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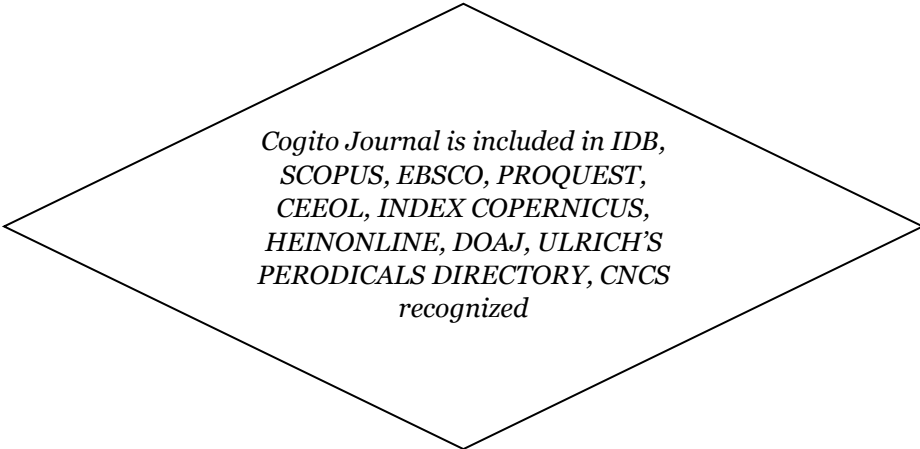
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ACTING PERSON AND THE PHENOMENOLOGY OF OTHERNESS FOR THE CULTURE OF PEACE

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Abstract: *The understanding of Acting Person as the subject of lived experience is pressed on the values of the human actions and actions, on which every model of development the human society is adopted. This is the concern of Wojtylan existential personalism (WEP) on the values of the Otherness of Living, with which the projects the indispensability of the Culture of Peace over the limiting nature of the Culture of War. The paper advances the developmental imports of lived experiences of the Acting Person through the understanding of his or her actions being expressed in truth, for the institution of social order and justice. Through the analysis of Karol Wojtyla's phenomenology of the Acting Person as a being whose action and values defines his or her existence in relation to the interpretation and adoption of his or her lived experiences, the paper recognised that the institutionalization of social order and justice. The concerns for social order and justice through the valuation of human actions posed the issues of asking questions and then questioning answers, as the agent and vendor of both the Culture of Peace and the Culture of War. This paper, adopting the phenomenological method for the analysis of WEP, contemporarily recognised the possibility of the Culture of Peace and the elimination of the Culture of War through ethical and pragmatic adoption of the Otherness of Living. It concludes that, away from the influences of the Culture of War inherent in our modern, economic-driven world of values and ideologies, the values of the Culture of Peace by recognising the indispensability of the Otherness of Living in achieving the courses of Integral Human Development (IHD).*

Keywords: *Acting Person, Culture of Peace, Culture of War, Integral Human Development (IHD), Lived Experience, Otherness of Living, Wojtylan Existential Personalism (WEP)*

Introduction

The social contemporariness of the human person and his or her living conditions and values demands the corporate and integral understanding of the meaning, influences and relevance of both essentialism and existentialism as theories or philosophical thoughts for the realization of Integral Human Development (IHD). It is observably true to say that the

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contemporary forces of scientific and technological-driven development demand that these philosophical thoughts should be properly enhanced in understanding the growing concerns for IHD in our world occasioned by the imposing the *Culture of War* and other forms of dehumanization as against the *Culture of Peace*. The former, for many phenomenological ethicists, is increasingly been engineered by hedonistic and nihilistic valuation of interests and ideologies and the economic imperialism of scientific and technological values and culture by some powerful nations over the weak nations, especially in terms of nuclear weapons and technologies.¹ If the concerns for IHD call for a conscious, contemplative and holistic marriage of these two thoughts, not adopting one and neglecting the other, then there are needs to examine the motifs and ideologies of development that necessarily and indispensably propel our actions. This is in order to fully consider both the material and metaphysical natures of the person, by the projections of the factors of IHD (trust, authentic freedom, charity of purpose, common good, solidarity, values for life, rights and dignity, and ecological continence).

It is on this basis of ethically marrying both existentialism and essentialism for the realization of IHD that Karol Wojtyla as a philosopher and a Pope (as John Paul II) developed the existential phenomenology of the *Acting Person*. It is through this conception of the human person that he expresses his philosophical belief that the individual is the subject of lived experiences through the nature and values of the actions he or she executes and the choices he or she makes. This is the philosophical thought has been conceptually known or termed as Wojtylan Existential Humanism (WEP). For Wojtyla, in ethics, the existential phenomenology of the human person is socially expected to be in relation with the contents of one's own lived experiences. Recognising the indispensable influences of lived experiences for the realization of IHD, Wojtyla developed an existential phenomenology of the *Acting Person*, and it was regarded as a brand of Christian "existential personalism or humanism": an ethics of authentic living: based on the social consideration of the wholeness of the human person in all aspects of development. This philosophy is also highly specified in his social ethics and metaphysics through the valuations of truth and human freedom, especially in the first of his social encyclicals: *Laborem Exercens* of 1981: on the values and dignity of human work and freedom of actions, and through his apostolic exhortation, *Veritatis Splendor* of 1993: on the splendour of truth for the development of human person in right freedom and conscience.

¹ Cf, P.O. Isanbor, *Acting Person and the Quest for Integral Humanism in the Crisis of Truth. Cogito: Multidisciplinary Research Journal*, Vol. XV, No. 1, 2023, pp. 30-46.

With WEP in the hands of many contemporary philosophers, humanity will necessarily be aware that the values of human actions and choices must be known by the actors who expressed themselves, who responsibly valuing their actions and valued choices along the contents of human *beingness*.² To Wojtyla, such actions must be associated with the effects of lived-experiences, centred not mainly on the acts of war and other forms of dehumanisation rather than the acts of peace. These are about the exercise of freedom in human labour or work. For many existential thinkers like Douglas Roche and John Paul II, the acts of war are about the question: How can any act being right to do what is wrong?³ And, the acts of peace are about the question: How can any act being wrong to do what is right?⁴ These questions cannot be easily answered as they are problematic due to the exercise of human nature in relation to the power of his or her freedom.⁵

Hence, this paper recognises that the both the *Culture of War* and the *Culture of Peace* are products of human actions and valued choices based on the employment of lived experiences phenomenologically.⁶ As such, the achievement of IHD demands that our actions should be ethically monitored and domesticated in order to avoid the possibility of human extinction through increasing *Culture of War*. With this conviction, we are faced with the following questions to be answered:

1. How can one's lived experiences determine one's present active personality and then inform his or her future?
2. Can there be the achievement of IHD without some operational elements of the *Culture of War* as against the most reasonably desired the *Culture of Peace*?
3. What really is the indispensability of the phenomenological ethics of *Otherness* in realising the *Culture of Peace* as inherent in WEP?
4. How possible is the *Culture of Peace* in realising IHD in our conflict-driven world that has being occasioned by greed, selfishness and beastly ideologies?

² See, P.O. Isanbor *Acting Person and the Quest for Integral Human Development in Wojtylan Existential Personalism*. Unpublished Doctorate Thesis, Department of Philosophy, University of Benin, Benin City, Nigeria, 2022, p. 3.

³ J. Babic, Ethics of War and Ethics in War. *Conatus Journal of Philosophy*, 4(1), 2019, pp. 9-30. Cf, p. 10.

⁴ See, J. Babic, Ethics of War and Ethics in War, p. 15.

⁵ See, G.O. Onah, *To Restore the Dignity of Man: Why and How?* The Fifty-Seven Founders' Day Lecture, University of Nigeria, Nsukka, Nigeria, 5th October, 2017, no. 4.

⁶ P.O. Isanbor, "Environment in the Cultures of War and Peace." In I. A. Kanu (ed). *African Eco-Philosophy: Cosmology, Consciousness and the Environment*. Maryland: Association for the Promotion of African Studies, 2021, p. 220.

Phenomenological Basis of *Acting Person* as an Ontological Agent of Integral Human Development

Wojtylan phenomenology of the person is about the values of the individual in relation to his or her actions indispensably through the management of his or her lived experiences. Such relation of human personality and actions necessarily, according to WEP, defines the individual as an *Acting Person*.⁷ Wojtylan scholarly achievement is basically concerned on the questioning the values of faith in relation of human cosmological salvation in the thought of St John of the Cross. With this, he owes that his metaphysical engagement on moral-theological foundation for the analysis of the person as a substance. This, he later substantiated with the works of Max Scheler on the “substance of the human person” and Thomas Aquinas on the “indispensability of human dignity”, and this, Wojtyla regarded as the ethical and philosophical suitability for the understanding of the human person.⁸

For Wojtyla, the analysis of actions should be beyond the traditional notion of the human person as a “pure substance”. It should be based on acknowledging the socio-ethical imports and consciousness in the development of the contents of human conscience, for the human individual is a person because of his or her conscience through which he or she exercise responsive freedom. With existential phenomenology of the *Acting Person*, we are to be readily conscious of the following, that:

1. To be a person means “to be more than to have more”
2. To express oneself as a person means that in human activity. “the non-transitive dimensions of our inner actions are more important than that of the transitive ones”;
3. To develop one’s own inner self as a person, we are obliged to follow always our individual inner voice which is called conscience.

In the book, *The Acting Person*, Karol Wojtyla argues strongly that the person is not only an individual subsistent of the rational nature; rather, he argued that the person is an *Acting Person- actus persona*.⁹ This means that a person remains a person only in acting. But cosmologically operational, many actions have been erroneously interpreted, especially attributing their existential valuations to other animals.¹⁰ When we see a goat grazing, we say

⁷ K. Wojtyla, Karol Wojtyla, *The Acting Person*. Dordrecht: D. Reidel Publ. Co., 1979, p. 2.

⁸ Hans Kochler, “Karol Wojtyla’s Notion of the Irreducible in Man and the Quest for a Just World Order.” In N. M. Billias, A. B. Curry and G. F. McLean (eds). *Karol Wojtyla’s Philosophical Legacy*. (pp. 166-182). Washington: The Council for Research in Values and Philosophy, 2008, p. 168.

⁹ See, K. Wojtyla, *The Acting Person*. Trans. by Andrej Potocki. Dordrecht: D. Reidel, 1979, p. 4.

¹⁰ See, P. A. Edema and A. V. Bukete, Social Dependency and Conflict Resolution: An Application of Karol Wojtyla’s (Pope John Paul II) Philosophy in Nigeria. *Albertine Journal*

it is acting; but it is not the case. To resolve this controversy, Wojtyla gives two elements of action-existence and morality. Any being that does not exhibit these two elements {participation and integration} is not acting.¹¹ For this, Wojtyla was been regarded as a Thomist and Phenomenologist, even in his theological method and exegesis, especially in his philosophical valuation of contents of human conscience for distinction of moral actions and in the *Theology of the Body*.

With the understanding of WEP, we cannot but set a great value upon our reason's drive to attain goals which render people's lives ever more worthy, even beyond the influences of death. Such conviction sees in philosophy the way to come to know fundamental truths about human life. At the same time, it considers philosophy an indispensable help for a deeper understanding of faith and for communicating the truth of the gospel to those who do not yet know it.¹² This conception of the human person as an *Acting Person* is what permeates Thomas Aquinas' philosophy of *summa bonum* and Max Scheler's personalism of *ardo amoris*, and on which Wojtyla's conceptions of human inter-subjectivity is substantiated on the philosophy of self-authenticity. This conception of the *Acting Person* as a being of change brings the modern happenings to the fore the dilemmatic understanding of human actions, whether ethically right or wrong, good or bad. It owes the fact that

It is ironic that, while the human person is the very victim of this violence, it is also the person who is the perpetrator of such violence, the human person is simultaneously the victim and the culprit. The person indeed is a paradox, for while he or she is bestowed with dignity and good nature, he is also is capable of doing evil, and inflicting harm against others.¹³

Only the person can redeem himself or herself from the ideologies he or she formulates, the products or goods he or she produces and the services he or she renders. Not to be a slave to them, for the person is born to redeem his or herself by relating his or her knowledge to his or her transcendental values. For the person is not saved by what he produced, for salvation is by the

of Philosophy and Related Disciplines, Vol. 2, 2018, pp.18-39, cf, p. 29; P. O. Isanbor, "Environment in the Cultures of War and Peace." In I. A. Kanu (ed). *African Eco-Philosophy: Cosmology, Consciousness and the Environment*. (pp. 209-232). USA, Maryland: APAS, 2021.

¹¹ See, A. Okonkwo, *Destined Beyond; The Truth of the Human Person: Concept and Transcendence in the Philosophy of Karol Wojtyla/John Paul II*. Owerri: Bosco, 2010, p. 23.

¹² See, John Paul II, *Veritatis Splendor*, Vatican City: Libreria Editrice Vaticana, 1993: no. 5.

¹³ Karol Wojtyla, *The Acting Person*, p. 40.

creator of everything, including the self, since he or she does not create himself or herself, as he or she cannot redeem himself or herself.¹⁴ For no one can give what he does have, since salvation is God Himself- man returning to the source of which he is created, owing that; man is then indebted to keep to the process of his or her returning, by the substantiality of his or her authentic subjectivity. With knowledge of lived experiences, the community of persons ascertain the needs to develop themselves in order to develop the World of values, even in the midst of mistrusts, avarice and greed.¹⁵

The “truth” always sits on the threshold of what is good for the human person and his or her pursuance of authenticity and subjectivity, simply and collectively exacting common humanness of oneself as an *Acting Person*. It is about the subjectivity of the human person who is authentically responsible for his or her actions through the expression of his or her lived experiences in “truth.” Such truth of development stands tall over the presence of evil, beyond the test of time, possibilities and opportunities of innovations and creativities. This capacity to discover the thresholds of histories of development inherent in lived experiences; on which one knows what to do at a certain time and situates his or her capacity to accentuate the values of truth, demarcating what are right from the wrong, by integrating oneself in the web of human relationships. Owing to the ethical phenomenology of actions, what should be very mattered to the persons is the fate of their future from the interpretation, values and expression of their past indispensably dependable on the morality of their freedom and conscience of their present.

Acting Person and the Phenomenology of *Otherness*: Asking the Questions

In our world of multiplicity of human interests, values and ideologies, there is a general understanding that the ultimate end of development is to have a better quality of human life, especially through the phenomenology of *otherness*. This would certainly mean that, it is not the development of

¹⁴ Benedict XVI, *Spe Salvi*. Vatican City: Libreria Editrice Vaticana, 2007, no. 24. Here, Pope Benedict XVI recognises the science and technology have been serving and improving human lives, but they cannot save human lives, that is, granting salvation to the human souls, for lives belong to God, and the human society does not the freedom to save to themselves from the presence of God, in whom the creation is his very self. The presence of God is the power of love amongst us as humans that should be expressed in our actions. In his words, “it is not science that redeemed man: man is redeemed in love. This applies even in term of the present world. When someone has the experience of a great love of his life, this is a moment of redemption which gives a new meaning to his life. But soon he will also realise that the love bestowed upon him cannot be itself resolve the question of his life. It is a love that remains fragile. It can be destroyed by death” (*Spe Salvi*, no. 26)

¹⁵ See, John Paul II, *Fides et Ratio*, Vatican City: Libreria Editrice Vaticana, 1998: no. 25.

material resources only or alone that is aimed at by the “Right to Development”, but the holistic well-being of the *Acting Person* involving his or her physical, moral, intellectual, social, political, and cultural growths.¹⁶ One can have these qualities of life in full when he or she fully develops the consciousness of the *otherness of living*. Just like Immanuel Levinas, Hannah Arendt, Benedict XVI, Claude Levi-Strauss and John Paul II in their various works on the existential values of human togetherness, posited that one lives and develops for his or her very own self and that of the others.

The individual as an *Acting Person* is by his or her actions enriches the world through his or her ability and capacity to communicate and exercise his or her values, emotions and interests in truth to better and sustain the lives of others.¹⁷ He or she makes, creates and sustains the contents and issues of public necessities as epistemic and ethical realities to improve his or her *beingness* in the society he or she belongs.¹⁸ Such consciousness of authentic living, as a result of residency of truth in oneself, helps oneself to accept the *others* as his or her very self. Such truth is the true development of oneself in the lives of *others*. Such development is enlivened by the hopes of better tomorrow, for the *Acting Person* does not only live for today, knowing that the power of his or her existence lies on the hope of tomorrow in order to better existence in midst of conflicting developmental ideologies and values. To live, the *Acting Person* has to be a being of tomorrow, which is determined by his or her actions of today conditioned by our actions and choices. It is living for *others* that one lives his or her own life through ethical valuing his or her actions.¹⁹

As existentially recognised, the person as an acting agent of development is not a mere thing- an object thrown into the world, as Martin Heidegger has phenomenologically postulated in his ethics of subjectivity and autonomy and would make the humankind to believe that we are born into the world of conflicts and which will constantly and continually define human values and ending.²⁰ Such Heideggerian ontologised ethics directs human intentions to the values of essence than existence, and at such, the

¹⁶ See, P. O. Isanbor and M. M. Uzomah, Natural Law Philosophy and the Quest for Social Order, Justice and Development. *Akungba Journal of Religion and African Culture*, Vol. 5, No. 2, 2017, pp. 62-72, cf, p. 70.

¹⁷ Cf, D. Stagaman, “The Implications for Theology of the Acting Person.” In J. M. McDermott (ed.). *The Thought of Pope John Paul II: a Collection of Essays and Studies*. Rome: Editrice Pontifica Universita Gregoriana, 1993, see, pp. 215-216.

¹⁸ See, P. Iroegbu, What is Life: Body, Mind and Soul? In P. Iroegbu and A. Echekwube (eds.). *Kpim of Morality*. Ibadan: Heinemann Books, 2005, p. 437.

¹⁹ Cf, P. O. Isanbor, Acting Person and the Quest for Integral Humanism in the Crisis of Truth, p. 40.

²⁰ See, Dennis Otto, Heidegger’s Ethics of Subjectivity and Autonomy. *Falsafa Journal of Philosophy*, Vol. 1, No. 1, 2018, pp. 33-47, see, p. 50.

essence of human existence is precipitated on the values of human actions. Such ethics also directs our consciousness to the indispensable existential belief on the eistentiality of the human person as a subject rather a mere object of lived experience, and he that

To be authentic is to be genuine and true to oneself. Authentic self is the self that determines itself spontaneously; a self that acts of deep personal conviction, a self that owns itself; a self that says yes and means yes.²¹

The *Acting Person* is an intellectual being and relational entity, a being capable of rationalizing basically the truth values, because he or she, unlike other animals, is endowed with a body and an immortal soul- the element that bears and communicates the *intellectus*.²² Such gifts of rationality and intelligibility exact human and societal meaningfulness in true freedom. For many social existentialists, the normative vision of the person calls for a proper harnessing the rational ethics of freedom, the socio-developmental ethics that evaluates the individual beyond the effects of oneself; rather, within the cognitivistic values of the *others*. This means that the *Acting Person* must continually live in a manner that justifies rationality and intelligibility²³, and in order to promote his or her self-authenticity and self-subjectivity, and for the recognition of the right to freedom. Thus, “this right covers the ability itself and everything required to exercise it. The freedom to develop one’s personality autonomously is therefore included in this right as the physical inviolability of human beings and the natural, economic and social foundation of their existence.”²⁴ This is because, if the *Acting Person* does not take advantage of his or her rationality and intelligibility, he or she may be steeped on a path of self-annihilation. Thereby, many of the existentialists and social philosophers down the ages have been passionate about doing for an authentic relationship of the persons. They do this because of the belief that the *Acting Person* is a relational being.²⁵

As understandably put; the sociological impulses of the ethics of *otherness* project that the unity of people does not mean conformity of interests which may be against the workability of natural law and morality,

²¹ See, Martin Heidegger, *Being and Time*. Oxford: Basil Blackwell, 1962, as quoted in Dennis Otto, Heidegger’s Ethics of Subjectivity and Autonomy, p. 41.

²² Justin C. Anyarogbu, Osu Denigration in Igbo Land and Gabriel Marcel’s Ethics of Interrelation. *Ekpoma Review*, Vol. 8, 2021, pp. 32-53, see, p. 48.

²³ A. Akalue, “Man, Religion and Philosophy: Towards a Normative Vision of the Human Person.” In G. Ogbenika and F. Ikhianosime (eds). *Formation of the Human Person in the 21st Century*. Ekpoma: SAS/Floreat System, Benin City, 2021, p. 243.

²⁴ Justin C. Anyarogbu, p. 48.

²⁵ Anthony Akalue, p. 243.

but the respect of the differences that exist with people of different interests. This is in consonance with Levinas' face theory which objectifies the importance of *otherness* for social collective epistemology of the self, where the knowledge of the love and truth of oneself help to sustain the lives of *others*.²⁶ For Levinas, the important element of inter-subjectivity is to establish knowledge community with his *Face Theory*. In such theory, the consciousness of the *otherness* is seen in oneself. This is because, "when I see you, I see myself in you." Therefore I do need to learn from you (the other) and doing so, is doing such to oneself. The 'face' in this context means or presupposes the consciousness of the *others* that one cannot be avoided (or nobody or no one should be neglected, since the face cannot be detached from the body). For this, 'to live' is 'to exist' and 'to exist' is 'to live.'²⁷

Hence, the phenomenological impulses of the ethics of *otherness* are based on and developed from the existentiality of human authenticity and subjectivity. It is developmental conceptualization of one's harmony of actions that accounts for the *others* in oneself of interests.²⁸ It is seeing the *others* in one's self in the pursuance of developmental processes, affairs and policies. It is a conditioning of collective growth and advancement by the communality of persons. It works against the social situation obtainable in the early stages of human society as depicted in the "state of nature" (confer the philosophies of social contract theory by Thomas Hobbes and John Locke) which is characterised by economic inequality, unequal distribution of income and property, poverty (for the weak) etc. It is an effort to rid the state of nature of all such ills.²⁹

In obtaining IHD, without the ontological values of *others* being highly and indispensably considered as an 'end itself' in developmental interests, programmes and policies beyond the influences of secularist consciousness of development, the world will lack the valued and moral externality of existence, and then, so breeds the cultures of greed, selfishness, sectionalism and individualism for such human society.³⁰ The phenomenology of *otherness* enlivens the world in hope of reformed present

²⁶ F. E. Ikhianosime, Levinas' Theory of Alterity and the Sketching of an Epistemology of Otherness. *Ekpoma Review*, 5(1), 2019, pp. 120-138.

²⁷ The relevance and the philosophy of African ontological personalism on the indispensable values of black solidarity and subjectivity for the institutionalization of the culture of peace in the communality of persons, irrespective of one social and economic stature, as the philosophy of "living for others and others living for you" as explained in A. I. Kanu, African Philosophy, Globalization, and the Priority of Otherness. *Journal of African Studies and Sustainable Development*, 1(1), 2018, pp. 50-60, see, p. 59.

²⁸ See, P.O. Isanbor, Environment in the Cultures of War and Peace, p. 228.

²⁹ B. Nneji, Severe Poverty and Human Rights: A Socio-Philosophical Critique. *West African Journal of Philosophical Studies*, 12(1), 2009, p. 100.

³⁰ Cf, F. E. Ikhianosime, p. 130.

and for better future where everyone sees oneself in the joys and sufferings of other persons. Within such contemporary understanding of the *Acting Person*, the consideration of the ethics of *otherness* suggests the cooperation of human interests and national policies for the achievement of common societal growth and advancement. It is about the solidarity of purposes and desires, in the culture of human empowerment and liberation.

Acting to Sustain the World in Peace: Questioning the Answers

The ethical notation of the *Acting Person* can be fully alive when he or she realises his or her authenticity, especially through integral exercises of his or her freedom in truth. With ethics of *otherness* in the exercises of human freedom, the future of human generations is assured. Although, we know that there are some complexity in approaching the developmental structures of the future, since no one, group or nation knows the future, but only with the imposing and increasing dehumanizing conflicts, the future is always known to be brink and unsure. The future of the world can never be assured by the threats and fear of *Culture of War*, rather by the love for the *Culture of Peace* through the embrace of common good and solidarity.³¹

Without prejudice to the successes in scientific and technological ascents of the world, what the world needed is some forms of self-authenticity, self-subjectivity and self-participation in re-appraising the existing and emerging structures of scientific and technological progress, canonising those developmental structures of the future that are in tune with human and universal destiny.³² As Douglas Roche states that:

A *Culture of Peace* is an approach to life that seeks to transform the cultural tendencies toward war and violence into a culture where dialogue, respect, and fairness govern social relation. In this way, violence can be prevented through a more tolerant common global ethics. The *Culture of Peace* uses education as an essential tool in fostering attitudes supportive for non-violence, co-operation, and social justice. It promotes sustainable development for all, free human rights, and equality between men and women. It requires genuine democracy and the free flow of information. It leads to disarmament.³³

³¹ P.O. Isanbor & M.M. Uzomah, Douglas Roche on Cultures of War and Peace: The Global Ethics for Human Rights, Social Order and Development. *EPHA: Ekpoma Journal of Religious Studies*, 11(1&2), 2016, pp. 76-104, see, p. 90.

³² Cf, P.O. Isanbor, *Acting Person and the Quest for Integral Humanism in the Crisis of Truth*, p. 41.

³³ Douglas Roche, *The Human Right to Peace*, Mumbai: Better Yourself Books, 2006, p. 100.

In order to sustain the human ecology from the possible factors of its extinction, we only have to the extent our actions and valued choices to be attuned with real advantage in knowing the real transcendental nature and values of the same human ecology. We should recognise without any sceptical reserve, along WEP, that the universe is made for the human family and not otherwise. It is only by authenticity that true development can be sustained upon continuous empowerment of the *Acting Person* towards common survival. This conception of common human survival projects the existential import of the ethical human nature that one must live to subjectively in realising true happiness and development for oneself and that for *others*.³⁴ This should be of “a lively awareness of the value of the rights of all and of each person. It likewise implies a lively awareness of the need to respect the right of every individual to the full use of the benefits offered by science and technology,”³⁵ in forms of communication, commerce, transportation, politics, education, religion, family socialization, engineering and the likes. It is meaningless to talk of the rights and dignity of the *Acting Person* unless he or she is a spiritual, personal being with a supernatural destiny. And yet these words are bounded about by people who believe that the *Acting Person* is just a chemical compound or at the best, a higher kind of animal.³⁶ With the long for peace rather than war, the *Acting Person* remains an interpersonal and inter-relational being, and without these qualities of development he or she cannot obtain for himself or herself an authentic living.

The consideration of IHD centred on the physical-spiritual unity of the nature of the person. It is a moral development of wholeness of the human *beingness* that we should consider the transcendent value of the person in his/her engagement of production, growth, advancement, and exercise in freedom and intellect.³⁷ Morality, for many theistic existentialists, is the act of existing for *others*, or more properly or probably, living for *others*. It is in it that the individual finds meaningfulness in one's own existence. It is in *others*, considering their happiness, that true human authenticity is realized. The consideration of the *others* in one's affairs brings the communality of interests, a culture of common goodness, a philosophy of commonness of existence. Along all philosophies of common human history, we envision or look out for the possibilities of the *Culture of Peace* in all human societies. Such philosophy of life concerns itself with the well-being of the person, although it does not involve itself with the direct

³⁴ See, Douglas Roche, *The Human Right to Peace*, p. 100.

³⁵ John Paul II, *Sollicitudo Rei Socialis*., no. 27

³⁶ Dennis O'Shea, *Theology and Sociology*, Oxford: Catholic Social Guild, 1963, p.7.

³⁷ Cf, Gabriel Marcel. “An Outline of Concrete Philosophy in Creative Fidelity” Printed in *the Existentialist Tradition*. ed, Nino Languilli, 1949, p. 155.

organization of the society, social groupings and institutions. Such philosophy of life inquires, for example, into the rational groups for the coming to be at all of the human societies.”³⁸ Although, some of the courses sometimes appear to be elusive due to some mismanagement of human intellect and freedom, there are needs for the nexical inevitability of both peace and development that cannot be over-stressed, especially when this societal interconnectedness is related to religious, social, political and economic integrations of values and ideologies.³⁹

Hence, this quest for the *Culture of Peace* inherent in the nature of the *Acting Person* necessarily intensifies with the developmental trend of contemporary humanism, especially in science and technology.⁴⁰ The same person is accepted to develop integrally with the conscious actions against the influences of a great magnitude of environmental aberrations and fallouts, presented to us by the embrace of modernisation and civilisation. The political, cultural, economic, environmental, social and religious defences of human dignity promote the courses of human life and its right and benefits.⁴¹ Taking the *Acting Person* more as a subject than as an object of development remains the foundation on which the *Culture of Peace* is possible and sustained. For instance, it is about the talks on the effects of procured abortion, medical anti-reproductive sterilization, sexual contraception, extra-judicial killing, biological warfare, jungle justice and the likes. The act of faith in the environment of the *Culture of War* may be very difficult to sustain, for peace and social order make the act of reasoning very meaningful for the consideration of the operational effects of the act of faith.

The consideration of the *Culture of Peace* propels the social conditioning the minds which ensures that social justices are the required principles and conditions necessary for the promotion of an environment that will make realise itself fully and completely, and the divine force and natural consideration of the growth of human personhood.⁴² The human communality linguistically generates some ethical principles to express the worthiness of the human personhood. This conception of the human life and its rights will lack total completeness of purposes when his or her

³⁸ Benjamin Ike Ewelu, Philosophy, Public Service and Peace in the Society. *West African Journal of Philosophical Studies*, Vol. 18, 2016, pp. 55-69, see, p. 61.

³⁹ P.O. Ujomu and F.O. Olatunji, “Security as Freedom in the Quest for the Value of Human Life: a Conceptual Analysis.” *Tattva: Journal of Philosophy*, Vol. 9, No. 1, pp. 43-67, see, 43.

