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Last Rights: The non-tragic image and the law.

The technological image manifests our lived reality. It is irreal, constructed, and inorganic—and yet it has the power to define our experiential present, our history, and our imagination. The image is in our head and is our head. This essay explores the problems with various emancipatory realisms proposed by art and critical theory that seek to confront this condition as a problem of freedom and limitation, turning on a hierarchy of the image by setting mediated, scientific, and administrative languages (understood as the conservative-mechanical apparatus of the image) against more critical unmediated languages that expose the truth of power. This 'truth exposure' is supposed to open the door to as yet unthought freedoms.

Identifying and dispensing with the limited and tragic dimension of such a critique, this paper turns instead to the non-tragic image. Questioning the assumed dualisms of freedom/limitation, truth/falsity, and organizational/unregulated languages, and identifying how law is thereby destroyed and configured without reference, we can ask what happens to *any claim* of rights, including freedom, if no natural given can guarantee this claim? Here, we face the fear of epistemological anarchy.

Last Rights: The non-tragic image and the law.
The technological image—that is, images that are produced through mechanical, mass produced and machinic processes—have acted as the primary site of contention for a politics that places human freedom as its guiding principle. Our anxiety over images is as much historical as contemporary, characterizing modernity ever since early industrialization, and prevailing today in the concern that a digital culture causes the recession of human morality and the further securitzation and territorialization of images. Adorno and Horkheimer famously complained about the invention of the soap opera and mass marketing, as these were understood as forms of insidious propaganda. Moreover, in this work, the jitterbug, the automobile, and the bomb occupy equivalent intensities of violence, leveling the spectacular with everyday experience. The techno-image destroys the special qualities of individual people by turning them into identity-free "consuming masses," producing a passive socialized nature that is dispossessed of community, individuation and consciousness.[1]

Complaints about the totalizing force of digital culture today are not so different. Data collection, surveillance within and beyond our consumer choices, and the management of our lives through social media underscore the degree to which our lives are constituted by the media-scape of mobile phones, computers, television, cinema,

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[1] In "The Culture Industry: Enlightenment as Mass Deception", Dialectic of Enlightenment, Verso , 1997, Adorno and Horkheimer wrote on the movie producer "The more intensely and flawlessly his techniques duplicate empirical objects, the easier it is today for the illusion to prevail that the outside world is the straightforward continuation of that presented on the screen." 126.

advertising, music, and news. Images are inside our heads, we are them and they are us.[2]

This conformity to reality is, as Baudrillard tells, us "diabolical".[3] Films like *The Truman Show* tell us as much, where a constraint to a constructed reality is made up of a horrific combination of the real (lived) and representational (acted) experience. In the film, this is a false reality that only love can save us from… For Baudrillard we are caught up in "a mad pursuit of images, in an even greater fascination which is only accentuated by video and digital images. We have thus come to the paradox that these images describe the equal impossibility of the real and the imaginary."[4] The power of images is enhanced further because they are not authored; there is no power behind the image. Images are a copy without a model, authoring reality for us - as "given." The techno-image manifests this reality in its mechanisms of distribution; flows and fragmentation from which we cannot move one inch away.

This all spells crisis: We are constrained to the infinite space of a capitalistic techno-power where our freedoms are accommodated, acted out and believed in, and the image, that thing we cannot trust, tells us so.

