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Legal Words are Latent Thoughts: Understanding Discourse Around Aboriginal Religion in *Delgamuukw v. British Columbia*

Lauren Forbes
University of Ottawa

Abstract: When Aboriginal issues involving Aboriginal religion come up in Canadian courts the religious aspects are avoided and pushed to the margins of the case and freedom of religion is not addressed. This article focuses on the Supreme Court case of *Delgamuukw v. British Columbia*, a land claims case where religion is again in the periphery, in order to determine how Aboriginal religions are being framed and conceptualized in court (by both the Court and by Aboriginal peoples). It will do so by examining the legal text surrounding the sacred oral traditions and histories of Aboriginal peoples, by investigating references the Court makes to Aboriginal religions, and by discussing the implications of the Aboriginal title discourse for Aboriginal religions. More generally, this article brings to attention some of the issues that Aboriginal peoples' religious traditions face in terms of freedom of religion in Canada.

Introduction

Religious freedom for Aboriginal religions[1] in Canada is

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1 I want to bring awareness to the fact that the terms "Aboriginal religions" are contentious. First, there are multiple terms used to refer to Aboriginal peoples in Canada, such as Aboriginal peoples and Indigenous peoples. Both of these terms refer to First Nations, Metis and Inuit simultaneously. Making the statement that Aboriginal peoples are in Canada rather than Canadian has implications on how one conceives of Aboriginal peoples in relation to the

something that Canadian courts have not dealt with explicitly under the *Canadian Charter of Rights and Freedoms*. When Aboriginal religious beliefs are brought up in court cases, they are typically dealt with as peripheral factors to the main disputes, namely, to hunting and fishing rights, land claims or treaty disputes.[2] Therefore, it is only through an examination of such types of cases – where religion is in the periphery – that an understanding of how Aboriginal religious beliefs come to be framed legally in courts (by both Aboriginal peoples as well as the bench) can be revealed. An example of this type of case, and the one which will be focused on here, is the Supreme Court case of *Delgamuukw v. British Columbia* (*Delgamuukw*). In many ways *Delgamuukw* remains the standard on how issues of tradition, culture and religion come to be presented and dealt with in courts, making it a useful case study. Handed down in nineteen-ninety-seven, the *Delgamuukw* decision commenced as

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Canadian government (Aboriginal people vary in the way that they conceive of themselves in this regard). I will use the former as to me it implies a more neutral view of this varying relationship. Another component of the debate surrounding these terms is that they are defined differently by the government of Canada and different Aboriginal groups (for a more in depth discussion on this see footnote 2 of Lori G. Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," *Journal of Church and State*. 44 (2002): 135. Given that the *Delgamuukw* case deals with an Aboriginal title claim brought forth by First Nations peoples, I will use these terms somewhat interchangeably but effort will be made to keep them distinct (the Court in *Delgamuukw* only uses the term Aboriginal). I will also pluralize the terms I use to account for the multiplicity and diversity of the groups encompassed in the term. Secondly, the term religion when referring to Aboriginal peoples religious beliefs in Canada is also disputed. Some have argued that the use of the term religion does not do justice to the religious beliefs of Aboriginal peoples as it is too limited in the way that it is commonly conceptualized (see Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 137). Despite my agreement with such statements I advocate that the definition of religion is what needs to be expanded and have decided to use the term religion in an effort to place Aboriginal peoples' religious beliefs on an equal footing to other religions around the world and also in order to avoid confusion in terms of what it is and what kind of protection in deserves in courts.

2 Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 136.

a title case, where a number of First Nations peoples[3] in the interior of British Columbia sought title to a fifty-eight-thousand square kilometre section of land, and concluded as a case defining the boundaries of legal evidence where the oral histories of Aboriginal peoples became acceptable forms of proof in court. The *Delgamuukw* case implicitly draws First Nations religions into the discourse in two main ways, 1. because it deals with land and many First Nations have a religious connection to the earth[4], finding particular lands or geographies to be sacred,[5] and 2. through oral histories and traditions which are considered to be sacred to First Nations.[6] The Court in *Delgamuukw* alludes to First Nations' religious beliefs towards the earth or particular lands in referring to Aboriginal peoples' "special interest in land" as "a *sui generis* interest that is distinct from 'normal' proprietary interests".[7] The Court in *Delgamuukw* also makes unequivocal references to the sacredness of oral histories and oral traditions to Aboriginal peoples.[8]

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3 The Gitksan and Wet' suwet'en nations.

4 For examples of religious relationship that some Aboriginal peoples have with land see Gordon Christie, "*Delgamuukw* and the Protection of Aboriginal Land Interests," *Ottawa Law Review* 32 (2000-2001): 89-90 & notes.

5 For Aboriginal peoples that see particular geographies as sacred see: John Borrows, "Living Law on a Living Earth: Aboriginal Religion, Law, and the Constitution," in *Law and Religious Pluralism in Canada,* ed. Richard Moon. (Vancouver: UBC Press, 2008), 161-191; Michael Lee Ross, *First Nations Sacred Sites in Canada's Courts,* (Vancouver: UBC Press, 2005); and Jill Oakes, Rick Riewe, Kathi Kinew, and Elaine Maloney, eds. *Sacred Lands: Aboriginal World Views, Claims, and Conflict,* (Edmonton: Canadian Circumpolar Institute, 1998).

6 See David McNab, *Circles of Time: Aboriginal Land Rights and Resistance in Ontario,* (Waterloo: Wilfrid Laurier Press, 1999), 1-20.

7 *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 125. For a discussion on '*sui generis*' and its meaning (means 'unique') see John Borrows, *Recovering Canada: The Resurgence of Indigenous Law,* (Toronto: University of Toronto Press, 2002), 9. The claim that '*sui generis*' also refers to Aboriginal religious views towards the earth is made by James (Sakej) Youngblood Henderson, "The Struggle to Preserve Aboriginal Spiritual Teachings and Practices," in *Religious Conscience, the State, and the Law: Historical Contexts and the Law,* ed. John McLaren, Harold G. Coward. (Albany: State University of New York Press, 1999), 175.

8 *Delgamuukw*, 13, 14.

It would seem that First Nations religious views towards the earth as well as oral histories and traditions would be addressed more than they are in the case of *Delgamuukw*, given their relevance to Aboriginal land title claims. However, an attribute of courts is that they are able to (and do) frame cases in particular ways which enable them to avoid discussing particular issues while retaining an appearance of neutrality, what Mary Jane Mossman calls "characterization".[9] In regards to Aboriginal religions in the case of *Delgamuukw*, Lori Beaman has noted that this is in fact the situation where,

> [T]he Supreme Court acknowledges the spiritual connection between the Wet'suwet'en people and their land as evidenced through a collection of sacred oral tradition or stories. Again there is discussion of a core of 'Indianness.' Yet the case is framed around establishing the existence of Aboriginal title.[10]

The tendency for courts to focus on particular aspects of a case while avoiding others is achieved through the particular wording of legal texts. In courts, language is used in particular ways, not only to "characterize" specific issues, but also to give the illusion of a single authoritative voice, which according to Rebecca Johnson masks the many voices present in cases which can be uncovered by focusing on the legal discourse.[11] In addition to this, Johnson and Marie-Claire Belleau have singled out "the intersection of law and language" as a focal point to bringing out some of these other perspectives and as a place to answer interdisciplinary questions surrounding law.[12] This paper will

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9 Mary Jane Mossman, "Feminism and Legal Method: The Difference It Makes," *Wisconsin Women's Law Journal* 3 (1987): 157-8.

10 Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 144.

11 Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood, and The Law,* (Vancouver: UBC Press, 2002), 58.

12 Marie-Claire Belleau and Rebecca Johnson, "I Beg to Differ: Interdisciplinary Questions about Law, Language, and Dissent," in *Law, Mystery, and the Humanities: Collected Essays,* ed. Logan Atkinson and Diana Majury. (Toronto: University of Toronto Press Incorporated, 2008), 161.

focus on this law and language intersection in the case of *Delgamuukw* and will discuss the ways in which First Nations' religious beliefs were presented and dealt with in order to uncover how freedom of religion for Aboriginal religions is playing out in Canadian courts.

Why do courts avoid the subject of Aboriginal religions? What is at the root of this tendency? These questions have twofold answers as the decision is shaped by both the way in which the Aboriginal groups presented their cases and also by the way the courts frame them. In examining Canadian courts some conclusions can be drawn regarding their structural behaviour. When courts take on cases they do not generate decisions in a vacuum. New decisions instill law that is not only tied back to the original statute but also to past cases.[13] In examining the continuity of court decisions, Eric Reiter argues that courts construct a narrative from fact that in turn becomes fact and is used to evaluate other cases, thus perpetuating a created narrative.[14] Reiter's argument is not so different from the views of Carol Smart who finds that law, like science, appeals to and generates a notion of truth from which it garners power which it then applies to society.[15] A result of the legal system's perpetuation of particular ways of dealing with cases is that, "[i]n the case of historically excluded groups, like the plaintiffs in *Delgamuukw,* the very creation of this narrative serves at once to exclude and to reinforce the exclusion" says Reiter.[16] Aboriginal peoples are therefore continually marginalized by the state and the marginalization is justified by a 'law' that is conceptualized as truth or of a high moral standard.

In Canada, the legislation with the greatest impact on how events transpire around religion in court is the Nineteen-eighty-two *Canadian Charter of Rights and Freedoms*.[17] Section

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13 Mossman, "Feminism and Legal Method," 149.
14 Eric H. Reiter, "Fact, Narrative, and the Judicial Uses of History: *Delgamuukw* and Beyond," *Indigenous Law Journal* 8 (2010): 67-77.
Carol Smart, *Feminism and the Power of Law,* (London: Routledge, 1989), 9-14.
16 Reiter, "Fact, Narrative, and the Judicial Uses of History," 67.
17 For clauses in the Charter that have to do with religion see Iain T. Benson,

2(a) of this legislation states that "2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion".[18] Despite such an enactment, along with s. 15 equality rights and s. 27's protection of multiculturalism, it has been argued that religious freedom rights offers more protection to some groups than to others, namely more protection goes to Christian groups than to minority religious groups, especially to the religious beliefs of Aboriginal peoples.[19] In terms of freedom of religion, Aboriginal peoples' religious beliefs are, according to Lori Beaman, "legally constructed outside of the boundaries of religious freedom" in three main ways:

> First, the religious landscape is dominated by mainstream Christianity, resulting in a narrow interpretation of religion and religious freedom. Secondly, legal claims are framed in the rhetoric of individual rights that ignores the systemic disadvantages suffered by Aboriginal peoples.... Finally, the legal construction of Aboriginal spirituality continues the legacy of European colonizers that treats first nations peoples as an 'abnormal' group to be either tolerated or accommodated by the benevolent 'normal' majority.[20]

"The Freedom of Conscience and Religion in Canada: Challenges and Opportunities," *Emory International Law Review,* 21 (2007): 123-124.

18 *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

19 See Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion."

20 Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 136. Beaman also notes more specifically in a footnote on the same page that:

> The exclusivist approach by law in relation to Aboriginal spirituality is accomplished in a number of ways.... By specifically (quasi-) criminalizing activities such as hunting out of season, the law effectively prohibits some aboriginal rituals. In other cases, the law monitors and controls such activities.... Such criminalization has an historical context that ... includes, for example, the prohibition of the Sundance. Aboriginal spirituality is far enough removed from mainstream concepts of religion that

Not only are Aboriginal peoples in Canada failing to receive adequate protection for their beliefs but in addition to this, scholars such as Richard Moon have noted that the courts seem ambivalent as to whether there should be equality in the way that different religions are treated in Canada.[21] In other words, there is no guarantee that all religions in Canada will get a comparable form of protection for their beliefs.

In terms of the role Aboriginal peoples play in the explanation for why Canadian courts may not be considering Aboriginal religious issues under a religious freedom rubric is that First Nations in Canada are themselves not framing their cases in this way. This may be because Aboriginal peoples have had little success in arguing for religious freedom in the past,[22] because they do not view religion in the same way as courts do (they do not separate their religious beliefs from other parts of their lives/cultures),[23] and some Aboriginal peoples might not want to participate in the Canadian state's legal proceedings as they see it as an invalid exercise.[24] The result of Aboriginal peoples not clearly arguing for religious freedom is that courts also then do not have to address issues as religious freedom

it is also simply not covered by law. The all-encompassing nature of Aboriginal spirituality is a major challenge to the dominant view of religion. Finally, Aboriginal spirituality is pushed outside of the boundaries of legal protection when 'more important' social needs are identified, such as highways or the need to control illicit drugs.

21 Richard Moon, "Liberty, Neutrality, and Inclusion: Religious Freedom Under the Canadian Charter of Rights and Freedoms," *Brandeis Law Journal,* 41 (2003): 573.

22 Lori G. Beaman (Class Discussion, University of Ottawa, Ottawa, ON, February 3, 2011). See examples: *Jack and Charlie v. The Queen,* [1985] 2 S.C.R. 332 and *Thomas v. Norris*, 1992 CanLII 354 (BC S.C.).

23 For religion's interconnectedness in Aboriginal life see both Ross, *First Nations Sacred Sites in Canada's Courts,* 3-4; and Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 137.

24 For a description that some Aboriginal people(s) have of 'nation-to-nation' with Canada see: Dale Turner, *This is not a Peace Pipe: Towards a Critical Indigenous Philosophy,* (Toronto: University of Toronto Press, 2006), 4.

claims and can then discuss them in other less complicated ways. Finally, courts may also be choosing not to address Aboriginal religions under a religious freedom claim because such arguments may have more weight than other claims in court given the importance belief can have to an individual[25] which may create more difficulties for courts if they force concessions to be made to Aboriginal peoples (especially in the case of land or resources).

The following section will unpack some of the language surrounding First Nations religious beliefs in *Delgamuukw* and discuss some of its implications, whether intended or not by the Court.[26] First, it will examine the Court's use of the language surrounding oral histories and traditions (as religious language is most obvious here). Next, it will investigate how Aboriginal religions more generally arose in the text of the case. The final section will analyse some of the Court's discourse surrounding title and its consequences on Aboriginal religious traditions as they relate to land.

Language Surrounding Aboriginal Oral Traditions

In *Delgamuukw*, when referring to the oral histories and traditions of Aboriginal peoples in Canada, the Court uses clear religious language such as 'sacred' or 'spiritual', as seen in the following statements:

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25 See importance of religion to identity in Moon, "Liberty, Neutrality, and Inclusion," 569.

26 This work is only part of the preliminary findings of a larger research project which examines the ways in which Aboriginal religions are framed in *Delgamuukw* by both Aboriginal peoples and by the Court in order to better understand the situation of religious freedom for Aboriginal peoples in Canada. This project uses a method of discourse analysis in its investigation of the *Delgamuukw.* The process involves coding the results thematically by paying attention to key terms. The discourse analysis methods used are based primarily on discourse analysis texts such as, Teun A. Van Dijk, "Principles of Critical Discourse Analysis," *Discourse & Society*. 4 (1993): 249- 283; in addition to being modelled after work which uses discourse analysis to look at religion and law such as, Lori G. Beaman, *Defining Harm: Religious Freedom and the Limits of the Law,* (Vancouver: UBC Press, 2008).

> [T]he Gitksan Houses have an 'adaawk' which is a collection of sacred oral tradition about their ancestors, histories and territories. The Wet'suwet'en each have a 'kungax' which is a spiritual song or dance or performance which ties them to their land.[27]

> [T]he most significant evidence of spiritual connection between the Houses and their territory was a feast hall where the Gitksan and Wet'suwet'en people tell and retell their stories and identify their territories to remind themselves of the sacred connection that they have with their lands. The feast has a ceremonial purpose but is also used for making important decisions.[28]

The language the Court uses regarding Aboriginal oral histories and traditions can be seen as depicting their sacred nature in two ways: 1. as being greatly respected within the Aboriginal communities and 2. as having religious content (in this case, religious views towards a particular piece of land). This type of depiction is consistent with the way in which Aboriginal peoples also seem to be viewing their oral histories and traditions.[29] The fact that the Court describes oral histories and traditions in such obvious religious terms points to the legal development of a clearer understanding of the significance of those oral histories and traditions in Aboriginal belief systems. This may be because they can be compared to the sacred texts of other religious traditions, most of which also had oral beginnings. On another note, the conceptualization of Aboriginal oral traditions or religious beliefs as 'spiritual' or as a form of 'spirituality' is potentially troublesome as this language may result in Aboriginal beliefs and religions eluding characterization as a 'religion' deserving of protection in court.

The acknowledgement of the religious aspect of oral histories and traditions however, appears to have little effect in

27 *Delgamuukw*, 13.
28 Ibid., 14.
29 See McNab, *Circles of Time,* 1-20.

demonstrating the religious significance of the land to Aboriginal peoples as a part of their claim for title. Instead, the only oral histories and traditions (or parts of them) that are focused on are the parts that are deemed 'history' by the Court. The Court therefore misses the richness of these traditions which encompass more than religious and historical aspects.[30] Some scholars argue that the situation for how oral histories and tradition are used and received in court can improve through education and the aid of Aboriginal interpreters.[31]

While *Delgamuukw* appears to be an attempt to address some of the inequalities in Aboriginal people's struggle to attain Aboriginal rights by having to prove continuity of pre-contact practices to the present day, it may not be going far enough in its declarations. John Borrow argues that the Court's move to allow for the submission of oral histories and traditions as evidence actually subjects Aboriginal peoples' traditions to the scrutiny of non-Aboriginal peoples, which is exceedingly problematic given the extent of cultural misunderstanding on the latter's behalf.[32] Reiter also sees shortcoming in the Court's statements, arguing similarly in regards to *Delgamuukw*, that the case, while containing "a pluralist understanding of the relationship between Aboriginal and non-Aboriginal evidence about the past",[33] also "firmly reasserts the authority of the dominant narrative and makes it clear that Aboriginal evidence must be made to fit

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30 For a description of how rich oral traditions are see: Borrows, "Listening for a Change," 11.

31 In terms of education see Andie Diane Palmer, "Not in a Form Familiar to Common Law Courts': Assessing Oral Histories in Land Claims Testimony After *Delgamuukw v. B.C*," *Alberta Law Review*. 38 (2000): 1047:

> If we are to expect oral histories of Aboriginal Peoples to be given more consideration in Canadian courts, we must develop our educational system in such a way that it becomes unreasonable for a trial judge to be unaware of the workings of such orally-based legal traditions.