⁴⁰ See, Stephen Egwim, Between Conflict and Peace: The Wisdom of Docility and Openness. *West African Journal of Ecclesial Studies*, Vol. 10, pp. 101-119, 2014, see, p. 101.

⁴¹ Cf, P. O. Isanbor and M. M. Uzomah, 2017, p. 71.

⁴² See, Anthonia Bolanle, The Church: An Instrument of Peace and Reconciliation in the Nigerian Society. *West African Journal of Ecclesial Studies*, 10, 2013, pp. 87-100, cf, p. 92.

corresponding duties are not judiciously considered by a person as an agent of development. One cannot talk about rights without the individual, cooperative and State's duties that make them reasonable and realisable. The demands of the *Culture of Peace* see individual, cooperative and State duties as conditions that are inevitable towards the recognition and respect of human life, rights and dignity.⁴³

As John Paul II, true pursuance of IHD is possible and realizable only when persons are truthful to their actual nature and existence, recognising the value of their personhood through their actions and valued choices in terms of creativities, initiatives and innovations.⁴⁴ It owes to the facts that; the societal general quests for IHD are based on the objective, responsive and moral considerations of our actions and valued choices. For, we long for conflicts when human wants and needs are not determined by the structures and principles of common good and solidarity. The individual as an *Acting Person* achieves what he or she deserves only within the purview of what profit the operation of human inter-subjectivity and authenticity through the sense of responsibility, participation, neighbourliness and transcendence.

Conclusion

We have been reflecting on WEP in relations to the consciousness of one's lived experiences for the realization of IHD; especially through the institutionalization of the *Culture of Peace* as against the *Culture of War*. The concerns here laid credence to the phenomenology of *Otherness* which recognised that the person does not develop outside the participatory influences of his or her own community, where the values of one's lived experiences are evaluated to be either right or wrong when they are expressed or exercised. The human person is expected to act in promoting the *Culture of Peace* rather than the *Culture of War* through the valuation of the contents of one's lived experiences in truth. With this, he or she develops his or her self-possession, self-participation and self-dynamism based on his or her understanding of the morality of lived experiences, as evidently showcased in WEP.

Many thinkers have longed been arguing that the attainment of any iota of the *Culture of Peace* is always eschewed from conflicting political, social and economic interests. But, the achievement of the *Culture of Peace* in our world must be on the revaluation of the models and contents of our thinking and values through the actions we expressed.⁴⁵ We understand that, in some cases, IHD is not possible without some conflicts of interests, but it should

⁴³ Cf, P.O. Isanbor, *Acting Person and the Quest for Integral Humanism in the Crisis of Truth*, p. 42.

⁴⁴ See, John Paul II, *Fides et Ratio*, no. 27.

⁴⁵ Stephen Egwim, p. 103.

be on the morality of social reformation and stability based on the compromised management of actions and policies based on the values of the wholeness of the person as an active agent of development.⁴⁶ The quest for democracy is the quest for the *Culture of Peace* since such governance involves the participation and integration of everyone's interests, based on sustainability of common good and solidarity. Such actions for social changes are basically on the societal values of what conflicts and agitations are to the individuals and nations. Such projection of the *Culture of Peace* depends on the knowledge we have about ourselves and governance.

For the possibility of IHD is indispensably determined on the healthy social provisions of the developmental actions and values that will be guaranteed by the exercises of well-enlightened and peaceful minds on the beliefs that:

1. The *Culture of Peace* is possible if the *Acting Person* responsibly respects the values of created order and obedience to the civil laws built on the dictates of natural law and morality.
2. The values of the *Culture of Peace* cannot be questioned or underestimated as they are rights or conditions for the realization of human transcendental ending
3. The values of lived experiences are always clouded with and by the phenomenological negativities and possibilities, but long for the operational appreciation of their positivity in order to sustain future generations.

These ethical clauses of the pragmatic possibilities and sustainability of the ethics of *Otherness* in relation to the values of the *Culture of Peace* remind us of one of the social and existential convictions of Pope Paul VI, that:

Peace is the ideal of mankind. Peace is necessary. Peace is a duty. Peace is beneficial. It is not a fixed and illogical idea of ours; nor is it an obsession or an illusion. It is a certainty. Yes, it is a hope: it holds the key to the future of civilization and to the destiny of world. Peace is the goal of mankind in the process of its growing self-awareness and of the development of society on the face of the earth. Peace is human power of potential actualisation and societal thrust for development. Peace is humanity itself.⁴⁷

In all, the above Pope Paul VI's assertion cannot be said of the *Culture of War* as far as human actions and choices are concerns, but nature

⁴⁶ Anthonia Bolanle, p. 95.

⁴⁷ Pope Paul VI, *Message for World Day of Peace*. VC: Libreria Editrice Vaticana, 1974.

demands that the human person longs for what promote his or her life, right and dignity. For peace as a duty determines the kinds of actions we exercised and long to be responsible for them in keeping to the sustainability of human communal and just existence. For, peace is an inevitable entity for human and societal existence, and as the assurance of IHD. The demands for IHD in our contemporary existence should be hinged on the kinds of activities with which we are currently engaging our energies in constantly changing contemporary world, a world that has been imperially tailored along the values of scientific, technological and relativist humanisms. The demands for the *Culture of Peace* is on the hopeful crystallization of human interests that true development is possible only on the valuation of the human person through the exercises their actions in “truth.” Away from truth, we create different premiums or values of living within us. Such premiums or values do not, in any way, fully reasonable to accentuate the responsive respects that are due to the individual as a person, irrespective of his or her colour, race, ethnic grouping and educational background. The authentic individuality of the human person rests the sources of social order and justice that make the individuals enjoy the courses of their living.

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SPINOZA AND THE PROBLEM OF MODERNITY

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Abstract: *This paper intends to rethink and demonstrate Spinoza as an alternative thinker in modernity. By situating the philosopher in the context of modernity characterized by rationality, the colonial and extractivist practices by which he is aware of, I introduce his ontological disjunctive formulae Deus sive Natura as a radical departure from the human exceptionalism championed by Euro-Anthropo-centrism. Further, I argue that the Dutch philosopher's theory of the affects could be utilized as a powerful device in creating a politics of relations towards hopeful sociabilities. In this way, I show the transmodern possibilities by which we can extrapolate from Spinoza's own philosophical principles.*

Keywords: *Affectivity, Colonialism, Modernity, Relationality, Spinoza, Transmodernity.*

Introduction: Epistemologies of Indifference

The discourse of modernity is one that is characterized by rationality. That is, as human beings develop their own capacity to overcome beliefs, opinions, and imaginations, philosophy as a discipline is broadly construed as the means out of the mundane experiences of everyday life. This line of argument is symptomatic in Kant's proclamation of the Enlightenment as the answer for humanity to exorcise itself 'out of self-incurred immaturity.'¹ It is in this vein that I want to build on Enrique Dussel and Anibal Quijano's critiques of modernity as one of the possible modes in which we can decolonize modern epistemologies that still bear their implications in philosophy today. Particularly, Enrique Dussel's proposal of the notion of *transmodernity* as an alternative way of viewing the discourse of modernity could be considered to happen from within – in its own geographies and boundaries as immanent in such a discourse. It is to this point that I invoke Spinoza's philosophy, particularly his metaphysics and epistemology as one of such alternatives that we can utilize in order to demonstrate such a critique. By means of his criticism towards the Cartesian philosophical anthropology which is characteristic of modern philosophy and the whole

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¹ I. Kant, *An Answer to the Question: 'What is Enlightenment?'*, trans. H.B. Nisbet, London, Penguin, 1991, p. 1.

discourse of modernity, Spinoza undermines the understanding of the classical philosophical principles of the Cartesian doctrine that have come to define modern theological and political thought. With this alternative, I look into the Dutch philosopher's immanent principle which he calls God or nature (*Deus sive Natura*) and intend to demonstrate and extrapolate the implications that follow from it in order to show the relevance of thinking the political in the light of contemporary reality. As we approach a world characterized by political instability, ecological crisis, and the extractivist principles of global capitalism, there is a need to rethink the ways we approach our own positionality and consider the philosophical and epistemic imports of affects and the principle of relationality, which I would draw from Spinoza's immanent metaphysics. In this way, we can reorient ourselves and move away from the myths and fictions that philosophies of modernity as epistemologies of indifference have brought us.

1.1. Dussel, Quijano, and the Critique of Modernity

Dussel introduces two concepts of modernity that goes hand in hand with each other and which can be summarized into a Eurocentric notion that puts them at the center of world history. The idea of a world-system is exhibited and propagated by the advent of modern thought; or, it could also be argued, that it is no accident that the material conditions such as the formation of nation-states, changes in political and economic systems, and the rise of sovereign military powers further exemplified European modernity through global colonial conquest.² As it went along with its violent process of appropriation of resources, which are concentrated within a small geography in Europe, it established a Eurocentric notion of domination evident in political, social, and cultural domains. Here, Western imperialism gave way for an unequal distribution of power, since, apart from the direct violent participation of the colonizers, there is an implicit process of subjugation that happens alongside the explicit mode of domination present in colonialism. This implicit process, Quijano elucidates, is the mode of domination in the imagination.³ An internal colonization affects an individual at a micro level, affecting the way that it views signs, images, and symbols that are, epistemically speaking, significant in terms of an individual's production and reproduction of knowledge. At this level of imposition, the colonizers' way of living is introduced as coming from a civilized culture and society, marked by progress and rationality. In short, of modern man.

² E. Dussel, "Europe, modernity, and eurocentrism," *Nepantla: View from South*, vol. 1, no. 3, 2000, pp. 465-478.

³ A. Quijano, "Coloniality and modernity/rationality," *Cultural studies*, no. 2-3, 2007 pp. 168-178.

Along with the direct and indirect imposition of Eurocentric colonialism is its categorization of ‘race.’ Quijano asserts that race has become “the key element of the social classification of colonized and colonizers.”⁴ Through fictional biological and structural codification of race, they were able to establish a narrative of superiority and inferiority intrinsic within the colonized themselves. Here, Quijano stresses, the coloniality of power takes on a totally different form: that apart from the explicit and implicit modes of domination, colonialism through the categorization of ‘race’ imposes an absolute, monolithic way of understanding culture, society, and history through relations of power.

The cultural complex that has come to be known as European modernity/rationality has the presumption that knowledge is a product of subject-object relation.⁵ On the one hand, the former as a category implies an isolated thinking individual, devoid of the particularities of its history and geography. This principle is, in philosophy, a well-guarded and upheld as objective, universal, scientific, and rational as I would expound later on. On the other, the latter is seen as an entity external to the individual. In this sense, nature appears as an object for the subject. The idea of the “objective natural world” demonstrates this. One of the implications that follow from this principle is the notion that when the object corresponds to the subject, it then produces knowledge and treats it as a property: a thing to be extracted from nature, marketed and sold as an ‘epistemic good.’

1.2. Colonialism, Extractivism, and Universality

In a world dominated by global capitalism, the market value of things are determined by the amount of labor and processes appropriated by the principle of extraction. However, there are, to a certain extent, values that are lost in terms of commodifying not only natural resources, but also knowledge in such a way that these goods are being assessed and translated into a universal medium of exchange: monetary value. Linda Alcoff argues that such practices that exhibit the motivation of extracting resources always involve an epistemic component.⁶ By historicizing this extractive principle of global capitalism, we can find its traces to the conquest of colonial powers in pursuit of capital accumulation. Here, as Gurminder Bhambra argues, the global economy as we understand it today can only be partially explained if we do not recognize the extractivism present in the

⁴ Ibid.

⁵ Ibid.

⁶ L. Alcoff, “Extractivist epistemologies,” *Tapuya, Latin American Science, Technology and Society*, vol. 5, no. 1, 2022, pp. 1-23.

colonial history of the world.⁷ That is, when the dominated culture in their knowledge and practices are expropriated, not to mention the material resources they take, it demonstrates the extractive practice of the colonizer to the colonized. The exoticization of the dominated proves this point. As an example, Quijano shows the way Western or Europeanized African artists use some of the African modes of expression as an “inspiration” to create artworks, but they are not considered as artistic practices in their own.⁸ This exhibits a parasitic relationship between the colonized in their epistemics and the colonizer in their demonstration of power.

The implications that follow from the extractive and exploitative principles of colonialism are, to an extent, parallel. Just as much as there is violence that is explicitly enforced upon the body, there is also violence that is implicitly fed to the mind. Here, under the myths and fictions of racial categories, the subjugated bodies are deemed uncivilized, barbaric, and backwards compared to those who subjugate who are seen as civilized, modern, and rational. Along with this subjugation, the epistemic capacity of the colonized is not only questioned but altogether considered an impossibility. This nexus of coloniality of power stems from the systematic mode of domination backed by the principles of extraction both in bodies and minds: material resources and epistemic goods. That, in order to fulfill the requirements of modernity, there is a necessity to establish control as it is the moral obligation of the civilized European man to educate the barbarians and teach them the ways of modernity.⁹

With rationality as one of the double aspects of modernity (alongside colonialism), universality of knowledge is seen in the orientation of subject-object relations. Through abstraction, the essential properties of the idea are extracted from its particularities, such as its situatedness in space and time. This form of knowledge production became significant in order to establish the idea of totality, which permeates in all the domains of reality: social, political, economic, and cultural. In this sense, the universality of knowledge is used as a potent element in restructuring systems of powers: first, in the proliferation of capitalism, and; second, the justification of colonialism.¹⁰ In conjunction to the European modernity perceived as the superior civilization in the historically homogenous totality, it has been used to justify the ‘improvement’ of the barbaric, uncivilized people under the guise of moral obligation stemming from a totalistic view of reality.¹¹

⁷ G. Bhabra, “Colonial global economy: towards a theoretical orientation of political economy,” *Review of International Political Economy*, vol. 28, no. 2, 2021, pp. 307-322.

⁸ Quijano, “Colonialism and modernity/rationality.”

⁹ Dussel, “Europe, modernity, and eurocentrism.”

¹⁰ Quijano, “Coloniality and modernity/rationality.”

¹¹ Ibid. Also see Dussel, “Europe, modernity, and eurocentrism.”

1.3. The Faceless Cogito

A knowledge that is universal is a depoliticized knowledge. The universality of rationality and humanism of the modern man is a sterilized category. Philosophy has always exemplified this. By abstracting epistemic categories in the process of knowledge production, the particulars (in contrast to the universal) are deemed inessential – all in the name of the idea, the essentiality of the concept. Grosfoguel sees this aspect of epistemic extractivism (the process by which the particulars are ‘sacrificed’ in the process of obtaining universal ideas) with the aim of extracting ideas is done in order to colonize them.¹² In this subsumption of the colonized knowledge into the Western cultural complex of modernity/rationality, the epistemologies of the particular subjugated geographies and their populace are turned into faceless, lifeless, and inorganic products fit for commercial trade and cultural assimilation.¹³

The way in which the Cartesian cogito is monumental as the epitome of modern thought is upheld by modernity as one of its principal tenets used to justify and rationalize its colonial conquest. Dussel traces back the famous “ego cogito” and highlighted it as a variation of “ego conquiro” which points out to the Spanish and Portuguese subjugation of the Americas.¹⁴ Here, colonialism became apparent in the development of modern thought. In emphasizing this, we can say that Descartes did not usher a new European paradigm of thought all by himself. The material and socio-political conditions helped in constructing such a rationality for the myth of modernity to propagate.¹⁵ But I do not want to dispense the Cartesian principle and ease it from the burdens it should carry with its philosophical baggage. Descartes’ *Discourse* holds the idea that the new paradigm of scientific-mathematical thought is not only for the acquisition of knowledge, but also for allowing us to become ‘masters and possessors of nature.’¹⁶ Compounded with the existing historical fact of colonialism during Descartes’ own time, it exacerbated the problems and amplified the extractive practices and epistemologies of modernity/rationality.

¹² R. Grosfoguel, “Epistemic Extractivism: A Dialogue with Alberto Acosta, Leanne Betasamosake Simpson, and Silvia Cusicanqui,” *Knowledges born in the struggle*, New York: Routledge, 2019, pp. 203-218.

¹³ Ibid.

¹⁴ Dussel, “Europe, modernity, and eurocentrism.”

¹⁵ D. Stromback, “The *Ego Conquiro* as the Paradigm of Modern Imperialism and its Violence Against the Struggle for Epistemic Injustice,” *TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, vol. 11, no. 2, 2024, pp. 24-43.

¹⁶ J. Cottingham, “Mathematical Science and the Control of Nature: Rene Descartes,” *Western Philosophy: An Anthology*, ed. John Cottingham, Oxford, Blackwell, 2008, pp. 422-27.

The metaphysical principles upheld by Descartes turned an understanding of the natural world into a mechanistic one. That is, the quest in 'discovering' truths in nature involves an understanding of the essence of things through the mind's ability of mathematical reasoning.¹⁷ Only by this, Descartes says, that we are able to describe "the whole universe as if it were a machine."¹⁸ This mechanistic understanding of the world is reductive, to say the least. Not to mention the way in which the mind is deemed as superior over the body, since it contains in them innate universal ideas. At the expense of this ascend to universality, however, is the reluctance to emphasize particular bodily configurations. When the mind is elevated at the top of the hierarchy and treated as primary, it reduces everything else simply as insignificant. Here, the idea of the metropole and the periphery and its parallelism to mind-body relations and subject-object relations becomes apparent. As the former is treated as the mind of the empire, the latter is relegated to the periphery as parts of the body: inessential, secondary, and expendable. This is especially illustrated rather explicitly by Descartes' contemporary Thomas Hobbes in his political theory: the idea behind the body-politic "is a fictitious body."¹⁹ Therefore, it is essential to disavow, disown, and deny the natural body in order to be subsumed in the macro-politics of the Leviathan: the body-politic as an artificial constitution. Here, as Charles W. Mills argues, race becomes the construction by which the body in its molecular configuration takes on a heightened sense of significance in order to establish social categories that reinforces the bodily features of the colonized.²⁰ Through the recognition of race, the body becomes the subject to which rejection and antagonism arises from this particular dimension of such a category.

Thus, with the advent of modernity and the proliferation of modern thought, it can be classified as having a distinct characteristic of modern-colonial-rationality.²¹ This conglomeration of historical, cultural, philosophical, social, and economic actualities cannot be considered as an accidental process that perpetuated the violence imposed by Eurocentric thought and praxis upon the world through colonialism. At the very least, it can be said that these actualities are manufactured in conjunction with one another to fabricate the myth of modernity and racial categories. Above all,

¹⁷ H. Grossman, "Descartes and the Social Origins of the Mechanistic Concept," *The Social and Economic Roots of the Scientific Revolutions: Texts by Boris Hessen and Henryk Grossman*, Dordrecht, Springer, 2009, pp. 157-229.

¹⁸ Descartes, "Principles of Philosophy," *Descartes: Selected Philosophical Writings*, Cambridge, Cambridge University Press, 1988, pp. 160-212.

¹⁹ R. Douglas, "The Body Politic "is a fictitious body": Hobbes in Imagination and Fiction," *Hobbes Studies*, vol. 27, no. 2, 2014, pp. 126-147.

²⁰ C. Mills, *The Racial Contract*, Ithaca, Cornell University Press, 1997, p. 3.

²¹ Quijano, "Colonialism and modernity/rationality."

the extractive principle that can be linked with the epistemologies of indifference allowed for the categorization of the modern man as a universal category, thereby justifying the sacrificial practice enforced among the colonized in the name of progress, development, even stewardship – all of which modernity brandishes and champions.²²

Ontological Priorities: Spinoza and the Problem of Modernity

Considered in its own right, and within the broader context of European colonialism, is where I situate Spinoza's critique of the Cartesian cogito, both in scope of its epistemic and modern colonial implications. Here, I take on Emerson Bodde's attempt at the idea of a decolonial Spinoza.²³ Although treated as a major thinker in the 'Western canon' as a rationalist, along with Descartes and Leibniz, this paper takes on a different approach when it comes to highlighting and emphasizing the philosopher's significance, especially in contemporary understanding. Thus, following Bodde, I consider Spinoza's philosophical principles as it resonates with the current trajectory of decolonial thought, albeit at varying degrees and tensions. In this part, I position the Dutch philosopher's epistemic and philosophical doctrines against the pitfalls of human exceptionalism, which, as established in the previous sections, is manifest in Descartes' and the discourse of modern philosophy's way of understanding reality in terms of the human subject. To this end, by bringing up the controversial Spinozist ontological formulae *Deus sive Natura*, I highlight the possibility by which it may counteract the crux of modern thought. By emphasizing these aspects of Spinoza's alternative, I show another way we can perspectivize, through the philosopher's thought, a philosophical principle that goes against Euro-Anthropo-centrism.

2.1. A Critique of Human Exceptionalism

Spinoza presents an ontological understanding of reality in a totally different manner than that of Descartes. In this way, he was able to avoid overemphasizing the role in which human beings play, particularly in its capacity to control and master nature. Apart from the theological underpinnings still present in modern thought, specifically Descartes' formulation of the intellect as the revelation of the divine, human exceptionalism in modern philosophy is apparent due to the teleological principles modern thought attach to the idea of the human being. In addition to this, the cultural complex that contextualizes this exceptional

²² L. Alcoff, "Extractivist Epistemologies." Also see Dussel "Europe, modernity and Eurocentrism."

²³ E. Bodde, "A Decolonial Spinoza: An Interpretation in Tension," *Journal of Spinoza Studies* 3, no. 2, 2023, p. 3-26.

status of modern philosophical anthropology as the European, white, rational man and the whole process of the moral necessity of colonialism as “white man’s burden” is justified.²⁴ This is the reason why I do not want to relieve the Cartesian ‘ego cogito’ despite it not being the sole reason for the framework in the advent of colonialism and the beginnings of capitalism, since both of them legitimize their violent and extractive principles from the notion of human exceptionalism.

In the appendix to *Ethics I*, Spinoza identifies three fictions that human beings attribute to themselves: (1) that the divine has made everything for human beings’ utility; (2) that human beings understand good and evil based on the inherent nature of things; and (3) that there is a teleology in nature.²⁵ These fictions are some of the reasons why we usually understand ourselves as having a different set of rules than the rest of reality. That when we consider our place in nature, as Spinoza notes, we regard ourselves as *imperium in imperio* – a kingdom within a kingdom.²⁶ Here, Spinoza criticizes the way in which modernity glorifies the mind and separate it from the rest of reality. This sense of the exceptional power of the mind is demonstrated by Descartes in his philosophical principles. So, in attributing an absolute status to the mind, modernity as a European scientific paradigm champions rationality and the modern man over the backwardness of those who immerse themselves with their bodies, and the irrationality of their emotions.

As it was made apparent in his works, Spinoza denies human exceptionalism. Through his naturalism, he rejects any kind of supernatural qualities attributed to the human being.²⁷ By setting forth the parallelism of the mind and the body, he was able to relegate a horizontal understanding of the properties that we may ascribe to thought in the same way we do with the body. Here, as the mind and the body “play by the same rules,” human beings are treated the same way we treat animals, plants, and the environment.²⁸ This immanent metaphysics of the human individual in relation to nature does away with the idea of the subject. In this ontological configuration, there are no subjects, only individuals. As a result, the subject-object orientation characterized by modern thought requires a new formulation, an epistemology of relations that not only includes bodily state of affairs, but that which naturalizes thought and makes it grounded in an immanent relationship with the body.

²⁴ Dussel, “Europe, modernity and Eurocentrism.”

²⁵ B. Spinoza, *Ethics*, trans. George Eliot, ed. Clare Carlisle, Princeton, Princeton University Press, 2020, p. 105.

²⁶ Spinoza, *Ethics*, p. 161.

²⁷ H. Sharp, *Spinoza and the Politics of Renaturalization*, Chicago, Chicago University Press, 2011, p. 2.

²⁸ M. Della Rocca, *Spinoza*, New York, Routledge, 2008, p. 5.

2.2. Deus sive Natura: A Radical Enlightenment?

Spinoza's immanent metaphysics of substance allows for a new epistemology – one that is relational in nature. Operating within the grammar of Aristotelian metaphysics upheld by theology and philosophy all the way to Descartes and beyond, Spinoza sought to classify substance as “that which exists in and by itself.”²⁹ As he further elucidates, substance as a self-subsisting thing known as God is naturalized and made immanent: as God or nature (e4praef). Here, Spinoza subverts any expectations of a transcendental divine that is in charge of human affairs and is beyond the domain of physical reality. Spinoza's God (or nature) is the divine naturalized, or nature made divine. This ontological disjunctive formula was very potent in going against the theological and political thought of Western modern intellectual regime. As a result, Spinoza was excommunicated from his Sephardic community, and later on branded as an atheist, all before he even made his ideas public.³⁰ All of his works were considered to be subversive, with one rabbi explicitly criticized his *Theological-Political Treatise* as a “book forged in hell... by the devil himself.”³¹ In this sense, one can imagine and imply the destructive capability of Spinoza's philosophical doctrine, as Gilles Deleuze attributes to the philosopher's posthumous work, “an explosive book always keeps its explosive charge.”³² Thus, the reception of Spinozism during and after Spinoza's life is met with resistance and hostility. Those who were seen to be sympathetic of his philosophical principles were likewise branded as atheists, anti-state, and ultimately against the progress upheld by the European paradigm of thought.

In diagnosing Europe's Early Enlightenment period, Jonathan Israel claims that Descartes initiated the “greatest intellectual and spiritual perplexity” in terms of the philosophical landscape at the time. As scientific thought was championed and upheld by the Cartesian philosophy, it was seen as a time by which the process of rationalization and secularization overthrew the hegemonic hold of theology.³³ However, apart from the intellectual circles and scholars, this was hardly the case. Leon Roth argues that Descartes' philosophy still resembles the previous intellectual regime's philosophical principles. Descartes himself demonstrates this in his *Principles of Philosophy* where he says that “I submit my view to the authority of the Church.”³⁴ Apart from the explicit statement, the Cartesian

²⁹ Spinoza, *Ethics*, p. 73.

³⁰ S. Nadler, *Spinoza: A Life*, Cambridge, Cambridge University Press, 2001, p. 144.

³¹ Steven Nadler, *A Book Forged in Hell*, Princeton, Princeton University Press, 2011, p. xi.

³² Gilles Deleuze, *Spinoza: Practical Philosophy*, trans. Robert Hurley, San Francisco, City Lights Books, p. 10.

³³ J. Israel, *Radical Enlightenment*, Oxford, Oxford University Press, 2001, p. 3.

³⁴ Descartes, “Principles of Philosophy,” pp. 160-212.

method still upholds the principle that a transcendent God remains the true center and foundation of the intellectual world.³⁵ This mediation renders such a method to resort to the revelation of the transcendental, anthropomorphic divine in order to obtain clear and distinct ideas, and most importantly, maintain the human being at the top in the hierarchy of ontological priority.

As a critical response, the challenge imposed by Spinoza's philosophical tenets to the Cartesian doctrine swept and has shaken the foundations in which the Early European Enlightenment stands upon. As Israel notes, Spinoza's radical reformation of the classical philosophical notions, which was ascribed to by various authors and intellectuals alike, spanning from Ireland to Russia and Sweden to Iberia, was enough to consider him as the period's 'philosophical bogeyman.'³⁶ Although Israel's proposition that Spinoza initiated what he calls the "Radical Enlightenment," it must be approached also in a critical manner. However, there are certain truths to this framing of perspective. For example, the primary questions Spinoza has dabbled with was undertaken by Kant, all the while avoiding directly referencing to the philosopher because of the religious, political, and social implications it might bring upon him. Kant's postulations on the existence of God, causality in nature, and the immortality of the soul are all reminiscent of Spinoza's inquiry into the same subject-matter. Post-Kantian philosophers such as Fichte, Schelling, Hegel and as well as the German Romantics in their response to the Kantian postulates, are all, in varying ways also responding to Spinoza in their writings (Schelling and the German Romantics were explicitly Spinozists, while Fichte and Hegel were critical of Spinoza's philosophy). Suffice to say, it is evident that the Dutch philosopher's Radical Enlightenment, which is built upon his ontological and epistemological framework, received both critical appraisal and avoidance in its subversive, radical position and principles.

2.3. Spinoza Against Euro-Anthropo-Centrism

Situating Spinoza as a proponent of Europe's Radical Enlightenment in the Early Enlightenment period, there must also be a consideration, apart from the intellectual history that looks into his intellectual and philosophical principles, of his life within the context of which he is immersed in. As colonialism was, in principle, reinforced by the modern conditions of thought, we can look into the other means by which we can inquire into the traces that might inform us, apart from rational categories, of the formation of the modern human subject. This alleviates us from the dangers and traps of detached philosophizing. Spinoza, as coming from a

³⁵ L. Roth, *Spinoza, Descartes, & Maimonides*, New York, Russell & Russell, 1963, p. 11.

³⁶ Israel, *Radical Enlightenment*, p. 159.

family of merchant Portuguese Jews who fled the Spanish Inquisition and moved to a much tolerable Dutch Republic, was excommunicated from his Sephardic community in 27th of July 1656 for his “abominable deeds.”³⁷ As a “mulatto,” Spinoza was haunted by not only his own racial heritage, but also by the religious attachment he was born into as a Jew. Here, as everyday experience would afford us, such particularities of histories, culture, and experiences are not important when it comes to philosophizing. But not for Spinoza who regarded that affections go hand in hand with reason, and that there is a greater role in which affectivity plays in our reasoning and philosophizing. His dream reveals his striking commitment to the reality and the intellectual and philosophical imports of affectivity.