Critical Method: Lies and Myths

This catastrophic diagnosis can be paralleled with particular artistic critiques of the image in this and the last century. Specifically, in response to the incapacity for images to index or represent reality, critical arts practices have sought to disclose and reveal the image as *a mechanism*, *system, or apparatus.* We have seen a rejection of what we might consider to be creative languages, a moving away from and a distrust of representation, figuration, and symbolism, and a shift towards processes, time-lines, performative networks, relations, dynamics, exchanges, and forces. Images and objects proliferate but they are presented as systems and phenomenological plots. These images express our location within process, within and as part of this system. Crucially, the aim of this critique, which emerges in a range of aesthetic forms and styles, is not to imagine or determine a new way of life, nor to wipe out existing forms of bad power in forms of direct action. Instead, by moving away from representation, there is an attempt to access and know and present the *real apparatus of power* that constitutes reality *as a lived material and technical process.*

Artworks that have taken this path litter the vista of critically acclaimed practices in recent times. These include works that highlight the processional, the performative, the dematerialized object, and the temporal event in the genre of performance art, where

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[2] They present a miasmic biotechnological landscape of exchange and communication. News reportage now seems to follow the image, as if desperate to catch up, where TV newscasters do their best to pass off the description of what they see in front of them as news; deciphering the image that is relayed to our screens at the same time as it is presented to us, the audience. This is "journalism in the moment". Mediating stories aren't available – the dynamic image gets there first.

[3] Jean Baudrillard, *The Evil Demon of Images and the Precession of Simulacrum*, in Thomas Docherty, ed., *Postmodernism: A Reader* (New York: Columbia Univ. Press, 1993) pp. 194

[4] Ibid. p29.

a turn to the apparatus or base-line of production is associated as a less mediated, more free and more real operation of the image.[5]

The principle of this critique is not dissimilar to Duchamp's infamous engineering of the urinal work, *Fountain*, in 1917, where a critique of the performative operations of the internal workings of the 'art system' became the content of the work. As we know, this involved Duchamp's stage managed rejection of his alter-ego, Richard Mutt's, artwork from the open and all inclusive call by the Salon of Independents exhibition, and the subsequent story of this rejection that was presented alongside the now infamous photograph of the urinal by Alfred Stieglitz in the pamphlet *The Blind Man.* As part of this myth creation we must not forget the missing and unavailable object of the urinal itself, which adds to this story through highlighting the mystical and negative presence of the ideological apparatus of the art-world system. Conceptual art in a general sense manifests this method of critique as central to the production of artworks, where art works of all kinds were careful to display the epistemological, contradictory, and even paradoxical means of their production. It was this method that became paramount to the work of institutional critique.

Whilst institutional critique arrested the apparatus of "meaning production" other works invested in the technical apparatus of "image production" located specifically in the processes of image machinery and technology. This was given some focus in Structuralist inspired (anti-realist) experimental art. Here, the empirical material of the medium—the celluloid, the scratch, the hand-crafted mark or accidental stain all developed through an active process of production—is privileged over and above what kinds of images the camera would record, capture and stabilize. In Stan Brahkage's work we are presented with the mechanical process of image-material before our eyes, *sans camera*, and, apparently, without mediation.[6]

Alternatively, rather than unravel and expose the processes of meaning or production, ironic and/or parodic art works can be seen to focus instead on our interface with the image of power in a politics of reception. Andy Warhol's *Brillo Boxes* (1964) reform and reproduce the homogenous systems of existing power *as image in image form* in a critique of over-identification. One aligns oneself with the exact

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[5] See Jean François Lyotard's "Answering the Question; What is the Postmodern?" in *The Postmodern Explained to Children*, Sydney, Power Publications, 1992. "Industrial photography and cinematic processes always had the edge over painting and the novel when it is a matter of stabilizing the referent, of ordering if from a point of view that would give it recognizable meaning, of repeating a syntax and lexicon that would allow addressees to decode images rapidly, and make it easy for them to become conscious of their own identities and the approval they thereby receive from others."p.3
Here he makes a clear distinction between the social realism of traditional forms of representation and chimes in with the consistent obituary writing for representational painting, where rather than interpret an empirical world as real, these works presented an already agreed upon normative reality. In opposition to this, Lyotard asserts a realist sublime of processional practices that elusively identify the 'lack' of reality in their processes, by connecting formlessness and the unpresentable. Here there "is no figuration of the absolute," and we must present allusions to "what is conceivable but not presentable" that would oppose the idealism of the resolution of "the sensible and the concept." p.7-9
[6] See *Dog Star Man Prelude*, 1961 or *Water for Maya*, 2003, for example.

