictly confidential. More can be said about the legality/illegality of the performance or of artistic disobedience, yet in the context of this book I have aimed at paving new and alternative routes into rather neglected or overlooked aspects of law and justice through what I refer to as judicial-visual activism. All the works in the exhibition are the outcome of preliminary encounters, meetings, exchanges, and consultations between law and art practitioners.

Occasionally, aspects of the legal exchange are at the forefront, but mostly it is integrated rather seamlessly into the work. Yet, what I have aimed for in this publication and in the exhibition is to go beyond immediate dichotomies such as that of the legal/illegal or obedience/disobedience by blurring the borders between law and art. Touching upon the law as archive in an exhibition setting is a proposal for imagining new possibilities and new spaces for judicial and visual activism.

5.6.5. Motion Number Five: “To Serve You” (work in progress)

The last motion for the agenda to be discussed is Thalia Hoffman's sound installation and performance “To Serve You” (work in progress). The work is the outcome of the artist's determination to continue with the exchange between disciplines before committing to any specific outcome. The call to propose a concrete project seemed premature to Hoffman, prompting her to seek a possible prolongation of “Towards Legal Imagination” through linking them to her ongoing research and experimentation with public cooking and feeding. Hoffman has expanded her creative reach in recent years from film and video into that of performance art and public interventions. From *Beit Ha'Blia'a*, *Gullet//Chamber* (2014/5), a dinner performance during which the audience was served a sixteen-course meal of fermented dishes on stage, to *Interior Parts* (2016), a rather more intimate performance in which Hoffman shared the stage with the actor Morad Hassan as she cooked and fed him meat consisting only of innards, Hoffman demonstrates a growing appetite towards the act of cooking as she explores the political, cultural, sociological, and economic meaning food holds in our time.

Thus, and although food was never an 'official' topic of discussion in the preliminary meetings, Hoffman suggested arranging a couple of dinners during which she would be cooking and

discussing matters related to food, nutrition, law, and the act of eating with and feeding invited guests. With my continuing support and that of Artport and The Israeli Center for Digital Art in Holon, Hoffman took charge of the production of dinners, to which some, but not all, of the group members were invited to join a discursive evening meal with newcomers selected by Hoffman. With a focus on unraveling the relation and connection between food and law, Hoffman assembled jurists, cultural scholars, sociologists, and psychologists, who were informed that they would be audio-recorded (but not video-documented) for future use in the creation of a new art piece. Together with scholar Yoav Kenny, who was recommended to Hoffman by a member of the group and co-hosted the dinners, the participants were encouraged to talk freely about their research as well as about their personal relationship to food without the need for any prior preparation on their side. The outcome was shown in the exhibition as a sound installation described by Hoffman as touching “on legal, theoretical, and practical issues concerning the diverse power relations between feeder and fed, between host and guest, and between diner and diner. And in the background, the similarities and differences between feeding-catering-fattening-entertaining-food bank-infusion-force feeding.”⁴⁹⁹

Both Hoffman and I were eager to find ways to involve the general public in the process, leading to the exhibition while furthering the notion of host and guest in an exhibition setting. A large part of my interest in curating this particular exhibition was the wish to expose some aspects of our preliminary encounters with the public. Hoffman's idea to only record audio of the dinners offered a way to share a sort of a private archive that documented personal information from eating habits and disorders, to research on the Book of Proverbs' definition of daily bread, to

⁴⁹⁹ “Meal // Feeding,” The Israeli Center for Digital Art, accessed June 30, 2019, https://www.digitalartlab.org.il/skn/c6/%d7%94%d7%9e%d7%a8%d7%9b%d7%96_%d7%94%d7%99%d7%a9%d7%a8%d7%90%d7%9c%d7%99_%d7%9c%d7%90%d7%9e%d7%a0%d7%95%d7%aa/e1530363/Meal_Feeding?localeId=en-us.

food as a human right. Seeking to maintain a sense of informality and intimacy, Hoffman created a wooden table made to accommodate six from which the sound was distributed in the space, and on which a performance for six participants would also take place.