For discussion on Aboriginal peoples helping to interpret oral traditions see Borrows, "Listening for a Change," 31.

32 Borrows, *Recovering Canada*, 86-92.

33 Reiter, "Fact, Narrative, and the Judicial Uses of History," 73.

within it".[34] Reiter supports his points by quoting Chief Justice Lamer who states that "the laws of evidence must be adapted in order that this type of [oral] evidence can be accommodated and *placed on an equal footing* with the types of historical evidence that courts are familiar with" and give them "due weight"[35] but also states in the case that "accommodation must be done in a manner which does not strain 'the Canadian legal and constitutional structure'".[36] Reiter determines from this that "[a]ccommodation thus becomes a process of fitting in, of translating one's claims, one's evidence and one's history into the framework of the predominant narrative".[37] Requiring Aboriginal peoples to submit their oral traditions to the structure of the more dominant group means they will not be dealt with in their own right. These issues that Reiter finds regarding accommodation have been previously picked up on by others, such as Beaman who has noted that, "[t]he language of accommodation rests on an assumption of a normal or mainstream and a benevolent dispensing of special consideration for those on the margins. It builds in inequality and maintains it".[38] In addition to this underlying discord in accommodation, Michael Lee Ross questions altogether an approach of accommodation towards Aboriginal peoples in Canada by stating that "accommodation presupposes compatibility".[39] Ross' statement points to the potential of incompatibility and raises the issue of a possible difference between the way Aboriginal peoples, the courts and larger Canadian society may be conceptualizing religion.[40] Thus the Court's decision in *Delgamuukw* is filled with both the possibility for change in terms of what can be used as evidence while also placing limitations on these allowances.

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34 Ibid., 74.
35 Ibid., 74 citing *Delgamuukw*, 82, 87.
36 *Delgamuukw*, 82. Citing paragraph 49 of *R. v. Van der Peet,* [1996] 2 S.C.R. 507.
37 Reiter, "Fact, Narrative, and the Judicial Uses of History," 73-4.
38 Beaman, *Defining Harm,* 146.
39 Ross, *First Nations Sacred Sites in Canada's Courts,* 150.
40 Also been noted by Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 136.

Language About Aboriginal Religious Beliefs

In addition to its discussion of sacred oral traditions, the text of *Delgamuukw* includes a number of indirect comments and references to Aboriginal religions. It is noteworthy that the language used to refer to such factors typically puts religion under larger umbrella terms such as: "ceremony," "tradition," or phrases such as, "practice, custom or tradition".[41] An example of this is where the term 'traditions' is used to describe many actions including religious ones:

> The *traditions* of the Gitksan and Wet'suwet'en peoples existed long before 1846 and continued thereafter. They included the right to names and titles, the use of masks and symbols in rituals, the use of ceremonial robes, and the right to occupy and control places of economic importance. The *traditions* also included the institution of the clans and the Houses in which membership descended through the mother and the feast system. They regulated marriage and relations with neighbouring societies (emphasis added).[42]

Using this type of all encompassing language may be indicative of how Aboriginal religious beliefs actually are, that is, infused into all aspects of life where, according to Ross, "cultural elements (such as history, ethics, law, and politics) are intricately interwoven with their spirituality and religion" which is also tied to land.[43] Singling out religion in order to more forcefully claim

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41 *Delgamuukw*, 80, 124, 140.

42 Ibid., 70.

43 Ross, *First Nations Sacred Sites in Canada's Courts,* 3-4. The singling out of religion in this paper could, in this light, be viewed as problematic however, given the threats to Aboriginal religions, it seems a necessary focus to determine if improvements can be made. See threat to Aboriginal religions in the following: Ross, *First Nations Sacred Sites in Canada's Courts*; Henderson, "The Struggle to Preserve Aboriginal Spiritual Teachings and Practices," 175; Marie Battiste and James [Sa'ke'j] Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge,* (Saskatoon, SK:

a religious right might yield more for Aboriginal peoples but may simply not be in line with how they conceptualize the sacred. Another reason why Aboriginal groups may not be referring to religion or their beliefs explicitly is because some of their beliefs are intended to retain a degree of concealment where some knowledge "cannot be revealed completely to outsiders, or even to the rest of the community".[44] In this regard, Ross makes a point in relation to First Nations sacred sites (which I believe can also encompass Aboriginal religious views more generally) that it is possible for Aboriginal religious beliefs to be protected without courts and larger society knowing the reasoning behind why they are considered sacred.[45] Nevertheless, the reluctance of Aboriginal peoples to bring religion to the fore of cases points to an ambivalence that results in religious arguments being peripheral or sometimes added on to cases as an afterthought resulting in them remaining under valued.[46]

Another term in *Delgamuukw* that can be understood as referring to Aboriginal religious beliefs is the term "legends".[47] The Court only uses this term in its discussion of types of Aboriginal evidence that were used in the case stating, "[s]ome of that evidence was not in a form which is familiar to common law courts, including oral histories and legends".[48] The Court can be said to be referring to Aboriginal religions in its use of the term 'legends' because such a link can be made by looking at the subsequent case of *R. v. Vautour* (*Vautour*) in relation to the Mi'kmaq. In *Vautour*, the court cites a Chief who states that, "'[o]ral traditions' encompasses the ceremonies, the stories, the songs, the dances and activities, prophesies and traditions of the Mi' kmaq people. And 'oral history' encompasses the stories of an individual in that individual's lifetime what they, have heard

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Purich Publishing Ltd, 2000), 159.

44 Battiste and Henderson, *Protecting Indigenous Knowledge and Heritage,* 141; 140. For secret knowledge in relation to First Nations sacred sites see Ross, *First Nations Sacred Sites in Canada's Courts,* 144-5.

45 Ross, *First Nations Sacred Sites in Canada's Courts,* 158.

46 For examples of this see: Ross, *First Nations Sacred Sites in Canada's Courts,* 48, 51-2.

47 *Delgamuukw*, 5.

48 Ibid., 5.

and what they have seen".[49] It seems that 'legends' would fall under oral traditions which are intimately tied to Aboriginal religious beliefs.[50] Given this connection, the Court can be understood as opening the door slightly to the idea that Aboriginal religious beliefs could help Aboriginal peoples achieve their claims.

Unfortunately, the court's potential opening to Aboriginal religious beliefs as support for Aboriginal claims is not without issue. While the Court's use of the term 'legends' may in fact be appropriate when referring to aspects of Aboriginal religions, Aboriginal communities would need to be addressed on whether this is the case. In using the term, which can be seen as indirectly referring to aspects of Aboriginal religions, the Court's language comes off as demeaning as the general understanding of the term 'legends' is that they are stories where "untruth is told for truth".[51] Use of this term therefore holds not only a demeaning characteristic in asserting falsehood but it also has an imperialistic character when used by an outsider like the Court. In this manner the Court seems to be focusing on oral histories as true, from legends as false. While such separation may be necessary for the Court to establish the weight of the evidence, it may not be doing justice to Aboriginal perspectives which do not draw the same kinds of true-false distinctions in their oral traditions.[52] By using the term 'legends' the Court may be belittling something of great religious significance and value to Aboriginal groups. A final point regarding the Court's use of the term 'legends' with its negative connotations becomes evident when its use is considered in other contexts. Would courts consider referring to parts of the Qur'an, the Tanakh, or Christian Bible as 'legends'?

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49 *R. v. Vautour*, 2010 NBPC 39, 38.

50 Scholars also describe legends as being apart of Aboriginal oral traditions see Borrows, *Recovering Canada*, 89. For how religion and beliefs are tied together see Linda Dégh, "Legend and Belief: Dialectics of a Folklore Genre," (Bloomington, IN: Indiana University Press, 2001).

51 Linda Dégh, "Legend and Belief," 46.

52 See Thomas Flanagan, *First Nations? Second Thoughts*, (Montreal: McGill-Queen's University Press, 2000), 160-161.

Lastly in this discussion on the Court's use of language surrounding Aboriginal religions is how the Court is able to make judgements on religious significance for Aboriginal peoples. In *Delgamuukw*, the Court does this in its comments on the history of the Gitksan and Wet' suwet'en nations when discussing their historical occupation of the land at stake, seen in the following excerpt:

> This occupation was mainly in or near villages on the Skeena River, the Bulkley River, where salmon, the staple of their diet, was easily obtainable. The other parts of the territory surrounding and between their villages and rivers were used for hunting and gathering for both food and ceremonial purposes. The scope of this hunting and gathering area depended largely on the availability of the required materials in the areas around the villages. Prior to the commencement of the fur trade, there was no reason to travel far from the villages for anything other than their subsistence requirements.[53]

This statement first makes the claim that "the territory surrounding and between their villages and rivers were used for hunting and gathering for both food and ceremonial purposes", both of which would likely have been very important for these First Nations at that time. The court continues on in its next sentence referring to this area. It is the Court's concluding remark of this paragraph which raises issue when it states that, "there was no reason to travel far from the villages for anything other than their subsistence requirements". Not only does the Court seem to determine none of the Aboriginal peoples' historical uses of the land surrounding the villages to be significant, but it also only refers to sustenance needs through the term "subsistence" and remains silent on the ceremonial purposes of the areas. Through language in this section the Court erases the religious significance of the areas surrounding the villages. Furthermore,

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53 *Delgamuukw*, 10.

in working through how the territory in question has been used the Court seems to be determining how much land is really "needed" for these groups. Beaman has addressed this type of focus on land in relation to Aboriginal religious traditions by stating that it "commodifies Aboriginal expressions of spirituality by quantifying the amount and value of fish, wildlife, and property involved in the various rituals and practices".[54] Such commodification is improper when dealing with Aboriginal religions as it fixes religious significance to a particular quantitative amount which may not only insult Aboriginal beliefs but may also not be how they determine value.[55] Unfortunately the act of commodifying the sacred also means the ability to regulate and restrict it.

Implications of Discourse Surrounding Title

Land, as a commodity, is regulated and this has significant implications for First Nations peoples whose religious views are often connected with land. When courts enforce land regulations they implicitly regulate on Aboriginal religions. An example of this in *Delgamuukw* is when Chief Justice Lamer states that, "aboriginal title cannot be put to such uses as may be irreconcilable with the nature of the occupation of that land and the relationship that the particular group has had with the land which together have given rise to aboriginal title in the first place".[56] Lamer then goes on to give examples of how this is

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54 Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 144.

55 For a brief description of how some Aboriginal peoples view land 'ownership' for example see: Rodney Bobiwash, "The Sacred and the Profane: Indigenous Lands and State Policy," in *Sacred Lands: Aboriginal World Views, Claims, and Conflict,* eds. Jill Oakes, Rick Riewe, Kathi Kinew, and Elaine Maloney. (Edmonton: Canadian Circumpolar Institute, 1998), 207; and Leroy Little Bear, "Aboriginal Relationships to the Land and Resources," in *Sacred Lands: Aboriginal World Views, Claims, and Conflict,* eds. Jill Oakes, Rick Riewe, Kathi Kinew, and Elaine Maloney. (Edmonton: Canadian Circumpolar Institute, 1998), 18-9.

56 *Delgamuukw*, 128.

relevant to Aboriginal religions, stating that, "if a group claims a special bond with the land because of its ceremonial or cultural significance, it may not use the land in such a way as to destroy that relationship (e.g., by developing it in such a way that the bond is destroyed, perhaps by turning it into a parking lot)".[57] Together these statements on Aboriginal title can be argued to restrict Aboriginal religious views regarding the land or particular geographies within the title area. Accordingly, Aboriginal peoples are forbidden from using title land in a way that is inconsistent with the beliefs that were used to establish title. Although this seems to indicate that it is possible for Aboriginal religious views towards the earth to be used to establish title, it nevertheless restricts their land use afterwards. This results in a stagnant view of Aboriginal religious beliefs by the Court; a view that defines Aboriginal land use in relation to their religious beliefs at a particular time, thus not allowing for change. Furthermore, this stagnant view of Aboriginal religious beliefs towards the earth would be amplified if religion was used as evidence to establish title or an Aboriginal right.[58] Regulation of First Nations' lands through regulating title in this manner places unwarranted restrictions on how Aboriginal religions are legally viewed and how they are expected to act.

While the regulation of title has implications for Aboriginal religions, the infringement of title may have more obvious detrimental outcomes for them. In stating a list of potential reasons why Aboriginal title could be overruled by courts,[59] Chief Justice Lamer in *Delgamuukw* completely ignores

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57 Ibid.

58 Borrows, "Living Law on a Living Earth," 180.

59 Lamer's list of some of the reasons why courts can overrule Aboriginal title is listed at *Delgamuukw*, 165:

> [T]he development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kinds of objectives that are consistent with this purpose and, in principle, can justify the infringement of aboriginal title.

the religious damages that would ensue for Aboriginal peoples if their land was altered or taken away. Borrows states that these types of activities leading to the harming of Aboriginal religious beliefs could easily occur (and do) and would not only threaten their beliefs but he also views it as a continuation of the colonialist project towards Aboriginal peoples.[60] Regarding this subject of title infringement, the Court goes on to state that the Crown must always consult with Aboriginal peoples before infringing on their title rights and that,

> [T]his consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation.[61]

These statements by the Court are not hopeful for Aboriginal peoples who seek protection for their sacred traditions as it is only the case that "full consent" *may* be required (emphasis added). Furthermore, although through consultations it is intended "that aboriginal interests be placed first" the reality is that "the fiduciary duty does not demand that aboriginal rights always be given priority".[62] These statements seem to contradict one another with the likely outcome that the non-Aboriginal Canadian's "rights" would be the ones given priority. Such an obvious ability to override Aboriginal title rights and allow for infringement of their religious freedom reveals the double standard that Aboriginal peoples face in this area which leads them to receive less protection of their sacred sites than other religions in Canada. This stems partially from a difference in conceptions of the sacred whereby Aboriginal peoples focus on land and geography rather than buildings or statues as Christians

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60 Borrows, "Living Law on a Living Earth," 183.
61 *Delgamuukw*, 168.
62 Ibid., 162.

primarily do.[63] Following an analysis of how Aboriginal title is discussed in *Delgamuukw*, I am in agreement with Gordon Christie who determines that,

> [T]he complete picture of Aboriginal title offered in *Delgamuukw*, one which includes the Court's discussion on the power of the Crown to infringe enjoyment to this title, rests on underpinnings which make the entire picture conceptually unstable and generally unacceptable (the Court's creation, Aboriginal title in Canadian law, is questionable both on moral and doctrinal grounds, and unacceptable in the eyes of Aboriginal peoples interested in preserving their spiritual connections to lands they conceive of as placed in their hands by the Creator).[64]

Given the amount of control that the Crown will retain in relation to Aboriginal title land, it can be concluded that title itself is insufficient in terms of what Aboriginal peoples are really after in terms of land. So long as Aboriginal peoples do not have complete control over their land, or it is encroached upon, their religious traditions will remain threatened.

The Court in *Delgamuukw* suggests a remedy for infringement of Aboriginal title, stating, "fair compensation will ordinarily be required when aboriginal title is infringed".[65] The Court however does not elaborate about what such compensation would entail only stating that "it is best that we leave those difficult questions to another day".[66] Throughout the case there is no discussion of compensation or of harm (such as mental

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63 Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," 144-5. Here Beaman discusses the implications of the Canadian Christian majority on Aboriginal religions. Also, for issues in dealing with different views of the sacred see: R.C. Gordon-McCutchan, "The Battle for Blue Lake: A Struggle for Indian Religious Rights," *Journal of Church & State*. 33 (1991): 790.

64 Christie, "*Delgamuukw* and the Protection of Aboriginal Land Interests.," 115.

65 *Delgamuukw*, 169.

66 Ibid.

distress) or “irreparable harm” in relation to religion[67] caused by a desacralisation of or prohibiting access to Aboriginal sacred sites. This demonstrates little understanding of the seriousness of title infringements and destruction/loss of sacred lands for Aboriginal peoples. It also reveals the reluctance of the Court to wade into the complex discussion of how to compensate or if it is possible to compensate for lost land when it has religious significance.

Conclusion

An analysis of the *Delgamuukw* case illustrates that, although there is an underlying dialogue about Aboriginal religions (which can possibly be used in establishing legal claims), yet much is left to be done in terms of freedom of religion for Aboriginal religious traditions in Canada. The most difficult challenge for courts appears to be the ability to capture and adequately deal with the way in which Aboriginal peoples conceptualize religion which is currently contributing to the continued oppression of their religious traditions. A greater focus on developing the legal system's understanding of Aboriginal peoples, their traditions, religions, cultures and perspectives is needed. However, progress in understanding about Aboriginal peoples also needs to occur outside the courts as a court's understanding is often influenced by 'common sense' held in society.[68] For now, a place to start is in uncovering where there are misunderstandings and misinterpretations between the courts and Aboriginal peoples in an effort to reveal points where rectifications can be made. Finally, the hurdles that must be overcome by the courts are not merely deeply embedded views in legal practice but potentially some of the conceptual foundations upon which the Canadian legal system is built, which have rendered the system unable to adequately deal with Aboriginal religions and even be harmful to them.

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67 Beaman, *Defining Harm,* 89.

68 For a discussion on on Canadian courts appeal to 'common sense' see Lori G. Beaman, *Defining Harm*, 13.

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History as the Rise Of a Modern Jewish Identity

Paul L. Gareau*
University of Ottawa

Abstract: History has always held an important place in the forming, inflection and reflection of Jewish identity. The emancipation movement and subsequent Jewish enlightenment in nineteenth century Germany brought about a major crisis in Jewish identity regarding issues around integration to modern German society. From this emerged both an intellectual and a religious movement that sought different ways to negotiate Judaism within a Christian hegemony. But these movements were in conflict with one another, each vying to support the correct means of social participation and integration without assimilation. History, more precisely historiography, became the central element of delineating one form of modern Jewish identity upon which this conflict was waged. In this article, I will outline the important role historiography took in the rise of the scientific study of Judaism or *Wissenschaft des Judentums* in modern Germany, the emergence of the Jewish Reform movement and its impact on Jewish socio-religious identity, and conclude by delineating the second-generation of *Wissenschaft des Judentums* and its negation of the Reform movement. This essay underscores the connections between historiography and identity.