principles/images of a power that are understood as dominant and standard.[7] In Warhol's work the categories of art and life are collapsed, along with what is considered true and false, and we are asked to identify another overriding truth, that of the false nature of both. This unification means that we are caught within a hall of mirrors where both "model" and "copy" are equally false, *and we know it*. Specifically, the role of the artwork is to educate us towards this insight where this double confrontation of the contested image, or repeat, invites a Nietzschean inspired "Eternal Return" as a form of theater. [8]

In all these cases, the machinery of cultural production is made visible as its own theatre, where art works locate themselves deep within the systems of production, meaning, and exchange. This making visible of specific processes appears as Duchamp's immaterial and perverse reflection of power, Brahkage's idealization of processional material that attempts to reject or delete representation altogether, or as the dark void of contingency in Warhol's more traditional antirealist irony where the world is made false in order to expose a larger truth.[9]

These three examples serve to illustrate three primary problems. The first is that we see the production of a hierarchy of images despite this world of images being understood as borderless and infinite. Here we begin to see the difference between technical images and representational images, the processional and the figural, and the conceptual and the experiential image. The irony is stark: the claim is made that the space of the image is deregulated, open and in flux and yet at the same time, we must free ourselves from this space. It is this contradictory gesture that produces the borders and categories that determine a real and consistent unfreedom that this theory cannot hope to transcend..]

Our second problem highlights the contradictions of a theory that seeks to make a distinction between a freedom that is real and a freedom that is false. We see this

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[7] Such stories have been played also out in literature and film. Ernst Jünger's writing from the 1930s tells of a mutual love and fear of technology, and is played out in a mix of political philosophy and sci-fi horror stories in which sacrificing oneself to the world of everyday mechanical forces, including the violent mechanical eye of the camera. His work offers a masochistic and delirious experience of being bound to technology as the truth of capital and the cosmos. The destination of techno-power is the nature-chaos of science itself; a power that is dominant and cannot be held in check. Becoming as one with the dominant system and embedding yourself in the processes of power is titillating, erotic and adventurous for Jünger, but not only for him, it's the stuff of standard science fiction fantasies from there to *The Matrix* and beyond. And the image of technology takes center stage in this, where the wires, the lenses, the components and the cables *are* the techno-image. The mediation of the lens and the material that it processes are now one and the same – a total dynamic machine. It is the radio in Cocteau's *Orphée* that broadcasts transmissions from the dead. It is the television in *Poltergeist* that holds Carol-Anne in the netherworld of horror. It is the corporate computer system that achieves self-awareness in *Terminator*. It is the space station computer's memory that gains will in *Moon*, and so on…

[8] See commentary extending from this in the section in this text: "Image and the Law".

[9] Here, we must assert that these images forms are also false and unavailable but also strangely reflex precisely on this original conceptual and ideological difference. Here, in this latter case, this knowledge of particular pre-existing historical conditions of category forms overrides the groundlessness that critique may gesture to and returns us to the tragic dimension of this irony.

when artworks set out to claim that other forms of power are in fact false and that they must be exposed as such. However this method runs into trouble when it has to deal with the language that *it* puts into effect. How can critique administer and understand its own authoritative claims to power? If all language is designated as unreal and false than the language it puts to use is equally weak. The consequence of this critique means that not only are other forms of power false but equally so is the language that makes this claim. All authority must now be put into question, and this results in a tragic critique that targets itself as the object of interrogation.[10]