In a letter to his friend, Spinoza mentions of a dream where he sees a “scabby black Brazilian,” an appearance that lingered even in his waking moment.³⁸ In an unconscious moment, one would think that Spinoza as a staunch rationalist would pay little attention to dreams as only an aberration by which our minds cannot comprehend. But, as he addresses further in his letter, he goes on to explain how the affections of the body projects one’s own disposition at a particular time. Examined analytically, it might just be the case that he was simply sharing a dream with his friend. But given the situation of the time in which the Dutch Republic is involved in mercantilism in the colonies, the appearance of the black scabby Brazilian was an everyday occurrence in Amsterdam as a city which primarily focuses on trade. Or, as Lewis Feuer suggests, Spinoza might be referring to Henrique Diaz, a well-known rebel military leader of either Brazilian or African descent that freed a Dutch colony in Brazil.³⁹ If this is the case, then Spinoza might have been well aware of the problems by which the Dutch Republic was involved in the colonies – much more importantly, the perpetuation of colonialism. As Goetschel suggests, the dream might have been induced by Spinoza’s anxiety of the return of the Catholic rule (one that his family has struggled and was therefore familiar with), knowing that Diaz was later on made a noble by the King of Portugal.⁴⁰ Another reason could be that it represents his trauma from his excommunication from his Jewish community eight years prior to the letter, since the Rabbi that presided over his banishment was Aboab da Fonseca, who served as the chief Rabbi of

³⁷ L. Gordon, “Shifting the Geography of Reason, with Respects to Spinoza,” *Krisis Journal for Contemporary philosophy*, vol. 44, no. 1, 2024, pp. 84-105

³⁸ Spinoza, “Letter 17” in *The Collected Works of Spinoza volumes 1 & 2*, trans. Edwin Curley Princeton, Princeton University Press, 1985, pp. 352-354.

³⁹ L. Feuer, “The Dream of Benedict de Spinoza” in *American Imago*, vol. 14, no. 3, 1957, pp. 225-242.

⁴⁰ Willi Goetschel, “Spinoza’s Dream” in *The Cambridge Journal of Postcolonial Literary Inquiry*, vol. 3, no. 1, 2016, pp. 39-54.

Pernambuco when the Dutch colony was liberated by Diaz.⁴¹ Nonetheless, these two possible reasons by which we analyze Spinoza's dream seriously suggests that the emotional import of the appearance of the black scabby Brazilian overwhelmed and took hold of the "rationalist" philosopher, as he continues on in his letter that he had to focus his gaze on a book to remove the figure from his dream.⁴² Lewis Gordon has an interesting take on this. He suggests that as Spinoza was fleeing something externally (his excommunication, the Inquisition, and the attempts on his life that he avoided being accused as an atheist), he was also fleeing from something internally, and it did so in the form of the unconscious. Gordon asks, "who else was that "black scabby Brazilian" but the rebellious Spinoza?"⁴³

The apparition that disturbed Spinoza in his dreams and in his waking moments impresses us with an image that reorients our perspectivizing in a different angle. That, as we come to understand how experience and reason inform and transform one another, we are also invited to "shift the geography of reason" as Gordon reminds us. Thus, Spinoza's horizontal metaphysics is one that we can consider as such a shift, allowing for a critique of the Euro-Anthropo-centric paradigm of thinking. In the way that we view and orient a Spinozist understanding of the contemporary world, we are challenged to immerse ourselves in the immanence of the histories, particularities, and affectivities of our own contingent realities. In this manner, we might conceive of an opening that treats the liberative capacities as immanent in its own right, not as a transcendental principle, but simply as a power informed by the materialities we are faced with. Here, the question is in reorganizing the prevailing notions and priorities that we attribute with our understanding of our ontological priorities – that of the rational man.

Affective Ecologies

In taking up the challenge of overcoming the categorizations by which the Euro-Anthropo-centric paradigm of thinking supposes and imposes, we can subvert this imposition through giving affectivity with an equal footing to rationality. In this way, we can shed light on, and consider, those that have long evaded reason's concerns and regard, such as the affective properties that inform our understanding and capacity to act. Thus, in this part I highlight the relational principle of affectivity that Spinoza has emphasized in his treatment of human psychology and the physics of emotions. Through such a consideration, I will then pay attention to the formation of hopeful sociabilities as a politics informed by a renewed organization of affectivity and rationality. As a conclusion, I will provide

⁴¹ Feuer, "The Dream of Benedict de Spinoza."

⁴² Spinoza, "Letter 17."

⁴³ Gordon, "Shifting the Geography of Reason."

some arguments on why this kind of relational affectivity could be one of the possible modes to which we can decolonize epistemology. By showing the other aspects that inform the formation of the modern subject as a category, I demonstrate the transmodern possibilities Spinoza can offer – as a metaphysician of the naturalized divine, an epistemologist of the affects, and as an optimistic advocate of liberty.

3.1. Relationality and Affectivity

In *Spinoza Lectures* in 2023, Linda Alcoff talks about the epistemic import of imperial museums. She contends that the existence of such institutions inform the publics' epistemic formation: that the idea of universality of interspecies knowledge production implicated by colonization as the rationalization and "humanitarian" effort reinforces the violent and extractivist principles and practices by which colonialism and capitalism is hinged upon. As colonialism is predicated on racial categories and the superiority of the white European man, the possession of the material, cultural objects were justified as a "right to know."⁴⁴ Here, we can diagnose the relational effects of museums as they turn the material possessions of the colonized as objects of admiration, as a spectacle – to differentiate the civilized self from the uncivilized other within the protected walls and a controlled environment called the 'museum.' This perpetuates violence in terms of the affective and imaginative properties the objects in possession signify. Here, the politics of the imagination is at play at the level of affects.

For Spinoza, affects (or emotions) are the affections of the body that increases or decreases our power of acting (e3d3). Moira Gatens highlights this aspect of power by which our affective imaginaries bring about social and political constructs that are informed by the epistemic capacities of affects. She emphasizes Spinoza's recognition of the role of emotion in the domain of politics. Within the scope of historical and sociopolitical conditions, affectivity and imagination adds a layer to the complexity by which it involves social, political, and even sexual identities.⁴⁵ Consider the reductionist principles of sexuality in which Maria Lugones pins down the modern gender system of heterosexuality with colonialism.⁴⁶ Likewise, Charles Mills traces the social contract theory as predicated from racial categorization.⁴⁷ With these two axes in which modernity, colonialism, and

⁴⁴ Alcoff, "Imperial Museums," lecture, University of Amsterdam, Amsterdam, 2023.

⁴⁵ M. Gatens, "The Politics of the Imagination," *Feminist Interpretations of Benedict Spinoza*, ed. Moira Gatens, Pennsylvania, Pennsylvania State University Press, 2009, pp. 189-210.

⁴⁶ Maria Lugones, "Heterosexualism and the colonial/modern gender system," *Hypatia*, vol. 22, no. 1, 2007, pp. 186-219.

⁴⁷ Mills, *The Racial Contract*, p. 1.

capitalism are in line with, the formation of modern rationality and sensibility is characterized by the supremacy of the white, European male – an imaginary that boasts and relishes in its own affective construction and rationalization that justified the violence brought about by its imaginings of the gendered and racialized body.

In retrospect, the immanent capacity of affectivity to form social and political imaginaries could perpetuate injustices by configuring our epistemic orientation towards a (mis-)understanding of ourselves in relation to the other. On the flip side, affectivity and rationality, if oriented towards a politics that treats of the human beings as modes capable of affecting and being affected equally, we can remove and do away with the harmful imaginaries that inform our own epistemic configuration and form a politics that is based on the principle of relationality – one that is built upon an optimistic construction of sociabilities.

3.2. A Politics of Relations: Towards Hopeful Sociabilities

Producing sociability is a political act. In relating towards others, we create connections – and with it, form ethical relations. Thus, political figurations also have affective properties, as Maya Mikdashi states, reminding us of this significant element that often “we forget that ideological states and political commitments are, deep down, affective states.”⁴⁸ In this sense, articulations of social and political endeavors contain in them both the rational justification, and as well as affective content. Here, we understand that through a society’s movement in the organic production and reproduction of social and political subjectivities and its imaginaries, there are tensions that may arise since affections do not affect everyone in the same way (e2p14d). Jan Slaby and Jonas Bens assigns this particular configuration as “political affect.” That as these affective states are found within the bounds of resistance, in the expressions of longing for freedom, in the emotion of pain induced by relations of dominance, or motivations for liberation.⁴⁹ In the struggle against oppression felt by the multitude, hope becomes the affective state by which individuals aim to produce for its mode of sociability, as an object or idea of the future in which a society experiences joyful affects, or those that which increases their power of acting – or simply, that which provides liberty.

Spinoza presents hope as an aspect of the dual compound of a single affective complex. In contradistinction to fear, which is the accompanying pain that arises from the idea of a past or a future thing, hope arises as an

⁴⁸ M. Mikdashi, “What Is Settler Colonialism? (For Leo Delano Ames Jr.),” *American Indian Culture and Research Journal*, vol. 37, no. 2, 2013, 23-34.

⁴⁹ J. Slaby and J. Bens, “Political Affect,” *Affective Societies: Key Concepts*, ed. Jan Slaby and Christian von Scheve, London, Routledge, 2019, pp. 340-351.

imaginative affect that influences us to act upon those which we perceive to bring us closer to understanding ourselves as liberated individuals.⁵⁰ That, despite the uncertainties of the contingencies of our present time characterized by climate crises, political tensions, and effects of colonialism and global capitalism, we remain optimistic in hopes of transforming our sociabilities that minimizes pain and increases joy.

Conclusion: towards transmodern possibilities

As a conclusion, allow me to summarize the points I have argued in this paper to demonstrate a possibility by which we can consider Spinoza's philosophy – both in its principles and its context – could be seen as an alternative way of overcoming the myths of modernity. First, by starting at a critique of modernity by Dussel and Quijano, I demonstrated the characteristics of which we can attribute with modern philosophies as epistemologies of indifference. That is, through colonialism and its extractive practices, the epistemic component of such principles allowed for the production of knowledge to be exploitative in nature, thus the universalizing principle of philosophy – particularly epistemology, creates a mirage and defaces an all too particular, personal, and immanent aspect in our endeavor to produce knowledge. Second, I highlight the way in which Spinoza categorizes and redefines the ontological status of human beings. As a critique to the idea of human exceptionalism perpetuated by the Cartesian and therefore the modern cogito, Spinoza subverts this ontological verticality of hierarchy by positing his proposition that the divine is immanent in nature (*Deus sive Natura*). This move, as I argued, is one of the possible ways in which we can frame Spinoza against the Euro-Anthropo-centric paradigm of thought. Lastly, in overcoming modernity/rationality as a Eurocentric principle, I highlight the role affectivity occupies. By showing relationality as a principle where we can attribute the affective compound in our ontological disposition, we can shift the discourse of modernity and beyond towards an optimistic politics that prioritizes relations and affects in producing sociabilities.

Going back to Dussel, he argues that the necessity of the denial of the myth of modernity requires an ethics that comes from responsibility.⁵¹ The way in which we become responsible in the historical and sociocultural aspects of our own positionality is to form connections that, for Spinoza, are fundamentally ethical. Thus, in allowing these connections to prosper, the transmodern project seeks to eliminate the idea of extreme polarities that oppose one another set by modernity/rationality in lieu of colonialism.⁵² By

⁵⁰ Spinoza, *Ethics*, 212.

⁵¹ Dussel, "Europe, modernity and Eurocentrism."

⁵² Ibid.

not only recognizing and acknowledging the existence of such polarities, but also creating a space in which every instantiation of individuals could form and maintain social configurations of ethical relations, we can produce a politics that allows for an individual and collective striving.

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DAVID HUME'S AESTHETICISM AND PHILOSOPHY OF ART INTERSECTION WITH DESIGN ARGUMENT IN CONTEMPORARY PHILOSOPHICAL THOUGHT

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Abstract: *This article examines the convergence of Hume's aestheticism and philosophy of art with the design argument in contemporary philosophical discourse. This research enhances comprehension of Hume's philosophical ideas and their significance in current discussions within art, philosophy of religion, and aesthetics. This paper employs a critical analysis of Hume's works, including his Dialogues Concerning Natural Religion and essays on aesthetics, to investigate the connection between his aestheticism and critique of the design argument. The research suggests that Hume's aestheticism presents a nuanced perspective on the design argument, highlighting the complexities of inferring divine design from the natural order. His perspectives on beauty and taste highlight the subjective essence of aesthetic experience also in relation to music, and contesting the notion of objective design. This article argues that Hume's aestheticism offers valuable insights into the design argument, emphasizing the importance of considering human perception and experience in evaluating claims about divine design.*

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Introduction

David Hume thoroughly examined aesthetic inquiries and the philosophy of art during a period when such topics were mostly overlooked in England and Europe; however, his impact on later aesthetic discourse and contemporary philosophy of art has been comparatively minimal.¹ Hume addressed aesthetic issues in essays like 'Of the Standard of Taste' and 'Of the Delicacy of Taste and Passion,' explored graphic artistic endeavours and painting in 'Of the Perfect Happiness of Stoicism' and 'On the Progress of Art,' examined poetry in 'Of the Epitaph,' discussed both science and literature in 'Of the Harmony of Poetry with Music' and 'Of the Influence of Ideas on the Passions,' and analyzed music in several letters. Hume additionally authored and published analyses of particular literary and artistic works, including the Cantos of St. Augustine's Confessions and a 'Composition' and 'Description of a Beautiful Piece of Sculpture,' both concerning the Venus of Medici. Hume's writings on aesthetic matters have generally been examined in a fragmented manner and have not been regarded as an exploration of the overarching philosophy of art.² Consequently, although entire chapters of Hume's renowned works, such as the Treatise or the Enquiry on Human Understanding, appear to be burdened by a lack of contemporary relevance, he continues to be a prominent and impactful figure in aesthetic philosophy.³

Simultaneously, one must not disregard the richness, complexity, insightfulness, and profundity of much of Hume's artistic writing. Each Humean response is interpreted broadly and ambiguously, allowing the replies to align approximately and closely with one another. Consequently, in some situations, art is characterized as passion or emotion; more broadly, art is defined as a synthesis of nature and intellect.⁴ The design argument, on the other hand, is one of the most instinctively persuasive arguments for the presence of a divine Creator. However, for numerous scientists and philosophers, Hume's critique and Darwin's theory of natural selection have

¹ V. Moura, "Gostar ou avaliar: David Hume e a crítica de arte," 2008, <https://core.ac.uk/download/pdf/154274352.pdf> (Accessed 25 February 2025).

² Jenefer Robinson, "Expression and Expressiveness in Art," *Postgraduate Journal of Aesthetics*, 4, 2, 2007, p. 21.

³ David Hume, *An Enquiry Concerning Human Understanding*, London: A. Millar, 1777, p.74.

⁴ Antony Fredriksson, "Environmental Aesthetics beyond the Dialectics of Interest and Disinterest: Deconstructing the Myth of Pristine Nature." *Nordic Journal of Aesthetics*, 22, 40-41, 2011, p. 92.

eroded the notion that one may extrapolate design in artefacts that are produced in nature.⁵ This analysis reviews empirical findings from developmental and experimental psychology to explore the cognitive foundations of the design argument. It is evident that humans instinctively perceive purpose in nature. When formulated accurately in theological and philosophical contexts, the design argument is not offered as definitive proof of the existence of God but rather as an abductive, probabilistic argument.⁶ The final portion explores the cognitive foundation of probabilistic assessments with respect to natural theology.

The design argument is presented to elucidate the rationale behind the argument from design, detailing how premises regarding purpose are intended to culminate in belief in a Creator God. The design argument is predicated on an underlying theory of cognition. Hume's critique and Darwin's theory of natural selection are delineated, demonstrating how they undercut the argument from design.⁷ The two philosophers contend that the perceived purpose in nature is deceptive, resulting from a system of thought that evolved to recognize design in artefacts. The arguments of Hume and Darwin are compelling on the premise that perceptions and opinions accurately reflect reality. Numerous scientists, naturalistically inclined philosophers, and certain theologians contend that these arguments have effectively undermined various design arguments derived from conventional natural theology.⁸ In numerous instances, the pertinent assertion on the ostensible design in nature is deemed untrue, vacuous, or poorly constructed. Therefore, it is presumed that belief in God is neither justified nor rational.⁹ In the philosophy of religion and natural theology, the destiny of the design argument is inextricably connected to the associated accusation of the illusion of design in nature.

David Hume's aestheticism and philosophy of art about the design argument in contemporary thought is a critical examination of the aesthetic principles advocated by David Hume in his renowned eighteenth-century essays. Utilizing materials from his philosophy of mind and theory of belief, it positively assesses Hume's impact on the evolution of a philosophy of art that is apart from moral philosophy and, despite its limitations, about

⁵ J. Megill, "Hume, Causation and Two Arguments Concerning God," *European Journal for Philosophy of Religion*, 6, 1, 2014, 171.

⁶ Scott Aikin, and Nicholas Jones, "An Atheistic Argument from Ugliness," *European Journal for Philosophy of Religion*, 7, 1, 2015, p.210.

⁷ Ignacio Silva, "From Extrinsic Design to Intrinsic Teleology", *European Journal of Science and Theology*, 15, 3, 2019, p.65.

⁸ Moura, 2.

⁹ Jerrold Levinson, "Toward a Non-Minimalist Conception of Aesthetic Experience," *In his: Aesthetic Pursuits*, Oxford: Oxford University Press, 2013, p.118.

contemporary philosophical discourse.¹⁰ An analysis of Hume's design argument is provided, together with an examination of its relationship to contemporary thought, to contextualize it within the constraints of Hume's philosophy of art. This elucidates Hume's preference for a subjectivist theory of taste as a reliable basis for the most significant theoretical and practical dilemmas of humanity, highlighting the constraints of his impact on the future of art philosophy.¹¹

David Hume: An Overview

David Hume (formerly Home) was born on May 7, 1711, and died on August 25, 1776.¹² Hume was a Scottish philosopher, scholar of history, economist, and essayist famous for his influential doctrine of empiricism, philosophical scepticism, and philosophical naturalism.¹³ Joseph and Catherine Home were the parents of Hume, who reared them by himself. Because of the unpopularity of the surname, he changed his family name in 1734. He had little money and resided in the Berwickshire house his family owned. At a young age, Hume studied law at the University of Edinburgh, but he ultimately decided to pursue a career in the field.¹⁴ David Hume has significantly influenced numerous academic fields, generating a body of work that articulates a diverse array of intricate concepts. Although his work *A Treatise of Human Nature*, published in 1739, was initially poorly regarded, it has subsequently attained the status of a classic in modern philosophy. Likewise, his *Enquiry Concerning Human Understanding* (1748) and *Enquiry Concerning the Principles of Morals* (1751) have significantly impacted epistemology and ethical theory, respectively.

Conversely, his aesthetics articulated in the essay *Of the Standard of Taste* (1757), while significant in its merit, is less recognized and examined. Although often regarded as either philosophically inadequate or trivialized as the pursuits of a dilettante, Hume's contributions have nonetheless attracted attention as foundational elements for contesting the contemporary 'standard of taste' and have influenced a body of scholarship on taste and evaluation within the humanities.¹⁵ Nonetheless, Hume's aestheticism and philosophy of art hold intrinsic significance, illuminating

¹⁰ Tamas Demeter, *David Hume and the culture of Scottish Newtonianism: Methodology and ideology in Enlightenment inquiry*, London: Brill, 2016, p.278.

¹¹ David Hume, *A Treatise of Human Nature*, London: The Floating Press, 2009, p. 156.

¹² William Edward Morris, and Charlotte Brown, "David Hume," *Stanford Encyclopedia of Philosophy*, Stanford: Metaphysics Research Lab., 2019 [2001], p. 337.

¹³ Don Garrett, *Hume* (reprint ed.), London: Routledge, 2015, p. 136.

¹⁴ Garrett, 136; Morris, and Brown, 337.

¹⁵ Peter Hutton, and David Ashton, "David Hume – An Apologia". Scottish Affairs, 17 July 2023, Appendix 1 Extract from letter from Hume to Francis Seymore Conway, First Earl of Hertford.

the current discourse among prominent personalities today.

Hume addressed beauty and emotions on two separate occasions. In the latter part of his life, he authored the essay *On the Standard of Taste*. In this essay, he attempts to address the 'issue' associated with art; nevertheless, paradoxically, he scarcely elucidates the problematic concept of 'art' in its entirety. This essay articulates Hume's perspective on 'beauty' as a mental construct and the proportionality of objects perceived by ordinary observation, elucidating how the 'execution' naturally engenders the fine arts.¹⁶ Highlighting his fundamental notion that art is the authentic appreciation of a mind's innate emotions and the recognition of beauty associated with a subject, viewers are encouraged to identify and empathize with the beauty governed by attention, intellect, or 'delicacy' of feelings, while also being cautioned against a catalogue of excessive emotions.¹⁷ Nonetheless, Hume's delineation of morality is insufficient, since it primarily relates to beauty as a representation of character, so neglecting beauty as an intrinsic aspect of character or addressing only a singular form of artistic beauty.¹⁸

Aestheticism and Aesthetics in the Philosophy of Hume

European philosophers are better at paying philosophical attention to dance, literature, and music. Rather than focusing primarily on aestheticism, this line of thought was more interested in the aesthetic essence of art, narrative, and mimesis.¹⁹ Category issues, logical issues about their ontological status, and aesthetic issues about the nature of their response to art as a source of better anxiety, diversion, rest, and relaxation were all topics of discussion and argument among philosophers of art. Radical humanism was also prevalent in art philosophy. Nowadays, most people believe that the philosophy of art falls under the purview of comparative aesthetics or the philosophy of history.²⁰ In order to determine the nature of artistic universals and the historicity of each tradition, the latter compares and contrasts artistic, religious, and scientific ideas across the world's artistic traditions.

¹⁶ Rafe McGregor, "Hutcheson's Idea of Beauty and the Doomsday Scenario," *Postgraduate Journal of Aesthetics*, 7, 1, 2010, p. 14.

¹⁷ McGregor, 14.

¹⁸ John Asquith, "Hume's Scepticism Regarding Reason," Philosophy Documentation Centre, 2016, <https://philarchive.org/rec/ASQHSR>, (Accessed 10 October 2024); Cf. David Hume, *Essays: Moral, Political and Literary*, 2 vols, in Tom Beauchamp, and Mark Box, Oxford: Clarendon Press, 2021, pp. 229 - 231.[[

¹⁹ D. Allan, "Analytic Aesthetics and the Dilemma of Timelessness," 1970, https://www.academia.edu/26792942/Analytic_Aesthetics_and_the_Dilemma_of_Timelessness?uc-g-sw=41693698, (Accessed 3 March 2025).

²⁰ K. Asher, "Was David Hume a racist? Interpreting Hume's infamous footnote (Part I)," *Economic Affairs*, 42, 2, 2022, p. 229.

The broad idea of aesthetics highlights the value of beauty in both life and people. Some interpreters, on the other hand, minimize its significance and emphasize limited meanings in favour of religion, morality, higher objectives, or the economy. 'Anglo-protestant' aestheticism emerged as a result of reviewers, sometimes referred to as 'stuffed shirt' critics, who viewed human portrayals as unattractive.²¹ This method evolved into a more limited kind of aesthetics when paired with pessimism in the 19th century. Similar to 'Anglo-protestant aestheticism,' aestheticism extols the sublime in natural phenomena like as mountains, volcanoes, and natural calamities. Few people strictly agree with this view, though, because it is too wide. There are more stringent interpretations that exclude Enlightenment theorists and scientists. Like the arts, music, and visual arts, aesthetics is a bold manifestation of scientific investigation.

Hume's philosophy is characterized by its aesthetic nature. Aestheticism is a central theme in Hume's epistemology, ethics, and economics.²² Hume's aestheticism is a significant aspect through which the philosophy of art must be comprehended.²³ This inquiry is constrained in scope and will concentrate just on one issue, notably Hume's philosophy of art about the Design Argument, which has a logical connection to Hume's aestheticism. The design argument is critically examined in Hume's philosophy of religion and nature, as well as in the broader context of British empiricism.²⁴ Although various publications address this feature, the varieties of art examined are relatively few, as this aspect is intrinsically linked to the overarching principles of all art forms that Hume sought to influence.

Hume addresses the powers of the mind, particularly the imagination and its "sprightly" PDFs as "beauties". All beauty exists solely "in the eye of the observer." Even an unclad "Venus" may not offend, although the purity of the widow and the jable (whipping post) of the subjugated; and even empathetic ignorance may transform such beauties into blemishes.²⁵ This judgment elicits both pleasure and provocation—reflecting a sense of decorum. Taste can result in either complacency or pride, as exemplified by the connoisseur and the wittol, respectively.²⁶ Gardner thinks that antiquity

²¹ Donald Baxter, "Hume on Virtue, Beauty, Composites, and Secondary Qualities," *Pacific Philosophical Quarterly*, 71, 1990, p. 113.

²² David Hume, *An Inquiry Concerning the Principles of Morals*, Indianapolis, IN: The Bobbs-Merrill Company, 1957, p. 47.

²³ Timothy Costelloe, *Imagination in Hume's Philosophy: The Canvas of the Mind*, Edinburgh: Edinburgh University Press, 2018, p. 199.

²⁴ Helen De Cruz, and Johan De Smedt, "Paley's iPod: The Cognitive Basis of the Design Argument within Natural Theology." *Zygon Journal of Religion and Science*, 45, 2010, p. 678.

²⁵ McGregor, 14.

²⁶ Moura, 4.

redefined beauty. The "pure rays of light" transformed into "an internal mirror through which" surfaces, images, or sculptures were to be rendered as plastic beauties. This prediction omitted the "harmonious variety" of intellects characterized by the vibrant stimulation of whites manifesting in waves over the cheeks (the "antique," "dainty," and "Pedro"). Peters Jones contemplates analogous beauties observed, for instance, in Shakuntala or among the distinguished individuals promenading in the plaza.²⁷ The brain and its faculties would both contribute in a "mathematical" manner. Creativeness was passively augmented by tastes and passions. These entities operate independently, neither producing nor appreciating architecture, poetry and songs amongst others. This aesthetic would emerge, neither "universal" nor "rational," nor philosophically established, but would acquire meaning through the attributes referenced, rendered technically absolute, and tailored to produce a different mental state: the appreciation of beauty.²⁸

Hume's Philosophy of Art

Art is characterized by its outcome and result, with thought functioning as a creative and cognitive process. It is also characterized as a foresight of nature and prediction, emphasizing the conceptual connection between artists and audiences. Art possesses a genesis and a conclusion, influencing emotions and sentiments through its visual impact. Art is recognized as the process of creating or organizing something which is aesthetically pleasing.²⁹ The term is typically used to describe works of intellectual or practical brilliance in music, art, sculpture, or poetry. In this minimalist interpretation of art, natural phenomena such as the sun, stars, meteors, and birds may also be categorized as artistic creations (McGregor, 2010). Thus, creations crafted with purpose, such as timepieces, chariots, and vessels, can also achieve this. Reid asserted that these purported arts or beauties cannot be associated with the philosophy of art due to their lack of relation to the philosophy of a priori.³⁰

Modern philosophy has produced ideas that prioritize the aesthetic aspect, constraining it to artistic creation and interpreting art through the lens of language. Analytic aesthetics has adopted a neo-Kantian perspective

²⁷ Peter Jones, "Hume on the Arts and The Standard of Taste": Texts and Contexts, 2008,

https://www.researchgate.net/publication/292351055_Hume_on_the_arts_and_the_standard_of_taste_Texts_and_contexts

²⁸ A. Berleant, "Art and Intuition, or Pygmalion Rediscovered," *Alue and the Arts*, in E. Laszlo, and James B. Wilbur (eds.), Geneseo: State University College of Arts & Sciences, 1976, p. 7.

²⁹ Tina Baceski, "Hume on Art Critics, Wise Men, and the Virtues of Taste," *Hume Studies*, 39, 2013, p. 241.

³⁰ Moura, 3.

on art and aesthetics, but the genuine transcendental shift in philosophical thought regarding art is gaining prominence in modern discourse. Modern philosophers have advanced the philosophical aspects of art, examining the ambiguity of art, music, musings on forbidden pleasure, and the intricate building of worlds and notation.³¹ Certain philosophers have significantly redefined the aesthetic aspects of art through concepts of astonishment, sentiment, and emotion; nonetheless, these ideas remain unactualized in non-mimetic theories that focus on the relational and combinatorial nature of meaning in specific forms.

A specific philosophy of art is founded on the emulative qualities of a distinguished writer, taking into account truth, probability, decorum, and comedy. Appreciating an object entails a complex process comprising emotional and intellectual elements, and the painting's attractiveness provides aesthetic arrangements that might influence emotional states and grievances. This casts doubt on the existence of a computational framework capable of producing a definitive conclusion regarding aesthetic judgment.³² Hume's aesthetic perspective asserts that the detection of beauty is manifested in propositions that elicit evaluation, shaping interpretative exegesis that engenders 'liking' without yielding 'judgment first'. The significance of creative terminology in public discourse has transformed, resulting in novel perspectives on their analysis and linguistic evaluation.³³ This entails examining their behaviour using an event and state calculus, taking into account the event structure in public conversation concerning art. The implications of these concepts are examined within the framework of meaning, particularly grammar, and are linked to ethical considerations.³⁴ The interpretation of meaning concerning public perception is fundamentally anchored in conventional pragmatic objectives.

According to Jones, Hume's insights regarding the arts are grounded in social life, examining both the creation and reception of art as human activities.³⁵ He never authored a dissertation on criticism and did not formulate views regarding beauty, art, or critique. By analyzing his disparate comments and the context of his writing, we can discern his primary perspectives on these subjects. Establishing the context and chronology of a

³¹ Víctor Dura-Vila, "Shelley on Hume's Standard of Taste and the Impossibility of Sound Disagreement among the Ideal Critics," *Journal of Aesthetics and Art Criticism*, 73, 3, 2015, p. 342.

³² Marian David, "The Correspondence Theory of Truth". *The Stanford Encyclopedia of Philosophy*. In Zalta, Edward N. (ed.), Stanford: Stanford University, 2018, p. 391.

³³ Timothy Costelloe, *Aesthetics and Morals in the Philosophy of David Hume*, London: Routledge, 2007, p. 281.