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Reform Judaism developed out of the nineteenth century emancipation movement in Germany that allowed Jews, and

other ethnic minorities, to participate openly in civil society as citizens. Within this inclusivist social thrust, the German Jewish community were offered new opportunities to engage modes of cultural production—i.e. academia, art, governance, economics and business. This, along with new secular-modernist definitions of citizenship and an identification with the nation-state, developed a need to reinterpret Judaism from its conceptions of the past to fit modern views. However, Jewish emancipation came with the price of assimilation to Christian society. Jewish scholars and liberal reformers aimed to negotiate Jewish identity within this modern social context without succumbing to assimilation. By mid-century, this caused an irreparable rift between liberal Jewish reformers and conservative Jewish scholars. History and historiography became the rhetorical tool in this polemic between social engagement and ethnic differentiation. I wish to discuss the relevancy and impact of nineteenth century Jewish historiography on the Jewish Reform and counter-reform movements, and the forging of a modern Jewish identity.

This thesis will be argued in three major sections. The first section will engage the definition, historical context and experience of Jewish emancipation and the Jewish Enlightenment within a German context. In so doing, we will understand the emergence of *Wissenschaft des Judentums* or the scientific study of Judaism. The second section will investigate the burgeoning Reform movement by underscoring its relationship to Wissenschaft and modernity, its founders, and its core values and concerns. In order to gain the clearest view of these developments, I will explore the work and worldview of Abraham Geiger, considered the progenitor of the modern Jewish Reform movement. This will lead to the third and final section that questions the impact the Reform movement had on Jewish historiography, or the writing of Jewish history, at the height of the nineteenth century. This discussion is most concerned with the place of historiography in the counter-movement against Jewish Reform. I will discuss the second generation of Wissenschaft scholars focusing on the historian Heinrich Graetz. I will outline his conception of history and delineate how he used

historiography to counter Geiger's Reform movement and make epistemological innovations. This, ultimately, will explain how this very influential religious movement impacted the writing of Jewish history and, moreover, the forging of a modern Jewish identity.

Jewish Enlightenment and Emancipation

Jewish emancipation and the subsequent enlightenment came out of a general paradigm shift that affected most Western European nations in the nineteenth century. These nations were dealing with issues surrounding the emergence of the nation-state and the rise of secular, post-Enlightenment ideologies. Meyer (2001) describes this phenomenon as a "world that developed gradually and differentially in the West over the last three centuries, characterized especially by unifying theories and technological advance, cultural innovation, and reliance upon human reason" (18). This development disrupted traditional understandings of society as a whole—from modes of governance to the rights of the individual as a social agent. In Germany, the effect was a humanist thrust towards the integration of its ethnic minorities, such as Gypsies and Huguenots (Panayi, 2000), in a broad nationalistic project of social integration. For German Jews, this was the opening of the ghetto and an unprecedented opportunity to escape the brutality of a history of social marginalization. However, this humanist project was only a partial integration of Jews into the greater Christian society.

In Germany, emancipation was understood to be a greater social inclusion of ethnic minorities, so long as they acted the part of modern Christian Germans. The majority Christian population wanted a partial emancipation of ethnic and religious minorities based on "occupation, education and capital, thus sustaining the mercantilist-absolutist policy of making horizontal (urban-rural) and vertical (socio-economic) differences into political-legal ones" (Sorkin, 1990: 20). This classist prerogative nevertheless created a secularist, somewhat anti-Judaic undercurrent dressed as liberalism that asserted "only the

dissolution of Judaism would make emancipation feasible. Moreover, the naysayers sometimes turned the language of emancipation on its head, asserting that the Jews must first 'emancipate' themselves from Judaism" (20). Though there was a wide variance of opinion amongst German Christians with regards to the Jews themselves (i.e. from "Friends" to anti-Semites), this conception of modern identity as a matter of assimilation to the German Christian hegemony remained a dominant feature of the German worldview.

Nevertheless, emancipated Jews could not forsake the opportunity of greater social and civic engagement vis-à-vis these assimilation policies. Their efforts gave rise to the maskilim. The maskilim were a group of scholarly, liberal Jewish reformers who sought new ways in which Jews could distance themselves from the languages and worldview of the ancient rabbinate and move towards modern scientific approaches of interpreting the world in what they understood to be a more rational way. Sorkin (1990) notes,

> The bulk of such intellectuals, as well as of the urban middle-classes, understood assimilation to mean the transformation of a corporate community subject to numerous disabilities into a religious community whose members enjoyed equal rights with non-Jews. Such a community would be distinguished by its Judaism alone, which was now to be divested of its corporate trappings in order to fit its members' new situation (21).

Emancipation became less the view that Judaism was to be dissolved, but rather understood as a renewal process where Judaism had to adapt or modernize in order to exist in the modern period.

The maskilim negotiated and interpreted non-Jewish, Western epistemology as part of their efforts of intellectual and social engagement. This was no small task. Schwarcz outlines three elements that describe the difficulties German Jews faced when engaging this liberal, intellectual paradigm. The first refers to the fact that the maskilim took a conscious step into Christian

society, while keeping its own history and distinct identity. But a major concern of the maskilim was the misalignment between Jewish identity and the broader Enlightenment project related to "the partnership between Christianity and Western philosophical consciousness" (1971: 7). Effectively, the second element relates to the Christian undercurrents of Kantian philosophy. Schwarcz notes how Kantian philosophy and the modern Enlightenment project are but an extension of the Reformed Christian movement, especially with regards to major Kantian notions such as freedom, ethics, and law as guiding principles similar to Reformed Christian interpretations of religious justifications acting as guiding principles (i.e. *sola fides* as ultimate freedom). As such, religious Jews could not subscribe to the inherent freedoms implied through Kantian philosophy, the basic premise of the Enlightenment. The third and most important element is the fact that German Christian culture, at "its most mature philosophical manifestations" (8), ultimately relegated Judaism to the annals of an arcane and outmoded pre-history that could not fit within a modern cultural and philosophical framework. Schwarcz aptly states: "[A] historiosophical conception which traced general culture from the association of Hellenism and Christianity had no difficulty in squeezing out of it the spiritual reality of Judaism" (8). Ultimately, emancipated Jews faced a tremendous struggle for the recognition needed to match the nationalistic ambitions of the Enlightenment project.

Against this massive hegemon, early scholarly reformers sought a way to convince the rest of the modern world that they, as Jews, were capable and worthy of cultural and scholarly inclusion. This could only be done via a scientific study of Judaism or *Wissenschaft des Judentums*. Schorsch notes that Wissenschaft ideology consisted of two fundamental components that inadvertently caused an irreparable rift in the Jewish community. The first has to do with a normative value of Jewish historicity or the deliberate periodization of Jewish history. In relation to the historical/philosophical concern with time and how it drew consternation, debate and existential problems between the pre- and post-Emancipation definitions of what is Jewish, "all [Wissenschaft scholars] were part of an intellectual

revolution which no longer approached reality as a category of changeless being. The modern mind perceived existence as a function of becoming" (1994: 179). The second component was concerned with critical engagement, and the freeing of the once restricted access to knowledge and cultural reality within Judaism. This concerned the eviction of dogmatic assertions that gave Wissenschaft scholars the freedom to critically engage the 'claims and conclusions' of a longstanding rabbinical hegemony. With the emergence of the Wissenschaft movement, Judaism took a turn towards completely asserting a historical primacy in relation to Jewish identity. "History is no longer a handmaiden of dubious repute to be tolerated occasionally and with embarrassment. She confidently pushes her way to the very centre and brazenly demands her due. For the first time it is not history that must prove its utility to Judaism, but Judaism that must prove its validity to history, by revealing and justifying itself historically" (Yerushalmi, 1982: 84). History thus became the icon of modern Jewish scholarship.

Schorsh (1994) also points to a third component of Wissenschaft ideology that is described as being a "quantum jump in the conception of Jewish sources available for a study of the past" (180). Though this is mainly a methodological innovation, Schorsch explains that it underscored major attitudinal differences between the Ashkenazic yeshiva (i.e. religious schools) and the works of the maskilim who were now engaged in a critical understanding of history using multiple sources beyond the internal documents of the Jewish community. As a result, the scientific or, more precisely, the systematic study of the Jewish past became a political ploy to convince traditional European Jews to engage the modern discourse. Meyer (2001) notes, "The study of history, as some of the more radical German maskilim saw it, would liberate their fellow Jews, especially the benighted ones in Poland, from the shackles of a tradition that they had never before examined critically. They would come to realize that their plight was of their making" (48). Though at the heart of Wissenschaft lay a polemic between traditional Ashkenazic rabbinism and modern German Jewish scholarly scientism in relation to the differences in the conception of

Judaism, there were difficulties, however, in transcribing modern ideals into traditional Judaism especially with regards to its religious and liturgical forms that seemed antiquated and somewhat outdated. Meyer underscores that "Judaism might be modern in its fundamental values, but in its externals it was foreign to the culture of modernity" (212). This social and intellectual environment under such conditions in Germany was ripe for religious reform.

Convergence of the Reform and Wissenschaft Movements

The Reform movement in nineteenth century Germany had an intimate relationship with the rise of *Wissenschaft des Judentums*, which was itself a reaction to the shifting identities of modern Jews. Modern Jewish identity has three distinguishing features: the rise of historical consciousness, the secularization of Jewish identity as promoted by the maskilim, and a re-evaluation of traditional authority structures. One of the major impediments to full emancipation was the reluctance of the German state to give full civil access to German Jews. According to Schorsch, this was an assault on the halakhic primacy of Judaism as an impediment to full integration—in other words, a constant projection of 'Otherness' on Jewish people. One manner in which emancipated Jews took to initiating this social rapprochement was by downplaying the spiritual and religious importance of the Talmud, by claiming it to be an exegetical tool for the early rabbinate that has since lost its meaning due to its historical specificity. Such a perspective has as its aim "to restore equal authority in religious matters to the leaders of every generation, without debunking the Talmud or espousing a return to some form of pristine Mosaism" (Schorsch, 1990: 83). This type of critical understanding unquestioningly deflated the power of traditional rabbinism and ushered Judaism into the modern world.

Questions over rabbinical authority, therefore, came to play an essential role in provoking contention between liberal and traditional Jews ultimately affecting the role of halakhah and

the vernacularization of liturgy into German. This thrust towards modernization was a cue to redefine traditional rabbinical roles—i.e. from being a judiciary authority to a liturgical, pastoral and pedagogical community leader, as well as a shift in priority and redefinition of educational backgrounds for rabbis. The rabbinate became the symbolic battleground in circumventing new means of shaping modern Jewish identity. Schorsch (1994) describes how the pre-modern rabbinate, due to the emerging modern Jewish Emancipation, had lost political and cultural dominance over a judiciary role that encompassed defining halakhah and morality as well as divorce and inheritance claims. This shift was led by a generation of scholarly rabbis who matriculated within secular institutions, whose roles were de-emphasized around civil concerns and shifted in terms of a vernacularization of liturgy and community pedagogy. Therefore, within the context of modern nation-states with new forms of governance and new levels of civic engagement, modern Reform rabbis took a prescribed role resembling Christian pastors rather than traditional Jewish rabbis. Abraham Geiger, one such rabbi, became the leading proponent of the Reform movement in Judaism.

Abraham Geiger (1810-1874) changed the contours and definitions of Judaism, not from within an academic institution, but from behind a pulpit as a modern, liberal rabbi. Under different circumstance Geiger himself might have been an historian, even as a rabbi his main prerogative was to "make history." In contrast to the maskilim and their secularization campaign, Geiger was theologizing modern Judaism. According to Geiger, the task of the Jewish theologian was outlined as a historical endeavour: like the maskilim, Jewish history must be held to the rigors of a modern scientific approach, but this must be done strictly from a Jewish perspective that cannot be divorced from its religious character. This was very different from the early nineteenth century syncretistic adaptations of Western philosophy into a Jewish framework. Geiger was influenced by Johann Gottfried Herder's historical philosophy. Herder was a "pre-romantic thinker…not interested in history in the sense of political developments…but in order to discover the

evolution of the human spirit" (Meyer, 1971: 27). Geiger too sought to "characterize an era of the Jewish past as a particular manifestation of the Jewish spirit and to advance from bibliography to intellectual history" (27). This intellectualist, universalistic approach to understanding the Jewish spirit became the centre of Geiger's worldview affecting both his scholarship and the subsequent religious reforms of Judaism.

Geiger founded a scholarly journal of Jewish theology with a nine year circulation that "irregularly coincided with a period of theological turbulence in Geiger's own thinking in which he often bordered on despair over worth, viability, and future of Judaism" (Schorsch, 1994: 186). Geiger's main concern reflected this somewhat despairing worldview, "namely, the validity of the exegetical base which supports the sprawling superstructure of rabbinic Judaism" (187). Geiger illuminated a crucial flaw of early rabbis who read their ideas into the biblical scriptures in a misrepresented Talmudic hermeneutic of subjectivity, subsequently taken dogmatically as divine revelation. He instead opted to emphasize historical periodization in which "he consistently aimed at penetrating to the essential character of a period and to the progress of the Jewish spirit from age to age" (Meyer, 1971: 30). Geiger wrote Urschrift in 1857 (Geiger & Wiener, 1962) that argued, "the arbitrary biblical exegesis of the Pharisees and their descendants was precisely the innovative instrument which enabled them to challenge the tradition-bound of the priestly Sadducean aristocracy with a democratic religious program" (Schorsch, 1994: 187). Using historiography and literary criticism, Geiger was able to invest into the modern Reform movement a tremendous historical precedent. He now viewed the Reform movement's contemporary values, concerns for religious and ideological restructuring, and historical change was something the early rabbinate also upheld. This slight change in outlook redirected the Reform worldview from that of the mostly secularist maskilim to one which could engage in the ancient Talmudic and Midrashic (i.e. exegetical) discourses, and adjust and reinterpret halakhah to fit a modern religious paradigm.

Prior to the paradigm shift occurring in Geiger's

Urschrift, many moderate and conservative proponents of the *Wissenschaft des Judentums* movement used historical methods to engage in a dialectical negation of reformed views in order "to accentuate the virtues, vitality, and achievements of traditional Judaism, to moderate the pace of change, and to stem the tide of defections. The same medium could be made to yield different messages" (Schorsh, 1994: 187). Though there had been a debate within the Wissenschaft movement oscillating between liberal/reform and moderate/conservative sides, by mid-century Wissenschaft was clearly outside of the spheres of the Jewish Reform movement and within a scholarly context. By then the movement was being driven by moderate/conservative academics, such as Zunz, Sachs, Luzzatto and Rapoport, and especially Hirshfeld and Bär Fassel. Their strategy to counter the Reform movement inducted into modern Jewish thought the reconceptualization of traditional Jewish religio-cultural elements, such as the Jewish legal system, into the "legal and conceptual categories of the Western world" (189). Though this discussion of the value of traditional formulations of halakhah (or the primacy of traditional halakhah over a restructuring of halakhah in face of the great changes of modernity) may appear by contemporary standards to belong in the domain of religion, the work of these scholars was undertaken in a scientific idiom; they sought to find a median between traditional Judaism and the modern world using critical scientific methods. Geiger had a great respect for Wissenschaft, understanding it to be complimentary to his work in the Reform movement. Yet, many of his contemporaries believed he was an antagonist, subverting both religious life and *Wissenschaft des Judentums*.

Jewish historiography and the second-generation Wissenschaft scholars

Of the many scholars of the mid-century *Wissenschaft des Judentums* movement, Heinrich Graetz (1817-1891) was a dominant factor of nineteenth century Jewish historiography. Graetz's academic career and scholarship was formed in

antipathy towards the Reform movement. He contributed to this counter-discourse exclusively using *Wissenschaft des Judentums* in order to devalue the claims of Reform to historical relevancy. Schorsch (1994) remarks, "The key to understanding Graetz's philosophy of Jewish history lies in the nexus between this early anti-Reform bias and the scholarly positions he subsequently adopted. Ideology governed his reading of Jewish history no less then it governed Geiger's" (280). As a young man, Graetz grew weary of the "narrow Talmudism" of traditional Judaism and moved away from his first mentor Samson Raphael Hirsch (i.e. an early proponent of the Conservative Judaism movement) to the more Positivist and historically minded Zacharias Frankel (Meyer, 1974). Taking a moderate approach, Graetz expounded a counter-argument to Geiger's overall treatment of the development of the Mishnah's objectivity and the hermeneutical failure of the Talmud. As such, Graetz opposed Geiger's exegetical arguments by stating that these arguments were only a cover for the contemporary "anti-halakhic program" of the Reform movement. This gained Graetz the recognition that he wanted and served as a catalyst in his professional life.

Graetz is considered the first historian of the Wissenschaft scholars "to integrate the external and internal history of ancient and medieval Jewry into a single work of scholarship" (Schorsch, 1994: 192). At that time, many of the contemporary Wissenschaft scholars preferred to study the internal histories of the Jews, holding to the notion that the external history was one of relentless persecution. All of these scholars exclusively used Jewish sources. Similar to the major innovation of Wissenschaft ideology in using multiple sources, Graetz's major breakthrough was also methodological: placing the profane history of the Jewish people and the sacred history of Judaism within the same narrative. Schorsch states, "Neither could be understood without systematic reference to the other. […] In sum, the combination of structural innovation, basic research, and pulsating narrative made of Graetz's didactic scholarship the most effective vehicle for reinvigorating the waning identity of a disintegrating community with the power of historical memory" (193).

Much like his counterparts in the Wissenschaft movement, Graetz took to creating a historical treatment of Jewish history that would refute the careful views of the Reform movement using their own methods against them. Graetz did so by staying grounded in German philosophical idealism with an additional understanding that a totality of Jewish history was the only way in which to understand modern Judaism. This was his first critique of the Reform movement as only covering the history that they needed and glossing over the rest. Schorsch (1994) notes, "if an idea had forged its way into reality and stamped its imprint upon an age, then it must represent a genuine dimension of Judaism's essence. In light of the totality of Jewish history and in contrast to Reform ideologues, Graetz proposed a multifaceted essence of Judaism whose different dimensions shaped different periods of Jewish history" (283). This ideal around the totality of Jewish history would become the methodological trademark that characterized his work.