As in the case of the rights of migrants in Israel, it is important to address the political and judicial background that informed the work of Hoffman. In the weeks leading up to the exhibition, a mass hunger strike by Palestinian prisoners began. In mid-April 2017, more than 1,000 Palestinians in Israeli prisons began to protest in order to demand better living conditions. The hunger strike erupted following the placement of Marwan Barghouti, an imprisoned Palestinian leader, in solitary confinement. It was reported that one of the main reasons for this was an essay smuggled out of prison written by Barghouti and published by *The New York Times*. In his Op-Ed article, Barghouti explained that the reason behind his own hunger strike was to protest against what he perceived to be the “illegal system of mass arbitrary arrests and ill-treatment of Palestinian prisoners.”⁵⁰⁰ In Barghouti's view, there is an immediate connection between the harsh imprisonment of Palestinian prisoners and the pain inflicted on their bodies and the violation of international law by Israel, resulting in the formation of an unjust legal system that he describes as “a dual legal regime, a form of judicial apartheid, that provides virtual impunity for Israelis who commit crimes against Palestinians, while criminalizing Palestinian presence and resistance. Israel’s courts are a charade of justice, clearly instruments of colonial, military occupation. According to the State Department, the conviction rate for Palestinians in the military courts is nearly 90 percent.”⁵⁰¹ These statements need to be

⁵⁰⁰ Marwan Barghouti, “Why We Are on Hunger Strike in Israel’s Prisons,” *The New York Times*, April 16, 2017, accessed June 30, 2019, <https://www.nytimes.com/2017/04/16/opinion/palestinian-hunger-strike-prisoners-call-for-justice.html?module=ArrowsNav&contentCollection=Opinion&action=keypress®ion=FixedLeft&pgtype=article>.

⁵⁰¹ Ibid.

considered in the context of the history of hunger strikes in Israel, and recent developments in Israeli law. Yoav Kenny draws our attention to the frequent hunger strikes by Palestinian prisoners that occurred in 2012. According to Kenny, the government reaction can be traced in the amendments made in the Israeli Prisons Ordinance in 2015. These amendments granted authority to the President of a District Court to instruct the feeding and forced feeding of a prisoner. The legislative intervention by the government is regarded by Kenny as an immediate result of the avoidance of the Supreme Court of Justice taking a stance on petitions by hunger-striking prisoners, and the court's unwillingness to draft clear legal guidance for the conduct of politically and conscience-based hunger strikes.⁵⁰²

The issue of political hunger strikes in Israel sets off, as if in a chain reaction, a multitude of related and charged matters. It touches on the ongoing atrocious fifty years of Israeli occupation; the role and duty of the courts in balancing questions of human rights and national security; the right to starvation versus the state's obligation to ensure the health and well-being of its citizens; the autonomy of the human body, medical ethics, and prisoners' rights. All these legal, political, sociological, and ethical subjects were vocalized as part of the sound installation and informed the research and background of Hoffman's performance. Nevertheless, the striking intimacy of a performance for only six participants taking place inside of a gallery space intensified the focus on the very personal relationship each of us as human beings has in relation to food, eating, nutrition, and force-feeding. Together with three female performers, Hoffman was able to capture

⁵⁰² Yoav Kenny's essay "Feeding and Force: Food and Bio-politics in the Discussion Surrounding the Forced Feeding of Hunger Strike Prisoners" was published in Hebrew recently (2017) in *Studies in Food Law*, edited by Yofi Tirosh and Aeyal Gross, published by The Buchman Faculty of Law, Tel Aviv University. Both Tirosh and Gross were members in the group meetings of "Towards Legal Imagination," and also participated in Hoffman's dinners. As part of the events taking place during the exhibition, a public panel of speakers was arranged together with Tirosh, Gross, Hoffman, Kenny, and Yossi Wolfson, a lawyer and animal rights activist.

the very primal dimension that food and nutrition play in a person's life from birth until death. Being fed, softly, yet also with a latent aggressiveness by the performers, made the experience an intense contemplation of food as an essential tool in which power and control, just as much as love and care, brutally intertwine. From a mother's milk, to the shared “family dinner table,” to public communal eating, to food deprivation and starvation, to taste and disgust, these all bring to mind notions of taste described by Pierre Bourdieu in his seminal book *A Social Critique of the Judgment of Taste*.⁵⁰³ The silent live cooking by Hoffman and the distribution of the food to the participants manifesting the unavoidable relationship between the taste of food and social relations in the world framed, intensified, and made this relationship more distinct by taking place in a gallery space.