³⁴ Jones, 2.

³⁵ Eva Dadlez, "Hume, Halos, and Rough Heroes: Moral and Aesthetic Defects in Works of Fiction," *Philosophy and Literature*, 41, 2017, p. 99.

writer's perspective is essential, particularly when delineating aesthetics. Hume's interests as well as references were more limited than those of contemporary readers. In his article "The Sceptic", Hume (1757/1985) contends that the beauty of items is determined by the sentiments individuals associate with them, thereby negating the existence of a universal standard of taste.³⁶

In his subsequent article, *Of the Standard of Taste*, Hume reevaluates his stance and concludes that in the absence of a standard of taste, individuals could commend plays that extol vices. He contends that a standard of taste is essential to harmonize the many moods of individuals in art appreciation, as it does not diminish the worth of the works of Picasso, Schubert, or Milton. Hume examines the reasons underlying the diversity of tastes in art appreciation, exemplified by a liking for Britney Spears over Wagner or Handel. This inclination may be shaped by an individual's disposition, including traits such as introspection or empathy, as exemplified by Hamlet in Shakespeare's play. Hume maintains that a standard of taste is essential due to his concern that poets and artists he deems inferior may receive equal recognition as their superior counterparts. Jerrold Levinson asserts that masterpieces, although not universally regarded as attractive, possess beauty due to their enduring significance.³⁷

The Role of Taste in Hume's Aestheticism

Hume criticizes his detractors by using the Aristotelian concept of taste. He claims that a taste evaluation is based on whether an object satisfies specific criteria.³⁸ Due to their universally communicative nature, these qualities can only be shared through taste judgments that do not impose restrictions on the object's ability to be tasted by those who do not perceive the beauty features revealed by the object's taste, as opposed to those who were introduced to the object's generic qualities through the observation of specifics, regardless of how toned the judgment may be. By engaging the viewer's imagination, the object's reasonable balance or effective impression explains a perfection that might be tasted. The judgment of a discerning viewer whose definition of beauty encompasses severity, sensibility, delicacy, liveliness, sublimity, and a taste for greatness and novelty is what communicates the artwork.³⁹ The viewer's imagination is

³⁶ Timothy Costelloe, "Hume, Kant, and the 'Antinomy of Taste'," *Journal of the History of Philosophy*, 41, 2003, p. 172.

³⁷ Levinson, 128.

³⁸ Dabney Townsend, "Art and the Aesthetic: Hume, Kant, and the Essence of Art," *Art and Essences*, in Stephen Davies and Ananta Ch. Sukla (eds.), Westport, CT: Praeger, 2003, p. 77.

³⁹ Dabney Townsend, "From Shaftesbury to Kant: The Development of the Concept of Aesthetic Experience," *Journal of the History of Ideas*, 48, 1987, p. 289.

stimulated by generalities, vivacity gains beam and expressiveness, and images are enhanced by analogies.

Tropes provide access to goodness or hatred, and the writing or verbal art industry uses interlocutors between soloists or the reader and the writer to play out a priori notions. Given that the genus of taste is pictorial, it is reasonable to assume that taste can be expressed but is not physically achievable. Inquiry into the object of representation is prompted by the relatively searched and inadequate understanding, imagination, and characterization of perfection.⁴⁰ The perfection envisioned may follow owners of an anomalous taste or the existence of beauty in other causes delineated by evil, so distaste for genius does not decrease the beauty of the work. The stance is that the object of perception is referred to by genius and taste. Although opinions on the object of perception may differ in terms of its usefulness to the individual's taste, they must follow suit if it is beautiful and able to evoke feelings of approval or disapproval. A visitor with the taste to evaluate art points out flaws in the piece.⁴¹

Prominent Enlightenment scholar David Hume produced profoundly novel views of human knowledge, understanding, religion, moral behaviour, aesthetic assessment, entertainment, and politics in his books and essays.⁴² According to Hume, both educated appreciation of avant-garde music and aesthetic empiricism will include some damage to imagination because they both call for a departure from some inherently lazy default postures.⁴³ People naturally and effortlessly make comparisons between their previous and present experiences, and this constant, impromptu comparison shapes everything that people see. Listeners are compelled to look for stylistic traits in musical compositions by making creative analogies with prior musical experiences. The seeming predominance of contra-standard qualities in this music is likely to confuse, and many people will dismiss it out of hand.⁴⁴ According to Hume, our imaginative bias to favour what is already most familiar—an ignorant listener's default or natural position—is at least partially responsible for the psychological barrier that prevents people from enjoying exceptional and unexpected art.⁴⁵ As a result, we argue that the eighteenth-century aesthetics' exaggerated value of instrumental music is

⁴⁰ Danielle Charette, "David Hume and the Politics of Slavery". *Political Studies*, 72, 3, 2023, p. 875.

⁴¹ Moura, 5.

⁴² E. Galgut, "Pleasure and the Arts: Enjoying Literature, Painting and Music," *Journal of the Musical Arts in Africa*, 4, 1, 2007, p. 73.

⁴³ K. Walton, "Aesthetic Properties: Context Dependent and Perceptual," *The Journal of Aesthetics and Art Criticism*, 78, 1, 2020, p. 83.

⁴⁴ K. Walton, "Categories of Art," *Philosophical Review*, 79.3(1970): 356.

⁴⁵ Theodore Gracyk, "David Hume, Aesthetic Properties, and Categories of Art," *Studi di estetica*, anno LI, IV serie, 1, 2023, p. 59.

remedied by David Hume's writings on the aesthetic experience. It suggests that David Hume's aesthetic literature has criteria for judging the value of instrumental works from the Classical period.⁴⁶ Therefore, it can be argued that Hume's empiricist aesthetic is not restricted to instrumental music but rather embodies a form of musical literacy and autonomy.

An Overview of the Design Argument and Humean Criticism

The design argument is an a priori proof that beginning with the observed order in the world, seeks to demonstrate the existence of God by attributing this order to the divine. This proof is designed to demonstrate that God exists. The Platonic theory of demiurge, some Aristotelian, Stoic, and Neoplatonic interpretations of providence and the finalistic readings of the writings of the Aristotelian that Thomas Aquinas cited are all examples of the different varieties that it can be found. It was presented in a manner that was more agnostic by the members of the Protestant Cambridge philosophical community, such as Edward, Clarke, and Bentley. Newton's discovery of gravitation was a significant contributor to the development of later versions.⁴⁷

An all-powerful Creator is portrayed as a cause for an effect that is witnessed in the world in an investigation known as a posteriori proof. It is the introduction of motion into something that does not move that is the event that is expected. Additionally, the idea of that which is artificial is presented. A comparison is made between the created being and a piece of art. An intelligent being with a great deal of power is responsible for explaining this artificial order.⁴⁸ After that, one can talk about the force that explains the existence of a designer God. It is possible to conceive of a designer God as having an explanatory capacity that can change depending on two variables: the measures of order that are given, and the power that is supposed to be possessed by God. However, it is necessary to also consider the constraints that the God-like being possesses. Every limitation corresponds to the fact that there are sources of order that are separate from the designer.

The design argument, which is based on design considerations in nature, asserts the existence of God in modern philosophy. One of the most well-known objections to the design argument can be found in Hume's *Dialogues Concerning Natural Religion*. The opinions of natural theologians, agnostics, and metaphysical theologians are represented by its three main characters, Cleanthes, Philo, and Demea, respectively. Cleanthes' design argument and Philo's criticism of it are given a lot of attention in the *Dialogues*. Regardless of their position on the matter, many modern philosophers of religion find Hume's presentation of Philo's

⁴⁶ Gracyk, 60.

⁴⁷ Silva, 66.

⁴⁸ De Cruz, and De Smedt, 678.

objections to contain several original insights. For philosophers of religion, Hume's Dialogues' design statement has been crucial ever since.⁴⁹ Many modern philosophers of religion were impacted by it during the 20th century, either adopting it or attempting to disprove it. There have also been other explanations of Hume's place in the Dialogues.

Presenting the design argument as it may have appeared in Hume's Dialogues is the first objective of this study. Every interpretation of Hume's design theory provides a list of characteristics to highlight to best convey Hume's point of view. The difference between necessary and contingent existences, however, is a trait that contemporary philosophers of religion ignore but that was significant to Hume. Many modern philosophers of religion interpret the contents of this paper as arguing against the existence of God, flawed designers, or few designers. But Hume did not understand them in this way. Rather, they are seen as justifications for believing that, if the cosmos had a plan, it only made room for a contingent creator God.

The Confluence of the Design Argument and Aesthetics

Considering natural theology as a component of the cognitive design argument implies, if effective, a novel perspective on the design argument, natural theology, and their interconnections with the scientifically informed philosophy of religion.⁵⁰ It fundamentally suggests reevaluating the design argument through the lens of cognitive science, as well as the essence of the philosophy of religion. In recent decades, the design argument has manifested in diverse forms within both naturalistic theology and the philosophy of science. This expansion occurred after a significant transformation in the philosophy of religion throughout the mid-twentieth century. In response to the previous dominance of an anti-metaphysical, verificationist philosophy, thinkers—especially those aligned with the continental tradition—explored alternative discourses regarding God, reviving old theistic issues such as creation, the design argument, and miracles. This renewed focus has therefore introduced a fresh array of issues regarding the reasonableness or scepticism of such arguments and claims—belief-influenced perception, ambiguous potentiality, and so on. Following the resurgence of the conventional philosophy of religion, attempting to categorize behaviours pertinent to natural theology by C318 and to examine anthropologically convergent themes may appear inappropriate.

When the frameworks of cognitive science and anthropology are employed, the philosophy of religion and natural theology emerge as not merely imperfect outcomes of cultural and societal selection, but to a

⁴⁹ Moura, 4.

⁵⁰ De Cruz, and De Smedt, 679.

considerable extent, as relics of the past.⁵¹ The appropriate objects of research have become ambiguous, as many of these "archaic" issues have been integrated into cognitive science or numerous sub-disciplines of anthropology and sociology. These broader conceptual frameworks are distanced from the trivialities of philosophical concerns and typically omit the intricate analyses and uncertainties regarding evolutionary psychology, despite recent efforts to integrate psychology and evolution within the scope of philosophical methodologies.⁵²

This postulate advocates for an understanding of environmental design as a means to enrich life through an aesthetic experience that accentuates the inherent qualities of objects and the designs that showcase them. The focus is on suspended time, separate entities, elegance, rationality, and suitability. The aesthetic standards that embody the good are intellectual, about the mind and perception.⁵³ This encourages reflection on nature as a museum, presenting a detachment from life that is intrinsically valuable rather than utilitarian, a static nature, if only for a brief period, allowing the observer to appreciate, both in the broad expanse and meticulous details, what renders it worthy of observation. This represents a perspective on the universe advocated by classicism and perpetuated by the overarching culturalism that influences contemporary environmental discourse.⁵⁴

Enlightenment natural theology, particularly as expressed by Hume, encompasses a design argument concerning the aesthetics of nature. Nature is intended to evoke awe-inspiring experiences to fulfil religious purposes. However, while others perceive design in nature and art, as well as a complex relationship between human creativity and nature's grandeur, Hume presents a reactionary deduction regarding the aesthetics of nature. This aestheticism repositions the subsequent design argument and critiques the assumption of an uncontrollable passion that exists outside the experience of nature. Hume adeptly illustrates how the conflict between genuine beauty and deceptive beauty enhances the design argument, together with a cognitive interruption. Hume acknowledged that individuals seek to derive intelligibility from the sensory world of phenomena, transforming their perceptions into comprehensiveness, desire, and value, ultimately leading to an assumption of worth, all dependent on the

⁵¹ Ottuh, Peter, "An Evaluation of Religious Skepticism about Human Suffering and Pain: Towards a Theoretical Synthesis," *ICOANA CREDINTEI. International Journal of Interdisciplinary Scientific Research*, 8, 16, 2022, p. 53.

⁵² Matthew Butler, "David Hume and the 'Disease of the Learned' – Psychiatry in Philosophy," *The British Journal of Psychiatry*, 217, 3, 2020, p. 524.

⁵³ Ottuh, Peter, "Religious Approach to Non-Anthropocentric Ethics in Environmental Philosophy," *Cogito-Multidisciplinary Research Journal*, 1, 2020, p. 20.

⁵⁴ Ottuh, 25.

intelligible beauty about its expected disdain and satire.⁵⁵

In a fragmented Baroque realm, characterized by a tumult of inexplicable sensations, godless magnificence, or the abomination of whimsy intertwined with disgraceful form, it would undoubtedly be hubris or vanity to presume that vice should manifest in any particular "shape," except for display or ornamentation to garner belief in something and obscure the absurd or immoral. It is well understood that it would be inappropriate to highlight the sun revealing a female lewd act to augment its beauty. However, to consider differently, to consciously tolerate (and to aspire to tolerate) non-existence (and therefore a potentially emerging rejection of extraordinary joys) would signify—when articulating the very act of calculation—being more advantageous outside of the performance. Alongside the ambiguity of the term art, there exists an ambiguity in the concept of intuition related to it. When individuals attempt to articulate an instantaneous variable or event that is indefinable, intuition plays a role. This appears to be accurate for both the atypical and for events that are relatively commonplace, which are noticed with greater frequency.

Berleant states that the Italian vulgate, Theophilus, defined it as a state of knowing; the Greek Phantasia as the representation of thought; the English term as the art of the mind; and a Russian novelist provided the following definition: Art embodies the study of disaster, suffering, destiny, and existence, together with its misfortunes and moral depravity.⁵⁶ It is neither statecraft, nor rhetoric, nor politics. Art exists in a different realm and is not associated with terrestrial elevation. Artistic perception pertains to the direct experience of phenomena and objects, emphasizing their hidden qualities, the fluid interplay of lines, and their evolving significance. Intuition, a nebulous concept, is at the heart of aesthetics. In the 1780s, there exists an equivocation and a spectrum of meanings in its varied interpretations. Intuition refers to a straightforward.

The experience of intuition signifies the recognition of the design. Intuition, as a form of instantaneous cognition, becomes problematic only when it is interpreted as the perception of unadorned or abstract objects or aesthetic experiences, specifically the recognition of sensory attributes in isolation. Cognitive mode, an immediate and unquestionable form of knowledge that is not verifiable, encompassing intuition, premonition, prescience, foresight, inklings, inner perception, forethought, Queer Feeling, and the clear understanding of Ray's mechanism or Kant's scientific insight regarding a lunar eclipse.⁵⁷ Conversely, it pertains to the simplistic,

⁵⁵ Moura, 2.

⁵⁶ Matthew Butler, "David Hume and the 'Disease of the Learned' – Psychiatry in Philosophy," *The British Journal of Psychiatry*, 217, 3, 2020, p. 524.

⁵⁷ Townsend, 78.

nonscientific origin of experience, characterized by attraction or aesthetic interest. The former, a commendable tribute to intelligence through chastity, has been a primary target of empiricist reductionist critique, which diminishes intuition in favour of habit, imagined or recalled experience, and emotion.

Humean Aestheticism and Art about Design Argument

The development of artistic human nature in humanity as a thinker incites a need for "the great," which is subsequently converted into a design. The resources and endeavours of worldly understanding transform it into art during a phase of initial frustration. Art is the refinement of design or artistic influence over the chaos and untamed aspects of matter, in contrast to natural art. Discussions on art are prevalent across various perspectives. Certain authors contemplate a sceptical approach from an analytical standpoint, while others examine aestheticism, subsequently providing an in-depth explanation of philosophy in texts like "Of the Standard of Taste."⁵⁸ Numerous individuals adhere to a commentary on the a priori theory of innovation in the *Essay Concerning Human Understanding*. An excessive empirical emphasis on the original naturalistic development of philosophy, together with its contrast to prior dominant influences, constricts the aesthetic conceptualizations of foundational artistic thought to a limited perspective. The prohibition of ambiguous art fails to provide a definitive focus on the evolving areas of concern within this expansive historical context of ideas. While paralleling the loss of all pertinent historical elements, excessive emphasis on appropriately framing ideas to contribute novelty to history does not transcend the constraints of restricted thought. The designer, as a significant agent of creation, cannot be reconciled with the notion of the early modern designer as the previously prevailing influence. The positioning was unequivocally accurate.

Aestheticism constitutes a fundamental element of Hume's artistic philosophy. In his most recognized work on aesthetics, he examines the essence of beauty and the application of the term "taste" to one's ability to appreciate aesthetics. He devotes an extensive essay and polemical writings to elucidate his perspectives and address recognized challenges. Aestheticism, in this context, is defined as the claim that aesthetic appreciation is a non-cognitive, non-intellectual, sentiment-driven, confrontational, and agnostic endeavour, with aesthetic properties being sentiment-sensitive relational attributes, resulting in a genuinely pluralistic, earnest, and dynamic engagement with art.⁵⁹ The design argument, in its inverse form, is conventionally regarded as a compelling

⁵⁸ Costelloe, 174.

⁵⁹ Townsend, 90.

basis for belief in the existence of God, the architect of the universe. Hume allocates sections of his *Inquiry concerning Human Understanding* and the *Dialogues concerning Natural Religion* to articulate this argument and critique several of its most notable formulations. He contends against the presence of a personal deity based on philosophical principles and employs externalism in both epistemology and linguistics.

The proposition of Humean consistency between Aestheticism and the critique of the design argument presents issues for the contemporary philosophy of art and philosophy in general. This necessitates elucidating several concepts in Hume's philosophy of art, examining the second book of *the Treatise*, and highlighting various challenges to Hume's perspective. The design argument in Hume's presentation includes both a priori and a posteriori reasons for the existence of a world designer. The primary concern in the initial group is the overarching contingency of existence in its general order, asserting that it was either impossible for it to occur or that it must have arisen from the necessity of some cause or foundation. It is asserted that, upon contemplating existence in its entirety, no definitive explanation can be offered. The opposing argument challenges this assumption directly. The second set presents arguments clarifying the restrictiveness and dissimilarity of the Creator in the design argument. All such arguments were critically significant within Hume's historical background of intellectual development.

Implications for Contemporary Philosophy

The ramifications for contemporary philosophy can be examined through diverse viewpoints on art and aesthetics including many cultural forms and institutions, elitism and populism, classical art and kitsch, the creative industries and art market, as well as an analysis of Hobbes's Commonwealth, among other topics.⁶⁰ The emphasis is on the language history of contemporary art, encompassing a survey of European artwork, sculpture, and buildings since the Renaissance, with particular attention to certain significant masterpieces. In Hume's examination of film and other cultural mediums, he critiques present politics in British filmmaking.⁶¹ He illustrates how the populist presumption that art serves as a medium for social critique neglects how film, upon achieving significant success, becomes integrated into the vast commercial apparatus of Hollywood, yielding revenues for corporations.

He inquires about the factors that facilitate the seamless transition of this analysis of taste from one instance to another. He asserts that the

⁶⁰ Ottuh, Peter, Omosor, Festus, and Abamwa, E., "Religious Iconography: Ethical Interface of Nigerian Knowledge Society," *Journal of Dharma*, 48, 1, 2023, p. 108.

⁶¹ Charette, 875.

utilization of imagination and the amalgamation of one concept with another are analogous in both painting and poetry.⁶² Evaluating and reconciling various types of taste involves examining the culinary preferences of many civilizations. The culinary preferences of each nation are elaborated upon, demonstrating sufficient divergence to inhibit the importation of representative samples.

Hume's 1757 edition took into account the emotions of individual viewers. Taste is not merely a perceptual response; nevertheless, if it is not a perceptual response, what is it? The model presented is an account of justice.⁶³ The problem lies not with the question itself. Beauty is defined as a trait in objects that provides pleasure; nonetheless, the question remains: what constitutes beauty? Here, the mere mention of a stone is adequate to provoke the inquiry. Contemporary art has not introduced new notions, but advancements in historical context. The eye's capacity to perceive detail is contingent upon the artist's history, and the act of seeing is both dizzying and cognizant of the history of matter.⁶⁴

Hume's philosophy of art encompasses numerous themes and contexts of significant interest, including his original writings on the perception of beauty and the creative imagination of critics, the nature and feasibility of tragic beauty, and his sceptical examination of the likelihood of miracles' truth.⁶⁵ Hume's principal contribution to the philosophy of art is his examination of the standard of taste and the evaluation of artistic value. It is significant not just for its inclusion of Hume's original concepts and personal reflections but also for its articulation of Hume's philosophy of art as a cohesive framework.

Among modern aesthetic theorists, Hume occupies the preeminent position in theoretical probability.⁶⁶ It is obstructed by uncontrollable passions or misapplication, and when passions are judiciously regulated, they become the wellspring of all human delights.⁶⁷ Consequently, observing a flaw, such as a discrepancy in the relationship between cause and effect, should elicit a joyful response. The regulation of emotional equilibrium resembles a work of art, yet it also constitutes a rational attainment. Thus, taste, or the literary evaluation of art rather than philosophical discourse on its veracity, serves as the connection between the subjectivity of sentiment and the objectivity of the norm of taste.

⁶² Charette, 877.

⁶³ Dadlez, 100.

⁶⁴ Allan, 3.

⁶⁵ David, 393.

⁶⁶ Allan, 2.

⁶⁷ Ottuh, Peter, and Jemegbe, Mary, "Covid-19 Pandemic: An Eschatologico-Theodical Paradox," *Cogito: Multidisciplinary Research Journal*, 13, 1, 2021, p. 37.

From the moment Hume chose to utilize the term “taste” in his writing, he recognized that he was assuming a risk. A risk that enhanced his writing while simultaneously exacerbating the problems and challenges it faced. It entailed, on one hand, determining whether to address the extensive and somewhat unwieldy intellectual connotations associated with the term, and on the other, how to navigate the simplistic, the ambiguous, the insipid, and the contradictory, fully aware that some of these elements would be present in his text.⁶⁸ In this instance, paradox served as Hume's master key, as there were only a limited number of subjects thereafter about which he felt overwhelmingly confident regarding the assertions of others, while simultaneously feeling uncertain about his contributions. Attempting to delineate the parameters of such a domain preliminarily appears to be as subjective as amplification, to put it mildly. It is merely a rephrasing of the majority of the essay's insights.

Questioning whether art elitism contradicts Hume's principles is either to be stupid or to see his ideas as antiquated. Raising this question now is not primarily to critique Valle or Eduardo, who are preoccupied with their perspectives on the matter, but rather to examine the various ways in which a historical cause is manifested. In terms of deficiencies, and to compare him candidly with the finest, Hume is neither unique nor archetypal, but rather continental in the traditional sense of revealing/alienating the peculiar. However, the concept of the possible, or the Ludovico lights referenced in Hume's title, warrants more serious consideration. Hume's concept of “hereafter and here before” may imply that truth is perceived as a reality of a moment characterized by the convergence and interaction of perspectives, evoking a semblance of Anelia's position.⁶⁹

Conclusion

Given the discussion so far, Hume's aestheticism and art are situated at the nexus of modern sensist European philosophy and mostly rationalist Scottish Enlightenment philosophy. As a result, it supports the fallibility of the philosopher's thinking and warns against the hubris of system-makers and wide humanity. However, it finds Scotland's feminism inadequate through a nuanced response to an alteration of concepts regarding the nature of the cosmos and our understanding of it. Similar to Hume's epistemology, his philosophy of art and aesthetics bases its criticism of design arguments on premises that are intrinsically flawed. It contends that design arguments are inappropriate for proving the existence of a designer and, ultimately, the creation of an intelligent power like God rather than some finite being or beings due to the poisonous usurpation of philosophy. Hume's theory of art

⁶⁸ Moura, 3.

⁶⁹ David, 394.

and his aesthetics were formed in quite distinct contexts. However, both projects attest to a critical scepticism regarding human STR (short tandem repeat), FR (founder repeat), and RA (restriction fragment) surpassing that of humanity, as well as a profound understanding of the dialectical tension and complementarity between these faculties in human minds, at least since the creation of such vanities as philosophy and art. Thus, the cognitive emotions of Humean art enjoyment and judgment are made up of a taught scepticism that is not separate from speculation and superficial anxieties about the dangers of foolishness. Therefore, Humean art critique guides the mind toward better viewing and elicits feelings of approval that are marked by a high level of taste. Thus, Hume's aestheticism provides significant insights into the design argument, highlighting the necessity of using human sense and experience in assessing assertions on divine design.

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SCIENCE FICTION: THE CULTURAL CODE OF AEROSPACE ENGINEERING

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Abstract: *The socio-philosophical analysis of aerospace engineering necessitates an investigation into the cultural codes that drive innovation within this field. A cultural code helps identify the common characteristics, unconscious images, and motivations that shape the aerospace community and its socio-cultural nature. The primary focus of this research is science fiction. This paper examines the influence of science fiction, as a cultural phenomenon of modern and postmodern society, on aerospace engineering.*

In the first part, the history of science fiction and its status within contemporary philosophical thought are explored. The second part is dedicated to a structural-functional analysis of science fiction as a cultural code in aerospace engineering. The third part, for the first time, analyzes Ukrainian science fiction writers who have laid the foundations for the cultural code of aerospace engineering in Ukraine.

Keywords: *science fiction, aerospace engineering, modern, postmodern, cultural code.*

Introduction

Aerospace engineering is a field that constantly demands innovation. One of its primary tasks is the systematic search for new solutions, as well as foresight and invention. Such activities require inspiration and motivation. While the issue of inspiration was thoroughly examined in a previous work¹, the topics of motivation and the stimulation of innovative thinking for aerospace engineering specialists have not received sufficient attention in socio-philosophical circles. Undoubtedly, motivation is driven by numerous and diverse factors: funding, working conditions, career growth, etc. However, we are particularly interested in the socio-cultural factors that can provoke an increase in innovative thinking. Such factors can sometimes have a surprisingly powerful impact. The socio-cultural environment of modern digital society significantly influences the motivation of both ordinary people and specialists in highly specialized

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¹ I. Ushno, *Humanity's Dream of Flying as Inspiration for Aerospace Community*. Bulletin of Lviv University. Series Philosophy-Political Science Studies, 2024, 53, pp. 130–138.

fields. By analyzing the components that shape the cultural community of aerospace engineering, we can further utilize these factors to enhance the effectiveness of professional activities. One such factor we propose to consider is science fiction.

The challenges facing the modern global community are multifaceted, ranging from national security to global warming. Space exploration remains one of these critical issues, requiring objective interaction between different countries, international cooperation, and global understanding. Aerospace engineering is a field where not only technologies intersect but also cultural coordinates. Identifying and highlighting such cultural constants that could serve as unifying factors for aerospace specialists from different countries becomes strategically necessary. What can transcend national and cultural peculiarities? The international aerospace community today unites specialists from various parts of the world, different religions, and nationalities. However, the aerospace community is shaped not only by external but also internal corporate factors, including professional activities as well as leisure, hobbies, and common interests.

This article is dedicated to the analysis of science fiction as a cultural code for the aerospace community. Science fiction represents a unique cultural phenomenon that inspires, stimulates innovation, and provides a socio-cultural environment for the exchange of meanings, images, and insights. Studying science fiction in the context of modern and postmodern conditions allows us to demonstrate the dynamics of this phenomenon, highlight its historical and cultural features, and substantiate the influence of science fiction as a cultural code on the development of scientific and technological progress. A structural-functional analysis shows how science fiction influences aerospace engineering, the factors that comprise this influence, and how it manifests in reality. As an example, we examine Ukrainian science fiction and its historical features.

Aerospace Science Fiction in the Historical Retrospective

Science fiction with an aerospace focus is a genre that manifests in various forms of art, namely literature, cinema, and comics. All these art forms are of great interest for detailed study, particularly considering the influence of modernism and postmodernism on each. Science fiction has often anticipated or inspired innovations in aerospace engineering. Here are some specific examples of books and films that have had a significant impact.

Books:

“From the Earth to the Moon” (1865) and “Around the Moon” (1870) by Jules Verne². Jules Verne predicted many aspects of space travel, including

² J. Vern, *From the Earth to the Moon*. Trans. from French by A. Biletsky. Kharkiv-Odesa: Dytvydav, 1935.

a rocket launch resembling the Apollo spacecraft. These books describe a launch from large cannon, analogous to the principle of space launches. “A Fall of Moondust” (1961) by Arthur C. Clarke describes concepts that can be seen in modern lunar missions and colonization projects. “2001: A Space Odyssey” (1968) by Arthur C. Clarke, foresees space stations, the use of artificial intelligence to control spacecraft, and implements ideas such as spacewalks and orbital stations³.

Films:

“Metropolis” (1927), directed by Fritz Lang. The first science fiction film introduced concepts of robots and automation that influenced subsequent developments. “Star Wars” (1977), directed by George Lucas. Many elements, such as spacecraft, laser weapons, and robotics, influenced the development of real technologies, including drones and concepts for military aircraft. “Solaris” (1972), directed by Andrei Tarkovsky (based on the novel by Stanislaw Lem). Explores ideas of interplanetary travel and the psychological aspects of long-term space missions. “Blade Runner” (1982), directed by Ridley Scott (based on Philip K. Dick’s novel “Do Androids Dream of Electric Sheep?”). Visualizes a technological future, including robots and artificial intelligence, which inspired engineers to create modern technologies. “Gravity” (2013), directed by Alfonso Cuarón. Though a more realistic film, it provides important lessons on survival in space and the technologies required for such missions. “Interstellar” (2014), directed by Christopher Nolan. Contributes to the understanding of black holes, space travel, and gravitational theories, which interest scientists and engineers. These works not only entertained but also inspired many engineers, scientists, and inventors to achieve real advancements in aerospace engineering.