In his nine-volume treatment of Jewish history in its entirety (Graetz, Löwy and Bloch, 1891), Graetz portrayed rabbis of the Mishnah and the Talmud as heroes or characters to whom modern Jews could relate. Though this was based in a thorough reading of the sources and careful consideration of the data, Graetz's historiographies notably fell in line with the conventions of modern German historiography, which were also engaged in a process of finding modern national unifications through the commonality of history. "Wissenschaft became a vehicle for the recovery of self-respect and a force for the preservation of the Jewish people. […] The historian had the sacred task to fire his people with a love for the drama and glory of its past in order to strengthen its sense of unity and its resolve to survive" (Schorsch, 1994: 288). In his historiographies, Graetz had two guiding characteristics. The first was a relentless belief in the historical continuity of the Jewish community. He rebuked the Christian denial of Jewish history past the Second Temple, seeking instead a justification to Jewish social representation through a continued history. The second characteristic revolves around Graetz's emotional engagement to the subject of Jewish history. "When the Jews endured defeat and persecution, he

shared the agony of their fate. […] Not surprisingly, Graetz also harbored an ill-concealed hatred for the enemies of his people" (289). Not only was he engaged in overtly subjective narrative, his historiographies were replete with the characterization of these imported values. Graetz was a product of his time as a nationalist historian, striving to make the Jewish people contending participants in the German nation-building project. Ultimately, Graetz as a Jewish historian was engaging Jewish history searching for the common Jewish spirit.

Historiography Informing Jewish Identity

Graetz's nationalistic fervour, however, would eventually send him into a place he did not expect. He would assert two important features of the Reform platform. After having been silent on the issue of the "universal Jewish mission", which refers to the soteriological value of Judaism in the diaspora, Graetz in 1853 finally spoke of his view that incidentally fell under the Reform understanding: "the redemption of mankind hinged upon the dissemination by the Jews of their unique theological and ethical systems. […] A consciousness of their mission and a confidence in their ultimate success served to sustain the Jews through centuries of frustrations" (Schorsch, 1994: 291). Ultimately, Graetz agreed with Geiger that "Judaism's right to survive could only be established at the expense of Christianity" (291). The second feature was an emphasis on the role of persecution for the history of Jews. Graetz highlighted the emotionally charged and lachrymose history of Jewish persecution underlining the importance of Jewish suffering and martyrdom as the justification for Jewish faith and its institutions. Both Graetz and Geiger venerated the diasporic qualities of Jewish identity, which reflected their German Jewish experience. And finally, both sought to find the common spirit of Judaism that traversed the eras of its long history.

Though Geiger and Graetz engaged the subject of Judaism in the modern world differently as a result of their

conflicting ideologies, they both reached the same conclusion that spoke of the Jewish spirit alive in the perpetuation and survival of Judaism throughout the ages as distinctly Jewish. Their competing views stood atop a shared worldview—that Judaism is relevant and important as evidenced by its uncompromising and rich history. For Geiger and Graetz and their contemporaries, that history affirmed and asserted the flexibility of Judaism to take its place in the social and cultural complexes of nineteenth century modernity. Against the cultural currents of a modern Germany that said otherwise, these historians understood the importance of a Jewish history as interrogating and informing a modern Jewish identity. Historiography, then, became not just the writing of history, but also a means of formulating and establishing different Jewish identities and the differences between these Jewish identities.

Reform Judaism, along with the Wissenschaft movement, came to play a critical role for modern Jewish historiography. Graetz's historiographies served as a catalyst for a nationalistic understanding of Judaism as well as a watershed moment for the contemporary historical study of Judaism. The different polemics between Enlightenment ideals and ethnic exclusion, socio-religious adaptation and cultural continuity culminated in the emergence, animosity and similarities between the Jewish Reform and Wissenschaft movements, which influenced the shifting of Jewish identity in a modern Germany. Therefore, under these terms, we can appreciate how the study of history was the impetus that gave rise to a modern Jewish identity.

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The Unbearable Lightness of Being Nothing: *Einmal ist Keinmal* in Otto And Nietzsche

Renate Anna Kandler
University of Ottawa

Abstract: Using void as a starting point this article provides an Ottonian and Nietzschian reading of 'nothingness.' Nietzsche's *Dionysian Worldview* describes the path laid out by "saint and tragic artist" while Otto's *Das Heilege* provides the parallel path of mystic and artist. Both cases lead to a discourse on emptiness and no-thingness. These categorical types (mystic/saint and artist) are localized through mystic St. Faustina Kowalska and minimalist sculptor Fred Sandback. Where Faustina *interiorizes* an abyss of nothingness, Sandback *exteriorizes* nothingness in his artwork. Her hidden, spiritualized void is paralleled in his exposed aesthetic display. An analysis of each reveals the ways in which Nietzsche and Otto engage with nothingness, respectively affirming and denying the sentiment that *einmal ist keinmal* (once is not enough).

Nothing

Nothing is no-thing; it is the void of non-existence. Encountering this void stirs an awareness of our temporal, transient nature or human condition. In an Ottonian Christian existentialism this tension drives us towards faith, God and ultimately resolution through eternal salvation. In a Nietzschian atheistic existentialism our mortality is an inner contradiction incapable of finding transcendent resolution. Otto and Nietzsche offer variant responses to the void, as do Christians and atheists respectively.

The former encourages theistic faith unto salvation, while the latter leads us into tragic clarity and absurdity. These alternatives can be explored using the phrase *Einmal ist keinmal.* Translated, it means that "once is not enough" often taken to mean that once is not enough in life. We cannot find satisfaction in the absurd limitations of brevity. Our transiency renders our existence tragic and pointless in Nietzsche, and a condition for salvation in Otto.

In addressing nothingness Nietzsche has laid out the path of "saint and tragic artist" (1997: 91). He uses Apollonian and Dionysian aesthetics to engage with their no-thingness. For Nietzsche art can always be understood in the context of Apollonian form and Dionysian formlessness; combined their aesthetic justifies the very existence of the world (1967: 5). Otto mirrors a *mystic* and artist, understanding no-thing in the context of the numinous. The numinous is holiness, void of all rational and moral character. It is received in consciousness as mysterious and tremendous, drawing one towards salvation. These categorical figures of mystic/saint and artist are localized in Polish mystic St. Faustina Kowalska and American minimalist sculpture Fred Sandback. This article begins with the void of St. Faustina and Fred Sandback, before moving on to an Ottonian and Nietzschian analysis, finally ending with an overall opposing dynamism.

Saint Faustina: Interior No-thing

Apophatic Christian mysticism is steeped in emptiness, nothingness and void. These conditions produce psychological states of absolute negation where the mind is emptied of objects, images, distinctions and any sense of self. This process culminates in 'pure consciousness' or 'undifferentiated reality' for the mystic (Encyclopedia Britannica, 2011). Contemporary mysticism scholar Bernard McGinn (2008: 75-76) suggests three apophatic stages: negation of language, annihilation of the created will and abandonment by God. St. Faustina experienced all three cumulative stages, finding deeper levels of negation in each.

At great depth language collapses such that mystics must creatively convey their experiences. This leads to paradoxical, analogous or metaphorical descriptions. Faustina explains that she was "swallowed up as the heat of the sun swallows up a drop of dew" and then alternately "drown[ed] like a single grain of sand in a bottomless ocean" of God (2003: 334). More than embodying a drop of dew or grain of sand, Faustina is inviting us to imagine the vast impossibility of her experiences. This early stage of negation deals exclusively with language, while still preserving multifarious forms of creative expression.

At the next level, mystics engage with nothingness through annihilation of self. This is not a rapturous union with God; this is the searing immolation of self. Meister Eckhart has called this a state of *entwerden* or unbecoming (Otto, 1923: 114). This unbecoming empties the individual of their very existence such that they have *become* void. Faustina describes herself as an "abyss of nothingness" such that she could "return to nothingness in a moment" (2003: 256). She remains in the abyss during the third and final stage of negation. Abandonment by God has commonly been experienced during the "dark night of the soul." Although the experiences vary, the same intense feelings of abandonment are clear. Faustina poetically articulates her own trials of abandonment as a *horrible night*. She was overwhelmed by complete abandonment by God and was left defenseless against feelings of extreme hopelessness. Faustina had always sought out comfort from God; without him she had no consolation. She describes herself as falling "deeper and deeper from darkness to darkness," even approaching a state where the soul "dies and withers" (101). However it is a "death without death, that is to say, it cannot die" (101). Despite the intensity of suffering and longing for death, there is no relief to be had. God does not immediately return, and does not comfort her. This most torturous stage typically leads to closer union with God, as it eventually did in Faustina. These three stages of negation illuminate the trials of St. Faustina. The second stage is most pertinent as she loses herself in an abyss of darkness and nothingness. Faustina's interior struggles are physically manifest in the work of Sandback who articulates nothingness through art.

Fred Sandback: Exterior No-thing

Minimalism is an expression of the fundamental features of art. Aside from its scant material presence, it can be recognized by its sharp lines, geometric shapes, repetition, neutrality and use of industrial mediums. Art critic Rosalind Krauss defines minimalism as "a reduction of art to the point of emptiness" where "minimalist sculptors, in both their choice of materials and their method of assembling them . . . [are] intent to deny the interiority of sculpted form, or at least repudiate the interior of forms as a source of their significance" (1993: 262). The inside of artwork, previously thought to conceal secrets, has been thrown open. Not a thing is withheld, all is on display. The transparent nature of the art is made evident in the clarity of its exposed form. Minimalism is brought to a startling level of no-thingness in the work of Fred Sandback.

Sandback studied philosophy and then sculpture at Yale University with minimalist artists Robert Morris and Donald Judd. During this time he absorbed minimalist trends and set about making artwork out of—and about—nothing. The first sculpture Sandback attempted was a rectangle made of string and wire which alluded to an empty rectangular solid. He explains "It opened up a lot of possibilities . . . I could assert a certain place or volume in its full materiality without occupying and obscuring it" (1986: 12). Those artistic possibilities were realized in two decades of work. Their sheer nothingness horrified and intrigued his audience by both existing and simultaneously not existing.

Using lengths of colored yarn, tautly pulled from ceiling to floor, Sandback created striking geometric configurations in empty space. He materialized empty planes and doorways, each alluding to forms that did not quite exist, relying instead on patrons' imaginations. He stressed the 'inherent transiency' of his art, which is made and re-made as it is assembled and dissembled. In horrifying clarity, nothingness was made palpable. Mark Taylor remarked of Sandback's work, "While lines frame planes, which are nothing, planes in turn, interact without intersecting to create volumes out of voids" and

"repeatedly returns to this question of nothingness" (1999: 207-210). This was intentional. Sandback confessed to wanting to create art without an inside (1986: 12-19). More than denying the interiority of his work he wanted to deny its very *materiality* and stretch its tenuous existence. He explains, "it allow[s] me to play with something both existing and not existing at the same time" (12-19). The existence of his art was balanced, as it were, on the edge of a string.

Otto's Numinous as mysterium tremendum in a Mystic and Artist

Rudolf Otto's *numinous* connects the nothingness of the mystic and artist. The numinous is holiness void of all rational and moral factors and is characterized by the diametric concept *mysterium tremendum*. The *mysterium* is perceived as *wholly other* from anything we have encountered and attractive, compelling, fascinating. The *tremendum* is awful, overpowering, uncanny, and urgent (Dawson, 1989: 307). These two terms exist in a dynamic tension, as simultaneously attracting and repelling for the believer. Aspects of the *tremendum* have been uniquely expressed in Goethe and Nietzsche. Otto remarks of Goethe's *ungeheurer* that it is monstrously huge and "too overwhelming for our space perception to register" or alternately it is the "uncanny, fearful, incomprehensible" (1923: 40). It is also Nietzsche's *unheimliche*, the unknown, unfamiliar and perhaps the concealed. Through Otto these varied conceptions come together as the numinous, expanded through the mystic and artist below.

Mystic

Bernard McGinn's three stages of mystic negation, exemplified in St. Faustina, resonate with Otto's numinous. Each is considered in turn. According to Otto (1923: 101) mystics negate language in order to convey their non-conceptual, non-rational

experiences of the wholly other. Language breaks down such that paradox becomes indispensible. Otto explains, "exaggerated to the point of paradox this [mystic] negation and contrast [are] the only means open to conceptual thought to apprehend the *mysterium*" (29). Additionally, paradox is an essential, distinguishing feature of God, adding great depth to Christianity as a whole (59).

At the next level mystics engage with nothingness through annihilation of self. Otto frames this as a consequence of the overpowering *tremendum*. Diminished relative to the great absolute the mystic feels that they are naught but "dust and ashes and nothingness" (20). This often leads them to utter the phrase "I am naught, thou art all" (21).

The final stage of feeling abandoned by God is also a consequence of the *tremendum* and articulated in combination with the previous two states.

> Yet although the *tremendum* element is subdued [in Western Christianity], it is not entirely lacking. It remains a living factor in the . . . *altum silentium* in the 'abyss' the 'night'… into which the soul must descend in the 'agony,' 'abandonment,' 'barrenness,' in the shuddering and shrinking in the loss and deprivation of selfhood and the 'annihilation' of personal identity (105).

The mystic encounters the *mysterium* and then the *tremendum* as it progresses through the three stages of negation. The negation of language is a consequence of the wholly other nature of *mysterium,* necessitating the creative use of paradox. The loss of identity comes in the face of overpoweringness from the *tremendum.* Finally, abandonment by God results in the shuddering, shrinking, and fearful element of *tremendum's* awe-fulness.

Artist

The numinous is additionally exemplified in the no-thingness of artwork. Rationality gives way to intuitive, creative modalities of art as the sublime is broached, pushing us into the numinous. For Otto, art is "the most effective means of representing the sublime" especially in darkness, silence or emptiness (Otto, 1923: 69). Although the sublime is often an indirect means of approaching the numinous there are exceptions. On rare occasions we are brought into confrontation with the numinous. This occurs when the artist produces arresting, compelling or shocking artwork. It arouses an uncanny feeling, provoking us to "rise above what is mortal" (Poland, 1992: 176).

Sandback's work is especially impressive. It localizes seemingly vast emptiness within the already bounded enclosure of the gallery space. He carefully wields the nothing inside of something (the gallery), forcing it to manifest itself in appalling clarity. The starkness of the emptiness is simple but also profound. This forced presentation can leave spectators aghast and compelled to engage. Patrons pass through the ephemeral gateways, step across planes, and are left wondering on which side of the nothing they stand. The pedestrian space of Sandback in fact encourages active participation. By delimiting the nothing around the nothing Sandback may create an eerie apprehension in his spectators who may approach and reach the numinous. The sculpted emptiness of Sandback unites aesthetic sublimity, localized in the numinous. Sandback's sublime art transports us, by first freezing us in uncanny awe and then escorting us into numinosity.

Ultimately, the dread of the no-place haunts Faustina and Sandback, as tragic artist and mystic saint. Faustina explicitly locates the abyss of her soul as vacuous and gigantean. Sandback looks into the nothingness outside of us, and sees how it provokes a realization of the nothingness inside of us. It is an ever-present interiority where the incomprehensible is inescapable and, ultimately, must be confronted (Taylor, 1999: 217). We may all be haunted by what is old and familiar, intimately known to ourselves as self and also as unknown void.

The void exterior to Sandback is a material recreation of the immaterial abyss of St. Faustina, as tragic artist mirrors sanctified mystic. In both we come face to face with the numinous—at once frightening, compelling and awe-ful. At the same time it is eerily attractive, compelling and retains the positive quality of being wholly other.

Nietzsche's Dionysian and Apollonian Aesthetic in a Saint and Artist

From *The Birth of Tragedy* onwards, Nietzsche's aesthetic has centered on Greek gods Apollo and Dionysus. The God Apollo is a god of sculpted form; he stands as beautiful, insightful, moderate and wise. He is "the marvelous image of the *principium individuationis,*" an individual in firm control of himself (Sedgwick, 2009: 5). Dionysus is rooted in "intoxication, rapture and the dissolution of … the individual" (Nietzsche, 1997: 82). His is the artwork of music—powerful, fluid and overflowing. It is Apollo who intercedes to capture forms as they rush by, undifferentiated, in a Dionysian "stream" (145). These forms are dissolved in the rush of a Dionysian flow, re-formed again by Apollo. Chaos is managed, if not ordered, by Apollo in this dynamic balance of power. The power exerted by each god reflects the human phenomenon of *will to power*. Will to power is the insatiable drive to dominate. It is in fact the "essence of [human] life" finding fulfillment in mastery and control (Sedgwick, 2009: 153). Each individual attempts to exert their own insatiable will to power to attain mastery. This will to power is a never-ending quest to constantly overcome.

Saint

Faustina extends to an extreme point the universal struggle with limitation. Ultimately it is death that imposes limits on becoming, impresses our mortality onto us, and delimits our existence. In acknowledging the limits of death we acknowledge

the fragile temporality that defines us. Faustina is teetering on the edge of this form and formlessness expressed in her abyss. In recognizing formlessness differentiated identity is made all the more meaningful.

In Nietzschian terms, Faustina has control of her form in an Apollonian way: a quietly inspired self delimited by the boundaries of individuality. In encountering the abyss she is consumed in Dionysian intoxication, dissolving the boundaries of her limits. She feels herself to be melting away into nothingness, such that she no longer exists. She slips deeper and deeper into darkness, until her sense of self is swallowed up. Finally she is, "an abyss of nothingness and … [could] return to nothingness in a moment" (Faustina, 2003: 256). She encounters the nothing of the abyss, and the nothingness she feels herself to be fading into. This nothingness is the Dionysian terror of existence, which Apollonian language both masks and reveals (Nietzsche, 1967: 123). The excess of Dionysus, as the terror of existence, is the extreme no-thing surrounding and eventually engulfing Faustina. Unlike Faustina, Nietzsche does not recognize the potential for salvation through God or any other form of fixed truth. Any fixed constructs, like God or truth, are illusory appearance and "illusory ornaments for nothingness" (Hatab, 1987: 95). Sacrificing self does not lead to greater celestial reward, but a keener discernment of the nothingness of life. Nietzsche explains, "When we sacrifice God, we have 'unchained this earth from its sun . . . [and are] straying as through an infinite nothing'" (1968: 24). Understood in the words of Yeats 'the centre cannot hold' and so we are thrown into anarchy. Given this emphasis on nothingness, it is important to note that Nietzsche's 'infinite nothing' does not lead into nihilism. Nietzschian scholar Lawrence Hatab explains that "in nihilism to say that all is false is to assume *that* truth as a fixed construct, that becomes certainty a 'belief in unbelief' and therefore [one will] 'still have faith in truth'" (1987: 98-99). In Nietzsche the firm belief in the nothingness retains the quality of a belief in truth.