5.6.6. Motions for the Agenda: From the Curator's Desk

All in all, as mentioned above, my initial idea was to have the exhibition built as layers overlapping each other. Leaving relics from previous works in the exhibition space touches upon the notion of the double violence discussed by Mawani in relation to the archive. As demonstrated earlier in this chapter, it is that which lends the law and the archive their authority, and it is that which is also destroyed to conceal and to protect the law and the archive from claims against their legitimacy. Leaving traces of food spilled in the space and stained into the wood of Hoffman's sound table; the four small rooms from Amir's performance; the yellow painted wall with statistics from Public Movement's performance; and Weiss and Weitzen's ongoing video projection exposed layers of law's archive through the exposure of the exhibition's layers of works. Maintaining traces of different works in the space makes the exhibition's history visible, while also requiring the visitor to inquire about those “leftover” objects, since their

⁵⁰³ Pierre Bourdieu, *A Social Critique of the Judgment of Taste* (Cambridge, MA: Harvard University Press, 1996).

meaning in the space is unclear. Rosen's film is yet another manner in which to document the past of the exhibition while allowing the space and objects to acquire new meanings and interpretations. At the same time, besides occupying the exhibition's space for a day of filming in which the general public was invited to take part as audience members or as extras, Rosen left two small drawings made especially for the exhibition hanging in the space.

Lastly, another manner in which I aimed at approaching the double violence of the law as archive and of the exhibition was through adding a feature to the exhibition that I named the “Curator's Desk.” Composed of one wooden glass-topped vitrine and a desk, it was alternatively operated by Vardit Gross and me during the opening hours of the exhibition. The vitrine and desk presented books, catalogues, brochures, and posters that could be read in the space. Along with reading materials and newspaper clippings that we gathered on diverse current topics related to law and art, we also exhibited items in the vitrine that could be found at lawyers’ offices and meeting rooms, such as mugs and paperweights given out by the law bar on different occasions. Unlike the common curator's talks or tours of the exhibition, the “Curator's Desk” can also be perceived in the frame of institutional critique. The presence of the curator (alternately with the director of Artport) at the exhibition suggests a striving for critical reflection and enhanced transparency regarding the work of the curator and the institution. The material presence of the “Curator's Desk” invited visitors to sit down, drink some coffee or water, and have the chance to be exposed to the layers of the exhibition even when not attending any of the performances. The intention of the “Curator's Desk” was to give information about the exhibition while sharing knowledge about the making of the exhibition, the development of the different works, and a peek into the gradual accumulative formulation of the exhibition as law's counter-archive through intimate one-on-one conversations between the curator and the general public. The

“Curator's Desk” offered an informal casual space for an encounter about past, present, and future possibilities of the law's archive. It emphasized the longing for a sense of intimacy that can be traced in all the motions for the agenda. The “Curator's Desk,” just like most of the exhibition's works, facilitated a face-to-face discursive exchange in order to envision a time and place after the law as we remain forced to be standing before the law.

Epilogue

The question of whether judicial-visual activism can be further solidified in a real world context cannot be answered solely through this modest publication. Nor can it be allowed to rest on the efforts of a single individual. The intention of the aforementioned ideas, structures, and efforts has been to ignite the attention of the reader into becoming attuned to a new sensitivity to the relationship between law and art. It demands and provokes a more vigilant awareness of the structures and hidden characteristics of the law. Louis Althusser famously described the complex power and multivalent quality of the law as operating with the support of both the Repressive State Apparatus and legal ideology as part of the Ideological State Apparatus. In this winding study that meanders between Franz Kafka's “Before the Law” and Althusser's ideology, the Dreyfus Affair and the first Congress of “The Jewish Renaissance Movement in Poland”, Catharine A. MacKinnon on “Women’s September 11th” and the Right of Intervention of the New World Summit in Rojava, I have aspired to challenge common perceptions of both legal ideology and legal institutions.