The origins of this genre can be traced back to the 2nd century AD in the works of Lucian, a Syrian satirist writing in Greek, with his “A True History”, as well as to the 17th century with “The Celestial World Discover’d: Or, Conjectures Concerning the Inhabitants, Plants and Productions of the Worlds in the Planets” (1698)⁴, written in Latin by the eminent Dutch scientist Christian Huygens, renowned in the fields of astronomy, mathematics, physics, and invention, and considered one of the greatest scientists of all time. The speculation that there might be life beyond Earth has intrigued many thinkers. Few dared to write about such an irrational phenomenon as space. Science fiction is about what does not exist, fully dependent on the author’s imagination. The 17th century marks the first period when imagination was given free rein: Giovanni Domenico

³ A. Clark, *2001: a Space Odyssey*. 1968.

<https://www.goodreads.com/book/show/70535.2001>

⁴ A. Derleth, *Beyond Time and Space*. New York: Pellegrini & Cudahy, 1950.

Campanella's (1602) "City of the Sun", Francis Bacon's (1627) "The New Atlantis", Johannes Kepler's (1634) "Somnium", and Francis Godwin's (1638) "The Man in the Moon"⁵.

Science fiction was not always positively received by contemporaries. For example, it is believed that Johannes Kepler's book was used as evidence to accuse his mother of witchcraft. This book is the first in the history of astronomy to describe phenomena as seen by an observer located on the Moon. Such a perspective could not remain "unpunished", but nothing could stop the progress of science fiction. It took considerable time for scientific and technological progress to overcome religious dogmatism.

The study of 19th-century science fiction is the focus of Dr. Anastasia Klimchynskaya's work. She notes that the new worldview of the 19th century fostered a sense of unprecedented power over the physical world through scientific and technological means, but also contributed to a growing awareness of human insignificance and potential extinction due to the era's discoveries in geology, paleontology, and biology. In the nineteenth century, the collective future became a subject of serious consideration for the first time, and science fiction thinking became possible through new forms of media⁶.

The modern era triumphs and scientific and technological progress captivates people's minds. What does modernism bring to science fiction? Modernism supplies science fiction with the necessary technical imagination while leaving room for irrationality. The freedom of imagination is already present, aided by real experience. More and more working machines surround the writer, machines once described by their predecessors. These facts inspire science fiction writers, providing new ideas and solutions. Science fiction of the modern era is filled with anticipation, and there is already a division into different directions. The sky and space become very attractive and marketable themes. An author who writes science fiction must possess theoretical or practical knowledge, which largely requires engineering thinking. The machine-mechanism, as the main object of modern science fiction, acquires real experience. Modernism is a technical object expressed through the prism of art, with the science fiction writer acting as a conduit for such realization. Examples include "A Tale of Negative Gravity" (1884), by Frank Stockton, "The New Accelerator" (1901), by H.G. Wells, and "The Lotus Eaters" (1935), by Stanley G. Weinbaum⁷. The most pressing questions of modern philosophy become: What will happen if the machine triumphs? These are the questions that postmodernists will seek to answer.

⁵ A. Derleth, *op. cit.*

⁶ A. Klimchynskaya, *Science Fiction as Thought Experiment: The Case of Jules Verne's Extraordinary Voyages*. Configurations 29.3, 2021, pp. 289–320.

⁷ A. Derleth, *op. cit.*

Postmodernism is the primary driving force behind science fiction. It seems that the energy of postmodernism has shaped science fiction into what we know today, and this article will discuss it in greater detail. Science fiction has gained depth, no longer confined to a few directions. New styles are created, combining previously incompatible and diametrically opposed genres into a single product. Postmodernism, as a space for realizing creative and scientific-technical discoveries, has infused science fiction with boldness and commercialization. Business representatives have seen potential in science fiction. In this context, it can already be debated whether the initial impulse comes from demand or idea. Science fiction reaches the masses. If the audience does not read, they can watch comics, cartoons, or films. If that is not enough, they can play computer games, visit simulators, or virtual reality rooms where science fiction comes to life.

Ethical Discourse: From A. Asimov's Laws of Robotics to Contemporary Rules of Spaceflight

With the increasing complexity of science fiction as an art genre, new tasks are becoming pertinent. Thinkers are concerned with finding answers to ethical questions. Science fiction cannot remain long in the format of negative scenarios: the triumph of machines over humans or the destruction of human civilization by alien robots. There is already a full understanding that machines will coexist with humans for a long time, and it is essential to consider how to shape this future coexistence. One of the first science fiction writers to create an ethical code was Isaac Asimov.

The laws of robotics proposed by Isaac Asimov played a significant role in shaping the ethical and technical aspects of robotics. These three laws, described in his works, state:

A robot may not injure a human being, or, through inaction, allow a human being to come to harm. A robot must obey the orders given it by human beings, except where such orders would conflict with the First Law. A robot must protect its own existence, except where such protection would conflict with the First or Second Law⁸.

Despite having been formulated in the 1940s, interest in Asimov's science fiction remains undiminished. On the contrary, contemporary science fiction writers actively debate their relevance. This article proposes to examine the interpretation of these laws within the context of aerospace engineering, considering both theoretical and practical aspects. The aerospace industry is characterized by a high degree of risk, both for individuals and for the technology itself. In this context, Asimov's laws may serve as a foundation for developing ethical norms and standards in the design and operation of robots and automated systems.

⁸ R.J. Sawyer, *Robot Ethics*. Science 318, 2007, pp. 1037-1037.

The First Law and Flight Safety:

In aerospace engineering, flight safety stands as the paramount concern. The application of the First Law entails the development of systems capable of averting any actions that might potentially endanger human life and health. This encompasses the creation of emergency systems designed to autonomously prevent disasters.

The Second Law and Process Automation:

Robots and automated systems within the aerospace sector are required to follow human commands, whether issued by astronauts or ground operators. However, these systems must be programmed to refuse execution of any commands that jeopardize safety. For instance, automated flight control systems ought to reject a pilot's command if it would lead to a crash.

The Third Law and System Resilience:

Systems must be designed to minimize the risks of damage and malfunction. This includes the development of redundant systems and the undertaking of regular maintenance, aligning with Asimov's Third Law.

The technical implementation of the laws of robotics in aerospace engineering necessitates the integration of sophisticated algorithms and artificial intelligence systems. One critical task, for instance, is the development of collision avoidance systems, applicable both in airspace and outer space. These systems must possess a high degree of autonomy and the capacity for rapid decision-making, thus actualizing the First Law. The development of intuitive and reliable interfaces for human-robot interaction is also a paramount task. This will enable operators to manage systems effectively and respond swiftly to changing situations, aligning with the Second Law. Autonomous systems capable of self-diagnosis and repair represent a vital aspect in the context of prolonged space missions. These systems must be able to identify and rectify faults independently of human intervention, thereby fulfilling the Third Law.

The contemporary practical realization of such principles can be observed in various instances:

Modern rovers, such as Curiosity and Perseverance, already exhibit elements of Asimov's laws. They are programmed to avoid hazards, execute commands from operational centers on Earth, and protect their systems from damage.

The aerospace industry is actively developing and deploying autonomous drones for the inspection and repair of infrastructure. These drones adhere to safety principles, preventing threats to humans while executing operator's commands.

Autonomous spaceflight control systems, such as docking and navigation systems follow Asimov's laws by ensuring crew safety and executing operator's commands without compromising safety.

Despite the widespread popularity and potential applicability of Asimov's ethical laws from science fiction to real aerospace engineering, many contentious issues remain. Chief among these is the lack of consideration for the human subject who operates the robots or other technological tools. The laws formulated by Asimov, based on the principle of Kant's categorical imperative, omit the relationship between the robot and the human who developed it. The responsibility of the subject for scientific and technological discoveries is a primary concern in contemporary philosophy. To underscore this point, it is pertinent to cite Robert J. Sawyer: "The development of AI is a business, and businesses are notoriously uninterested in fundamental safeguards — especially philosophic ones. (A few quick examples: the tobacco industry, the automotive industry, the nuclear industry. Not one of these has said from the outset that fundamental safeguards are necessary, every one of them has resisted externally imposed safeguards, and none have accepted an absolute edict against ever causing harm to humans.) Indeed, given that a huge amount of AI and robotics research is underwritten by the military, it seems that there will never be a general "law" against ever harming human beings. We already live in a world in which Asimov's Three Laws of Robotics have no validity..."⁹.

The theses written twenty years ago are now being confirmed in practice. Twenty-five authors, under the guidance of Vasiliki Rahimzadeh, proposed an ethical framework for regulating commercial space flights: "Rules Needed for Human Research in Commercial Spaceflights", September 2023¹⁰, which includes principles such as social responsibility, scientific excellence, proportionality, and global governance. However, key participants in the commercial space sector either show no interest in these principles or do not acknowledge them. Vasiliki Rahimzadeh noted in an interview that representatives of private aerospace companies have not approached them regarding these principles.

The Status of Science Fiction in Contemporary Philosophy

Contemporary philosophy is increasingly interested in the study of science fiction and its role in postmodern society. One prominent source in this field is Science Fiction Studies, a journal that publishes articles on science fiction and critical commentary on the works of science fiction

⁹ R.J. Sawyer, *op. cit.*

¹⁰ V. Rahimzadeh et al., *Ethically Cleared to Launch?* Science, 2023, Vol. 381, pp. 1408-1411.

writers. Founded in 1973, SFS is based at DePauw University. Over the past thirty years, the relationship between philosophy and science fiction has changed significantly, even within the scope of this single journal. In 1996, Tucker, in his article, envisions such an interaction and notes: “Though science-fiction writers have been borrowing philosophical themes freely and developing them in a narrative form to their logical conclusions, philosophers tend to ignore science fiction, at least explicitly, fearing the criticism of their pompous colleagues”¹¹.

The current situation is quite the opposite: **2023 SFS Mullen Fellows**. The Mullen Fellowship offers stipends of up to \$5000 for a postdoctoral award and up to \$3000 each for two PhD awards to support research at any archive with sf holdings. Fellowships are awarded in support of dissertation or book projects that have science fiction as a central focus¹².

In other words, we are witnessing a historic shift within the realm of philosophical science. Science fiction has succeeded in convincing philosophers to take it seriously. On one hand, we can speak of the influence of the commercial success of science fiction, the expansion of its genres and styles, and consequently, the growing interest from philosophers. On the other hand, contemporary philosophy is indeed undergoing immense transformations. Postmodernism has not bypassed philosophy, nor could it have done so. It is precisely postmodern philosophy that has allowed philosophers to turn to science fiction as an object of study. Rational activity, objective reality, and scientific methods all become relative. What become of interest are the play, the narrative, and the predictions.

While the playful aspect of postmodernism is well-documented (*homo ludens*), predictions and foresight are increasingly becoming indispensable attributes of contemporary reality. Psychologists associate this need for predictions with heightened levels of anxiety and panic. However, philosophy offers its perspective: predictive power. This term in the philosophy of science can be defined as the property of a theory that enables it to predict new manifestations of the physical world, from empiricism to postpositivism. A notable figure in 20th-century philosophy of science was Imre Lakatos, who significantly influenced the development of the term predictive power. “A programme degenerates if its successive theories are not *theoretically* progressive (because it predicts no novel facts), or not *empirically* progressive (because novel predictions get refuted)”¹³.

¹¹ A. Tucker, *Science Fiction as a Bridge to Philosophy*. Science Fiction Studies, 1996, Vol. 23, No. 3, pp. 534–536.

¹² L. Swanstrom, *Notes and Correspondence*. Science Fiction Studies, 2023, Vol. 50, Part 3. <https://www.depauw.edu/sfs/notes/notes153.html>

¹³ A. Musgrave, C., Pigden, *Imre Lakatos*. The Stanford Encyclopedia of Philosophy, 2023. <https://plato.stanford.edu/archives/spr2023/entries/lakatos/>

Prediction has gained status. The work was written in 1970, during the heyday of science fiction. Within the framework of the theory of predictive power, science fiction acquires a rationality it previously lacked. It would take several decades for philosophy to truly consider this fact. The main issue in the rationalisation of science fiction was its mass popularisation in postmodern society. The popularity and mass culture of postmodernism could not allow science fiction to enter the real field of science. A society of rapidly developing modern technologies not only does not ignore predictive power; it systematically utilises it for its startups.

Structural-Functional Analysis

Science fiction is examined in this study through several functional aspects. Firstly, it serves as an informal platform for communication and cooperation among specialists from various countries. It has the potential to become a promising factor for uniting professionals in aerospace engineering, as it is free from strong national and cultural influences. Science fiction writers address space exploration, describing scientific, technical, psychological, physical, and other factors that are independent of cultural affiliation. In this context, science fiction represents a phenomenon of a globalized community. Secondly, it acts as a catalyst for scientific and technological progress. A key feature of science fiction is its innovative nature, which inspires the search for ways to realize various speculative ideas. Thirdly, it functions as an ambassador for aerospace engineering. Science fiction can become a major argument in popularizing aerospace engineering within society. As aerospace is a relatively insular and specialized field, society may struggle to define its developmental prospects, particularly in terms of funding priorities and budget allocation. Science fiction could serve as a tool for public persuasion.

An undeniable interest for such an analysis is the collective work David Raitt, Patrick Gyger, Arthur Woods, Paper IAF-01-IAA.8.2.02 presented at the 52 International Astronautical Congress.

It is against this background that the European Space Agency (ESA) launched a specific initiative, the main objectives of which were to review the past and present science fiction literature, artwork and films in order to identify and assess innovative technologies, systems, devices, designs, configurations and concepts described therein which could be possibly developed further for space applications. The study resulted in some 250 innovative technologies and concepts mentioned in the science fiction genre being found and a preliminary assessment is currently being performed in order to identify whether any of these technologies might hold potential for a more- in-depth analysis leading to subsequent feasibility studies. The assessment is also examining the technologies described with a view to

ascertaining what might be possible with today's knowledge, techniques, technologies and materials, and what new technologies and knowledge might be required to make any of the identified science fiction concepts work¹⁴.

To comprehend the full seriousness of these intentions, it is essential to evaluate the scale of the undertaken work. A working group, utilizing a dedicated electronic platform with the assistance of passionate science fiction enthusiasts, selected 250 potentially innovative predictions. These predictions subsequently became the subjects of scientific research, with allocated funding in the field of aerospace engineering. This fact is highly indicative – science, including philosophy, not only engages with science fiction but also applies rational methods of analysis and evaluation to existing speculative hypotheses. It took thirty years for “predictive power” to earn a respected place among scientific theories and to be realized in the practice of aerospace engineering.

Why does the aerospace segment of science fiction remain popular for so many years? One can point to the very nature of aerospace engineering. The article “Humanity's Dream of Flying as Inspiration for the Aerospace Community” delves into the phenomenon of the “dream of the sky”¹⁵. The entire history of humanity is linked to its aspirations for the new, the unknown, and the supernatural. The conquest of the sky and space epitomizes such dreams. Science fiction as a genre caters to this desire – to imagine what does not exist in reality and to offer hope that humanity can achieve it. It touches upon deep, subconscious human experiences that have been layered over millennia with cultural features and historical events.

Firstly, fear. This emotion is too powerful to ignore. Space instills fear due to its unknown nature and the corresponding anticipation of danger. Perhaps, this is how the human psyche is wired – it prepares for the worst-case scenario.

Secondly, pride. The ascent into the heavens serves as a challenge, a display of arrogant superiority, a testament to uniqueness and success. The space race among various nations is evidence of this. Many contemporary theorists and practitioners in the field of aerospace pose the rhetorical question about the necessity of venturing beyond Earth's orbit, suggesting that these vast resources might be better spent on the inhabitants of our planet.

Thirdly, loneliness. Humans, as an anthropologically intelligent species, experience feelings of isolation. Perhaps this very sensation contributes to the relentless exploitation of nature by mankind. Jean-Paul

¹⁴ D. Raitt, P. Gyger, A. Woods, *Paper IAF-01-IAA.8.2.02 presented at the 52nd International Astronautical Congress*. Toulouse, France, 2001.

¹⁵ I. Ushno, *Humanity's Dream of Flying as Inspiration for Aerospace Community*. Bulletin of Lviv University. Series Philosophy-Political Science Studies, 2024, Issue 53, pp. 130–138.

Sartre's concept of a "World without the Other" can be extended to a cosmic scale. Emotional alienation, the absence of an equal "the Other", provokes the expansion of our search into space.

Fourthly, divine nature. The sky itself is the principal source of the Divine on Earth. The association of goodness and God with the heavens, and of evil with the subterranean, imbues space with spirituality. It is this very cocktail of emotions, these emotional oscillations from irrational suppositions to hopes for an engineering marvel that contribute to the great popularity of aerospace science fiction.

The Heroic Theory vs Multiple Discovery

In the context of this research, it is necessary to substantiate two concepts. The first is one of the most prevalent among both science fiction writers and aerospace specialists. The essence of this concept is that science fiction serves as an inspiration for aerospace engineering. For example, in many biographies of prominent figures in the aerospace field, one can find assertions that reading science fiction in their youth provided the motivation to pursue education or fostered a dream they wished to realize. The internal existential experiences induced by science fiction about the exploration of the sky and space have sparked further scientific and technological discoveries.

Moreover, the more humanity observed the increasing number of coincidences where science fiction preceded real technological developments, the stronger the influence of this first concept became. It is unnecessary to enumerate such instances within the scope of this article. Modern and postmodern eras have created true masterpieces of the science fiction genre. This genre has manifested not only in literature but also in cinema, comics, and computer games. Text-based science fiction has been augmented with visual and auditory elements, followed by interactive implementations. The advent of 3D, 4D, and 5D formats and the creation of virtual reality have expanded the possibilities of the science fiction genre and its influence on human consciousness.

This concept informs us that science fiction, more so than other genres, possesses the gift of foresight, anticipating the directions of scientific and technological development. The popularization of science fiction across various cultural forms creates a cyclic dependency effect: the more science fiction there is the more enthusiasts it garners, who subsequently become the implementers of ideas that will eventually provide scientific and technological facts for new science fiction writers. The 20th century effectively utilized this correlational dependency. By analogy, one might refer to the work of Ralph C. Epstein, *Industrial Invention: Heroic, or*

Systematic¹⁶? The heroic theory of invention and scientific development is the view that the principal authors of inventions and scientific discoveries are unique heroic individuals—i.e., “great scientists” or “geniuses”.

The second concept is less widespread and can be considered a hypothesis. Multiple Discovery¹⁷. The concept of multiple discovery (also known as simultaneous invention) is the hypothesis that most scientific discoveries and inventions are made independently and more or less simultaneously by multiple scientists and inventors.

This hypothesis, in relation to our topic, posits the following: science fiction writers create their works while, concurrently, scientists are already working on new discoveries. A shared informational field or common information base becomes accessible simultaneously. Both humanities scholars and engineers interpret this information in parallel, selecting the most important aspects for their respective fields. As an audience, for instance, we read science fiction and later find facts that confirm these fictional discoveries in reality after some time. In this case, the difference in time is only due to the additional time required for the practical implementation of a particular phenomenon. Publishing a book is faster than producing a rocket.

Effectively, there is no real difference in time; therefore, it is impossible to assert that science fiction writers truly anticipate the future of aerospace engineering. This concept is not commonly popularized because it does not create the necessary atmosphere for commercialization. If everything is not dependent on us, if knowledge arrives chaotically and discoveries are beyond human control, then no one would want to invest money in uncertainty.

Aerospace Science Fiction: The Ukrainian Format

Ukraine in the 20th century was a country actively involved in the development of aerospace engineering. The history of aircraft and rocket construction has its own socio-cultural tradition. The Soviet period is characterized by its ideological context, but it is not limited to it. Within the framework of this article, Ukrainian science fiction is of particular interest. Two main periods can be distinguished: the period of Soviet Ukraine and the period of independent Ukraine.

Science fiction in Soviet Ukraine was a unique phenomenon that combined elements of socialist ideology, cultural heritage, and scientific and technological progress. It became not only a means of entertainment but also an important tool for the philosophical reflection on reality and the

¹⁶ R.C. Epstein, *Industrial Invention: Heroic, or Systematic?* The Quarterly Journal of Economics, 1926, Vol. 40, Issue 2, pp. 232–272.

¹⁷ D. Lamb, S.M. Easton, *Originality in Art and Science [chap. 9]. Multiple Discovery: The Pattern of Scientific Progress*. Amersham: Avebury Publishing, 1984.

future. In the Soviet Union, literature, including science fiction, often served as a means of propagating communist ideals. This was expressed through works that described utopian societies of the future, where people lived in harmony with nature, technology, and each other.

Science fiction in Soviet Ukraine reflected a belief in inevitable and positive scientific and technological progress. This techno-optimism was a key part of the philosophy of the time, which held that science and technology could solve all of humanity's problems. Works often described advancements in space travel, robotics, and biotechnology. These themes not only inspired readers but also helped disseminate scientific knowledge among the general audience.

One of the pioneers of this genre was Volodymyr Vladko. Like many science fiction writers, Vladko was a visionary. This was acknowledged by Pavlo Popovych, one of Vladko's most ardent admirers and later the first Ukrainian astronaut to orbit the Earth: "For me, "Argonauts of the Universe" was the primer of astronautics. When I eventually went to space, I was simply amazed at how accurately the writer predicted the situation related to weightlessness"¹⁸. This foresight is also found in another novel published by Dniprovidav in 1934, "The Returning Airship". In this novel, a European country (interestingly, its soldiers are dressed with swastikas) attacks the Soviet Union. The first bombs are dropped by bombers at four in the morning, seemingly foreshadowing the beginning of World War II seven years later, in June 1941. Among the book's characters is Aviation Lieutenant Gagarin.

After the publication of *Argonauts of the Cosmos*, Vladko revised the novel several times to adapt it to new technological developments. The novel was extremely popular, and the revised *Argonauts* were continually republished. It was even reissued after the author's death in 1974. The last edition of *Argonauts of the Universe* was published in Ukrainian in 1990¹⁹.

Science fiction in independent Ukraine has approached the theme of aerospace with particular interest, reflecting national ambitions and global trends in space exploration. Aerospace themes not only create captivating narratives but also serve as a basis for philosophical reflection on the role of humanity in space, ethical questions, and the possibilities of interstellar existence.

Ukraine has a rich history of participation in the Soviet Union's space programs. Figures such as Sergei Korolev, the chief designer of rocket and space technology, hold special significance for Ukraine's cultural and

¹⁸ S. Tsalyk, *"Argonauts of the Universe": How Ukrainians Went to Venus*. 2015. <https://www.istpravda.com.ua/blogs/564f9eaa247d7/>

¹⁹ V. Vladko, *The Gray Captain; Argonauts of the Universe: Novels*. Art by Malakov Georgy. Kyiv: Veselka, 1990.

scientific heritage. In the post-Soviet period, this historical connection has become the foundation for new narratives that reflect on past achievements and build projections for the future.

Space in Ukrainian science fiction is often viewed as a new frontier for humanity, offering unlimited possibilities for exploration and colonization. Authors explore ideas related to the settlement of new planets, the search for extraterrestrial civilizations, and the development of technologies necessary for long-term space travel. These themes encourage reflection on the future of humanity, its place in the Universe, and possible paths of evolution.

The works frequently address issues of interaction with extraterrestrial life forms, the rights to exploit space resources, and the responsibility to maintain the cleanliness of outer space. These questions reflect broader philosophical considerations about the limits of human knowledge and responsibility.

Science fiction authors in independent Ukraine pay great attention to the technologies necessary for space exploration. Their works describe the latest developments in rocket engineering, space medicine, robotics, and artificial intelligence. These technologies are considered not only in terms of their functionality but also in terms of their impact on society and the individual. Questions arise about how these technologies might alter our perception of ourselves and the world around us.

Modern writers contemplate how human activities in space might affect the environment. Scenarios are explored in which uncontrolled use of space resources leads to negative consequences for both space objects and Earth. This allows readers to reflect on the importance of sustainable development and the preservation of space for future generations.

One of the primary sources for such analysis was I. V. Cherny's work *Fantasts of Modern Ukraine*²⁰. In the early years of independence, science fiction became one of the most popular literary genres. For example, Kharkiv hosted the science fiction festival "Star Bridge" until 2011. The first "Star Bridge" festival was held in 1999 at the V. N. Karazin Kharkiv National University, attracting writers from various cities of the former Soviet Union. A distinctive feature of the festival was the significant emphasis organizers placed on scientific work: science fiction writers had the opportunity to interact with prominent scientists, engage in debates with them, or develop common themes.

Unfortunately, no studies have been conducted in Ukraine to analyze Ukrainian science fiction for potential discoveries and innovations. Such an analysis would require budget allocation and the organization of a dedicated community. The aforementioned work Paper IAF-01-IAA.8.2.02 covered only English-language sources, providing motivation for innovative

²⁰ I.V. Cherny, *Modern Ukrainian Fantasts: Encyclopedia*. Kharkiv: Publishing House "Investor", 2007.

activities by the European Space Agency (ESA).

Modern Ukrainian science fiction writers work in various genres. Unfortunately, in recent years, science fiction has not been the primary focus. For example, if we analyze the fantasy books published in 2023, the majorities are based on Ukrainian mythology and belong to the fantasy genre. However, one very interesting and, in our view, promising work worth noting is Max Kidruk's *Colony*²¹. This is the first book in the science fiction series *New Dark Ages* about the world in the 22nd century. The series is dedicated to the colonization of Mars, the relationship between Earth as the metropolis and Mars as the dominion, as well as the political and environmental issues on Earth in the 22nd century.

Examining the author's biography reveals the substantial scientific content in his work, but science fiction is valued by readers not only for its technical foundation but also for its intuition. How much the author possesses this intuition can only be speculated. Reading other readers reviews, we understand the challenges of writing science fiction in contemporary Ukraine. We cannot distance ourselves from the current situation; the military actions are ongoing, and people from different regions of Ukraine do not want to read about the destruction foreseen in their areas or about pessimistic forecasts for the east and south of Ukraine. Another interesting example of modern Ukrainian fantasy is a book published not in Ukraine but by the Ukrainian diaspora in 2023²². It also predominantly features fantasy, but science fiction occupies a certain place. This collection of stories reflects the interests of Ukrainians living abroad.

Conclusions

The Role of Science Fiction: Science fiction serves not only an entertainment function but also acts as a cultural code for aerospace engineering. It performs the roles of a cultural catalyst for scientific and technological progress, a socio-cultural platform for the aerospace community, and a cultural ambassador for the aerospace sector in the socio-economic development of society.

Historical and Philosophical Retrospective: The historical and philosophical retrospective of science fiction has demonstrated the development of this genre, the transformative changes of this phenomenon in modern and postmodern society, and its high status within contemporary philosophy.

²¹ M. Kidruk, *New Dark Ages. Book 1. Colony. Bearded Tamarin*. Illinois: UkrainianBestBooks, 2024.

²² *Embroidered Worlds: Science Fiction of Ukraine and the Diaspora* (V. Dudycz Lupescu, O. Brylova, I. Pasko eds). Detroit: Atthis Arts, 2023.

Ethical Code in Aerospace Engineering: The works of Isaac Asimov exemplify the ethical code of aerospace engineering, highlighting the challenges of implementing ethical standards in practical activities, particularly in the 2023 collective work “Rules are needed for human research in commercial spaceflight”.

Approaches to Evaluating Science Fiction’s Role: In evaluating the role of science fiction as a cultural catalyst for scientific and technological progress, two approaches are highlighted: Heroic Theory and Multiple Discovery. A comparative analysis was conducted, identifying key differences. The experience of the European Space Agency (ESA) was utilized in defining science fiction both as a socio-cultural platform and as an ambassador.

Ukrainian Science Fiction: Ukrainian science fiction represents a significant and underappreciated source of inspiration and motivation in the field of aerospace engineering. The history of science fiction in Ukraine raises a wide range of issues, emphasizing the impact of technology on our perception of ourselves and the world around us; the activities in space and their environmental impact; the uncontrolled use of space resources; and the importance of sustainable development and the preservation of space for future generations.

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ECOMODERATIONISM (WASATIYYAH) IN ISLAMIC THOUGHTS: TOWARDS A FAMILIAL AFFINITY BETWEEN MAN AND NATURE

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Abstract: *Islam as a faith has very rich spiritual practices with far reaching implications in human endeavours, with the relationship between man and nature as one discourse in its teachings. Ecomoderationism as a concept exposes environmental ethics in Islamic thoughts which is the focus of this paper. A critical reflection on the teachings, principles, practices and beliefs in Islam explicates how much ecomoderationism contributes to a more holistic approach on the human-nature relationship in Islamic thoughts. Employing the philosophical methods of analysis and hermeneutics, the paper argues that ecomoderationism with the foundation of Islamic values such as balance, unity/oneness, justice, compassion, accountability and stewardship holds the practicable potentials of biodiversity preservation, conservation of natural resources, tackling degradation of the environment which would culminate in fostering a familial relationship between man and nature. The work concludes that with the attainment of such potentials, ecomoderationism promotes sustainable living and environmental stewardship in human existence.*

Keywords: *Islam, nature, moderation, conservation, biodiversity*

Introduction

Beyond the primary teachings on the relationship between man and a higher being (Allah) which is connected by spiritual and moral practices carried out by man, there are in-depth teachings on the entire ecosystem comprising humans and non-humans. The manner in which human beings relate with the natural, in Islamic thoughts, to a great extent also explains how they connect with God. The implication of this is that a disregard for the natural

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world translates to the disregard for God. The idea of ecomoderationism in recent years has emerged as a unique and distinct perspective to the relationship between humans and the natural world, with Quranic foundations. This approach explains the fundamental role played by status in the economization, 'ecologization' and utilization of the ecosystem¹ as can be found in Islamic principles for sustainable development of the ecosystem. The basic principles that are very instrumental to ecomoderationism (*Wasatiyyah*) in Islamic thoughts include: the principle of unity (*Tahwid*), the principle of creation (*Fitrah*), the principle of balance (*Mizan*) and the principle of responsibility (*Khalifa*).