Our third problem is where we return to the question of freedom. The methods that we have examined reflect the idea that we are constrained to specific systems and processes of power, and that we are located within an apparatus that is deregulated but somehow at the same time totalizing. As such, we can say that the critical position identified here explores the consciousness of our constraint. This constraint is key to thinking a freedom to come, but freedom is in this case un-presentable and inaccessible. As such, this consciousness of the false nature of our experiences, written through this desire to engage in systems of image-power, does not really give us the tools to do anything in a political or practical sense about the situation it identifies. Rather, it is the key to thinking a freedom to come that is only ever negatively inscribed in relation to the extant constraints of the now. Furthermore, since all power is the target of this critique, we are told that any system in which we find ourselves would find itself under the same scrutiny.[11] In the end, this is our political inertia and a final distraction. A theory that knows this to be the case and which nevertheless continues to identify failure as some redemptive space can only be *tragic* because (a) this theory knows it is responsible for defining the now of the status quo, and (b) it cannot move beyond that acknowledgement in real terms. Its parameters are set in the mirror.

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[10] The consequence of this method is paradoxical, resulting in a horrible mixture of self-annihilation and naive sovereignty. Self-annihilation happens because the art work must tell the truth that all language is false, *including its own*; and sovereignty is naively asserted when critique must claim that the language that claims this truth is "more real" than that which it targets. A critique whose target is *knowledge* and whose assertion is *constraint* invites the kind of paranoia that means the self is always the subject of interrogation. This theory is reliant upon an understanding of the Lacanian real where the missing original article of power produces the deferral of representation and therefore emphasizes the processional. Consciousness is manifest in making a tight connection between the symbol of a never-to-be-known self and a freedom that will remain invisible and unknowable. The destination of this critique remains not only fictive but politically castrated in its own privacy. Critical culture is its own worst enemy. *Myra* by Marcus Harvey (1995) serves well as an example: The police photograph of Myra Hindley reproduced in a large format black and white painting made up of children's handprints. The simplistic materiality of the hand printed image reflexes upon its opposite, the missing and dead victims of the Moor's murderers Ian Brady and Myra Hindley. Here the circle of innocence, pain, irrational murder, and the documents of institutional power are collapsed in an ideal representation of dark and unknown forces. Here the work correlates the anonymity of the works moment of production and real (and terrible) historical events. In doing so, the work makes a self conscious appeal to a universal childhood as spectacular abstraction that struggles to move beyond the privacy of thought.
[11] Stanley Fish comments on this in the essay "Change" in *Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies.* Duke University Press Books, 1989.

In "Popularity and Realism," Brecht wrote that "realistic means: discovering the causal complexities of society/unmasking the prevailing view of things as the view of those who are in power," and that we must "keep in step with the rapid developments of reality."[12] However, in a non-Brechtian world where any center of power is displaced there is no longer anything to unmask, the image is all we have.[13]

The issue here, as we have seen, is that critique persists in operating with this original Brechtian antirealist method at its core, and goes to work with the same values of what is designated as real and what is illusory. As a result, contingent processes that are claimed as un-representable are characterized as figures of mystical dominance, and freedom is mystified as an ideal concept. Bearing this diagnosis in mind, we can see that our only hope for a critical image in these cases is for it to express this tragic internal contradiction – the critical image must represent itself as non-redemptive and constrained to its own crisis of representation. The only possible redemption is for 'critique' to recount the failure to be free from representation.

Image and the Law
What would it mean to think past these moral dimensions of the image? It is clear that theories that attempt to think the de-ontologised and open space of the contingent image and who determine this as a real, struggle to understand the epistemological condition as well as the political operations of images, namely how they produce particular forms of regulatory power. It is in this determination of a real that is antithetical to the image where the dualisms of freedom and power, the real and the false, and openness and

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[12] "Popularity and Realism" (1938), in E. Bloch, G. Luckas, B. Brecht, W. Benjamin and T. Adorno, *Aesthetics and Politics* (London: New Left Review of Books, 1977).