By insisting on unraveling the law in curatorial and artistic projects that seem at first glance to have little to do with the judicial, every chapter in this publication brings us, hopefully, closer to

realizing the potential in joining judicial activism with visual activism. Whether through a performative Congress, the construction of a Parliament, an artistic encounter as part of a residency in a governmental office, or by exposing law's archive, sound, and language, this research urges art practitioners and scholars to explore, oppose, and re-imagine existing legal structures in collaboration with legal experts and activists as part of their own creative process. By propagating the need to merge legal scholarship with artistic and curatorial knowledge and practices, I have intended to frame and herald judicial-visual activism as a key to establishing alternatives to existing laws and legal systems. This study argues that judicial-visual activism opens up a space between the “Era of the Witness/Testimony” and the “Era of the Forensic” through which a new comprehension of law and art can take hold. This is manifested when a concentrated effort is translated into action, detecting traces, gaps, and lacunae left unnoticed in the margins of the intersection between the judicial and the visual. Judicial-visual activism emerges as a third option when a constant pendulum movement between art and law is invigorated..

Considering artistic and curatorial capabilities in times of globalization, I have aimed at linking the judicial and the visual in order to carve out a political space for art. Coupling the Trial of Maurice Barrès with a Congress taking place almost a century later allowed me to embark on an investigation of justice and of the legal sphere in contemporary art. Bartana's Congress, as I have indicated, did not envisage itself as a legal platform. Yet, when read in relation to the Dreyfus Trial—considered by many as The Trial of the nineteenth century that continues to hold an influence on global politics—a legal terminology and dimension begin to form. The Congress, as I have shown, is part of a growing phenomenon of organizations created by artists rooted in the art world while cultivating political aspirations. Jonas Staal's New World Summit and the

establishment of a Parliament in Rojava is undoubtedly a striking example of this tendency. In the context of this publication, Staal's work from the very first Summit in Berlin in 2012 to the establishment of a Parliament in Rojava serves as an excellent case study of how artists are currently envisioning the legal system anew. Reading Staal's actions alongside Nancy Fraser's concept of reframing justice and Catharine A. MacKinnon's writing on international law after September 11, 2001 have allowed me to demonstrate how artistic capabilities creates new rights.

The emergence of rights through artistic engagement has been a continuous concern throughout this book. Borrowing from the legal theory on the transformation of disputes through the act of naming, blaming, and claiming, I have examined artistic and curatorial attempts to intervene in governmental and administrative institutions. It is in these spaces in which the ideological and the repressive come together that the rethinking of the event of the encounter is ever more necessary. Following Itamar Mann's exploration of the Right of the Encounter as part of a call for a new theory of human rights, I have demonstrated how artists such as Lawrence Abu Hamdan and a research agency such as Forensic Architecture formulate a legal demand. I have sought throughout this book and in my curatorial practice to outline possible ways in which to unveil, observe, and tackle the entangled relation between law and art. Confronting the violence of the law by dealing with its archive in the constellation of an art exhibition has allowed me to juxtapose the space of law and the space of the exhibition as a means through which to envision a place *after* the law.

Further research and experimentation rooted in a collaborative mutual effort between legal and visual practitioners and scholars should be a prerequisite for any further investigation. Analyzing the two fields via the threefold methodology suggested in this publication considers that only through encounters and exchange can one begin, and only begin, to attain a critical perspective of

both fields. The lack of reciprocal channels of communication between legal and art experts and practitioners; the almost non-existent spaces for informal, open, and diverse meetings on subjects of interest to the two fields; and the scarce resources dedicated to the study of law and art as an interdisciplinary field have resulted in the insufficiency of in-depth and subversive attempts to question, confront, and dispute prevailing and imagined relations between the two fields.

The current research on art and law can be said to be mainly concerned with matters of aesthetics on the one hand, and copyrights and contracts on the other hand. Alongside this, issues of censorship and disobedience seem to be the ones capturing much of the attention of artists and scholars in relation to the law. From the law and literature movement, to which I also referred in my writing, to an exploration of the image of law, or theatrical and performance-related dimensions of the law, this diverse body of research rarely aspires to ignite a collaborative effort in which legal and art practitioners investigate, re-imagine, and propose and create legal rights, legal institutions, and active means for intervention.