The aforementioned principles are not taken in isolation one from the other in the espousal and practice of ecomoderationism; they are all a web of principles aimed at maintaining the natural world. The principles are ethical and obligatory frameworks for the actions shown to nature as required in the concept of *Taqwa*, an idea in which individuals exhibit their deep reverence for Allah's commands due to His ubiquitous presence among humans and non-humans. The connective links that bind these principles together are also the cords connecting the entire ecosystem, thus showing clearly the interconnectedness of all beings. All of these links, webs and connectedness between man and nature have been neglected in man's relationship with other non-human components of the ecosystem². The natural world is willfully destroyed at the behest of man. A lot of ecological theories and principles have been discussed in environmental ethics with a view to saving the natural world; some of these approaches are theocentric³, others are ecologically anthropocentric⁴ yet there are still some others that are either ecocentric or biocentric⁵.

This paper appreciates the contributions of those traditional ethical approaches to the rescue of the ecosystem in the face of human debilitating actions. However, ecomoderationsim is a hybridized ethical approach and

¹ Schmidt C. Aarts et al, *Towards a morality of increasing moderation*. Studies in Environmental Science, 1995, 65, p. 1247.

² Nicholas Onyemechi Alumona, *The nature of (human) life and the life of nature: Advancing environmental sustainability*. ISRG International Journal of Arts, Humanities and Social Sciences, 2024, p. 278.

³ Garrett J. DeWeese, *A theocentric environmental ethic*. Religions, 2023, 14(913), p. 2. Available: <https://doi.org/10.3390/rel14070913>. Accessed [12 December 2024]; Andrew J. Hoffman & Lloyd E. Sandelands, *Getting it right with nature: Anthropocentrism, ecocentrism and theocentrism*. Organization and Environment, 2005, 18(2), p. 142.

⁴ Kyle L. Burchett, *Anthropocentrism as environmental ethic*. 2016. An unpublished thesis, University of Kentucky. Available: <http://dx.doi.org/10.13023/ETD.2016.2591>. Accessed [12 December 2024].

⁵ A.G. Nnamani, *Ethics of the environment. Kpim of morality ethics: General, special and professional*. Panteleon Iroegbu & Anthony Echekwube(eds.). Ibadan: Heinemann Educational Books (Nigeria), 2005, p. 398.

it is viewed as more holistic than each of the approaches mentioned above. This research argues that ecomoderationism as found in Islamic principles and teachings promotes a more balanced and moderate approach on human-nature interactions, thereby fostering a familial relationship between man and the natural world.

In view of the central argument stated above, the objective of this paper is to show the uniqueness of ecomoderationism and its significance to believers and non-believers alike in their actions on the entire ecosystem. This objective has further influence on stakeholders and policy makers for an interconnected ecosystem.

Theoretical Framework

This paper employs the theory of ecological holism whose background is from the notion of holism. Helen Erickson from a biological point of view dovetailed into philosophy examined holism by considering the nature of humans in relation with the entire universe. According to her,

Holistic nurses believe that unity of mind, body and spirit creates a system that is dynamically interconnected with the universe. These interconnections mandate that the whole cannot be broken down into parts; it must be considered as a dynamic interactive entity that exists within a context⁶.

Holism therefore is not additive; it is integrative. The parts of the system's whole cannot be separated from either of themselves or from the whole. A healthy human is connected to a healthy universe. The health of the mind, body and spirit must all be connected not just to one another but also to the entire universe.

Erickson's point of view is in line with Smut, a South African Philosopher, who is the progenitor of the term, holism. In Smut's words,

Holism is the term ... coined for this fundamental feature of wholeness in the world. ... The idea of whole and wholeness should...not be confined to the biological domain; it covers both inorganic substances and mental structures as well as the highest manifestations of the human spirit⁷.

Ecological holism as a theory explains how much the concept of holism connects with the entire ecosystem in its comprehensiveness. Dealing with

⁶ Helen L. Erickson, *Philosophy and theory of holism*. Nursing Clinics of North America, 42, 2007, pp. 146-148.

⁷ J.C. Smuts, *Holism and evolution*. London: Macmillan & Co. 1936, p.85.

the interconnectedness between the human and non-human components of the ecosystem, ecological holism is a theory that emphasizes the idea of the ecosystem being more than the sum of its individual parts, and the interconnected interactions and behaviours of the whole is essential to understanding the entire system⁸. In its orientation of wholeness, it is a theory that promotes the framework for comprehending the varieties and complexities in the ecosystem with a view to engendering a more balanced and sustainable management of resources in the environment. Ecological holists hold that there are emergent properties in the collective ecosystem which cannot be found in its individual components⁹. It is this theory with its tenets that will guide the position of the researcher in this work.

Traditional Ethical Approaches on Human-Nature Relationship in Brief

The orthodox ethical approaches to how man relates with nature include but not limited to: anthropocentrism, biocentrism, ecocentrism and theocentrism. Anthropocentrism as a man-centred environmental ethics has been clearly criticized for the disregard of nature; hence it is too simplistic an approach to be considered as one of the approaches that could culminate in ethical quandaries. It is the modified version of anthropocentrism which Burchett calls ecological anthropocentrism is that whose rejection constitutes a stronger justification for the proposed approach to the human-nature relationship which the thesis of this research supports to engender a more balanced relationship between man and nature.

Ecological anthropocentrism is an ethical perspective of the environment which transcends anthropocentrism but still recognizes the necessity of human values while going further to acknowledge the need for an interconnected system of humans and nature. It also acknowledges the role played by human beings as part of the ecosystem and how their well-being is linked to the well-being of nature. Key features of ecological anthropocentrism include the following:

- (1) human centred environmental ethics: This is the recognition and placement of priority in certain human needs and values that are fundamental to decisions and policies about the environment.
- (2) Sustainability driven ethics of the environment: This entails the notion of sustainable development through ecologization aimed at ensuring the well-being of humans and nature.
- (3) Value-based environmental ethics: Human values (aesthetics and

⁸ Qinpel Fan, *Ecological holism in wolf totem*. Frontiers in Educational Research, 2021, 14(7), p. 78.

⁹ Michael P. Nelson, *Teaching holism in environmental ethics*. Environmental Ethics, 2010, 32, pp. 40.

social) are prioritized because they play fundamental roles in shaping human-nature relationship.

(4) Avoidance of ecocentrism: The intrinsic value of non-human aspects of the ecosystem is not prioritized over the human needs and values.

Other scholars who identified the dangers of anthropocentrism and instead advanced similar views with ecological anthropocentrism include Aldo Leopold who argued in his land ethic that humans should exhibit high regards for and responsibility to the natural world for the purpose of the health of the natural world¹⁰. Callicott's view is against anthropocentrism and talks about a symbiotic relationship between man and the biotic community, which comprises the non-human components of the ecosystem. Man has the moral responsibility to foster this relationship¹¹. Anthropocentrism, whether from Leopold's or Callicott's view, is seen as idealistic because of man's selfish nature which propels him to consider his health first before any regard to the health of nature. Callicott's symbiotic ethics in terms of human-nature relationship is as Utopian as it is untenable. A symbiotic relationship is built on mutuality based on rational orientations from parties involved in such relationships¹². How do non-humans which do not possess the same level of mental consciousness enter into such a relationship with humans who can potentially manipulate the ecosystem? A cursory look at the key features would clearly affirm that ecological as term in ecological anthropocentrism is redundant; anthropocentric orientations still is a great determinant of the human-nature relationship.

Biocentrism is another traditional ethical framework that explains how man relates with the environment with its foundation in life-centredness. Rather than man determining the worth of the ecosystem, intrinsic value is dependent on a biotic paradigm- a paradigm that centres on life. This is traditionally attributed to a much discussed Albert Schweitzer's 'reverence for life' which serves as a fundamental foundation for biocentric discourse. The recognition of value of life as a moral attitude that should be lived rather than studied emanated from Schweitzer. This attitude he refers to as ethics is a similitude of Kant's categorical imperative or what in Christian ethics is known as 'the golden rule'. For him, ethics is that which demands that one should necessarily show other beings the will-to-live with the same

¹⁰ Roberta L. Millstein, *The land is our community: Aldo Leopold's environmental ethic for the new millennium*. Chicago: The University of Chicago Press, 2024, p. 82; Aldo Leopold, *For the health of the land: Previously unpublished essays and other writings*. J.B. Callicott & E.T. Freyfogle (eds.). Washington DC: Island Press, 1959, p. 216.

¹¹ J. Baird Callicott, *Elements of an environmental ethic: Moral considerability and biotic community*. *Environmental Ethics*, 1979, 1(1), p. 76.

¹² Alumona, *op.cit.*, p. 279.

reverence with which he recognizes his own will-to-live¹³. Biocentrism therefore urges people to encourage life and abhor harm to life. All living things have equal moral values and humans have the direct obligation to protect not only themselves but also non-humans which have life¹⁴. Key features of biocentrism include:

(i) Ubiquity of life: Life is not a restrictive property of humans as there is life everywhere in the universe. That means that apart from human beings, there are other non-humans in the universe that are also referred to as living things.

(ii) The universe as a living system: The universe as a living phenomenon is an interconnected whole, with all living beings individual parts of the connectedness of the whole. In this sense, the Universe is a web of humans and non-humans as long as they have life.

(iii) All living things have their own independent good and have their own moral value. That means they all need moral consideration for their own sake.

(iv) In all, attaining their good is intrinsic to them¹⁵.

One of the issues with biocentrism is the impracticability of the ethical framework for those environmentalists with empirical orientations. For them, to attribute life to creatures that do not existentially and empirically display it (life) is practicing spiritualism¹⁶. This could lead to subjectivism as it appeals to individuals who arrive at certain rituals and practices of connecting the being of the physical with the sacred. Again, the ubiquity of life is the same with the ubiquity of the spirit¹⁷. This is because the phenomenon that constitutes the life-force for both humans and non-humans is spirit and it is for this reason that both divides of living things are said to have equal moral standing. Subjectivism cannot result to a situation of mutuality between human and non-human components of the ecosystem. And very injurious to biocentric ethics is the claim that not all nature has life; thus leaving humans indirectly responsible for the exclusion of the non-

¹³ Albert Schweitzer, *The philosophy of civilization*. C.T. Campion (Trans.). p. 309.

¹⁴ Biswajit Debnath, *The basic concept of environmental ethics*. International Journal of Research and Analytical Review (IJAR), 2020, 7(1), p. 388.

¹⁵ Robin Attfield, *Existence Value and Intrinsic Value*. Ecological Economics, 24, 1998, p. 163.

¹⁶ P.O. Marumo & M.V. Chakale, *Understanding African philosophy and African spirituality: Challenges and prospects*. Gender and Behaviour, 2018, p. 11700; Maryam Solgi & Maryam Safara, *Philosophical-psychological recognition of concept of spirituality*. Advances in Language and Literary Studies, 2018, pp. 85-86.

¹⁷ G.E. Ogbenika, *The idea of spirit in African philosophy: Scientific rationality and the phenomena of spirit in traditional African societies: The relevance of spirit in the contemporary world*. Lagos: Safinos Publishers Anofil Centre, 2011, p. 32.

living part of nature. This surreptitiously returns the focus to anthropocentrism.

Ecocentrism can be rightly described as being at one end of the polar nature of environmental approaches to the ecosystem, with anthropocentrism being at the other end while biocentrism is at the middle. It involves the whole of nature, both the living and non-living components of the entire ecosystem; ecological systems, processes and relationships inclusive¹⁸. Everything existing in the ecosystem has equal moral standing and by extension the moral right to exist without being subjected to abuse, especially the abuse perpetuated by humans on non-humans. Emphasis is placed on the whole even if it is made up of the parts. No part is more valuable than the other and as such, a dislocation of any part is tantamount to the dislocation of the whole. It is this equality perspective of all parts that leads to every existent have a rights attribute such that nature has rights as much as humans have. This aligns with the claim that "...ecocentrism is clearly associated with the ethical and legal framework of rights"¹⁹. Key features of ecocentrism include the following:

(i) Intrinsic value: Non-human components of the ecosystem have inherent value and self worth regardless of whether humans have need for them or not.

(ii) Rejection of anthropocentrism: Ecocentrism casts aspersion on the view that humans are the centre and determinant of the moral standing of the non-human components of the ecosystem. It abhors the utility value of the non-human aspects of nature to humans as captured in anthropocentrism.

(iii) Appreciation of deep ecology principle: Ecocentrism aligns with the second of the eight principles of deep ecology which emphasizes that the richness and diversity of both human and non-human life forms are important to the recognition of their inherent worth. Therefore, humans cannot lay claim to a superiority of richness and diversity, and on the basis of such self-determined claim interfere with non-human components of the ecosystem²⁰.

Without doubt, ecocentrism seems to enjoy a better description as a more ideal ethic of the environment when placed side by side with the other traditional approaches discussed above, especially on the grounds of its promotion of holism. However, there are a few scholarly reservations on

¹⁸ Nnamani, *op. cit.*, p. 398.

¹⁹ Vito De Lucia, *Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law*. *Journal of Human Rights and the Law*, 2017, 8(2), p. 190.

²⁰ Wendy Ambrosio, *Deep ecology: A debate on the roles of humans in the environment*. *UW-L Journal of Undergraduate Research*, 2005, VIII, p. 2.

ecocentrism. Among them is the view that the holism of ecocentrism leads to the ontological monism of the ecosystem. This monistic view of the environment jettisons pluralism in the cultural understandings of the universe. In reality, different cultures have diverse values and beliefs about the natural world which do not fit into the ontological monism of ecocentrism. Another fallout from this monism is the clear fact that ironically, the equity promoted by ecocentrism breeds impracticable balance between human and non-human components of the environment.

Amidst other shortcomings of the identified traditional ethical approaches to the environment, one common thread on their negatives is the question of practicability. That is why they are discussed as more ideal than practicable. These lapses overshadow the gains of the approaches, hence our quest for a different ethical model of examining the relationship between man and nature. To ecomoderationism, we now turn.

Explicating Ecomoderationism as an Ethical Model of Human-Nature Relationship

Among the three major ethical approaches traditional to environmental ethics, biocentrism seems to play the moderate role between anthropocentrism and ecocentrism because of the presence of the postulations of the two extreme ethical positions in its own claims and principles. While it takes the role and centrality of man from anthropocentrism, it draws from ecocentrism the relevance of living things in the ecosystem yet the combination does not qualify biocentrism as any form of ecomoderationism²¹. Ecomoderationism is a hybridized philosophical approach in environmental ethics that recognizes the inevitability of human needs of the entire ecosystem but it also seeks a balance between such needs and environmental protection as humans pursue developments tied to the ecosystem. It is seen as a more pragmatic ethical approach to the environment because it is not pretentious about the stark reality that human beings as part of the natural world must have their needs met in and by the same natural world. In its advocacy for a balanced relationship, it acknowledges the relevance of preserving the natural world for future generations. So, it is an ethical approach to the environment which is not unmindful of the intricacies and complexities in issues relating to the link between man and nature. It attempts to deal with many of the problems created as man deals with the entire ecosystem. That is why ecomoderationism is pluralistic in its approach. In its pluralism, three major principles deserve elaboration and they include: economization, utilization and ecologization. All three are practical ways of man's

²¹ H.B. Yuzbasioglu, *Approaches to Environmental Ethics*. Different Perspectives on Environmental Education, Sinan Erten (ed.). Turkey: ISRES Publishing, 2021, pp. 87-89.

relationship with nature, which distinguish ecomoderationism from biocentrism and ecocentrism which are described as Utopian ethical approaches to the environment. The first two would be discussed together because of their mutual connections in terms of values, and provisions of goods and services to both humans and non-humans while the third is discussed separately due to its regulatory roles on the first two.

In environmental ethics, economization refers to the attribution of economic values to environmental goods and services. Environmental goods refer to non-human members of the ecosystem capable of providing what we refer to as ecosystem services both to humans and non-humans but in economization, the benefits are from non-humans to the human components of the environment. Ecosystem services for which economic values are attributed include: supporting, provisioning, regulating and cultural services²². Supporting and provisioning services dovetail into each other and include but not limited to services such as food, shelter, agriculture, health and transportation while regulatory services can be found in the natural process of air cleaning, wind control, regulation in climate disorder, and cultural services include recreation, spiritual activities among others. But what exactly do we refer to as economic values? In a narrow sense, economic values are values placed on ecosystem goods and services because of their market values and price tags on them²³. However, Barbier et al gave a more expansive meaning of economic value when they opine that it is the value derived from an asset with respect to the attainment of economic, spiritual, cultural and aesthetic goals²⁴. This shows that economic value goes beyond market values to other values that are described as non-market indices for economic values. Such non-market indices include different sub-types of use values such as indirect use value provided by regulatory ecosystem services, bequest value associated with the relevance attached to the ecosystem because of the benefits it could be for future generations, altruistic value which indicates unselfishness on the part of individuals who think more of the benefits of the ecosystem to others, and existence value which explains the value placed on the ecosystem for the mere knowledge of its existence²⁵. From the exposition thus far on economic value, it has been adduced that both use and non-use values make up what is referred to as economic value. The use and non-use values of

²² Alumona, *op. cit.*, 279-280.

²³ J. Scorse, & J. Kildow, *Ecosystem Services and their Economic and Social Value*. 2024, p. 1. Available at <https://www.forest-trends.org>. Accessed [15 December 2024].

²⁴ E.B. Barbier, et al, *The Valuation of Ecosystem Services*. Biodiversity, Ecosystem Functioning, and Human Wellbeing: An Ecological and Economic Perspective, Naeem, et al (eds.). Oxford University Press, 2009, p. 249.

²⁵ Paul Armsworth et al, *The Economics of Valuing Ecosystem Services and Biodiversity*. The Economics of Ecosystems and Biodiversity: Ecological and Economic Foundations, Pushpam Kumar (ed.). London: Routledge, 2012, p. 195.

economic value bring us to the second principle of ecomoderationism, the utilization principle.

Utilization in environmental ethics simply refers to the use or exploitation of the ecosystem, natural resources or ecosystem services for the benefits of the human components of the environment. Beyond the sub-types of use values mentioned above, there are major kinds of values which determine utilization of the ecosystem by human beings and they are respectively known as intrinsic and instrumental values²⁶. While intrinsic value refers to the value and worth which the non-human aspects of nature have in and of themselves, instrumental value is defined as values that non-human entities have based on their utility or functional values to humans. This essay argues that, contrary to the association of utility to instrumental value alone, utilization of the ecosystem is also manifest with the intrinsic values of some non-human components of the ecosystem. For instance, inherent properties or characteristics such as beauties and uniqueness of some non-human components can drive human beings to make use of them. It is therefore a fact that non-human components of the environment can be utilized either for their instrumental values, intrinsic values or both. The linked discussion of economization and utilization is due to the fact of their interconnections; utilization of the ecosystem is based on economic values and economic values also determine its (ecosystem's) utilization.

In environmental ethics, ecologization is the act of re-examining the values placed on the ecosystem by human beings as well as human practices which affect the environment, all with a view to prioritizing ecological well-being and promoting a harmonious relationship between humans and the natural world. It further advocates for the restoration of degraded or damaged ecosystems in order to ensure the promotion of biodiversity and ecosystem health. Ecologization is the principle of ecomoderationism which acknowledges the inevitability of human needs for nature in the process of development but advocates for balances between such human needs and environmental protection. Maintaining such balances helps in protecting and preserving natural habitats, ecosystems and species. Major aspects of ecologization include the following:

(i) Ecological Consciousness: In spite of the fact of the reality human needs of nature, the principle of ecologization still recognizes that certain components of the environment also possess intrinsic values, with valuable stake in the interconnectedness of the entire ecosystem.

(ii) Anthropocentric Consciousness: Ecologization admits that humans

²⁶ Holmes, Rolston, *Intrinsic Values on Earth: Nature and Nations*. Environmental Ethics and International Policy, Henk A.M.T ten Have (ed.). Paris: UNESCO, 2006, pp. 47, 49; Attfeld, *op. cit.* pp. 164-166; Justine Bell-James, *Ecosystem Services as a Metaphor in Environmental Law: Balancing Intrinsic and Instrumental Values*. University of Queensland Law Journal, 2020, 39 (3), p. 527.

have a central place in the environment because they are the aspects of the environment that consciously carry out activities that upgrade or degrade the environment. It would therefore be Utopian to feign ignorance of the potential strength of man in his bid to conquer nature, sometimes when not necessary.

(iii) Sustainability and holistic thinking: Despite recognizing the centrality of man and his roles in the environment, ecologization deeply considers the well-being of both humans and the environment so as to ensure that human activities are environmentally sustainable. And in terms of the holistic thinking in ecologization, there is a significant long term consideration of the consequences of human activities on the ecosystem.

(iv) Environmental Stewardship: From (iii) above, ecologization adopts a responsible approach from human beings who should be caretakers towards the natural world.

Ecologization may seem to be the only principle, out of the three principles of ecomoderationism, which aligns with our thesis of ecomoderationism itself. However, it must be stated that such is not exactly the case because without the first two principles being in existence and well understood, ecologization can never take place and even if it does, it would not be appreciated. In fact, the balancing of the use of the environment with the needs of human beings in ecomoderationism is possible because the first two principles exist for the third one to re-examine.

Ecomoderationism in Islamic Thoughts as a Familial Connection between Man and Nature: An Analytico-Hermeneutical Approach

The most appropriate way to discuss ecomoderationism in Islamic thoughts is to first expose some teachings in Islam's holy book, the Quran, which reflect the three principles that define ecomoderationism. Below is a list of teachings in the Quran which reflect ecomoderationism in the ethical discourse on the environment:

(i) He it is Who created for you all things that are on earth... (Quran 2: 29).

(ii) He hath created the heavens without supports so that ye can see, and hath cast into the earth firm hills, so that it quake not with you; and He hath dispersed therein all kinds of beasts. And We send down water from the sky and We produce (on the earth) every kind of noble creatures, in pairs (Quran 31: 10).

(iii) Then let the man look at his food, how We pour forth the water in abundance, and then split the earth in clefts, and cause the grain to grow therein, and grapes and clover, and olives and date-palms, and gardens dense with foliage, and fruits and herbage, for you ... to enjoy (Quran 80:

24-32).

(iv) And do not commit abuse on the earth, spreading corruption (Quran 2: 60).

(v) And He it is Who hath made you successors of the earth, and hath raised some of you above others by (various) grades, that He may try you by (what He hath given you). (Quran 6: 165).

(vi) And when he turns away, his effort in the earth is to make mischief and to destroy the crops and cattle, and Allah does not love mischief (Quran 2: 205).

The first three quotes from the Quran are prominent foundations of economization and utilization principles of ecomoderationism in Islamic teachings on the environment. They have been selfishly interpreted as divine permission from Allah on how free the use of the environment should be. "...for you all things that are on earth" shows that the entire non-human components of the ecosystem are at man's behest. He uses them as they please him, especially as determined by the economic values placed on them. On the strength of the entire world being made for man, there is therefore no question of rights of protection from indiscriminate consumption of the non-human aspects of the environment. In (ii) above, God's declaration that the world was created without support 'so that you can see' has been interpreted as an affirmation of 'for' in (i) which indicates purpose as well as showing beneficiary or recipient. It is this perspective that views 'see' in the expression 'so that you can see' as 'use'. The purpose of God's creation without needing support is for the reason of directing humans to take charge of the entire environment such that no other entity will make a right claim when in use by humans who have been directed to make use of all the creatures on the earth. The 'you' in both (i) and (ii) is in the generic sense and refers to humans who should use natural resources for various beneficial purposes. Humans as beneficiaries of the environment (as God's creature) become very explicit in (iii) when God said "then let the man look at his food...". The non-human components of the ecosystem are then listed as the food meant for man's consumption. Very significant is the declaration that these resources have been provided for man in excess. This carries with it the implication for the justification of man's indiscriminate use of nature. All of these explanations indicate the presence of ecomoderationism as economization and utilization in Islamic thoughts. But Islamic teachings on the environment with its emphasis on balancing show that economization and utilization which are inevitable cannot be indiscriminately carried out on the environment. It is for man's selfish reasons of arbitrary consumption of the environment that the principle of creation (*Fitrah*) is interpreted in isolation of the principle of unity of the ecosystem (*Tahwid*).

Ecologization a very key principle of ecomoderationism is visible from

(iii) to (vi). Embedded in these verses of the Quran are the fundamental principles of *Tahwid*, *Khalifa* and *Mizan*. The first principle is the principle of unity which shows that the entire environment is taken as one community where human beings and non-human beings live as a web. This is a foremost explanation for Allah kicking against corruption of the environment as such destruction would amount to destroying the well knitted web of existence created in measure and balance. It further disrupts the purpose of unity for which this environmental balance is created by Allah. Ecomoderationism through the principle of ecologization ensures that the unity of existence as intended and commanded by Allah remains intact and unaltered. *Khalifa*, the second principle, shows that ecological unity is a ruse without applying the principle of responsibility placed on man as a steward of the environment. As a steward, man can exploit nature as depicted in (i) to (iii) but he is never allowed to deplete it otherwise he would have betrayed God who entrusted nature into his care on the basis of the trust that nature would be responsibly taken care of²⁷. The extremism in the consumption of the non-human is what Caron spoke against as non-conformity with the principles of environmental responsibility in Islamic teachings. In his interpretation, responsibility to the environment is a religious obligation which demands that one should eat and drink of the earth without doing so in excess since excessive consumption amounts to waste and God hates wasters²⁸. The principle of balance called *Mizan* recognizes that every creature is designed for its purpose(s), whether human or non-human and that is what strikes the balance in the environment. The Quran exposes the balance in creation thus: "...He created man and taught him clear expression. The sun and moon both run with precision. The stars and trees all bow down in prostration. He erected heaven and established the balance" (55: 1-5). The responsibility of man therefore is to implement this balance with his rationality. According to Khalid, "Allah singled out humankind and taught it clear expression- the capacity to reason. All creation has an order and a purpose and is in a state of dynamic balance"²⁹.

One of the issues raised against ecomoderationism has to do with its economization and utilization principles. These principles critics argue make ecomoderationism predominantly anthropocentric and give humans dominant and oppressive powers over the non-human components of the environment. The dire implication of this domination is that

²⁷ Mohamed A. Arafa, *Islamic Policy of Environmental Conservation: 1500 Years Old- Yet Thoroughly Modern*. European Journal of Law Reform, 2014, 16(2), p. 465.

²⁸ Ibid, p. 555.

²⁹ F.M. Khalid, *Islam and the Environment*. In Social and Economic Dimensions of Environmental Change, Peter Timmerman (ed.), Chichester: John Wiley and Sons, 2002, p. 337.

ecomoderationism becomes a market-based mechanism of human-nature relationship putting “huge pressure on the land, water resources and biodiversity”³⁰. It is our position in this essay, and clearly so, that the creative principle in the Quran which identifies with the unity principle (*Tahwid*) is unambiguous on the environment of all God’s creatures as a community. There is therefore no market interest on the environment that can substitute the regulatory mechanisms and principles of economization and utilization which are evident in ecomoderationism. Man may be at the centre of all creations but not for the purpose of consumption; it is rather for stewardship on the environment, as has been earlier explained.

There is also another attack on ecomoderationism in Islamic thoughts which views the perspective of preserving the environment as theocentric and theoretical- a mere idealistic and impracticable postulation³¹. Contrary to this claim, ecomoderationism in Islamic thoughts shows that preserving the environment is not only dependent on God’s commands. Islamic thoughts on the environment have shown that Islam is also a religion of reason, hence there is the accommodation of legal restrictions and environmental penal codes which must not be violated. Violators of such codes are not handed over to God but are tried within the statutory laws on the environment. For instance, Islamic law principles applied in Nigeria Sharia Courts promote the principle of no harm (*la darar*) which prohibits actions that cause harm to humans, animals or the environment. In Nigeria where the authors of this essay hail from, Sharia laws are not uniformly applied across the States but there is uniformity in the prohibitions against environmental degradation. The *Kano State Sharia Penal Code* (2000) in Section 233 prohibits the destruction of trees and plants, with offenders liable to imprisonment with the option of fine. The *Sokoto State Sharia Penal Code* (2001) in Sections 245 and 246 respectively prohibit destruction of natural resources and pollution of the environment. Violation is punishable by a fine or imprisonment. The *Zamfara State Sharia Penal Code* (2000) in Section 217 prohibits the destruction of wild life habitats with offenders punishable by a fine or imprisonment. All of these instances deflate the claim that ecomoderationism in Islamic thought is theoretical and impracticable.

Finally in this essay, critics argue that ecomoderationism in Islamic thoughts has undeniable limitations because it is a spiritual ecology whose possible application is only for Muslim audiences which believe in its

³⁰ Y. Kutval, *Islamic Economics and the Environment*. International Journal of Economics, Politics, Humanities and Social Sciences, 2024, 7(3), p. 229.

³¹ Muhamed Ali & Muaz Agushi, *Eco-Islam: Integrating Islamic Ethics into Environmental Policy for Sustainable Living*. International Journal of Religion, 2024, 5(9), p. 955.

teachings³² (Tiwari). But this attack is a product of a narrow-minded understanding and interpretation of ecomoderationism (*Wasatiyyah*). *Wasatiyyah* as a model of environmental preservation is based mainly on certain universal and shared values which go beyond the matrix of Muslim environmental ethics. For instance, stewardship of the earth, responsibility to the environment and environmental justice are shared values across different faiths: Christianity, Judaism, indigenous religions amongst others. Interconnectedness, balance and accountability are also unbounded principles that apply across faiths and cultures in dealing with the environment and other aspects of human existence. All of these values propagated in *Wasatiyyah* show similarities with other religions and foster participatory and collaborative approaches towards safeguarding the earth³³.