[13] Vilem Flusser's critique of the "technical image" is enlightening as regards these problems. In *Into the Universe of Technical Images* (trans. Nancy Ann Roth, London & Minneasota: University of Minneasota Press, 2011 (orig 1985); pp. 51-69), he argues that consciousness is the managed and outmoded "artificially preserved republic" of the non-society of the technical image. It is no longer a means to dismantling of normative power because the technical image operates as a form of nature in an entropic closed circuit "feedback loop" of image-human relations. The technical image is a "parasite" on history and "human freedom" as "the source from which history springs is beginning to dry up." In a fashion that echoes Accelerationist critiques, where capital as nature is its own crisis, an "eternal boredom will [then] spread throughout society." The regulatory power of the image is actually seen to be the site of chaos, a kind that results in its own destruction since this malaise serves to bring about a revolution of the image-human dynamic where new technicians arise and take control with "visionary powers." Flusser's revolution asserts new systems of human communication which are described in the words of another naturalism: "For only then would [technical images] link person to person, a bit like nervous pathways and nerve cells join together."

While Flusser recognizes the problematic correspondence between consciousness and critique, his appeal to mastery however produces another hierarchy that entertains its own problems, this time between the double abstraction of the human and the image. Flusser forgets that the human is a part of the technical image and is unfree to achieve the type of transcendental mastery that his revolution requires. This life of the technical image wrongly understood as capitalist expenditure is mystified to a form and force of nature that we must wait for in readiness, and then tackle and control in a metaphysics of reason that would supplant it. As a politics of freedom this theory is unachievable and as a politics of consciousness it only guarantees knowledge of constraint.

constraint are conjured and naturalized. In the face of this problem, what would it mean to take the image seriously without invoking these niave hierarchies of the image that seem to lead us to critical, cultural and political roadblocks and without falling back into the normative terminus of hierarchies that determine what is called the real, administrative, and scientific image over that which appears to be the mediated, allegorical, and representational image? Without a narrative of freedom, tragedy, constraint and finitude, would we end up in the space of an epistemological and moral anarchy?

Stanley Fish poses this latter question in his essay "Rhetoric", which follows Thomas Khun in arguing that the force of scientific statements are, in the end, that of persuasion.[14] Persuasion, in this instance, does not establish a duality of the false and the true, but, rather, constitutes a field of language where positions are contested rhetorically. Since there is no neutral foundation for positions, beliefs, arguments and truth claims to fall back on, we are left with the data that we have to situate our convictions as only situated, and these convictions are organizational, persuasive, imaginative as they are administrative, representational, and demonstrational. As there is no neutral space to be called upon, we now see an explicit threat to the quasi-scientific approaches to the image evidenced in the artworks that we have discussed. Any description of a more essentialized and true image system is as persuasively interested as any other. Therefore, all language is rhetorical; that is, language seeks to mobilize, to win assent, and to establish itself as true. At the same time there are no context-independent statements. Reading Austin, Fish asserts that "'True' and 'False' are situation specific judgments on the relationship between contextually produced utterances and states of affairs that are themselves no less contextually produced."[15] For Fish, the fact that language is "unreal" in this totalizing sense does not mean that language is incapable of producing facts or of affect. This is because there is no connection between a statement that is contextual and a statement that is false.[16] What Fish is laying down in this process is the assertion of a universal truth, that is, that *all statements are rhetorical* and contingent. Crucially, there is no regressive circularity that

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[14] Stanley Fish, *Doing What Comes Naturally,* p. 487

[15] Ibid. 490

[16] As we have shown it is the false distinction between technical and scientific languages and creative languages that is constantly at stake in our examples of critical artistic method, and this can be seen to motivate critical theory as much as critiques of affect. In "Plato and the Simulacrum" (trans. R, Krauss, in *October* 27, Winter 1983; 45-56) Gilles Deleuze establishes a distinction between the "destruction which conserves and perpetuates the established order of representations, models and copies, and the destruction of models and copies which sets up a creative chaos." Between them there is "that chaos which sets in motion the simulacra and raises a phantasm, … the most innocent of all destructions." This process of chaos is essential to his contention that the "moment of Pop Art" is where "the factitious," which is always a copy of a copy, "must be pushed to the point where it changes its nature and turns into a simulacrum." But this schema is now at risk because, as we have already shown, and as Fish argues, a creative destructive force is no less guaranteed to produce disorder as a conservative force is guaranteed to perpetuate order.