The persistent inquiry into art and curatorial projects that show traces of a legal inclination or interest and the experimental reading of art through legal scholarship both make an argument for the affiliation between artistic and legal imagination. Imagination is perceived throughout this book as one crucial common denominator binding the judicial and the visual in a mutual active quest to seek out, advance, and foster justice. I perceive this investigation as not only linking theory and practice, but also as a matter of advocacy for judicial-visual activism. In that, I follow Drucilla Cornell, who in her research on uBuntu and indigenous values argued that, “Questions of theory and practice are raised when one becomes an advocate and not simply a researcher.”⁵⁰⁴

The ideals and methodology suggested by Cornell, although rooted in her work on African

⁵⁰⁴ Drucilla Cornell, *Law and Revolution in South Africa* (New York, Fordham University Press, 2014), p. xii.

philosophy and law, seem to me to be of the utmost relevance when researching the relationship between law and art. Connecting European and African traditions, she calls for a “critical engagement [...] in that we need to see how the relations between the developments of different strands of critical theory both build off of and sometimes limit one another.”⁵⁰⁵ In this publication, I have aimed to broaden our perception of both law and art, while also acknowledging the limitations of each field positioning them in close proximity.

Further undertakings in which curatorial theory, knowledge, and practice are critically linked might lead to establishing new spaces for studying and experimenting with judicial-visual activism. The potential in juxtaposing and relating legal imagination with artistic imagination, between the space of the law and the space of the exhibition, has been emphasized throughout the chapters of this book. And while there have been a number of art exhibitions dealing with legal issues,⁵⁰⁶ it is worth noting that there is no permanent ongoing platform anywhere in the world dedicated to visual research and a presentation of the law.

It has been announced that the German Ministry of Justice together with the Federal Constitutional Court and the city of Karlsruhe have joined forces in initiating “Forum Recht” (Law Forum).⁵⁰⁷ From the limited information available to the public at this stage, one learns of a plan to construct a new building adjacent to the Federal Constitutional Court to host a “Law Forum.” Susanne Baer, a judge on the Federal Constitutional Court, and one of the founding initiators of the forum, gave an interview to the *Süddeutsche Zeitung* in May 2017 in which she

⁵⁰⁵ Ibid., xiii.

⁵⁰⁶ For example, nGbK’s *Dreams&Dramas. Law as Literature* (nGbK, Berlin, March 10–May 7, 2017), and *Polyphonic Worlds: Justice as Medium* (Contour Biennale 8, Mechelen, March 11–May 21, 2017) are just two recent examples of exhibitions dealing directly with law and art in Europe in 2017.

⁵⁰⁷ The website of the Forum shares some additional information, but only in German. Accessed June 30, 2019, <https://www.forum-recht-karlsruhe.de/>.

clarified that the intention is not necessarily to build a museum of law, but more of a space in which “the rule of law can be further thematized.”⁵⁰⁸ Against the background of increasing limitations on the independence of courts in European countries such as Poland and Hungary, Baer claims that in Germany as well one needs to constantly engage in debate with regard to the rule of law. In this sense, the judge perceives the Forum as a precautionary measure through which the German state can better secure the constitution, human rights, and a democratic culture. Exhibiting the law in such a forum is perceived by her as an opportunity to educate and mediate the legal system as a visual experience for the general public. According to the Forum's website, the goal is to gather information, documentation, and means of communication under one roof regarding the rule of law and its role and function in a democratic society. Through visual installations, talks, lectures, workshops, and conferences the “Forum Recht” aims at fostering a continuous debate on the relation and tension between law and justice.⁵⁰⁹ Time will tell what form and impact the “Forum Recht” will have, and whether it can become a vital player in advancing legal and artistic imagination and activism. I am of the opinion that, in the case of limiting the aims and function of the Forum to that of defensive democracy, the Forum will yield little substantial ground. A Forum abstaining from critical engagement with judicial-visual theory, practice, and advocacy risks ending up as an irrelevant and negligible space.

Based on the methodology and research conducted as part of this book, and in continuation with the structure of the exhibition *Motions for the Agenda* as detailed in Chapter Five, my upcoming theoretical and practical curatorial endeavor shall be to establish a rather dynamic, flexible, and nomadic structure for further experimenting with judicial-visual activism. Following an

⁵⁰⁸ Wolfgang Janisch, “Wenn der ‚wahre Wille des Volkes‘ herrscht,” *Süddeutsche Zeitung*, May 29, 2017, accessed June 30, 2019, <http://www.sueddeutsche.de/politik/karlsruhe-wenn-der-wahre-wille-des-volkes-herrscht-1.3526052>. Translated by the author.