Hatab identifies Nietzsche's use of negativity as an intrinsically valuable and essential feature of human nature

(102). Human beings, claimed Nietzsche, are in the "primal negativity of becoming" which necessarily entails finitude, temporality and non-substantiality. We all internalize this flux in the 'positive-negative interplay' required in all formations of meaning (100-103). Delimiting the boundaries of self with nothingness is a common feature of self-identity. Existentially, the self includes the breadth of what it is to be human, including passions, ambitions, fears, and anxieties—all in flux, confronting "change, limits and negative forces" (103). In attempting to fully understand individuals in a positive way, we destroy the inherent potentiality of unnamed nothingness. The uniqueness of individuality "eludes description in positive terms" (108). Hatab claims that being "pervaded by negativity does not threaten human meaning but articulates the way in which meaning is disclosed in the world, through tension of finitude [and in the]…midst of negativity" (103-104). It is a positive consequence of being human, and not merely reserved for mystical engagement. Faustina was literally confronted with a wholly otherness, manifesting itself all around her, engulfing her. It was this void that distinguished and delimited her form. Similarly we are all defining ourselves in the face of change, fluidity and non-substantiality. We may also be faced with the limits of an imminent death or the nothingness of a pointless existence. Nietzsche describes the world as "enclosed by nothingness as by a boundary" (Sedgwick, 2009: 153). This is his "Dionysian world of the eternally self-creating, the eternally self-destroying" (154). Faustina exists as a microcosm of the larger world, in a state of self-creating and self-destroying, by submitting herself to mystic annihilation and recreation.

Artist

Nietzsche prizes art as "the highest task and the [only] truly metaphysical activity of this life" (1967: Preface). The artist can understand and overcome pointlessness through the act of creating. While fully knowing the insubstantial nature of life, they proceed to live, and to create. It is the artist who saves the

world from the disgusting nature of existence "through the artwork of tragic-comic thought" (1993: 89). It is tragic in its brevity, that we should feel so much and remain in existence for so little a time. For these same reasons it is comic—full of such care and concern, yet all ending abruptly. The horror and absurdity of living is tamed in the sublime expression of the artist and in the laughable nature of the intoxicating absurdity (89).

All art can be understood in an Apollonian and Dionysian opposition, where "every artist is an imitator; that is to say, either an Apollonian …. or a Dionysian" (1967: 2). Sandback is Dionysian. He created what Mark Taylor has called, "indeterminate excess … indistinguishable from nothing" (1999: 210). Sandback embraces the Nietzschian state of becoming, openness and negativity as a part of the creative process. His threads weave a fluid meaning making in each moment, fixed yet transient, as if affirming the world as "formless negativity [in] primal flux" (Hatab, 1987: 98).

In *The Birth of Tragedy*, Nietzsche names Dionysus as the "eternal and original power of art" (1967: 86). Within the depth of this Dionysian potentiality it is the Apollonian task to make the world bearable through the "marvelous illusion" of beauty (Nietzsche 1967: 145). Through Sandback's delicate rendering of form, thin lines capture and suspend a beautiful emptiness on the edge of a string, where we catch a glimpse of the controlling limits of Apollo.

In a Nietzschian interpretation, Sandback overcomes the absurdity of nothingness by identifying it, localizing it, and then creatively interpreting it in his rendering of voids. He exposed the nothing *of* the world *to* the world. This creatively elucidates inherent negativity by identifying and showcasing it.

Tying up Loose Ends

Nietzsche's philosophical resolution rests in the creative interpretation of nothingness in tragic comic thought. He explains, "there remains a kind of pessimism, in so far as the

Dionysian being lives in a world without hope of redemption by way of a 'beyond' but it is a 'pessimism of the future' a 'Dionysian pessimism'" (1968a: 370). Our highest aspiration can only be to acknowledge this Dionysian pessimism and live on despite it. Both the saint and tragic artist continue on in the face of the nothingness of existence. They do this by 'overcoming' nothingness in creation: either by being sanctified or by being artful (Hatab, 1987: 95). The dynamic flux of becoming is internalized in the saint, who asserts their will to power over nothingness. The same interplay of power is alternately expressed artistically by manifesting the tragedy of life and clarifying it for all to bear witness. Ultimately, tension remains as long as we continue to hope for an end to Dionysian pessimism. Resolution comes in acceptance and moving on in the face of absurdity. The saint affirms their will to power through a lasting sanctimony and the artist through creation.

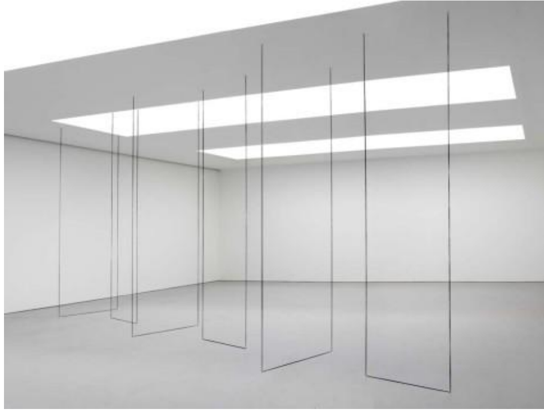
Otto unites interior and exterior nothingness through their wholly other nature as *mysterium tremendum*. Sublime beauty and the wholly other remain positive, allowing art to creatively materialize nothing and the mystic to regain form from formlessness. The sublime beauty of the no-thing, delimitated by string, or the wholly other of the no-self in the abysmal no-place each leads us to realize that the no-thing is not nothing, it is the numinous. No-thing is sublime, wholly other and positive in Otto. Through artistic renderings nothing may become palpable and transport us into the numinous. By diving into the abysmal self, the nothing is both terrifying and stirring as we awaken to numinous energy. The numinous is at all times elevating and amazing. These are uplifting experiences that point to a transcendent reality, contouring the ongoing nature of existence.

The complex threads of Otto and Nietzsche wind closer than they might first appear. In the Ottonian interpretation, sacrifice of self leads to the infinite nothing of God. In Nietzsche sacrifice of God leads to a finite nothing of self. In each case there is sacrifice and nothingness. Ottonian nothingness however recedes as one regains form and sublime certainty. This is denied in the meaningless flux of Nietzsche's absurdity. Otto *seeks out* the nothing localized in art, while Nietzsche *overcomes* the

nothing using art. For Otto art has become a means of approaching and reaching numinous sublimity. For Nietzsche art has been a way of identifying and sublimating pessimistic reality.

In Nietzsche the nothing frames existence, yet it must be overcome to evade the desperate absurdity of living. Nietzschian philosophy affirms that *einmal* is indeed *keinmal*, as the insignificance of our forms weighs heavily on our appraisal of life as nothingness. In the depths of the wholly other numinous, we find meaning and hope in the continuation of self. Otto turns *einmal ist keinmal* around. No-thing or no-one occurs in singular insignificance. Each has the potential continue into a meaningful multiplicity of being, in other words - *keinmal ist nicht nur einmal - sondern auch mehrmals*.

Appendix



Source: Fred Sandback. Venue: David Zwirner, New York. January 9 – February 14, 2009. [http://www.contemporaryartdaily.com/tag/fred-sandback/]

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The Illusion of the "Slippery Slope": How Religion and Culture Shape Canadian Doctors' Attitudes toward Euthanasia and Physician-Assisted Suicide

Stuart Chambers
University of Ottawa

Abstract: From 1988-1995 the majority of physicians within the Canadian Medical Association supported the prohibition against an intentionally hastened death for the terminally ill. Their main concerns entailed the "slippery slope" of the Dutch medical model and a possible return to Nazi eugenics. However, empirical evidence from this time period did not support physicians' fears of decriminalization. Therefore, it is important to understand why doctors, known for their reliance on empiricism and rational thought, reverted to uncritical and profoundly held beliefs when it came to discussions over state-sanctioned euthanasia and assisted suicide. This paper suggests that two motives were pivotal in shaping Canadian doctors' attitudes toward prohibition: the influence of religion and a lack of exposure to cross-cultural perspectives.

Keywords
euthanasia, physician-assisted suicide, "slippery slope," Holland, Remmelink Report, Nazi eugenics, Canadian Medical Association, sanctity of life, religious attitudes, culture.

Introduction

This paper presents a discourse analysis of Canadian physicians' attitudes toward euthanasia and assisted suicide. The

methodology is based largely on an examination of editorials, essays, journal articles, and letters to the editor located in the archives of the *Canadian Medical Association Journal* (*CMAJ*), supplemented by various other primary and secondary sources. The temporal period runs from 1988-1995 because in this time period, there was an explosion of discussion containing the fullest expression of what Canadian physicians were thinking and feeling about euthanasia and assisted suicide. High-profile court cases, particularly three involving Sue Rodriguez,[1] no doubt triggered nationwide debate over the intentional hastening of death. In addition, ethicist Daniel Callahan (see Crawford, 1995: 79) notes that controversial American figures, such as Derek Humphry, Jack Kevorkian and Timothy Quill, fuelled discussion that eventually entered Canadian ethical and medical discourses. Because euthanasia and assisted suicide are highly contentious issues, emotions run high whenever the possibility of decriminalization is posed.

This article contends that in times of moral panic, doctors—like any group of people—revert to uncritical and profoundly held beliefs. Thus, from 1988-1995 the majority of members within the Canadian Medical Association (CMA) supported the prohibition against an intentionally hastened death for the terminally ill. The paper begins by focusing on the dominant claim made by CMA members during this time period, namely that decriminalization would lead to a "slippery slope" similar to the Dutch experience and a return of Nazi eugenics. An overview of this claim will be followed by an interrogation of the discourse. Here, evidence will be presented that challenges "slippery slope" allegations made against the Dutch medical model. The conclusion highlights two key factors—the influence of religion and a lack of exposure to cross-cultural perspectives—that helped shape Canadian doctors' attitudes toward prohibition.

Holland's "Slippery Slope" and Nazi Analogue

During debates within the Canadian Medical Association Journal (*CMAJ*) from 1988-1995, one of the most polarized discussions involved Dutch medical acceptance of euthanasia and assisted suicide. Fears concerning the Dutch approach were certainly amplified during the winter of 1988. Euthanasia became headline news within mainstream medicine as a result of an anonymous letter written in the *Journal of the American Medical Association* entitled, "It's Over, Debbie." A gynecology resident knowingly performed a death-hastening act by administering an overdose of morphine sulphate for a 20-year-old woman named Debbie without personally knowing the patient.[2] The story caused nothing short of a media sensation. As Anne Mullens (1996: 162) acknowledges, "The letter marks the beginning of a constant stream of articles and opinion pieces that still hasn't ceased." Undoubtedly, the American controversy began to influence mainstream medical opinion across the border.

An editorial sent to the *CMAJ* by Dr. Peter A. Singer (1988: 1001-1001), a fellow at the Centre for Clinical Medical Ethics at the University of Chicago, triggered a series of intense debates among Canadian doctors. Dr. Singer felt that medical practitioners in Canada must categorically denounce euthanasia and assisted suicide. In his words, "Physician-mediated killing is bad for patients, doctors, and society, and the only justifiable stand toward active euthanasia can be summarized in one word: abhorrence." Singer used the Netherlands as an example of the "slippery slope," stating that "patients who are incompetent, not terminally ill and nonconsenting will fall prey to the 'killing treatment.' At risk will be the elderly, the uneducated, the poor, the retarded. The lives of thousands of vulnerable people will be in danger if active euthanasia is legalized." Singer also assumed that the Dutch experience signalled a return to Nazi euthanasia. He quoted Dr. Leo Alexander, the prominent American physician and advisor at the Nuremberg medical trial, as saying just before his death, "It [Dutch medical practice] is much like Germany in the '20s and '30s. The barriers against killing are coming down."

In Canada, several physicians replied favourably to Singer's editorial. Dr. Albert J. Kirshen (1988 : 1041) wrote the *CMAJ*, believing that in Holland autonomy and informed consent were not being universally safeguarded: "Apparently dementia sufferers in nursing homes are now subject to active euthanasia."[3] Dr. Kirshen (1989: 1258) corresponded again with the *CMAJ* to clarify his position on the issue of patient consent in Holland:

> If euthanasia is being practised in a hospital or a nursing home, where probably more than 50% of residents suffer from cognitive impairment and a significant proportion will, therefore, lack the capacity to consent, how can patient decisions be "well informed, free and enduring"? How does the question of competence arise? How and by whom is it decided?

Kirshen also felt that reported use of active *involuntary* euthanasia[4] in Holland "question[ed] the depiction of euthanasia as strictly voluntary" and was evidence of "the 'can of worms' we open when talking about active euthanasia. . . ." However, Dr. Kirshen was not alone in his critique of the Dutch regime.

A travelling exhibition titled "The Value of the Human Being: Medicine in Germany 1918-1945" arrived at the University of Toronto in 1992. A symposium in conjunction with it provided qualitative evidence of doctors' opinions concerning German physicians who participated in the Nazi eugenics program. Dr. Fritz Stern (see OReilly, 1993 : 819) of Columbia University was blunt: "We are talking about nothing less than the perversion of the noblest profession, the systematic violation of all that the white coat has ever stood for." Canadian physicians agreed. Dr. Frederick Lowy (see OReilly, 1993: 820), director for the University of Toronto's Centre for Bioethics, felt that given the right circumstances Canadian doctors could be deceived by the same propaganda that seduced German physicians: "It is important to remember that the Nazi doctors were just like all the rest of us. . . . They were trapped by an ideology and a state, but what really turned them in the wrong

direction was the disregard for the individual." Although Dr. Lowy did not believe in the "inevitability of the slippery slope," he felt that society "must first recognize that the slope is slippery."

A group of Alberta doctors sided with Lowy's concerns over the relaxation of safeguards within traditional medical ethics. However, their views were even more explicit in that they exhibited a strong pro-life bias. Rejecting quality of life judgements, Dr. W. Joseph Askin et al. (1993: 1866) wrote:

> We are already sliding down the slope and gaining speed. We self-righteously condemn the Nazis for exterminating people with genetic or mental imperfections, yet we consider ourselves compassionate when we abort fetuses with congenital abnormalities. Either way, lives were and are ended by a system that has decided which lives have value and which don't.

Ironically, the Alberta doctors added that the basis of their philosophical stance, the sanctity doctrine, demanded the subordination of the individual to the collective good, even if this utilitarian position[5] resulted in harm to minorities: "The recognition of moral absolutes such as the sanctity of life may cause people with terminal illnesses or women with unwanted pregnancies to suffer but would prevent the repetition of past [Nazi] horrors."

Affirming the views of the Alberta physicians, several doctors used the Nazi analogue[6] as a form of "slippery slope." For instance, Dr. Willi D. Gutowski (1993: 1866) emphasized that physicians in Germany had, at one time, shared similar values with Canadian doctors: "Their intentions and compassion were the same as ours; their search for truth was like ours. . . ." In similar fashion, Dr. William E. Goodman (1993: 1866) highlighted the danger of capitulating with fascist state policies: "Most German physicians, once they abandoned their primary responsibility to the individual patient in favour of what they were persuaded was their responsibility to the body politic, found it easy to not only refuse to confront Hitler's minions . . .

but also actively rationalize and cooperate in Hitler's mission." Dr. Wena V.P. Hyde-Williams (1993: 1866) was even more succinct: "It was murder, not euthanasia, that was practised under the Nazi regime. To euphemize the barbarism . . . is to trivialize and condone it and is every bit as much a danger sign as 'when economics begins to dictate policy.'"

The issue resurfaced in an exchange of letters from 1993-94, the year Sue Rodriguez sought decriminalization of physician-assisted suicide in the Supreme Court of Canada.[7] This time, however, Canadian doctors became increasingly vocal about comparisons between Dutch medical practices and Nazi experiments. Dr. Ted Boadway (see Sullivan, 1993: 858), the Ontario Medical Association's director of health policy, told the CMA's General Council in August of 1993 that members were afraid to confront the issue of assisted-suicide because if they did, "they may be compared to Nazis, even by colleagues." In fact, references connecting Nazi atrocities to euthanasia served one main purpose at the CMA's annual meeting in 1993. According to Dr. Douglas Sawyer (1994: 396), Chair of the CMA's Committee on Ethics, the link was used to "inhibit many who might want to speak in favour of PAD [physician-assisted death]."

The Nazi taint continued well into 1994. Dr. Howard Bright (1994: 273) felt that it was "sadly ironic that Dutch physicians, who resisted Hitler so heroically a generation ago, now embrace the utilitarian view of life and death." Dr. Bright (1994: 1396) also noted the key source of anxiety among the elderly and terminally ill: "Fear of physicians is understandable in light of the Remmelink Report, which documented widespread *involuntary* euthanasia in the Netherlands [emphasis mine]."[8] As an overall critique of the Nazi analogue, Dr. Sawyer (1994: 396-397) tried to explain that doctors in Canada were not asking for active *involuntary* euthanasia nor was there any evidence leading to its implementation:

> The Nazi experience was with "involuntary euthanasia"—ending life against a person's wishes. . . . It seems unfair, then, to compare those who favour

legalization of PAD [physician-assisted death] in Canada to Nazis . . . [I]t should be recognized that *no one* is arguing for legalized involuntary euthanasia; the CMA and its Committee on Ethics would never remain neutral on that issue [emphasis mine].