Conclusion

Ecomoderationism in Islamic thoughts is significantly dynamic and flexible in its advocacy for showing care to the environment. It is one of the approaches to a larger environmental ethical model referred to as environmental pragmatism. The uniqueness of *Wasatiyyah* is that it recognizes the abnormality and impracticability of traditional environmental ethics and adopts a reparatory and practicable approach towards saving not just nature but also the human component of the ecosystem. Without dealing with the obstacles of the traditional ethical approaches to safeguarding the environment, ecomoderationism would still be insignificant in promoting a pragmatically sustainable ecosystem. These obstacles include the overt selfishness of man in anthropocentrism, the unconvincing and idealistic ascription of equality of value to humans and certain non-humans in biocentrism and to all creatures in ecocentrism. Ecomoderationism in tackling all of these situations is fundamental in building a relationship that makes both the human and non-human components of the environment co-exist as a family. It does this by acknowledging the uniqueness of man with his consciousness and rationality as well as the obvious reality that nature is to be consumed by man. However, it is made clear to man as well that he needs nature in order to survive as well. A wanton and senseless consumption is detrimental to both the destroying generation and the future ones. Hence, the need to back up restrictions on environmental degradation with certain practicable legislative sanctions. These pragmatic steps are the bases for our position that ecomoderationism in Islamic thoughts, having overcome the

³² D.N. Tiwari, *Spiritual Ecology and Environmental Ethics*. Cultura: International Journal of Philosophy of Culture and Axiology, 2016, 13(1), p. 66.

³³ Renzhong Cui, *From Process Philosophy to Process Theology: The Ecological Theological Perspective of John Cobb*. Scriptura, 2023, 122(1), p. 10.

shortcomings of the traditional ethical approaches to handling environmental issues, is a more practical and existential ethical model to protecting the environment.

In view of our discussions so far, it is clear that ecomoderationism in Islamic thoughts is multifaceted and interdisciplinary as it employs the combination of the sacred and the profane; belief in God's commands of order and balance as well as the applications of human rationality in legislative imperatives towards the protection of the environment. This multidisciplinary approach makes it feasible to galvanize stakeholders, policy makers and environmental ethicists towards realizing the goals of biodiversity preservation, conservation of natural resources and the degradation of the environment; all aimed at fostering a familial relationship between man and nature and promoting sustainable living and community spirit in human existence with nature.

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THE RIGHT TO COGNITIVE LIBERTY: PROTECTING MENTAL PRIVACY IN THE AGE OF NEUROTECHNOLOGY

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Abstract: *The emergence of neurotechnologies such as brain-computer interfaces, EEG-based monitoring, and cognitive enhancement tools presents significant challenges to existing legal frameworks protecting human rights, particularly the rights to privacy, mental autonomy, and freedom of thought. This article critically examines the evolving concept of cognitive liberty, defined as the right to self-determination over one's mental processes, as a necessary legal response to technological advances that enable access to and manipulation of neural data. Employing a doctrinal and comparative legal methodology, the article analyses legal developments across jurisdictions including the European Union, the United States, Latin America, and Asia. It explores how different legal systems are addressing the neuroethical implications of mental privacy, and whether existing rights frameworks are sufficient to safeguard individuals against neuro-invasive technologies. The article identifies significant gaps and proposes a nuanced legal framework that strengthens existing rights while incorporating new protections specific to neural data. Ultimately, the study argues for formal recognition of cognitive liberty as a fundamental human right, supported by robust consent protocols, international legal cooperation, and technological safeguards to ensure that the last frontier of privacy—the human mind—remains inviolable in the digital age.*

Keywords: *Cognitive liberty, mental privacy, neurorights, brain-computer interfaces, freedom of thought.*

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1. Introduction

In recent years, neurotechnology has moved from the laboratory into everyday life. Brain-computer interfaces (BCIs) are being developed to treat neurological disorders and even enable “digital telepathy,” while consumer devices with embedded EEG sensors promise to monitor or boost concentration.¹ At the same time, employers and governments have begun exploring cognitive surveillance: in China, workers in factories and drivers in transit wear caps that monitor their brainwaves for fatigue or attention, generating streams of neural data.² These developments, once the realm of science fiction, raise unprecedented legal and ethical questions: Do individuals have a right to mental privacy and autonomy over their own thoughts? How can we prevent unwanted intrusions into the ‘last refuge’ of the human mind?

The concept of cognitive liberty has emerged as a proposed answer. Cognitive liberty broadly refers to the right of individuals to control their own mental processes, cognition, and brain states, free from external interference or surveillance.³ This includes both a “positive” dimension – the freedom to alter one’s mind or use neurotechnology to enhance or express oneself and a “negative” dimension – the freedom from unwanted intrusions, manipulations, or disclosures of one’s mental information.⁴ Closely linked is the notion of mental privacy, which has been defined as a neuro-specific privacy right protecting “private or sensitive information in a person’s mind from unauthorized collection, storage, use, or even deletion”.⁵ Together, these ideas seek to safeguard what international human rights law calls the *forum internum*, the absolute inner realm of thought and belief that has historically been beyond the reach of the state.⁶ Yet existing legal frameworks have not fully grappled with these challenges. Traditional privacy laws were not designed for brain data, and human rights like freedom of thought have long been insufficiently articulated because

¹ Perla Khattar, ‘Neural Data and Consumer Privacy: California’s New Frontier in Data Protection and Neurorights’ (*Tech Policy Press* 19 November 2024)

<<https://www.techpolicy.press/neural-data-and-consumer-privacy-californias-new-frontier-in-data-protection-and-neurorights/>> accessed 6 June 2025

² Kate Wild, “‘Our Notion of Privacy Will Be Useless’: What Happens If Technology Learns to Read Our Minds?” *The Guardian* (6 November 2021).

³ Tharin Pillay, “Rethinking the Right to Freedom of Thought: On Drug Policy, Neurotechnology, and the Case for Cognitive Liberty” *The International Journal of Human Rights*, (2025), vol. 29(2), p. 213.

⁴ *Ibid.*

⁵ Marcello Ienca and Roberto Andorno, “Towards New Human Rights in the Age of Neuroscience and Neurotechnology,” *Life Sciences, Society and Policy*, (2017) Vol 13(1), p. 5.

⁶ Sjors Ligthart, “Freedom of Thought in Europe: Do Advances in “Brain-Reading” Technology Call for Revision?” *Journal of Law and the Biosciences*, (2020), vol. 7, pp. 1-27.

thoughts were deemed inaccessible.⁷ Scholars and policymakers are now asking whether new rights or interpretations are needed to protect mental freedom in the age of neurotech. In 2021, Chile became the first country to enshrine neurorights in its Constitution, including the right to mental integrity and mental privacy.⁸ Soon after, France amended its bioethics law to affirm the right to mental integrity, Spain drafted a Digital Rights Charter addressing neurorights, and even the OECD issued guidelines calling for the protection of “cognitive liberty.”⁹ In the United States, while no explicit constitutional right to cognitive liberty exists, states like California and Colorado have recently classified “brain-generated data” as sensitive information, giving individuals new privacy protections over their neural data. These developments reflect a nascent, global movement to update laws in response to neurotechnology – but also reveal fragmentation and uncertainty about the best approach.

This article aims to fill a gap in the literature by providing a comparative analysis of the right to cognitive liberty and mental privacy across multiple jurisdictions. While prior works have proposed new “*neurorights*” or warned of threats to freedom of thought, there is a need for an integrated study that examines how different legal systems are beginning to recognize (or resist) these rights, and what common principles can be derived. We undertake that task here, surveying emerging laws, human rights instruments, and ethical frameworks internationally. The analysis focuses on key applications of neurotechnology from medical BCIs and neural implants to workplace EEG monitoring and military neuro-enhancement programs to illustrate the pressing need for legal safeguards. Using a doctrinal methodology (analysis of legal texts, cases, and scholarly commentary) and a comparative lens, we identify where existing law protects cognitive liberty and where gaps persist. By clarifying the concept and scope of a right to cognitive liberty, and comparing approaches from Europe, the Americas, and beyond, we seek to articulate how mental privacy and freedom of thought can be preserved amid rapid technological change.

In the sections that follow, we first review the state of the art in literature on cognitive liberty, mental privacy, and neurorights (Section 2), drawing on interdisciplinary scholarship to define these concepts and outline recent proposals. Next, we explain our methodological approach (Section 3) and present the results of our comparative legal analysis (Section

⁷ Ibid.

⁸ Sergio Ruiz and others, “Neurorights in the Constitution: From Neurotechnology to Ethics and Politics” *Philosophical Transactions of the Royal Society B Biological Sciences*, (2024), vol. 379, p. 20230098.

⁹ Kate Wild, “Our Notion of Privacy Will Be Useless”: What Happens If Technology Learns to Read Our Minds?’ *The Guardian* (6 November 2021).

4), highlighting key findings across different jurisdictions and use-cases. In the discussion (Section 5), we reflect on the implications of recognizing a right to cognitive liberty, including ethical considerations and challenges in implementation. Finally, the conclusion (Section 6) summarizes our contributions and suggests pathways for future research and policy advocating for proactive measures to protect the freedom of the mind in an era when our brains are no longer entirely “off limits” to technology.

2. Literature Review

2.1. Cognitive Liberty and Freedom of Thought

The phrase “cognitive liberty” entered academic discourse in the early 2000s, introduced by neuroethicists Wrye Sententia and Richard Boire to denote a basic right to control one’s own consciousness.¹⁰ It builds on the older principle of freedom of thought, a right enshrined in Article 18 of the ICCPR as absolute in the forum *internum* (inner domain of thought). Historically, freedom of thought attracted little case law or commentary, because inner thoughts were deemed factually intangible and beyond the reach of others. However, as neuroscience enables access to mental states, scholars argue that freedom of thought must be revitalized and expanded. Pillay (2024), for example, contends that freedom of thought should be reconceived as *cognitive liberty*, including a positive right “to self-determine the contents of one’s thoughts” and a negative right against “direct and non-consensual interventions” in one’s mind.¹¹ In essence, cognitive liberty affirms that individuals should be free to think as they wish and use neurotechnology voluntarily, while also being protected from involuntary “mind hacking” or thought monitoring by third parties.¹² This emerging right draws on multiple legal foundations. At its core, cognitive liberty is rooted in freedom of thought and opinion, which international human rights bodies now recognize needs clearer definition in light of neurotechnology. It is also connected to the rights to privacy and personal integrity. The European Court of Human Rights has long held that the mind is a protected zone of privacy (the “inner forum”), with any state intrusion categorically forbidden.

Some scholars thus see cognitive liberty not as an entirely new right, but as a modern synthesis of existing freedoms – the “necessary updating”

¹⁰ Paolo Sommaggio and others, “Cognitive Liberty. A First Step towards a Human Neuro-Rights Declaration” *BioLaw Journal - Rivista di BioDiritto*, (2017), vol. 11, p. 27.

¹¹ Tharin Pillay, “Rethinking the Right to Freedom of Thought: On Drug Policy, Neurotechnology, and the Case for Cognitive Liberty” *The International Journal of Human Rights*, (2025), vol. 29, p.213.

¹² Marcello Ienca and Roberto Andorno, “Towards New Human Rights in the Age of Neuroscience and Neurotechnology” *Life Sciences, Society and Policy*, (2017), vol. 13, p. 5.

of privacy and thought rights for the neuro-digital era. Farahany,¹³ advocates recognizing cognitive liberty explicitly in international law, achieved by updating privacy to include mental privacy and updating freedom of thought to include freedom from interception, manipulation, and punishment of our thoughts, as well as self-determination. In her view, cognitive liberty encapsulates “the right to self-determination over our brains and mental experiences,” ensuring individuals can think freely and control information emanating from their minds.

Legal theorists have also linked cognitive liberty to concepts of mental autonomy and self-determination. Bublitz and Merkel,¹⁴ argued for a human right to “mental self-determination,” warning that neurotechnological mind manipulation – from coercive brain interventions to subtle neuromarketing – threatens personal identity and autonomy. They and others posit that just as bodily integrity is protected, so too must “mental integrity” and liberty be safeguarded.¹⁵ In 2017, Ienca and Andorno,¹⁶ formally proposed the “right to cognitive liberty” as one of several new human rights to address neurotechnology, defining it as an individual’s “freedom to decide on the use of neurotechnology on one’s brain and to control one’s own mental state”. Cognitive liberty, under their formulation, has a protective function (shielding the mind from coercion) and an enabling function (allowing access to beneficial neuro-tools).¹⁷ This dual nature underscores that the right is not only about preventing harms (like unwanted brain surveillance) but also about empowering individuals to pursue cognitive enhancement or therapy on their own terms.

Importantly, cognitive liberty’s scope extends to emerging issues beyond traditional rights. For instance, it implies a right to refuse neurotechnology – such as the right not to be forced to undergo a brain implant or a neural interrogation – as well as a right to use neurotechnology to expand one’s cognitive capacities (subject to safety and ethical constraints). It also raises questions about government or employer mandates: would requiring workers to wear brain-monitoring devices violate their cognitive liberty? Early debates have begun on such matters. Some courts and commentators have analogized compulsory brain data

¹³ Nita A Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology* (St Martin’s Publishing Group 2023).

¹⁴ Jan Christoph Bublitz and Reinhard Merkel, ‘Crimes against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination’ *Criminal Law and Philosophy*, (2014), vol. 8, p. 51.

¹⁵ José M Muñoz and José Ángel Marinero, “Neurorights as Reconceptualized Human Rights” *Frontiers in political science*, (2023), vol. 5, p. 1322922.

¹⁶ Marcello Ienca and Roberto Andorno, “Towards New Human Rights in the Age of Neuroscience and Neurotechnology” *Life Sciences, Society and Policy*, (2017), 13, p. 5.

¹⁷ Ibid.

extraction to an unreasonable search of the mind (in U.S. terms, a potential Fourth Amendment violation),¹⁸ or to compelled self-incrimination (a Fifth Amendment concern). Others point out that freedom of thought, if taken seriously, would categorically prohibit any forced mind-reading, since the forum *internum* admits no exceptions.¹⁹ These discussions illustrate that the legal meaning of cognitive liberty is still being fleshed out, but at its heart is consensus that individuals must retain sovereignty over their own thoughts in the face of powerful new neurotech capabilities.

2.2. Mental Privacy and Neurodata Protection

Alongside cognitive liberty, scholars have advocated a specific right to mental privacy to address the unique risks posed by brain data and “mind-reading” technologies.²⁰ Mental privacy can be seen as a subset or component of cognitive liberty focusing on information: it protects the contents of one’s mind from unauthorized access by others. Ienca and Andorno²¹ defined this right as a new, neuro-specific privacy guarantee that covers information before it has been externalized (spoken or acted upon). In other words, even unexpressed thoughts and raw neural signals would be shielded. This is a departure from traditional privacy rights, which generally protect communicated information or personal data once it is recorded. By contrast, the right to mental privacy stands to protect information prior to any extra-cranial externalization (e.g. in verbal or written form) as well as the generator of such information (a person’s neural processes). As such, it protects a person’s mental dimension as the ultimate domain of information privacy in the digital ecosystem.²² The motivation for a mental privacy right arises from the growing ability of neurotechnology to extract, infer, and exploit data from brain activity. Electroencephalography (EEG) and functional MRI can detect patterns that correlate with memories, emotions, or intentions.²³ In one notable case, an Indian court in 2008 convicted a woman of murder based on an EEG-based “brain fingerprinting” test that

¹⁸ Francis X Shen, “Neuroscience, Mental Privacy, and the Law” *Harvard Journal of Law & Public Policy*, (2017), vol. 36, p. 653.

¹⁹ Sjors Lighthart, “Freedom of Thought in Europe: Do Advances in “Brain-Reading” Technology Call for Revision?” *Journal of Law and the Biosciences*, (2020), vol. 7, p. 1.

²⁰ C.M.L. Brown, “Neurorights, Mental Privacy, and Mind Reading” *Neuroethics*, (2024), vol. 17, p. 34.

²¹ Marcello Ienca and Roberto Andorno, “Towards New Human Rights in the Age of Neuroscience and Neurotechnology” *Life Sciences, Society and Policy*, (2017), vol. 13, p. 5.

²² L.E. Elrick, “The ecosystem concept: a holistic approach to privacy protection” *International Review of Law, Computers & Technology*, (2020), Vol 35(1), pp. 24–45.

²³ Chaofei Yu and Mei Wang, “Survey of Emotion Recognition Methods Using EEG Information” *Cognitive Robotics*, (2022), 2, p. 132.

claimed to reveal a memory of the crime in her brain.²⁴ Although the scientific validity of that test was later discredited,²⁵ the episode highlighted how law enforcement might seek to use neural evidence, blurring the line between thoughts and proof of guilt. Similarly, companies have experimented with neuromarketing techniques that analyse consumers' brain responses (via EEG or fMRI) to gauge their subconscious preferences.²⁶ Without mental privacy protections, such data could be collected and monetized without individuals' awareness or consent.

Even non-invasive everyday devices pose privacy issues. Modern "wearables" and apps can collect brain-derived data under the guise of wellness or entertainment – for instance, EEG headsets marketed to improve meditation or focus. The information they gather (brainwave patterns linked to stress, attention, fatigue, etc.) could reveal intimate aspects of a person's mental state. Unlike obvious personal identifiers (like a name or ID number), brain data is often involuntarily generated and rich with psychological detail.²⁷ This complicates the application of standard data protection regimes. Rainey and others,²⁸ observe that brain data from neurotech may result from largely involuntary brain activity, can be processed and reprocessed for different aims, and is highly sensitive, making it hard for individuals to give truly informed consent to its collection. Moreover, once recorded, neural data can be analyzed with machine learning to predict or reveal things far beyond the original context – for example, an EEG collected for a game could later be mined for signs of a neurological disorder or personality trait. Such secondary uses magnify the privacy risks and there may be no trivial data collection when it comes to brain recording.²⁹ The prospect of ubiquitous brain surveillance has led to calls for stronger legal safeguards. Privacy scholars argue that existing frameworks like the EU's General Data Protection Regulation (GDPR) do not explicitly address neural data and may be inadequate. The GDPR covers health and biometric data, but until recently it had not been clear if brainwave data fell into these categories.³⁰ In 2021, France amended its

²⁴ *State of Maharashtra v. Sharma* (June 12, 2008), Case No. 508/07.

²⁵ E. R. D. Murphy, J. Rissman, "Evidence of memory from brain data" *Journal of Law and the Biosciences*, (2020), vol. 7(1), p. 2.

²⁶ 'The Hidden Power of Neuromarketing' (*CMSWire.com*)
<<https://www.cmswire.com/digital-marketing/neuromarketing-a-journey-into-the-consumers-mind/>> accessed 8 June 2025.

²⁷ Stephen Rainey and others, "Is the European Data Protection Regulation Sufficient to Deal with Emerging Data Concerns Relating to Neurotechnology?" *Journal of Law and the Biosciences*, (2020), vol. 7, p. 051.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Patrick Magee, Marcello Ienca and Nita Farahany, "Beyond Neural Data: Cognitive Biometrics and Mental Privacy" *Neuron*, (2024), 112, p. 3017.

bioethics law to restrict brain imaging to medical or research purposes absent consent,³¹ implicitly recognizing the sensitivity of cerebral information. And in 2023, California’s legislature amended its consumer privacy law to define “neural data” as a category of sensitive personal information – giving individuals rights to access, delete, and control data produced from their nervous system.³² These developments suggest an emerging consensus that brain data deserves special treatment. Neural signals can convey the “very essence of human identity” and inner life, raising ethical stakes far beyond ordinary personal data. To address this, proposals for a right to mental privacy insist on requiring explicit consent for any collection of neural information, strict limitations on its use and sharing, and robust security to prevent unauthorized access. Under a mental privacy regime, no one – not employers, not tech firms, not even governments – should be allowed to probe or collect an individual’s brain data without legal authorization and the individual’s informed consent, barring extraordinary circumstances.

Debates continue over the exact contours of mental privacy. One question is how to balance this right against compelling needs like criminal investigation or national security. Could authorities ever be justified in “searching” a suspect’s brain for evidence? Traditional human rights doctrine suggests freedom of thought is inviolable a position implying that compelled brain-monitoring or mind-reading would never be permissible. Some scholars advocate an absolute ban on uses of neurotech that decode mental content without consent, likening it to a modern form of compelled self-incrimination or even a form of mental violation akin to torture.³³ Others allow that there might be narrow exceptions (for instance, accessing an unconscious person’s brain data to save their life, or monitoring a brain implant’s signals to ensure safety), but emphasize that any such intrusions must be strictly regulated and minimal. Overall, recent literature strongly signals that mental privacy however eventually codified should be treated as a fundamental right, crucial to preserving human dignity and autonomy in

³¹ Loi n° 2021-1017 du 2 août 2021 relative à la bioéthique, art 16-14 (insérant dans le Code civil que « les techniques d’imagerie cérébrale ne peuvent être employées qu’à des fins médicales ou de recherche scientifique, ou dans le cadre d’expertises judiciaires, et sous réserve du consentement exprès, écrit et préalable de la personne informée ») (France).

³² California Senate Bill 1223 (2023–2024 Reg Sess), ch ____ (enacted 28 September 2024) (amending Cal Civ Code § 1798.100 to add “neural data” to the definition of ‘sensitive personal information’).

³³ Sjors Ligthart, “The Right to Mental Integrity in the Age of Neurotechnology: Constructing Scope and Exploring Permissible Limitations” *Journal of Law and the Biosciences*, (2025), vol. 12, p. 010.

the face of neurotechnology's encroachment. As Ienca³⁴ posit if our brain data becomes just another commodity, we risk "losing our fundamental attributes as human beings such as our liberty, privacy and agency." Guarding mental privacy is thus seen as essential to prevent a future where our innermost thoughts are no longer our own.

2.3. Neurorights: New Rights vs. New Interpretations

The rapid emergence of cognitive liberty and mental privacy as concepts has sparked debate over whether entirely new human rights are needed or if existing rights can be adapted. One camp including many neuroethicists and innovators argues that the law must explicitly recognize "neurorights" as novel rights to protect the mind. They point to pioneering steps like Chile's constitutional amendment in 2021, which added the rights to mental privacy and integrity to its supreme law, and various proposals to codify a right to cognitive liberty internationally. The term "neurorights" generally encompasses cognitive liberty and mental privacy, as well as related rights such as mental integrity and psychological continuity.³⁵ Proponents argue that existing privacy and liberty doctrines were not formulated with brain data in mind, and thus lack the conceptual tools to address things like direct brain surveillance or manipulation.³⁶ Without new rights, they warn, we risk legal loopholes that leave our brains vulnerable to exploitation.

This perspective has driven a flurry of initiatives. Beyond Chile's landmark action, Spain incorporated neurorights into a 2021 non-binding Digital Rights Charter signalling intentions for future legislation, and Argentina saw a draft bill to criminalize the misuse of neural data.³⁷ The OECD issued a 2019 recommendation encouraging member states to uphold "cognitive liberty" and mental privacy in neurotechnology development.³⁸ In the United States, as noted, states like California and

³⁴ Marcello Ienca, "On Neurorights" *Frontiers in Human Neuroscience*, (2021), 15, p. 701258.

³⁵ Y Cornejo, "Neurorights, Neurotechnologies and Personal Data: Review of the Challenges of Mental Autonomy" *Journal of Digital Technologies and Law*, (2024), vol. 2, p. 711.

³⁶ Jan Christoph Bublitz, "Novel Neurorights: From Nonsense to Substance" *Neuroethics*, (2022), 15, p.7.

³⁷ Bojana Bellamy Bertoni Eduardo, 'Neurodata – the New Epicenter of Data Protection |TechPolicy.Press' (*Tech Policy Press*, 17 September 2024)

<<https://techpolicy.press/neurodata-the-new-epicenter-of-data-protection>> accessed 8 June 2025.

³⁸ Recommendation of the Council on Responsible Innovation in Neurotechnology, OECD/LEGAL/0457 (adopted 11 December 2019), Principle II (definition of "cognitive liberty") and Principle III (safeguarding personal brain data).

Colorado in 2023 created legal recognition for neural data privacy.³⁹ Meanwhile, the UN's Special Rapporteur on Freedom of Religion or Belief in 2021 called for clarification of freedom of thought in the face of neurotechnology, effectively endorsing efforts to safeguard the “*forum internum*” against mind-reading and manipulation.⁴⁰ All these developments reflect a growing sense of urgency about protecting the “mental neurocognitive sphere” from intrusive tech.

On the other hand, some jurists caution against declaring a whole set of new human rights too hastily. They raise concerns of “rights inflation”, the proliferation of novel rights that could dilute the importance of fundamental rights.⁴¹ If every desirable protection is labelled a distinct human right, the argument goes, we risk undermining the credibility of the human rights framework. Instead, Tasioulas⁴² suggest working within existing rights architecture. For example, rather than adding a brand-new right to cognitive liberty, one might reinterpret freedom of thought which have been long guaranteed by treaties to include freedom from neuro-interference. Similarly, mental privacy could be seen as an extension of privacy rights already enshrined in constitutions and international law. Muñoz and Marinaro,⁴³ argue that neurorights are best understood as reconceptualised human rights essentially updating and refining established rights like thought, privacy, and bodily integrity for the neural age. They emphasize the work that should be ascribed to regional human rights bodies in the reconceptualization and implementation of neurorights, given their important role as natural bridges between national and global institutions.

There is also a middle ground emerging. Scholars like Jan Christoph Bublitz have transitioned from early skepticism of “nonsense” neurorights to engaging with how to give them substantive meaning. Bublitz⁴⁴ acknowledges that while concepts like mental privacy were initially vague,

³⁹ California Senate Bill 1223 (2023–2024 Reg Sess) ch (enacted 28 September 2024), amending Cal Civ Code § 1798.140 (g)(1)(F)(i) (defining “neural data”); Colorado General Assembly, *H.B. 24-1058* (2024 Regular Session), amending Colo Rev Stat § 6-1-1303(24) to include “neural data” under the definition of “sensitive data.”

⁴⁰ UN Special Rapporteur on Freedom of Religion or Belief, *Report on the Freedom of Thought* (A/76/380, 5 October 2021) paras 26, 94.

⁴¹ Marcello Ienca, “On Neurorights” *Frontiers in Human Neuroscience*, (2021), vol. 15, p. 9.

⁴² John Tasioulas, “Saving Human Rights from Human Rights Law” *Vanderbilt Journal of Transnational Law*, (2019), vol. 52, p. 1167.

⁴³ José M Muñoz and José Ángel Marinaro, “Neurorights as Reconceptualized Human Rights” *Frontiers in Political Science*. (2023), vol. 5, p. 1322922.

⁴⁴ Jan Christoph Bublitz, “Novel Neurorights: From Nonsense to Substance” *Neuroethics*, (2022), vol. 15, p. 7.

they can be sharpened and grounded in law's concrete doctrines. Fins⁴⁵ (2022) likewise notes the “unintended consequences” of Chile's neurorights approach: he suggests moving beyond purely negative rights toward incorporating positive capabilities, ensuring individuals have the capacity to benefit from neurotechnology responsibly. In practice, this could mean pairing the right not to have one's brain hacked with a societal commitment to equitable access to neural enhancements or rehabilitation so the technology does not become available only to some. The ethical consensus is that protecting the mind requires more than just saying “no” to abuses; it also requires fostering conditions in which neurotechnology is used to promote human flourishing without compromising autonomy.

3. Methodology

This research employs a doctrinal legal analysis combined with a comparative law approach. Doctrinal analysis (or “black-letter” law analysis) involves a close reading of legal texts – including constitutions, statutes, case law, and international instruments – to discern the current state of the law and principles applicable to cognitive liberty and mental privacy. We systematically examined human rights treaties (such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights), national constitutions, data protection laws, and emerging bills or proposals across multiple jurisdictions, to identify explicit or implicit protections of freedom of thought, privacy, and mental integrity. In addition, we reviewed scholarly literature (law review articles, neuroethics commentary, and interdisciplinary studies) from approximately the last decade, focusing on peer-reviewed sources that discuss “neurorights,” brain privacy, and neurotechnology governance. Over 70 such sources were analyzed to map the conceptual debates and to find evaluations of existing law in different regions.

Comparative methodology was used to contrast how different legal systems are responding to neurotechnology. We selected key jurisdictions for analysis: the European Union (and Council of Europe) context, to see how a robust privacy regime (GDPR) and human rights court address neurorights; the United States, to consider constitutional implications and recent state-level initiatives; Latin America, highlighting Chile's groundbreaking neurorights amendment and related discussions in the region; and Asia, where neurotechnology is advancing amid varied privacy regimes (with examples from China and others). By comparing these, we sought to identify common challenges and divergent solutions. We also

⁴⁵ Joseph J Fins, “The Unintended Consequences of Chile's Neurorights Constitutional Reform: Moving beyond Negative Rights to Capabilities” *Neuroethics*, (2022), vol. 15, p. 26.

considered international soft law (e.g. OECD recommendations) and proposals at the United Nations level to gauge nascent global norms.

The study is largely qualitative. We did not conduct new empirical experiments; rather, our “results” emerge from legal analysis: we interpret how existing doctrines could apply to neurotechnology scenarios and where gaps lie. We paid special attention to doctrinal questions such as: Does brain data fall under personal data definitions in privacy laws? Would compulsory brain scans be barred by constitutional rights (privacy, self-incrimination, freedom of thought)? And can jurisprudence on analogous technologies (like polygraph tests or biometric data) guide the treatment of neural technologies? Through this analytical lens, we synthesized the findings into a coherent framework. The methodology also adheres to a comparative legal tradition that is mindful of context – recognizing that cultural and political differences (for instance, the EU’s emphasis on dignity vs. the US emphasis on liberty) might influence how cognitive liberty is framed. The goal is not to advocate a one-size-fits-all solution, but to draw lessons from each jurisdiction to inform a more universal understanding of the right to cognitive liberty.

By triangulating doctrinal legal sources with insights from ethics and technology studies, we ensured that our analysis remains grounded in current reality while maintaining legal rigor. This interdisciplinary, comparative method allows us to identify gaps – areas where present laws do not fully address neurotechnological threats to privacy or freedom – and to propose how those gaps might be filled, either by evolving interpretations or new legal instruments. In the next section, we present the results of this analysis, outlining how different jurisdictions currently protect (or fail to protect) cognitive liberty and mental privacy, and what principles can be distilled from these varied approaches.