⁵⁰⁹ “Forum Recht Karlsruhe,” accessed August 29, 2017, <http://forum-recht-karlsruhe.de>.

invitation by the Goethe-Institut New York, I created an “Agency for Legal Imagination” as part of MINI/Goethe-Institut Curatorial Residencies Ludlow 38 in 2018.⁵¹⁰ The Agency embarked as a one-year platform of exhibitions, meetings, performances, lectures, screenings, archival research, dinners, and think tanks at Ludlow 38 dedicated to furthering the exploration of existing and imagined relations between law and art. Against the backdrop of the US presidential election and ongoing political upheaval in the European Union, the judiciary system is perceived by many as the last haven for a democratic and pluralistic society. At a time in which pressing questions regarding race, religion, migration, minority rights, and abortion await the ruling and protection of the courts in the US just as around the world, a rethinking of the legal through an “Agency for Legal Imagination” becomes essential. A strong emphasis was placed on integrating and motivating legal experts and art practitioners to work with diverse local communities and institutions such as community courts and organizations in order to prompt innovative approaches to justice in the city of New York and its vicinity. As such, during its one-year residency the Agency transformed Ludlow 38 into a space devoted to reflecting and maintaining an intimate yet complex view on past, present and future developments of the legal system locally and globally. It should be mentioned, that although the Agency operated as part of a cultural institution, I plan in the future to expand it into educational institutions in order to further establish law and art as an interdisciplinary field of research.

Drucilla Cornell encourages us, through her writings about uBuntu and justice in post-apartheid South Africa, to envision our era as one that is committed, against all odds, to revolutionary thinking and action. “We will never understand what South Africa offers all of us who hope for a better world unless we use the now much contested vocabulary of revolution, emancipation, and

⁵¹⁰ For a list of all the projects developed and executed in 2018 by the Agency for Legal Imagination see: <http://ludlow38.org/contributors/avi-feldman/>,” accessed June 30, 2019.

transformation.”⁵¹¹ Cornell follows Boaventura de Sousa Santos by claiming that, “Revolution and law had been decoupled in the twentieth century, and this of course helps us at least to understand the hegemonic opposition between democracy and revolution.”⁵¹² Time will tell whether the insistence on the power of judicial-visual activism expressed throughout this book, in the exhibition *Motions for the Agenda*, and in the “Agency for Legal Imagination,” will lead to the recoupling of revolution and law. The striving for three-dimensional justice in a global world achieved through the reactivation of artistic capabilities via interventions, encounters, and the creation of new institutions, rights, and counter-archives, holds a modest yet noble promise for the future possibility of reinventing democracy and the rule of law and of art.

⁵¹¹ Drucilla Cornell, *Law and Revolution in South Africa* (New York: Fordham University Press, 2014), p. 2.

⁵¹² *Ibid.*, pp. 9-10.

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Appendix

OnCurating 28 (January 2016)

Issue 28 of *OnCurating* was perceived and edited as a platform for presenting texts and visuals in which the law is imagined by legal experts, art practitioners, and cultural researchers. For most of the contributors, it was a first-of-its-kind opportunity to reflect on their own practice and research in relation to the law. Contributors in order of appearance in the journal: Sabine Mueller-Mall, Zoltán Kékesi, Szabolcs KissPál, and Máté Zombory, Michal Heiman, Lawrence Abu Hamdan, Avi Feldman, Milo Rau, Hila Cohen-Schneiderman, and Avigdor Feldman.

Motions for the Agenda (May 16 – June 6, 2017), Artport, Tel-Aviv

The exhibition and series of events “all about law and justice” consisting of performances, videos, and sound installations were the culmination of encounters between legal experts, art practitioners, and cultural researchers that took place in 2015-2016. All works were newly commissioned, and performed or exhibited for the first time as part of the exhibition.

Participating artists and experts in order of appearance: Einat Amir in collaboration with Dr. Orly Idan, with legal counsel by Dr. Tali Kritzman-Amir, Hinda Weiss in collaboration with Asaf Weitzen, Thalia Hoffman, Public Movement, and Roe Rosen.