might arise from an ontological relativism, or no irony in this statement because this claim is also situated and context dependent: it *is not correlated to anything*.[17]

For Fish, an interpretative community is "an engine of change."[18] There is no guarantee that we will secure change, and no way of recognizing change when it happens, because there is no independently verifiable reality to base this measurement upon.[19] This dispossession of distance, and the forgetting of historical consciousness, does not define a tragic scenario. It is "a loss entirely without consequences,"[20] an unbinding from referents that were never stable in the first place.

The Non-Tragic Image

Our rights to freedom have been traditionally understand to be "God-given," where the freedom that we seek is always already there as a pre-political fact, given to us at the inception of life, and set as the standard of a freedom to come.[21] As we have shown, this non-political space is impossible and naïve. Our right to free speech, free expression, and free action is not apolitical. The definition of the human as a thing that deserves rights does not come from nowhere, these claims are specific and interested, they are fought for, argued, insisted upon; they are practiced and contested in particular circumstances *all the time*. As such, any correspondence theory that assumes that we can know freedom as a de-ontologised real of contingency can only be identified as a mystifying post-political alterity, or, alternatively, as a paranoiac form of political constraint. A critique that holds freedom as its standard bearer, where the empty space of freedom is seen to guarantee just and dissident emancipatory action as a participatory form in a schema of democratic politics, then does no more that identify a tragic and theological dimension to the political. For Fish, this right to freedom bears out "no force whatsoever."[22] Freedom is not illusory, but it is politically weak.

Fish's universal claim that everything is contingent annihilates the correlation between human consciousness and freedom and in doing so annihilates the concept of freedom. Now the human is transferred to the legislative, administrative, willful, constraining and constructive demands that constitute a contingent life. The image as a concept is no longer a reflection of false power, systems of power are no longer absolute, and critique is no longer the task of picturing the human condition, nor of delivering human consciousness in relation to freedom. Ironically, without a principle of freedom, and without the methods of critique that locate themselves within it, we might risk disabling any critical purchase we might have against existing form of power, including the target of this text: the principle of freedom itself. We risk leaving those

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[17] A universal statement which says that 'everything is contingent' cannot secure any degree of political change, but it has affect, since this consciousness leads us towards the non-referential and non-relational and away from those *aspirations* for change that are engraved as *causal* within the politics of critical theory.

[18] Fish, "Change", p.150

[19] Ibid. p.153: Change can only be understood "in the context of a historical reconstruction of its empirical conditions and not in the context of any (impossible) general account."

[20] Ibid. "Critical Self-Consciousness." p.465

[21] The US Declaration of independence: "all men are created equal"…

[22] Fish, "Force," p.524

forms of power unfettered from any critique that would target them. It might leave us without a politics altogether. The horror is that we are either devoid of imagination, trapped within the legislature of the given, or we are dispossessed of any means by which we can plan, think, and organize our future. Too free and too constrained. However, as we have seen, pitting the principle of a freedom against the prevailing comprehension of freedom is a false errand, a suicidal politics. It maintains the loop of a project that is only contradictory.

Instead, force is the operation of the non-tragic technical-image; a space where order and disorder are flattened, and where images do not require a reference to freedom, or anything else, to produce meaning. The non-tragic image has no orientation, but a demand. If force operates under no universal identity, name, or principle, we now bear witness to the last rights of freedom as we know it. Is it better to take the risk of thinking this non-contradiction than to continue to reproduce life with these same fatal errors?