Although scarce, there were some doctors that supported Dutch medical practices. Dr. Morley J. Tuttle (1991: 956) gravitated toward the Dutch medico-legal approach to euthanasia and assisted suicide because it balanced freedom of choice with safeguards against abuse: "Reasonable cases [of euthanasia and assisted suicide] will not attract the attention of public prosecutors, and in other cases the court decisions will in time provide appropriate guidelines." Dr. Frances S.H. Dartana (1992: 445) hoped that "the terminally ill . . . [would] be given alternatives, as they were in Holland." Further approval of Holland's approach was provided by Dr. Arnoldus J. Verster (1992: 1748), who highlighted how euthanasia in the Netherlands was "subject to very strict controls" and was "not a 'quick fix' that had been found in desperation."

However, the majority of Canadian physicians would not be swayed by the Dutch medical model, and divisions within the CMA became further entrenched. When CMA members took a vote at their annual meeting in August 1994 to "specifically exclude participation in euthanasia and physician-assisted suicide," it was approved by a margin of only 93 votes to 74 (with 18 abstentions).[9] A letter from Dr. Arnold Voth (1994: 1691-1692) suggested the "slippery slope" argument was the main reason the CMA General Council rightly rejected an intentionally hastened death: "[I]f the issue of physician-assisted suicide is to be decided by the public, then that public must include, almost to the exclusion of all others, those at risk. This means people who are ill, elderly, infirm, and dying." Dr. Voth even accused the CMA Committee on Ethics of not doing enough to protect the vulnerable:

[T]he CMA Committee on Ethics failed to give voice to disabled and infirm people who oppose any form of

> physician-assisted death. . . . [T]hey are not invited to appear before committees, and when they ask for this privilege they are often refused. The Svend Robinsons[10] of this nation do not visit them or trumpet their cause aloud on television. They are disenfranchised.

What the split vote and polarized medical opinion indicated was that an intentionally hastened death, using either euthanasia or assisted suicide, was not a normative stance the CMA could readily accept. Centuries of entrenched values, particularly those surrounding the sanctity of human life and its intrinsic worth, could not be abandoned by the majority of the profession. As Dr. Fred Lowy (see Refuse, 1993: 1305), a member of the CMA's Committee on Ethics acknowledged, "It's one thing for society to want to legalize euthanasia or physician-assisted suicide and for the judiciary to allow it, but quite another thing for physicians to be prepared to do it."

Because of overt resistance to decriminalization, jaundiced attitudes toward the Dutch medical model, and fears of a return to Nazi eugenics, it is important to examine whether physicians' remarks were based on evidentiary standards or conjecture. It is pivotal then to compare the empirical findings of euthanasia and assisted suicide in Holland with the opinions of those Canadian physicians who opposed such acts during the 1990s. This will help in clarifying two inquiries: (1) whether any links between Dutch medical practice and Nazi eugenics were indeed warranted; and (2) whether state-sanctioning of euthanasia and assisted suicide would actually lead to a "slippery slope."

Interrogating the Discourse

In 1990 the Dutch appointed a Commission to examine the extent and nature of medical euthanasia. Under the chairmanship of the Attorney-General, Professor Remmelink, the Commission was asked to report on the practice by physicians that involves "performing an act or omission . . . to terminate [the] life of a

patient, with or without an explicit and serious request of the patient to this end" (van der Maas, van Delden and Pijnenborg, 1992a: 4). The Remmelink Report focused particularly on 'Medical Decisions Concerning the End of Life,' (MDELs), which included "all decisions by physicians concerning courses of action aimed at hastening the end of life of the patient or courses of action for which the physician takes into account the probability that the end of life of the patient is hastened" (19-20). MDELs were given wide parameters, comprising the administration, supply or prescription of a drug, the withdrawal/withholding of treatment (including resuscitation and tube-feeding), and the refusal of a request for euthanasia and assisted suicide (20). Moreover, euthanasia was differentiated from other MDELs. The definition adopted by the Commission was the "intentional action [lethal injection] to terminate a person's life, performed by somebody else than the involved person upon the latter's request" (Keown, 1995: 270). Methodology aside, it is the controversial elements that need to be addressed, particularly cases of an intentionally hastened death involving non-consent.

According to the Remmelink Report, only a small percentage of those who died actually received euthanasia or assisted suicide. Out of 129, 000 deaths in 1990, "2300 [1.8%] resulted from euthanasia and 400 [0.3%] were physician-assisted suicides," (Mullens, 1995: 1847) in which the doctor provided only the means of death upon request (i.e., prescription drugs). An additional 1000 deaths [0.8%] occurred due to active *nonvoluntary* euthanasia in which consent was not explicit (see appendix). Dr. Paul van der Maas, the Remmelink Commission's head of research, added that in nearly all these 1000 cases, "the patients were severely ill—most were dying of cancer—and there was visible suffering and the patients were no longer able to make their wishes known" (Mullens, 1995: 1847). In 59% of these cases, "the patient had previously discussed euthanasia with the doctor but as death neared was no longer able to make a formal [explicit] request" (1847). In cases where there was no discussion, this was not possible since the patients were "permanently unconscious" or in a state of "reduced

consciousness" (Singer, 1994: 153). In 80% of the cases, death was caused by increased doses of morphine (Mullens, 1995: 1847). Moreover, in 71% of the cases, "the medical decision [to use active nonvoluntary euthanasia] had shortened life by less than a week" (Singer, 1994: 153).

The more worrisome of the trends, active *involuntary* euthanasia, occurred *zero* times. Unlike atrocities experienced during the Nazi era, no one's death in Holland was intentionally hastened *against* his or her consent by a physician (van Delden, Pijnenborg and van der Maas, 1993: 24). To summarize, of all deaths that occurred in Holland in 1990, no examples of active *involuntary* euthanasia were recorded, and not even one percent of *nonvoluntary* acts [0.8%] had occurred in a country that did not even have a formal law until 2002 (Petrou, 2005: 23). Since there were no previous comprehensive studies prior to 1990, the authors of the Report concluded that "no empirical data can be marshalled to support the slippery slope argument against the Dutch" (van Delden, Pijnenborg, and van der Maas, 1993: 24, 26). In fact, when a Dutch study was finally made available comparing 1990 euthanasia figures with those in 1995, active *nonvoluntary* euthanasia actually dropped by 0.1 per cent (0.8% to 0.7% of all deaths), and active *involuntary* euthanasia was still non-existent (see appendix). Furthermore, in countries where euthanasia was unlawful in the early 1990s, such as Australia and Belgium, the incidence of active *nonvoluntary* euthanasia was five times higher than in the Netherlands, 3.5%, 3.2%, and 0.7% respectively (van der Maas, van Delden and Pijnenborg, 1991: 669-674). Since public regulation may actually reduce, rather, than increase the incidence of nonvoluntary euthanasia, ethicist Helga Kuhse (see Tännsjö 2004: 66) suggests that "if there is a 'slippery slope,' it slopes in the opposite direction: the acceptance and regulation of voluntary euthanasia is linked with a lower incidence of non-voluntary euthanasia."

Yet the CMA's position on the intentional hastening of death remained diametrically opposed to that taken by the Royal Dutch Medical Association, which claimed that "a doctor must always be involved if any act of euthanasia is going to take place" (Mullens, 1995: 1845). Dr. Robert Dillmann, secretary of

medical affairs for the Royal Dutch Medical Association, felt that the Dutch were not sliding down a "slippery slope" but were, in fact, rather making their way back up the slope: "I think the tendency in the Netherlands is not downhill but uphill because of the increased awareness of the requirements [for euthanasia and assisted suicide], the increases in the number of doctors reporting and the increased awareness of the inappropriateness of life termination without [explicit] request" (1995: 1848). Dr. Borst-Eilers (see de Wachter, 1992: 24), chair of the Health Council and former medical director of the Academic Hospital at the University of Utrecht, noted that in situations of unbearable suffering, euthanasia becomes "the ultimate act in good terminal care." It was no wonder that by January 1995 the CMA concluded that Canada needed a study similar to the Remmelink Report so that one could "substantiate or refute the repeated allegations that euthanasia and assisted suicide [already] take place" (Physician-Assisted Death, 1995: 248B).

The Illusion of the "Slippery Slope": Religious and Cultural Influences

If physicians' claims concerning Dutch medical abuses, Nazi eugenics, and the "slippery slope" were largely unsubstantiated, it is important to ask why Canadian doctors relied on fears of risk rather than debate the results of empirical data. One possibility lies with the presence of religious beliefs. In one quantitative survey conducted by Marja J. Verhoef, PhD, and Dr. T. Douglas Kinsella (1996: 885, 887), the data supported the premise that doctors did indeed harbour religious biases. The objective of the survey was "to determine whether the opinions of Alberta physicians about active euthanasia had changed" over a three-year period (1991-94) and "to access the determinants of potential changes in opinion." During this time frame, one in which controversial figures in the right-to-die movement emerged, "Alberta physicians' support for the practice and legalization of active euthanasia decreased considerably." In

fact, “religious activity” was the “most important characteristic associated with changes in opinion.” The authors found that from 1991-94 the proportion of doctors willing to practise legalized active euthanasia “decreased by almost 50%, and the proportion in favour of changing the law to permit active euthanasia decreased from 50% to 37%. They concluded that “religious affiliation was significantly related to changes in opinion about willingness to practise euthanasia if it were legalized.” However, the research only targeted Alberta physicians, not Canadian doctors in general.

When Kinsella and Verhoef (1999: 211-215) studied doctors' opinions on physician-assisted suicide in a Canadian national survey in the late 1990s, they concluded that doctors' attitudes were more strongly influenced by personal determinants than by medical/professional determinants. Of all the personal determinants, one of the most important was “levels of religious activity.” Kinsella and Verhoef indicated that for those doctors who were regularly active, occasionally active, and not religiously active, a direct relationship was found: Opposition to assistance in suicide went from over 80% (regularly active), slightly above 50% (occasionally active), and less than 50% (non-active). Overall, 57% of doctors nationwide rejected the personal practice of assisted suicide. Ironically, the authors remarked on a different kind of “slippery slope.” There were disassociations between potential professional behaviours and personal preferences. If physician-assisted suicide were legalized, about 40% of doctors would wish it for themselves, but only half this number would practice it. The authors suggested that conflicts in personal and professional preferences among Canadian physicians “could impair the public's respect for the profession of medicine if they were perceived to reflect different standards of care for physicians . . . and their patients in end-of-life decisions.”

Global studies demonstrated similar links between religious beliefs and physicians' attitudes towards an intentionally hastened death. A survey conducted in New South Wales by Baume, O'Malley, and Bauman (1995: 49-54) studied doctors' religious attitudes and found that physicians without

formal religious affiliation (‘non-theists’) were more sympathetic to euthanasia, and had practised it more, than doctors who claimed any religious affiliation (“theists”). As the authors of the study indicated, “‘Non-theists’ were significantly more likely to favour the Dutch arrangements and to indicate support for . . . euthanasia policies and the need for legal changes, compared to all ‘theist’ doctors,” especially those of Catholic and Protestant affiliation.

Similar results were found in Belgium. Broechaert et. al. (2009: 41-50) noted that Flemish palliative care physicians[11] who possess a “strong belief in God” and express their faith through “participation in prayer and rituals” tend to be “more critical toward euthanasia”; whereas, physicians who “deny the existence of a transcendent power” and who “hardly attend religious services” are “more likely to approve of euthanasia even in the case of minors and demented patients.” The research found that doctors fit into one of four membership clusters: “church-going respondents” (31.6%), “infrequently church-going respondents” (14.7%), “atheists” (23.2%), and “doubters” (30.5%). The cluster of the church-going respondents was the only one with a significant amount of its members also being part of “the opponents of euthanasia.” In contrast, a large majority of atheists belonged to the cluster of “the staunch advocates of euthanasia.” The infrequently church-going respondents and doubters were “most often staunch advocates of euthanasia.” The researchers found that religion was the most important variable in determining attitudes for or against euthanasia. No significant differences were found when accounting for gender, age, and years of experience in palliative care.

Lisker et al. (2008: 452-458) also examined the influence of religion on Mexican physicians’ attitudes toward doctor-assisted suicide. Doctors were grouped into two categories, those with strong and weak religious beliefs, and were asked whether or not they agreed with the following: (1) a physician helping terminally patients die; (2) a family’s request to remove life-sustaining treatment for a patient in a permanent vegetative state; and (3) asking their own physician to help them

die if they had intolerable suffering due to a terminal illness. Those medical practitioners with strong religious beliefs, and who replied "yes" to the first two questions, were less than those categorized as weakly religious (34.5 vs. 53.4% and 45.4 vs. 58.5% respectively). The reverse was true for those who answered "no" in the last question (46.5 vs. 36.3 respectively). Part of the resistance to doctor-assisted suicide may be attributable to the influence of Christian normative assumptions. The authors noted that by far the most common religion in Mexico is Catholicism, and recent studies confirm the authors' suspicions. Emanuel (2002: 142-152) analyzed the attitudes of physicians regarding (a) support for; (b) legalization of; and (c) willingness to perform either euthanasia or patient-assisted suicide. He found that physicians who are Catholic or are religious are "significantly less likely to support euthanasia or patient-assisted suicide than others." The influence of other factors, such as gender, specialty, and years of medical practice, were minimal.[12]

Another reason doctors relied on conjecture may have resulted from a lack of cross-cultural exposure, an area of discourse that was often overlooked by physicians corresponding to the *CMAJ*. By moving beyond the North American context, one can examine how attitudes toward an intentionally hastened death differ both regionally and between Christian and non-Christian cultures. From 1988-1995 the subject was breached only once in a single *CMAJ* article by Lowy, Sawyer, and Williams (1993: 1896). The authors made an important observation in determining why euthanasia and assisted suicide became immoral practices in the East. The arrival of Christian missionaries in the 16th century, along with the British Raj in the 18th century, eventually made euthanasia and assisted suicide illegal in India. Of greater importance was the authors' statement that an intentionally hastened death was not always viewed in the pejorative by non-Western cultures. In their words, "[A]n important world culture [India] found a way to give positive meaning to self-willed death when the quality of life was considered unacceptable."

The authors also provided some much needed clarification about the German context. As previously noted, when the Dutch model was discussed by CMA members, a link was often made between euthanasia in Holland and Nazi eugenics. Lowy, Sawyer, and Williams (1993: 1897) admit that "in reaction to the shameful Nazi era, when euthanasia was a euphemism for extermination, even scholarly discussion of any form of direct mercy killing in Germany seems to be taboo." What is striking, however, about the authors' report is what Canadian doctors never discussed within the *CMAJ* from 1988-1995: the fact that assisted suicide is both legal and actively practised in Germany. Suicide has not only been decriminalized in Germany since 1751, but as the authors admit, "assisting someone to do it—provided that the person is competent and has made a 'freely responsible choice'—is permitted." Margaret P. Battin (1992: 44-51) also points out that German history and culture sanctions "Freitod," a voluntary and even idealistic form of self-deliverance, an act that does not possess the negative connotations often associated with suicide. Since it is described as "an admirable, heroic—if very difficult—thing to do," Germans tend to respect *Freitod* as a matter of right, that is, to assume that "one ought not interfere with it and that one always has the right to this choice" (1994: 266).

Although Lowy, Sawyer, and Williams did briefly mention Jain culture, it received scant coverage among CMA members. More recent studies in Jainism have elaborated on alternative perceptions toward hastening death. Admittedly, Jains would condemn killing or any form of physical violence; however, ritual fasting can actually be viewed as a positive act. This practice of "fasting to death," or "self-killing," is known commonly as *samadhi-maran* ('death while in meditation'). In one instance of *samadhi-maran*, anthropologist James Laidlaw (2005: 180, 193) describes the respect family members have for those who attempt and succeed at the ritual:

> Amarchand-ji's daughter swelled up with pride as she described [her father's] final fast for thirty-six days. For the last twenty-four days he did not take even water.

> People came from all around to see him. Even on the final day he was sitting up and saying his samayik (meditational prayer) under his breath. At the end he said, “Now I will die. . . .”

In these circumstances Jains accept the role of agency in self-killing and spiritual liberation. In contrast, Western ethicists had at one time considered the removal of nutrition and hydration a crime constituting murder (Singer, 1994; Colby, 2002; Caplin, McCartney and Sisti, 2006).

Literature on the Japanese perspective was also notably absent from the dialogue among CMA members. When hospice care was introduced to Japan from Britain in the 1970s, it was Christian in origin, which created a kind of cultural friction. Susan Orpett Long (2004: 278, 284) discovered that the hospice philosophy surrounding patient involvement in the decision-making process was at odds with Japanese custom. There was a “continuing reluctance on the part of families to discuss a terminal diagnosis, despite official insistence on informed consent and commitment to it on the part of hospice staff.” To the Japanese, protecting the patient from the “shock of bad news” was considered more important than the principle of self-determination. The Japanese approach not only helped to maintain a “calm emotional atmosphere,” but it was also felt that “[g]ood caregivers are those who protect the patient.” Ironically, this cultural norm led the Japanese to accept *nonvoluntary* euthanasia (explicit consent unknown), a category of death-hastening in the Netherlands that created great anxiety for Canadian physicians. If anything, it was a lack of cross-cultural exposure, along with profoundly held religious beliefs, that shaped Canadian doctors’ attitudes toward prohibition.

Concluding Remarks

Overall, it is hoped that an historical overview of Canadian doctors’ attitudes toward euthanasia and assisted suicide can help shed some light on which motivating factors shaped resistance to

an intentionally hastened death. From the opinions expressed in the *CMAJ* from 1988-1995, and from available attitudinal studies, religion was no doubt one factor that influenced physicians' ethical stances. As John R. Williams (1997: 1-28) notes, Christian moral theologians and ethicists were instrumental in shaping the direction of bioethics beginning in the 1960s and 1970s. For those doctors who did reject Dutch acceptance of euthanasia and assisted suicide, the underlying principle for this position was the sanctity of life ethos, a doctrine well known for its Christian biases (Larson and Amundsen, 1988; Kuhse, 1987). Moreover, since both Jews and Christians used the Hippocratic tradition as a tool to reshape Western medicine (Vaux, 1974; Carrick, 2001), it is highly likely that religious normative assumptions still influence medical ethics.

Furthermore, a lack of cross-cultural exposure played some role in the rejection of euthanasia and assisted suicide. Only one *CMAJ* article appeared within a seven-year period to discuss how other cultures, including non-Christian, viewed the intentional hastening of death. More exposure to such perspectives could have played a dual role by (1) expanding doctors' opinions surrounding the death-hastening practices of other cultural groups and by (2) demonstrating how Christian normative assumptions have historically restricted these practices within non-Christian settings. Although other variables may have shaped physicians' attitudes toward prohibition, and are important topics of further research, this article suggests that religion and a lack of cross-cultural perspectives played a significant role in creating unwarranted fears toward the Dutch medical model and a possible return to Nazi eugenics. Hence, in the tension-filled period from 1988-1995, the illusion of the "slippery slope" prevailed over empiricism whenever the intentional hastening of death was discussed among Canadian physicians.

Notes

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[1] For a complete legal analysis of Sue Rodriguez's three attempts to decriminalize physician-assisted suicide for the terminally ill, see *Rodriguez v. British Columbia* (1992), British Columbia Supreme Court (SCBC) No. 4040/92, Victoria Registry, Melvin J.; Court of Appeal for British Columbia (1993), No. V01800, Victoria Registry, McEachern C. J., Proudfoot, J., and Hollinrake, J. (1993); *Rodriguez v. British Columbia* (1993) 3 S.C.R. 519 Docket: 23476 (September 30 1993) http://scc.lexum.umontreal.ca/en/1993/1993rcs3-519/1993rcs3-519.html.

[2] Different moral philosophers have called into question the rhetoric surrounding the "Debbie" incident. For instance, Michael J. Hyde suggests that "Debbie" functions as "a call of conscience whose rhetorical interruption is meant to cause a break in one's thinking about the sanctity of life and the right to die." See Michael J. Hyde, *The Call of Conscience: Heidegger and Levinas, Rhetoric and the Euthanasia Debate* (Columbia, South Carolina: University of South Carolina, 2001), 148; also see Kenneth L. Vaux, "Debbie's Dying: Mercy Killing and the Good Death, *Arguing Euthanasia: The Controversy over Mercy Killing*, *Assisted Suicide, and the 'Right to Die*,*'* edited by Jonathan D. Moreno (Touchstone: New York, 1995), 31-41.

[3] In the spring of 1989, members of the Health Council of the Netherlands replied to Dr. Kirshen's letter, clarifying national codes of conduct pertaining to euthanasia. They stated that the guidelines for euthanasia required an "explicit and repeated request by the patient" and that "the patient's decision be well informed, free and enduring." This meant that "euthanasia cannot be performed on patients with dementia as they are no longer able to express their own will in a valid way." See H. Ritger, E. Borst-Eilers, and H.J.J. Leenen, "Euthanasia in the Netherlands," *Can Med Assoc J* 140 (1 April 1989): 788.

[4] Although Dr. Kirshen objected to what bioethicists call active *involuntary* euthanasia, meaning to euthanize someone *against* his or her wishes, in the Dutch context Kirshen would have meant *nonvoluntary* euthanasia in which the consent of the patient was unknown. See John Keown, *Euthanasia, Ethics, and Public Policy: An Argument against Legalization* (New York: Cambridge University Press, 2002), 9; Peter Singer, *Rethinking Life and Death: The Collapse of our Traditional Ethics* (New York: St. Martin's Press, 1994), 151.

[5] As John Stuart Mill acknowledged, utilitarianism implies a communal bias in that "the happiness which forms the utilitarian standard of what is right in conduct is not the agent's own happiness, but that of all concerned." See John Stuart Mill, *The Basic Writings of John Stuart Mill: On Liberty, The Subjection of Women, and Utilitarianism*, introduction by J.B. Schneewind (New York: Random House, 2002), 250.

[6] Philosopher Michael Stingl claims that the Nazi analogue is a weak one, especially when comparing fascist and democratic nations. As he states: "Nazi Germany began with a fascist political ideology, one which held that it was right and good to sacrifice individual lives to the greater glory of the state and

the race. In accord with this ideology, the country did not *end up* with a justification for involuntary euthanasia—they *started* with one. . . . Unless one is deeply pessimistic about the future of liberalism as a political institution in the developed world, the analogy to Nazi Germany seems completely misplaced." See Michael Stingl, ed., *The Price of Compassion: Assisted Suicide and Euthanasia* (Peterborough, Ontario: Broadview Press, 2010), 4.

[7] It is important to remember that the Rodriguez Supreme Court trial not only polarized Canadians. It ended in a 5/4 split decision, with the Chief Justice, Antonio Lamer, siding with Rodriguez's request for physician-assisted suicide.

[8] See footnote #4 for a clarification between *nonvoluntary* and *involuntary* euthanasia.

[9] For further details of the CMA's annual meeting in August of 1994, see J. Rafuse, "CMA Rejects Neutral Stand, Comes Out Firmly against MD Participation in Euthanasia," *Can Med Assoc J* 151, no. 6 (15 September 1994): 853.

[10] As a controversial member of the New Democratic Party at the time, Svend Robinson was not only an advocate of physician-assisted suicide, but he was also present when Sue Rodriguez chose to have her death hastened with the aid of an anonymous physician.

[11] It is important to note that the majority of the physicians in the study self-identified as either Christian or Catholic.

[12] The only other variable that played any other significant role in shaping Mexican doctors' attitudes toward physician-assisted death was "familiarity attending terminally ill patients."

Appendix

End-of-life decisions by doctors in the Netherlands 1990–1995

	1990	1995
Deaths in the Netherlands	129,000 (100%)	135,500 (100%)
Requests for euthanasia	8,900 (7%)	9,700 (7.1%)
Euthanasia (i.e. VAE)	2,300 (1.8%)	3,200 (2.4%)
Physician-assisted suicide	400 (0.3%)	400 (0.3%)
Life-terminating acts without explicit request	1,000 (0.8%)	900 (0.7%)
Intensification of pain and symptom treatment	22,500 (17.5%)	20,000 (14.8%)
a. explicitly intended to shorten life	1,350 (1%)	2,000 (1.5%)
b. partly intended to shorten life	6,750 (5.2%)	2,850 (2.1%)
c. taking into account the probability that life will be shortened	14,400 (11.3%)	15,150 (11.1%)
Withdrawing/withholding treatment (incl. tube-feeding)	22,500 (17.5%)	27,300 (20.1%)
a. at the explicit request of the patient	5,800 (4.5%)	5,200 (3.8%)
b. without the explicit request of the patient		
b1. explicitly intended to shorten life	2,670 (2.1%)	14,200 (10.5%)
b2. partly to shorten life	3,170 (2.5%)	—
b3. taking into account the probability that life will be shortened	10,850 (8.4%)	7,900 (5.8%)
Intentional termination of neonates		
a. without withholding/withdrawing treatment	—	10
b. withholding/withdrawing treatment plus administration of medication explicitly to shorten life	—	80
Assisted suicide of psychiatric patients	—	2–5

Note: A dash indicates that no figures are available.

Source: John Keown, *Euthanasia, Ethics, and Public Policy: An Argument against Legalization* (New York: Cambridge University Press, 2002), 126.

*Note: VAE refers to "voluntary active euthanasia."

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Pourquoi ne plongerais-je pas mes yeux dans les siens encore et encore? : Du regard puissant à la dévotion aveugle dans l'hindouisme

Marie-Josée Blanchard
Université d'Ottawa

Résumé : L'expérience du religieux au cœur de la dévotion hindoue est indissociable d'un contexte purement sensoriel : les sens y représentent le support de la communication entre les humains et les divinités. Parmi ces sens se démarque néanmoins la vue, arme puissante pouvant autant tuer que transmettre des qualités sacrées. L'échange de regards devient conséquemment essentiel à l'expérience hindoue, passant du *darśan* et du mauvais œil jusqu'au regard destructeur des dieux. Cette exploration du rôle de la perception visuelle dans l'hindouisme, appuyée par divers exemples tirés du film *Jai Santoshi Maa*, nous révélera comment ce regard puissant et perméable peut provoquer un déséquilibre entre les rôles de l'acteur actif et de l'acteur récepteur dans cet échange visuel; ce déséquilibre peut toutefois être rétabli par une dévotion « aveugle » de la part de l'acteur récepteur.

Abstract: The experience of Hindu devotion is intrinsically linked to a purely sensorial context where the senses represent the support to communication between humans and divinities. Yet the sense of sight leapfrogs the other senses by representing a powerful tool that can transmit sacred qualities as well as literally killing beings. From *darśan* to the evil eye or destructive divine gaze, the exchange of gaze thus becomes essential to the understanding of the Hindu experience. This exploration of the role of sight in Hinduism, supported by various examples from the movie *Jai Santoshi Maa*, will reveal how this powerful and permeable gaze can threaten the power balance between the actor and receiver; we will

> however see that this balance can be regained by a “blind” devotion from the receiver.

Satyavati s’approche humblement de la statue de la déesse Santośī Mā, tenant délicatement dans ses mains un plateau d’argent garni de fleurs, de bougies et de *gur-chana* qui serviront d’offrandes à la déesse.[1] Suivie par d’autres femmes dévouées à la Mère, elle entonne un chant dévotionnel afin d’exprimer son amour pour Santośī Mā. Tout au long de cette scène, elle échange son regard avec celui de la déité et exprime à quel point il lui est bénéfique :

> **Satyavati :** *There is so much love and affection in Mother’s eyes!*
> **Chœur :** *In Mother’s eyes!*
> **Satyavati :** *There is so much kindness and compassion in Mother’s eyes!*
> **Chœur :** *In Mother’s eyes!*
> **Satyavati :** *Why should I not look in Mother’s eyes again and again? I see a new miracle in Mother’s eyes every time I look into them!*
> **Chœur :** *In Mother’s eyes!* […]
> **Satyavati :** *I keep gazing into Mother’s eyes!*
> **Chœur :** *I keep gazing into Mother’s eyes!* (Sharma, 1975).[2]

Cette scène d’intense échange visuel marque de façon hautement émotionnelle le préambule d’un scénario mythique méconnu et explique probablement l'immense succès qu’a obtenu cette œuvre cinématographique à petit budget dirigée par Vijay Sharma en 1975 : *Jai Santoshi Maa* (« Louanges à la Mère de la satisfaction »). En tant que film mythologique et dévotionnel bollywoodien, *Jai Santoshi Maa* se concentre tout au long de son intrigue sur la puissance divine, mais surtout sur la puissance du regard. Que ce soit à travers le regard amoureux échangé entre Satyavati et son nouvel époux Birju, le regard dévotionnel échangé entre ces derniers et Santośī Mā,[3] ou encore le regard ravageur de la déesse qui réussit à faire trembler le monde des humains comme celui des dieux, la puissance du

regard à l'intérieur de l'intrigue de *Jai Santoshi Maa* réussit à affecter non seulement les personnages du film, mais également les spectateurs qui le visionnent grâce à la juxtaposition de prises de vue privilégiant cet échange sacré, tant avec l'auditoire qu'avec les personnages du film. Dans ce contexte, le film devient conséquemment un média porteur de sacré, une autre façon pour le divin, en cette ère moderne, de s'incorporer au profit de ses dévots.

Cet article ne présente pas une analyse détaillée du film *Jai Santoshi Maa*, mais s'attarde plutôt à une exploration du rôle de la vue dans l'hindouisme, à travers ses propriétés bénéfiques comme négatives, tout en utilisant le film de Sharma afin d'illustrer les éléments à l'étude. Cette analyse s'inspire également de la méthodologie suggérée par David Howes et Constance Classen (1991) en anthropologie sensorielle. Ces auteurs proposent, à l'intérieur d'études ethnographiques, d'explorer dix domaines culturels clés particulièrement informatifs quant à l'élaboration d'un « profil sensoriel » culturel. Parmi ces catégories, nous nous intéresserons particulièrement aux artefacts et à l'esthétique, aux décorations corporelles, aux modes sensoriels alternatifs, aux rituels et à la mythologie. À ceci ajouterons-nous la catégorie du folklore, qui sera explorée lors de notre analyse du mauvais œil. À travers les diverses scènes de *Jai Santoshi Maa*, nous remarquerons que le regard hindou peut être non seulement bénéfique, mais également destructeur. Ce regard n'est pas que symbolique, il est indéniablement actif et réussit à affecter concrètement son environnement. Nous noterons également que le regard hindou est à la fois perméable et fluide : il réussit à s'approprier ce qui s'offre à lui comme l'éponge absorbe l'eau et transmet tout aussi facilement ses qualités à son entourage. Ces qualités peuvent se retrouver autant dans le regard bénéfique du *darśan* que dans le regard dangereux du mauvais œil, ou encore le regard destructeur des dieux, notamment celui de Śiva et de Santośī Mā. Nous constatons dès lors que même si la puissance de l'œil actif l'emporte souvent sur l'œil récepteur, ce dernier est le plus souvent celui qui rétablit l'équilibre du pouvoir à travers son arme la plus puissante : la dévotion et l'amour (paradoxalement) aveugles.

Regard Bénéfique, Favorable et de Bon Augure :

Il est impossible de poser les pieds en terre indienne sans être submergés par les regards : des habitants qui fixent des étrangers, des dévots qui admirent une image divine, une foule qui se précipite autour d'un saint itinérant afin d'échanger leur regard avec le sien, etc. De tous ces regards, celui qui se démarque le plus est sans contredit le *darśan*. Dans le contexte religieux, le *darśan* consiste en un échange de regards entre un ou plusieurs dévots et une divinité, elle-même incorporée dans un média quelconque (Eck, 1985 : 3). Le plus souvent, on retrouve ce type d'échange visuel dans les temples, près des autels domestiques lors du rituel de la *pūjā*, où la divinité s'incorpore généralement dans une image ou une statue. Le contact visuel établi s'avère alors très intense et intime, il n'a généralement pas besoin d'être particulièrement prolongé ou soutenu afin d'être efficace. Afin d'illustrer cette idée, Pravina Shukla (2008 : 38) donne l'exemple du « drive-by *darśan* » auquel s'adonne sa tante : cet exercice consiste à chercher, lors de promenades en rickshaw, le *darśan* des dieux rencontrés sur le chemin. Pour ce faire, la dame établit un contact visuel rapide avec les divinités (*darśan*), puis baisse légèrement la tête en signe de respect et de salutation (*namaskar*) : ce sont là les deux éléments essentiels à l'échange avec le Divin.

Le point central du *darśan* repose sur le fait qu'il soit réciproque : non seulement le dévot veut-il voir la divinité, mais il veut surtout *être vu* par la divinité. De cette manière, les fidèles peuvent absorber les qualités sacrées et la *śakti* (énergie vitale) de la divinité « like light through their own eyes » (Fuller, 2004: 60). Prendre le *darśan*[4] d'une divinité apporte notamment la bonne fortune, le bien-être, la grâce et le mérite spirituel, en particulier s'il est reçu juste après le réveil matinal de la divinité (Fuller, 2004 : 59). Shukla avance à son tour que la *pūjā* tourne donc sans contredit autour de la vue et du *darśan* : « Although devotion to the gods involves many bodily gestures, and many senses, it is through direct eye contact, through the visual channel, that one asks for a favour or offers thanks to the gods, who in turn bless the faithful by looking back, training their enormous and benevolent eyes upon their devotee » (2008 : 27).

L'attention apportée aux détails des yeux des divinités témoigne de la portée et de l'efficacité du regard divin sur le regard humain : même si la statue ne ressemble par exemple qu'à un gros caillou coloré d'un rouge orange éclatant, on y dessinera des yeux afin d'être sûr que la divinité puisse à son tour voir ses dévots (Babb, 1981 : 387). Cette réciprocité du *darśan* est habilement représentée dans *Jai Santoshi Maa* (Sharma, 1975) lors de la « lune de miel dévotionnelle » (Lutgendorf, 2002 : 30) de Birju et Satyavati. Lors de cette séquence, la caméra s'immobilise d'abord sur les deux amoureux admirant Santośī Mā du regard, qui à leur tour se fixent l'un l'autre, et retournent finalement les yeux vers la déité. La caméra se retourne ensuite vers la déesse qui observe à son tour ses dévots, et ainsi de suite (Sharma, 1975). Ce « ping-pong darśanique » qui se répète à la visite de chacun des cinq temples de Santośī Mā inclus sur la route du pèlerinage, se synchronise à son tour avec les paroles du *bhajan* (chant dévotionnel) couronnant la scène. Les nombreuses scènes de *pūjā* (rituel) du film centrées sur cet échange de regards sont également dépeintes à travers des prises de vue passant de la déesse Santośī Mā à ses *bhaktas* (dévots), en privilégiant les zooms et la représentation détaillée des yeux tout comme la perception distincte de chaque acteur. Non seulement est-il possible de prendre le *darśan* de la déesse à travers les yeux de Satyavati et des autres dévots, mais il est également possible de se mettre dans la peau de Santośī Mā et d'obtenir sa perspective visuelle de ses fidèles, accentuant encore une fois l'importance de la réciprocité du regard favorable. En privilégiant ce type de prises de vue, Sharma a non seulement réussi à capter la centralité et la puissance du regard bénéfique de la déesse, mais il a également favorisé cet échange visuel avec le public visionnant le film.

Ce ne sont pourtant pas seulement les yeux des divinités qui sont mis en évidence, mais également ceux des humains, particulièrement ceux des femmes. C'est à travers les yeux que passent toutes les émotions divines et humaines, qui sont transmises efficacement à l'auditoire; les yeux facilitent particulièrement la transition de la *rasa* (essence) divine en *bhāva* (émotion) humaine, expérience centrale au sein de la *bhakti* (dévotion) hindoue. Encore une fois, le film *Jai Santoshi Maa* (Sharma, 1975) transmet cette expérience à travers un

scénario où le spectateur se retrouve prisonnier d'une montagne russe d'émotions allant de la joie et de la satisfaction à la tristesse et au désespoir.[5] Les plans rapprochés dépeignant les yeux de biche de son héroïne Satyavati, soit en larmes ou en admiration devant Santośī Mā, symbolisent les moments forts de cette transmission de *rasa* à l'auditoire. Comme Satyavati qui souhaiterait se plonger dans les yeux de Santośī Mā encore et encore, son époux Birju voudrait en faire de même avec les yeux de sa nouvelle épouse, qui sont eux-mêmes comparables à la déesse;[6] le *darśan* provenant de Satyavati lui semble tout aussi favorable et bénéfique que celui échangé avec la déesse Santośī Mā.

En complémentarité à la beauté des yeux, nous retrouvons la beauté physique des dieux, qui traduit inexorablement un caractère sacré. Ce qui est beau, pourrait-on affirmer, est ce qui est sacré, pur et de bon augure. Aussi, les dieux et déesses sont toujours représentés dans la perfection de leur beauté physique, qui elle-même reflète leur pureté d'âme. À ceci s'ajoutent les incontournables parures venant davantage embellir cette beauté naturelle : vêtements délicats et colorés, bijoux d'or et d'argent, fleurs, etc. La beauté des divinités « séduit le dévot et stimule sa dévotion » (Gérard Colas cité dans Berti, 2004 : 87); le simple fait d'admirer cette beauté constitue en soi un événement de bon augure. En effet, un dévot pourra notamment poser sur sa table de chevet l'image de sa divinité favorite de façon à ce que son regard se pose d'abord sur elle dès qu'il ouvre les yeux en se réveillant le matin, ainsi pourra-t-il être protégé et bien commencer sa journée. De la même façon, et pour que le regard divin se pose également sur quelque chose d'agréable à la vue, les dévots se font à leur tour beaux et belles lors de leur visite dans les temples : Joanne Punzo Waghorne (1992 : 28, 30-31) suggère même qu'ils servent de parures et d'extension au corps de la divinité.

Et pourtant, ce bienveillant regard divin peut s'avérer si puissant qu'il peut aller jusqu'à blesser, foudroyer ou même tuer ce sur quoi il se pose. Tel est notamment le cas du Seigneur Balaji, représentation du dieu Vishnu. Son regard est si puissant que ses yeux doivent être recouverts d'œillères. On recommande par ailleurs aux dévots venus prendre son *darśan* de porter des lunettes soleil afin de « diluer » ce puissant regard (Shukla, 2008

: 39). Ceci n'est pas sans rappeler la dernière étape de la conception des statues de divinités, qui consiste à « ouvrir les yeux » de la déité en y dessinant les pupilles. Si les prêtres et les dévots apportent la touche finale au niveau des yeux, c'est bien parce que le regard de la divinité, surtout lors de cette ouverture des yeux, est particulièrement puissant; ainsi les brahmanes font-ils bien sûr de laisser ce puissant regard divin se poser d'abord sur quelque chose d'agréable, comme une offrande de nourriture ou encore le reflet de la divinité dans un miroir. Si par malheur le regard de la déité se posait d'abord sur une personne ou un animal, ce dernier en serait tué (Eck, 1985 : 7). Plusieurs précautions rituelles sont donc nécessaires afin de canaliser cette puissance et la transformer en énergie bénéfique plutôt que foudroyante, aspect sur lequel nous reviendrons plus tard.

Regard Dangereux, Foudroyant et Meurtrier :

Du regard bénéfique, favorable et de bon augure, le regard divin peut se transformer, selon le contexte, en un regard dangereux, foudroyant et même meurtrier. Telle est l'une des caractéristiques rattachées au dieu ascétique Śiva et à son troisième œil. D'un seul regard il peut réduire en cendres une personne ou enflammer un paysage, comme il peut également donner ou redonner la vie. Cet œil représente d'abord « une force ascétique et antiérotique qui sert à brûler Kāma » (O'Flaherty, 1993 : 310), le dieu érotique. En effet, nombreux sont les récits où Kāma, tentant de déconcentrer Śiva plongé dans une plénitude et impassibilité ascétique, se voit réduit en cendres par le troisième œil flamboyant du dieu destructeur, démontrant ainsi la victoire de la force ascétique sur la force érotique. Néanmoins, les effets dévastateurs de ce troisième œil peuvent être renversés grâce au regard de *soma* de Śiva — « le regard bénéfique fait de l'élixir d'immortalité » (O'Flaherty, 1993 : 314). En effet, après avoir été supplié ou adoré, le dieu ascétique réussit à redonner vie aux cendres de Kāma à l'aide de ce regard vivifiant.

La déesse Santośī Mā, petite-fille de Śiva, semble également partager ces caractéristiques. Dans la scène finale de *Jai Santoshi Maa* (Sharma, 1975), les deux belles-sœurs jalouses de Satyavati décident de ruiner la fête en l'honneur de la déesse

en ajoutant du jus de lime à la nourriture offerte à la divinité. Santośī Mā, prise d'une fureur volcanique,[7] déploie alors son regard dévastateur autour d'elle. Après avoir fait trembler le monde des humains comme celui des dieux de son regard courroucé, ses yeux se transforment en deux rayons de feu calcinant les deux belles-sœurs responsables de cette tragédie. Les gens de la foule accusent pourtant Satyavati de tous les malheurs qui s'abattent sur eux. Totalement désespérée, l'héroïne entonne un chant adressé à la déesse, la suppliant de lui venir en aide. Santośī Mā, apaisée par cet hymne dévotionnel, octroie à Satyavati son souhait consistant à renverser les ravages causés par le regard destructif de la déesse. Comme dans le cas de Śiva, il semble que Santośī Mā ait pu renverser les effets négatifs de son regard en réponse à la dévotion de ses victimes; l'œil auparavant passif du dévot devient conséquemment actif et rétablit l'équilibre dans l'échange des regards.

Chez les humains, bien que le regard ne soit généralement pas aussi dévastateur, il peut tout de même réussir à causer du dommage à son entourage sous la forme du mauvais œil (*nazar* ou *najar*). En Inde, comme dans plusieurs autres pays, le mauvais œil est provoqué par l'envie, le désir et la jalousie, mais le plus souvent de façon inconsciente et involontaire. Un regard trop envieux peut rendre un enfant malade (ou même le tuer), empêcher une vache de produire du lait, ou encore ruiner un repas (soit en rendant celui qui le mange malade ou en donnant aux aliments un goût infect). Les enfants, les femmes enceintes et même les animaux ou les plantes sont des cibles privilégiées du mauvais œil, étant donné qu'elles sont généralement vulnérables ou trop « innocentes » pour le dévier et s'en protéger. Les hindous croient également que « something complete is inauspicious » (Maloney, 1976 : 120), car la perfection provoque trop souvent la jalousie et l'envie dans l'entourage. C'est pourquoi ils veilleront à ne jamais se présenter de façon « complète » ou « parfaite » en public. On appliquera par exemple une tache noire en khôl sur la joue d'un enfant de belle apparence pour le rendre « imparfait ». Aussi, une femme ne quittera pas son domicile sans avoir retiré un ou deux bijoux de sa tenue complète. Dans le même registre, par crainte d'attirer sur soi les soupçons de la « mauvaise bouche »,[8] les hindous ne complimenteront jamais leur entourage et encore moins les

enfants. Derechef, une mère s'adressera à son enfant comme étant stupide, inutile ou laid.

À la base, n'importe qui peut posséder le mauvais œil. Certains types de personnes attirent toutefois davantage les soupçons, telles les femmes âgées ou stériles, ou les gens en marge de la société, notamment ceux qui possèdent des difformités physiques. Si ces individus sont souvent accusés d'avoir jeté le mauvais œil, c'est bien parce que l'on considère qu'ils ont toutes les raisons d'être envieux et de souhaiter le malheur à ceux qui possèdent ce qui leur manque. À cet effet, Clarence Maloney (1976) suggère que les individus des strates inférieures de la société sont les plus prônes à exercer le mauvais œil sur leur entourage, étant donné qu'ils ont toutes les raisons d'envier les mieux nantis qu'eux-mêmes. Aussi réduit-il le mauvais œil, qu'il interprète comme une façon de justifier les malheurs et la malchance, aux conséquences de l'accumulation de mauvais karma. Mais si tel était le cas, les deux-fois-nés[9] n'oseraient jamais sortir dans la rue. Dans une société où le statut social constitue le résultat de lois cosmogoniques, il est quelque peu insensé de se sentir désavantagé face à ceux qui ont acquis une position favorable par mérite. Par le fait même, Pocock suggère plutôt que le mauvais œil « seems to be apprehended more from those with whom one is, in most other respects, equal, or has reason to expect to be » (1992 : 204) ou, tout au plus, que ce regard négatif soit provoqué par ceux qui manquent d'humilité. La plupart du temps, on remarque que la personne coupable fait partie de notre entourage proche, mais parfois de manière marginalisée, comme le serait notamment une belle-sœur.

Il existe en revanche un éventail étonnant de dispositifs et de moyens mis en place afin de se protéger, de dévier ou de neutraliser le mauvais œil. L'une des stratégies principales consiste à dévier l'attention du mauvais œil en l'attirant sur un objet neutre : amulettes, décorations, bijoux, inscriptions sacrées, cordes noires faites de nœuds entourant la taille ou le bras, maquillages particuliers, etc. Les piments forts (chilis) ont également cette propriété; nous pouvons fréquemment les retrouver à la porte des commerces ou encore sur les pare-chocs des voitures et rickshaws. De la même façon, les divinités peuvent protéger du mauvais œil, c'est pourquoi aucun

conducteur de voiture ou de rickshaw n'oubliera de placer près de lui l'image d'une ou plusieurs divinités afin de le protéger lorsqu'il conduit.

Regard Puissant :

Le regard hindou, comme le suggère Maloney (1976 : 109), ne devrait pas tant être qualifié comme mauvais, mais plutôt comme « puissant ». En se référant au regard puissant, nous pouvons non seulement rejoindre le regard bénéfique et le regard malveillant, mais nous pouvons aussi mieux cerner les caractéristiques du regard hindou, qui ne se définit pas en fonction de contraires, mais en fonction d'une complémentarité et d'un équilibre. Ce regard puissant peut provenir autant des humains que des divinités et affecter les uns comme les autres, bien que les humains soient en général les principaux réceptacles de l'influence du regard.

Qu'en est-il des dieux? Sont-ils vulnérables aux influences négatives du regard humain? Maloney (1976), qui atteste que les dieux peuvent effectivement être affectés par le regard malveillant humain, suggère que les diverses étapes de la *pūjā*, en particulier l'*aarti* (offrande de lumière), sont mises en place dans le seul but de protéger la divinité des mauvaises influences externes comme le mauvais œil, car l'exposition de la déité au regard des dévots en recherche de *darśan* la rend particulièrement vulnérable. Et pourtant, une analyse sensorielle de la *pūjā* nous laisse plutôt croire que ce rituel ne peut en aucun cas se réduire à une série d'actions mises en place afin de protéger une déité. La puissance du regard hindou, particulièrement chez les divinités, résulte davantage en la nécessité *de canaliser et de maîtriser* cette puissance à travers diverses stratégies rituelles. Concernant le mauvais œil entre humains, les amulettes et autres précautions servent à maîtriser ce regard puissant. Chez les dieux, la plus commune des stratégies repose dans le rite de la *pūjā*, où le contexte rituel et surtout l'environnement sensoriel permettent de délimiter l'espace et le temps qu'occupe cette puissance divine, tout en canalisant la puissance du regard divin offert. Ce n'est pas la divinité qui devrait craindre le regard des dévots, mais plutôt le

contraire, car bien que le regard humain puisse blesser, rendre malade ou même tuer les plus vulnérables, le regard divin, particulièrement sacré, peut de son côté foudroyer, enflammer ou tuer qui que ce soit, humain ou dieu, vulnérable ou non. Ce regard divin est si puissant qu'il peut souvent, comme le mauvais œil chez les humains, blesser malgré lui. Et dans le contexte de la *pūjā*, les dévots ont plus à craindre, car ils sont en position de passivité et non de transmission du sacré comme c'est le cas pour la divinité. Ce sont les dévots, en tant que réceptacles du sacré et de la bienveillance du Divin, qui constituent les agents vulnérables dans cet échange.

Voilà pourquoi tant de stratégies sont mobilisées afin de maîtriser ce regard puissant lors de la *pūjā*. Il faut protéger les dévots avant de protéger la divinité, qui malgré son apparence vulnérable lors du rituel, peut assurément se protéger elle-même des influences néfastes externes grâce à son aura sacrée. Pour maîtriser ce regard puissant divin, les humains font appel à un ensemble de stimuli sensoriels privilégiant et contrôlant le contact avec cette puissance divine. Afin d'établir une communication (sensorielle) efficace, l'environnement où la divinité s'incorpore est nécessairement décoré et rendu agréable à la divinité : temples sculptés et colorés, images diverses, couleurs éclatantes, dévots propres, bien habillés et maquillés, douces odeurs de fleurs et d'encens, musiques et *bhajan*, etc. Le son constant des clochettes tout au long du rituel indiquera à la divinité *quand* et *où* s'incorporer, et ne sert donc pas tant à dévier ou détourner le mauvais œil potentiel comme le propose Maloney (1976). Tout est mis en place pour favoriser l'échange de regards dans un contexte contrôlé, minimisant dès lors les conséquences néfastes du regard puissant.

Conclusion

Nous avons pu constater dans cet article que le regard indien possède cette caractéristique de pouvoir être à la fois positif et négatif, de pouvoir purifier ou sacraliser comme de pouvoir détruire, foudroyer ou blesser. C'est pourquoi il devient nécessaire de parler de l'œil puissant ou de la puissance du regard plutôt que du mauvais œil dans l'hindouisme. À cet effet,

nous suggérons que l'échange de regards implique une participation équilibrée entre l'acteur actif et l'acteur récepteur. Si cet équilibre est perturbé, comme il est souvent le cas avec le regard puissant et foudroyant des dieux, l'acteur passif se voit forcé de devenir actif afin de rétablir l'équilibre entre les deux acteurs. C'est notamment ce qui est arrivé entre Santośī Mā et Satyavati lorsque la déesse s'est déchaînée de fureur : auparavant passive (réceptrice) dans cet échange, Satyavati est devenue l'actrice active qui, d'un regard de supplication, d'amour et de dévotion, a réussi à rétablir l'équilibre (de la puissance du regard) entre les deux protagonistes.

Les yeux de l'hindou représentent un portail perméable absorbant les influences externes et affectant son entourage de façon négative ou positive. Ces yeux « are more than holes to see out of; *they transmit various emotions and functions of the mind: envy, malice, love, wisdom, and protection* » (Maloney, 1976 : 130). Le regard hindou détient une puissance considérable, mais surtout inconsciente. Il n'a pas qu'une valeur symbolique et sait se concrétiser de façon active. Il n'est donc pas étonnant de constater à quel point les yeux constituent un centre d'attention dans la culture indienne, allant des yeux grands et accentués des divinités aux yeux des humains, eux-mêmes accentués par leur ombrage naturel ainsi que leurs cils et iris foncés. Le regard hindou constitue un moyen de communiquer et d'échanger diverses émotions, qualités et fonctions psychiques avec son entourage. Les yeux des divinités, quant à eux, représentent carrément la vérité, la lumière et le pouvoir de la vie comme de la mort. Il suffit notamment à Brahma, dieu créateur, ou à Śiva, dieu destructeur, de fermer les yeux[10] pour plonger le monde dans une obscurité totale menant à sa destruction et régénération (O'Flaherty, 1993). La vue, en conséquence, a toutes les raisons de se hisser au sommet de la charte sensorielle hindoue.

Notes

[1] Le *gur-chana*, considéré comme la « collation des pauvres », se compose de pois chiches (*chana*) et de sucre non raffiné (*gur*).

[2] La traduction tirée des sous-titres anglais du film a été préservée afin de privilégier l'authenticité des paroles. Tous les autres dialogues cités dans cet article sont également tirés de ces sous-titres.

[3] Woodman Taylor (2003) utilise le terme *nazar* pour décrire ce regard passionnel amoureux et *drishti* pour décrire le regard à nature dévotionnelle et religieuse. Cependant, le terme *nazar* possède une connotation nettement plus négative en Inde en se référant généralement au mauvais œil; le terme *drishti*, de son côté, se réfère davantage au point de fixation visuelle sur lequel se concentre le yogi lors de sa pratique méditative. Dès lors, et ce malgré l'utilité de ces termes proposés par Taylor, nous préférons laisser de côté le *nazar*, à défaut d'un terme plus approprié, et utiliser *darśan* plutôt que *drishti* pour se référer au regard en contexte religieux.

[4] Les hindous affirment qu'ils « prennent » ou reçoivent le *darśan* (« to take *darśan* »).

[5] Cette stratégie caractéristique de la théorie de la *rasa* n'est pas sans rappeler la poésie de Mīrābāī, qui elle-même passe de l'angoisse et du désespoir de la séparation d'avec son amant spirituel Krishna à la joie et à l'extase de leurs retrouvailles (comme c'était le cas entre Krishna et sa compagne Rādhā). Il est également intéressant de noter que Satyavati, dans *Jai Santoshi Maa*, semble elle-même revivre à la fois les déboires de la vie de Mīrābāī (qui a longtemps été maltraitée par sa famille par alliance n'acceptant pas qu'elle ait refusé de se jeter dans le bûcher funéraire de son feu époux) et de Rādhā (qui devait non seulement vivre dans l'angoisse de la séparation de son amant Krishna, mais le voyait également courtiser d'autres femmes pendant son absence).

[6] Comme il est de coutume dans les films mythologiques bollywoodiens, l'héroïne Satyavati ressemble étrangement à Santośī Mā. Il s'agit là d'une stratégie visant à dépeindre les traits divins de l'actrice, qui se voit alors digne de jouer ce rôle et transmettre la *rasa* y correspondant. À ce sujet, se référer à Shukla (2008 : 31-32) ainsi qu'à Thakurta (1991).

[7] Le jeu de mots s'avère ici particulièrement approprié étant donné que les prises de vue du regard déchaîné de Santoshī Mā sont présentées en alternance avec des visions de volcans en éruption.

[8] « Evil mouth », qu'on peut considérer comme la « sœur » du mauvais œil (Maloney, 1976 : 131-133).

[9] Les personnes appartenant aux trois castes les plus élevées de l'Inde, soit les *Brahmins* (prêtres), *Kśatriyas* (chefs politiques et guerriers) et *Vaiśyas* (marchands et agriculteurs).

[10] On dit notamment des dieux qu'on peut les reconnaître (sur terre) par le fait qu'ils ne clignent jamais des yeux, permettant dès lors un *darśan* soutenu avec ceux qu'ils rencontrent (Eck, 1985 : 7).

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