4. Results

4.1. Europe: Privacy and Freedom of Thought in the Modern Era

European law provides robust general privacy protections that can be extended to neurotechnology, though no explicit “cognitive liberty” right is yet codified. Article 8 of the European Convention on Human Rights (ECHR) guarantees privacy and Article 9 guarantees freedom of thought,⁴⁶ and the latter is considered absolute in its internal dimension. To date, no ECHR case has directly tested brain-monitoring, but Ligthart,⁴⁷ posit that

⁴⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), arts 8–9.

⁴⁷ Sjors Ligthart, “Freedom of Thought in Europe: Do Advances in “Brain-Reading” Technology Call for Revision?” *Journal of Law and the Biosciences*, (2020), vol. 7, p. 048.

any non-consensual mind-reading by authorities would violate Article 9's *forum internum* protection. The Council of Europe has acknowledged that applications of neurotechnology raise issues of privacy, freedom, autonomy, integrity, and discrimination. It therefore needs to be assessed if new measures are needed.

Within the European Union, personal data regulations offer some coverage for neural data. The EU's General Data Protection Regulation (GDPR) does not mention brain data specifically, but it classifies health and biometric data as sensitive. Studies analysed from Rainey and others⁴⁸ suggests that EEG or fMRI outputs, insofar as they are linked to an identified person, would likely qualify as biometric or at least health-related information, thus gaining GDPR protection. However, GDPR's framers did not anticipate wearable neurotech in everyday life, so ambiguities remain. In response, European regulators have started to act. France's 2021 Bioethics Law amendments stipulate that brain imaging techniques may only be used for medical or scientific research without consent only in exceptional circumstances, effectively prohibiting non-consensual brain data use in other contexts. Spain's Digital Rights Charter⁴⁹ explicitly includes a section on neurorights, affirming principles of cognitive liberty and mental privacy though as a guiding document, not a binding law. And in November 2021, Italy's data protection authority publicly questioned whether **mental privacy** is already covered under existing privacy protections, signalling regulatory concern about the potential for neurotechnologies to enable unauthorised mind-reading.⁵⁰

Europe's approach thus far emphasizes interpreting and expanding existing rights. For example, scholars have increasingly urged that Article 9 of the European Convention on Human Rights, which guarantees freedom of thought, be reinterpreted in light of neurotechnology, so as to encompass modern threats such as brain surveillance and cognitive interference.⁵¹ Similarly, the European Data Protection Supervisor (EDPS) has noted that the definition of "personal data" may need to evolve to explicitly include

⁴⁸ Stephen Rainey and others, "Is the European Data Protection Regulation Sufficient to Deal with Emerging Data Concerns Relating to Neurotechnology?" *Journal of Law and the Biosciences*, (2020), vol. 7, p. 051.

⁴⁹ *Carta de Derechos Digitales* (Gobierno de España, 14 July 2021) Principle c (safeguarding the confidentiality and security of data regarding brain processes and ensuring full individual control over them).

⁵⁰ Kate Wild, "Our Notion of Privacy Will Be Useless": What Happens If Technology Learns to Read Our Minds? *The Guardian* (6 November 2021) <<https://www.theguardian.com/technology/2021/nov/07/our-notion-of-privacy-will-be-useless-what-happens-if-technology-learns-to-read-our-minds>> accessed 8 May 2025.

⁵¹ Rafael Yuste and others, "Four Ethical Priorities for Neurotechnologies and AI" *Nature*, (2017), vol. 551, p. 159.

neural data in order to safeguard mental privacy.⁵² Rather than declare entirely new rights, European discourse leans toward clarifying scope – e.g., confirming that extracting information from someone’s mind without consent would breach existing privacy and thought rights. Notably, the European Parliament and other bodies have begun using the language of “mental integrity” and “mental privacy” in resolutions concerning artificial intelligence and neurotechnology ethics,⁵³ signalling an intent to align future law-making with these concepts. In summary, Europe provides a strong baseline of privacy and human dignity protections that can be, and are being, adapted to the neurotech context; the challenge ahead is to make those adaptations explicit and enforceable before invasive neuro-applications become widespread.

4.2. United States: Constitutional Gaps and Emerging State Laws

The United States lacks a singular, overarching right to cognitive liberty, but certain constitutional provisions offer partial safeguards. The First Amendment protects freedom of thought indirectly through freedoms of speech and religion, and the Supreme Court has recognized that the government cannot penalize mere beliefs or thoughts (e.g., laws punishing thought crimes would be unconstitutional). However, the Fourth Amendment on unreasonable searches and Fifth Amendment on the right against self-incrimination are more directly implicated by neurotechnology. Legal scholars argue that forcing a person to undergo a brain scan to reveal information would constitute a search of the mind requiring a warrant, and likely also violate the Fifth Amendment if used to elicit incriminating evidence.⁵⁴ As Shen⁵⁵ notes, current U.S. doctrine is “nimble” enough that involuntary brain-machine mind reading by the government should be deemed unconstitutional under these existing rights. Notably, U.S. courts have thus far been cautious: no federal court has admitted fMRI-based lie

⁵² European Data Protection Supervisor, *Opinion 23/2020 on the European Commission’s White Paper on Artificial Intelligence* (29 June 2020) 9–10 (suggesting legal definitions of personal data may require reconsideration in view of neural data and mental interference risks).

⁵³ European Parliament, *Resolution of 20 October 2020 with Recommendations to the Commission on a Civil Liability Regime for Artificial Intelligence* (2020/2014(INL)) para 4 (calling for the protection of “mental integrity” in AI regulation); European Parliament, *Resolution of 6 October 2021 on Artificial Intelligence in Criminal Law and its Use by the Police and Judicial Authorities in Criminal Matters* (2020/2016(INI)) paras 25–26 (calling for respect for “mental privacy” and safeguards against neurotechnological surveillance).

⁵⁴ Dominique Church, “Neuroscience in the Courtroom: An International Concern” *William & Mary Law Review*, (2012), vol. 53, p. 1825.

⁵⁵ Francis Shen, “Neuroscience, Mental Privacy, and the Law” *Harv. J.L. & Pub. Pol’y*, [2013], vol. 36, p. 653.

detection in criminal proceedings, reflecting scepticism about both the science and the legal implications. That said, these constitutional protections apply only to state action; they do not restrain private companies from collecting brain data.

In the absence of a federal neurorights statute, state-level initiatives are beginning to fill the gap in the private sector context. California and Colorado have been leaders. In late 2024, California amended its Consumer Privacy Act to define “neural data” (information from a consumer’s nervous system) as sensitive personal data, granting individuals rights to access, delete, and limit sharing of such data.⁵⁶ Colorado followed in 2024 by explicitly classifying “consumer brain waves” as sensitive data under its privacy law.⁵⁷ These laws mean companies operating in those states must obtain consent before collecting neural signals (for example, from a wearable EEG headband) and must safeguard that data akin to how they protect financial or health records. Other states, like Minnesota, are considering similar bills.⁵⁸ While these efforts focus on data privacy, they indirectly support cognitive liberty by giving individuals control over who can use their brain-generated information.

American discourse on cognitive liberty has also gained prominence in academia and policy circles. In 2023, a U.S. Presidential advisory council on science and tech flagged brain-monitoring devices as an area needing ethical guidelines, and scholars like Nita Farahany have publicly advocated for establishing cognitive liberty as a new human right in the face of neurotechnology.⁵⁹ There is, however, some resistance to creating new rights at the federal level, given the general reluctance in U.S. law to expand constitutional rights absent clear necessity. For now, the U.S. approach is piecemeal: constitutional interpretation provides a backstop against government overreach (though untested), and state consumer privacy laws start to regulate private neurotech use. This patchwork leaves many scenarios unaddressed – for example, if an employer in a state with no neural data law requires employees to wear EEG focus monitors, there is little in U.S. federal law to prevent it. Thus, a gap remains in fully protecting employees’ and consumers’ mental privacy. The results in the U.S. highlight both the promise of cognitive liberty as an emerging legal principle and the

⁵⁶ California Senate Bill 1223 (2023–2024 Reg Sess) ch ____ (enacted 28 September 2024), amending Cal Civ Code § 1798.140(g)(1)(F)(i) (defining “neural data”).

⁵⁷ Colorado General Assembly, *H.B. 24-1058* (2024 Regular Session), amending Colo Rev Stat § 6-1-1303(24) to include “neural data” under the definition of “sensitive data.”

⁵⁸ Legal.io, ‘Colorado Leads With Privacy Law on Neural Data’ <<https://www.legal.io/articles/5496055/Colorado-Leads-With-Privacy-Law-on-Neural-Data>> accessed 8 June 2025.

⁵⁹ Nita A Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology* (St Martin’s Publishing Group 2023).

challenges of implementing it in a system that often relies on incremental, state-driven change.

4.3. Latin America: Pioneering Neurorights in Chile and Beyond

Latin America has become a surprising incubator for neurorights, led by Chile. In October 2021, Chile amended its Constitution to enshrine the rights to mental privacy and the integrity of one's mind the first explicit constitutional neurorights provision in the world.⁶⁰ The amendment ensures that individuals' brain data cannot be accessed or used without their consent and that their mental integrity which is sometimes framed as the right to free will or to an unmanipulated mind is protected by law. To implement this, Chilean lawmakers have drafted a "Neuroprotection" bill to detail safeguards requiring informed consent for any technology that reads or alters mental information, penalties for neuro-hacking, etc., though it remains under debate. Although this legislation was still under consideration as of 2024, Chile's effort has been influential. It has spurred discussions in other countries, for instance, Brazil's Senate held official hearings on the impacts of neurotechnology—inviting senators, jurists, and scientists to discuss ethical and regulatory implications, including proposals to amend constitutional protections for brain activity and mental integrity.⁶¹ Argentina's proposed Bill No 0339-D-2022 would criminalize the non-consensual use of neural data—specifically, any brain imaging or neurotechnology used to infer mental activity would be permissible only by court order and explicit consent, with unauthorised use potentially punishable under criminal law.

Chile's leadership on neurorights has also resonated within international institutions. In 2022, the Inter-American Juridical Committee of the OAS adopted a Declaration of Principles on Neurosciences, Neurotechnologies and Human Rights explicitly calling for human-rights based approaches to neurotechnology, linking existing rights such as dignity, privacy, identity, and freedom from inhuman treatment to protection from neurotechnological harm and recommended that states examine how the American Convention's privacy and dignity clauses should

⁶⁰ *Ley No 21.383* (14 October 2021) (Chile), amending Art 19 No 1 of the Political Constitution to provide that scientific and technological development must "respect [...] physical and psychic integrity" and that "the law shall regulate the requirements, conditions and restrictions for its use on people and must especially protect cerebral activity as well as the information derived from it."

⁶¹ 'Bill Outlines Protection for Mental Privacy in the Age of Neurotech' (*Agência Brasil*, 16 March 2024) <<https://agenciabrasil.ebc.com.br/en/geral/noticia/2024-03/bill-outlines-protection-mental-privacy-age-neurotech>> accessed 8 June 2025.

be interpreted to cover neural data and mental integrity.⁶² Chile's approach largely treats cognitive liberty and mental privacy as negative rights – freedoms from interference which aligns with classical liberal rights traditions. Scholars like Fins⁶³ have critiqued this as potentially too limited, urging Chile and others to also foster positive empowerment (e.g., ensuring equitable access to beneficial neurotech). Nonetheless, the symbolic importance of a constitution explicitly recognizing the “freedom of the mind” is significant. It has propelled neurorights from theory into actual legal text. Other Latin American nations have not yet followed with their own laws, but the regional dialogue through academic conferences and OAS meetings suggests that Chile's model could be adapted elsewhere, especially if neurotechnology use grows.

4.4. Asia: Early-Stage Discussions Amid Rapid Neurotech Growth

In Asia, explicit cognitive liberty protections are largely absent so far, even as neurotechnology advances and sometimes outpaces regulation. In China, for example, there are reports of government-backed programs equipping workers with EEG-based helmets to monitor their emotional states and productivity.⁶⁴ This kind of workplace cognitive surveillance has raised concerns internationally, but within China it operates in a legal environment with relatively weak personal privacy safeguards. China's Personal Information Protection Law (2021) includes biometric and health data protections, which conceivably could cover brain data, but there is no jurisprudence or guidance yet on that point. The Chinese approach has so far prioritized the developmental benefits of neurotech (for industry and military) over individual neurorights, reflecting a different weighting of interests.

Elsewhere in Asia, the neurorights discourse is nascent. Japan and South Korea have strong neurotechnology research sectors for brain-machine interfaces in medicine and gaming, and with that comes awareness of ethical issues. Japanese academics in 2021 formed a neuroethics working group under the government's Science Council, which has mentioned the importance of protecting mental privacy, though no legal reforms have

⁶² Inter-American Juridical Committee (OAS), *Declaration of Inter-American Principles on Neurosciences, Neurotechnologies and Human Rights* (CJI/RES.281 (CII-O/23) corr. 1, March 2023) Preamble and Principle 2 (emphasising dignity, privacy, identity, mental and physical health, and protection from neural-data misuse under the American Convention)

⁶³ Joseph J Fins, “The Unintended Consequences of Chile's Neurorights Constitutional Reform: Moving beyond Negative Rights to Capabilities” *Neuroethics*, (2022), vol. 15, p. 26.

⁶⁴ Bin Wei, Shuyao Cheng and Yang Feng, “Neural Personal Information and Its Legal Protection: Evidence from China” *Journal of Law and the Biosciences*, (2025), vol. 12, pp. 1-19.

ensued yet.⁶⁵ India, after the controversial brain-scan court case in 2008 which was mentioned earlier, has not integrated neurorights into law, but its Supreme Court's recognition of privacy as a fundamental right in 2017 might offer a constitutional basis if such cases arise again. Broadly, Asian legal systems are observing the developments in Europe and the Americas: for instance, when Chile passed its amendment, it drew commentary in tech communities across Asia about whether similar protections are needed. However, tangible legal action in the region remains limited.

5. Discussion

The comparative results illustrate both progress and gaps in securing cognitive liberty. A clear pattern is that legal systems are beginning to acknowledge the mind as a domain needing protection, yet there is no consensus on the best mechanism. This raises several important discussions: how to effectively protect cognitive liberty in practice; how to balance it with other interests; and what ethical principles should guide future laws.

One major challenge is operationalizing these rights. Recognizing mental privacy on paper is one thing; enforcing it is another. Neurotechnology often operates invisibly – brain data can be collected by subtle sensors or algorithms without obvious intrusion. Ensuring compliance will likely require new kinds of oversight. For example, regulators might mandate that companies undergo neurodata impact assessments before deploying brain-monitoring features, similar to data protection impact assessments in privacy law. Technical standards could be developed to embed privacy by design in neurodevices (ensuring, say, that raw EEG data is encrypted and only high-level metrics are shared). In workplaces, labour laws may need updating so that employees cannot be compelled or coerced into using cognitive monitoring devices, just as they are protected from invasive medical exams without cause. These practical measures flow from the ethical premise that consent and individual autonomy are paramount in any collection or alteration of neural information. Without such measures, any declared right risks being ineffectual.

Another issue is scope: how far should cognitive liberty extend, and are there limits? Absolute freedom of thought suggests an almost unconditional shield around the mind. In principle, this means even in scenarios of public safety or national security, forcible brain interrogation or unwarranted cognitive surveillance should be off-limits. Our analysis supports this stringent view: much like the ban on torture, society could draw a bright line against compelled mind-reading as a gross violation of human dignity.

⁶⁵ 'Opposition Builds against National Science Council Reforms' (*University World News*) <<https://www.universityworldnews.com/post.php?story=20250317175736598>> accessed 8 June 2025.

However, some scholars propose narrow exceptions – for instance, if a person is incapacitated and decoding their brain activity could convey consent or preferences for treatment, should that be allowed? Or consider military contexts: could a soldier voluntarily waive some mental privacy to use a BCI that enhances battlefield awareness, and what if that data is intercepted? These grey areas suggest that while cognitive liberty should be treated as fundamental, its implementation may require nuance. Legal frameworks might incorporate emergency clauses or require judicial oversight for any infringement which is akin to how wiretap warrants are handled, but with even stricter scrutiny. The guiding principle should be that any intrusion into one’s mind is an extraordinary measure of last resort, if allowed at all.

The relationship between cognitive liberty and other rights also warrants discussion. Farahany and others have framed cognitive liberty as a synthesis of privacy, freedom of thought, and self-determination.⁶⁶ In practice, enforcing cognitive liberty will reinforce those existing rights. For example, stopping unauthorized brain data collection upholds not just mental privacy but also informational privacy broadly. Conversely, some worry that making it a separate right could create confusion: would it overlap with, say, freedom of expression (the right not to reveal one’s thoughts)? Our comparative view suggests that in jurisdictions where explicit neurorights aren’t adopted, courts and lawmakers can achieve similar outcomes by interpretation. Ultimately, whether cognitive liberty is codified as a new right or integrated into current rights, the substantive protections should converge. What matters is that individuals are protected from having their neural information exposed or their mental processes manipulated without consent. In the long run, cognitive liberty might be seen as an underlying value the idea that the mind is a sovereign domain that informs multiple legal protections (privacy law, criminal procedure, anti-discrimination law in cases of neural profiling, etc.).

From an ethico-legal standpoint, our findings emphasize the importance of human dignity and identity in this context. Neurotechnology, unlike many prior technologies, directly touches the substrate of personal identity the brain. Thus, the stakes are arguably higher than typical data privacy issues. If mental privacy is compromised, a person’s innermost self can be laid bare or even altered, which challenges the core notion of

⁶⁶ Liz Mineo, ‘We Should Be Fighting for Our Cognitive Liberty, Says Ethics Expert’ (*Harvard Gazette*, 26 April 2023)

<<https://news.harvard.edu/gazette/story/2023/04/we-should-be-fighting-for-our-cognitive-liberty-says-ethics-expert/>> accessed 8 June 2025.

individual freedom.⁶⁷ This is why international human rights discourse (UN, OAS, etc.) has started to rally around neurorights as essential to protect what makes us human. Ethical frameworks, such as the UNESCO Bioethics Committee's reports on neurotechnology, often invoke principles like autonomy, beneficence, and non-maleficence: autonomy aligns with cognitive liberty; non-maleficence (do no harm) aligns with preventing misuse of brain data that could cause psychological harm.⁶⁸ We must integrate these ethical principles into law so that advances in BCI and AI do not outpace the moral safeguards. Encouragingly, interdisciplinary collaborations are forming – neuroscientists, ethicists, and lawyers working together on “neuroethics guidelines”⁶⁹ which help translate ethical norms into concrete policy suggestions.

Our analysis also highlights a forward-looking concern: the rise of artificial intelligence algorithms that can decode patterns from brain data with increasing accuracy. Today's EEG headband might only tell if you're fatigued; tomorrow's AI, given enough data, might infer your anxieties, political leanings, or personality traits from neural signals. This prospect underscores the urgency of establishing mental privacy norms now. Otherwise, we risk a scenario of “surveillance capitalism” extending into the brain, where corporations or governments mine brain data for profit or control. Preemptive legal action as seen in California's and Chile's cases – is thus a wise strategy: regulating before the tech is ubiquitous prevents a Wild West of neuro-exploitation. It is far easier to guide innovation with ethical constraints from the outset than to rein in entrenched practices later.

In considering future policy, one approach could be a multi-tiered framework: (1) an international declaration or guidance (perhaps by the United Nations or a coalition of states) affirming cognitive liberty and mental privacy as human rights principles, (2) national laws and regulations that detail these rights (through data privacy statutes, employment laws, criminal procedure codes), and (3) industry self-regulation to adopt neurorights principles in device design and data handling. The idea of a new international treaty specifically on neurorights has been floated by some advocates, but given the slow pace of treaty-making, a faster path might be integrating neurorights into existing instruments – for instance, adding commentary to the ICCPR or regional conventions explicitly addressing neurotechnology.

⁶⁷ Sergio Ruiz and others, ‘Neurorights in the Constitution: From Neurotechnology to Ethics and Politics’ *Philosophical Transactions of the Royal Society B: Biological Sciences*, (2024), vol. 379, pp. 1-10.

⁶⁸ UNESCO International Bioethics Committee, *Report of the IBC on the Ethical Issues of Neurotechnology* (2021) paras 24–36 (linking traditional bioethical principles to emerging neurotechnology challenges, including mental privacy and freedom of thought).

⁶⁹ Sara Goering and others, “Recommendations for Responsible Development and Application of Neurotechnologies” *Neuroethics*, (2021), vol. 14, p. 365.

Over time, jurisprudence (like a future case at the European Court of Human Rights or Inter-American Court) could cement the interpretation that freedom of thought includes freedom from mental intrusion.

Finally, a crucial element in this discussion is public awareness and engagement. Legal changes often follow public recognition of a problem. Right now, cognitive liberty is still a niche topic, but it is moving into the mainstream as people realize that devices like VR headsets or smart earbuds are starting to read their brain signals. Educating the public about neurorights through media, advocacy by civil society, and inclusion in digital literacy programs will build the societal consensus needed for robust protections. The concept of “freedom of thought” may be abstract, but it becomes tangible when framed as the right to keep your thoughts private. As Grant noted, if we lose mental privacy, “our current notion of privacy will be useless” in the face of technology that can peer into the mind.⁷⁰ The law must respond vigorously to prevent that dystopian outcome, while also harnessing neurotech for good under ethical guardrails. In sum, the discussion points to a singular conclusion: protecting cognitive liberty is both a legal and moral imperative as we navigate the neurotechnology age.

6. Conclusion

As neurotechnology progresses from the domain of science fiction into everyday reality, the human mind has become a new frontier of legal and ethical concern. This article has demonstrated that while traditional human rights frameworks provide a foundation especially privacy and freedom of thought they are increasingly inadequate in confronting the challenges posed by brain-monitoring technologies and cognitive surveillance. The comparative analysis reveals both promising efforts, such as Chile’s constitutional amendment and emerging U.S. state-level protections, and persistent regulatory gaps across jurisdictions. In light of these developments, cognitive liberty must be recognized not merely as a theoretical aspiration but as a practical legal necessity—an anchor for preserving autonomy, dignity, and mental sovereignty in the neuro-digital age. Legal systems must evolve to explicitly protect mental privacy and prohibit unauthorized access to or manipulation of neural data. This requires interdisciplinary cooperation, informed consent standards, and, potentially, international instruments affirming neurorights. Ultimately, safeguarding

⁷⁰ Kate Wild, “Our Notion of Privacy Will Be Useless”: What Happens If Technology Learns to Read Our Minds? *The Guardian* (6 November 2021)

<<https://www.theguardian.com/technology/2021/nov/07/our-notion-of-privacy-will-be-useless-what-happens-if-technology-learns-to-read-our-minds>> accessed 8 June 2025; David Grant, *Privacy in the Age of Neuroscience: Reimagining Law, State and Market* (Cambridge University Press 2021).

cognitive liberty is imperative to ensure that innovation serves humanity without undermining its most intimate domain: the freedom of thought.

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KEADILAN BERMARTABAT: RECONSTRUCTING LEGAL AUTHORITY IN INDONESIA

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Abstract: This article examines Keadilan Bermartabat (Dignified Justice) as a legal theory that redefines Indonesian jurisprudence through Pancasila principles. The theory shifts legal authority from procedural compliance to moral accountability, requiring judges to balance formal rules with human dignity and cultural values. Through case analysis and institutional review, this study identifies three core applications: constitutional interpretation that prioritizes citizen dignity over strict textualism, judicial decisions that weigh proportionality alongside precedent, and legislative processes that assess social impact before enactment. The research demonstrates how this approach addresses Indonesia's legal inconsistencies—conflicting court rulings, rigid proceduralism, and disconnect between law and social justice. The study reveals specific implementation gaps: judicial training emphasizes technical skills over ethical reasoning, legislative review lacks dignity-impact assessment, and legal education separates doctrinal study from moral analysis. The article proposes concrete reforms: mandatory ethics modules in judicial training, dignity-based legislative review protocols, and integrated moral-legal curricula in law schools. Keadilan Bermartabat offers Indonesia a practical framework for aligning legal practice with constitutional values, transforming law from bureaucratic tool to instrument of social dignity.

Keywords: Dignity-Based Interpretation; Indonesian Jurisprudence; Keadilan Bermartabat; Legal Humanization; Pancasila Legal Philosophy

Introduction

Keadilan Bermartabat (Dignified Justice) theory represents a paradigmatic development in Indonesian legal philosophy. Formulated as *Ilmu Hukum Bangsa Indonesia*—or Indonesian Jurisprudence—it positions itself not as a derivative of external legal traditions but as an original and comprehensive framework rooted in the cultural, historical, and normative foundations of the Indonesian nation.¹² It constructs law not merely as a mechanism of regulation but as a normative project to

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¹ Teguh Prasetyo, *Keadilan Bermartabat: Suatu Meta-Teori Hukum* (Jakarta: PT Gramedia Pustaka Utama, 2015), pp. 1–20.

² Teguh Prasetyo, “Hukum Progresif dan Keadilan Bermartabat”, *Jurnal Hukum dan Pembangunan*, 46(1), 2016, pp. 1–15

memanusiakan manusia—to humanize human beings.

Diverging from established justice theories such as distributive or commutative justice in Aristotelian thought, or restorative justice in criminal law, *Keadilan Bermartabat* defines itself as a meta-meta theory. It is not one value among others within legal axiology, but the overarching ontological framework from which legal reasoning and normativity must be derived. In this respect, the theory functions not simply as a grand theory of law, but as an epistemological architecture that transcends and governs other legal theories.³ As such, it is not merely an interpretive tool, but a constitutional philosophy that defines the purpose and structure of law within the Indonesian legal order.

Central to this construction is the role of Pancasila, identified as the Indonesian *volkgeist*—the living spirit and legal soul of the nation. Rather than treating Pancasila as a mere ideological backdrop, the theory elevates it to the status of a *grundnorm*, a juridical and metaphysical foundation where divine intent (*arus atas*) and human moral reasoning (*arus bawah*) meet to create a unified legal order. Thus, law is not a positivist artifact but a culturally and ethically constituted framework that guides governance, justice, and development in a holistic sense.⁴

The introduction of *Keadilan Bermartabat* as an authentic Indonesian legal theory does not imply epistemological insularity or rejection of comparative jurisprudence. On the contrary, it affirms Indonesia's capacity to construct internally coherent legal frameworks derived from indigenous cultural, spiritual, and institutional foundations. While rooted in national identity, the theory sustains an open dialogue with global thought—particularly in the domains of constitutionalism, legal pluralism, and dignity-based jurisprudence—while upholding fidelity to Pancasila and the 1945 Constitution.⁵ This pluralist orientation is reflected in Indonesia's legal system, which, though formally embedded in the civil law tradition, increasingly engages with interpretive practices such as judicial precedent to promote consistency. This pragmatic borrowing from common law traditions demonstrates the theory's contextual adaptability.⁶

³ Jeferson Kameo and Teguh Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy", *Journal of Legal, Ethical and Regulatory Issues*, 24(SI3), 2021, pp. 1–8.

⁴ Asian Association of Constitutional Courts (AACC), Pancasila as Guiding Principles in the Formulation of National Law, *Journal of the Asian Association of Constitutional Courts*, 6(1), 2020, pp. 3–17.

⁵ Teguh Prasetyo, 'Exploring Cross-Jurisdictional Transfer of Digital Personal Data Protection Laws Using The Dignified Justice Theory', *E3S Web of Conferences*, 426, 2023, p. 01004; AACC, Pancasila as Guiding Principles, pp. 10–11.

⁶ Muhammad Jibril et al., 'Jurisprudence as a Source of Law in Indonesia: Lessons from the Common Law', *Jurnal Jurisprudence*, 13(1), 2023, pp. 130–146.

Despite its normative clarity, however, Indonesian legal practice remains constrained by judicial inconsistency, instrumental use of legislation, and insufficient philosophical integration. The theory of *Keadilan Bermartabat* therefore functions both as a critique of prevailing positivist reductionism and as a transformative proposal for institutional reform.⁷ It challenges the relegation of jurisprudence to persuasive status and insists on elevating judicial reasoning as a reflection of the nation's collective legal consciousness.

This article explores the theoretical foundations and practical implications of *Keadilan Bermartabat* in the Indonesian legal system. Positioned within global and postcolonial jurisprudential discourse, the theory is examined in relation to Pancasila as Indonesia's constitutional philosophy. The discussion also considers how this framework may address persistent challenges in legal interpretation, judicial consistency, and normative development.

Theoretical foundations of dignified justice

meta-theoretical structure and philosophical position

Keadilan Bermartabat positions itself not merely as a theory of justice but as a meta-theoretical framework that reorganizes the epistemic foundations of Indonesian legal thought. It is categorized as a meta-meta-theory—meaning it does not function as an object of legal analysis, but as the structural framework through which legal knowledge must be interpreted. In this model, *Keadilan Bermartabat* is neither subordinate to nor derivable from foreign legal concepts. Rather, it forms the ontological and axiological grammar of *Ilmu Hukum Bangsa Indonesia*—Indonesian Jurisprudence in its most autonomous and original form.

This model asserts that law in Indonesia cannot be treated as a neutral, technical apparatus. Legal interpretation must emerge from the moral and cultural consciousness of the nation. In this regard, the theory elevates Pancasila—the constitutional and philosophical foundation of the state—as the normative soul of legal life.⁸ From this point of view, legal concepts gain their meaning not from imported taxonomies or abstract universality, but from their coherence with the Indonesian *volkgeist* and its historically situated values. What distinguishes *Keadilan Bermartabat* from conventional justice theories is its role-setting function. It does not define

⁷ Mahkamah Agung Republik Indonesia, Ringkasan Eksekutif Laporan Tahunan 2023: Integritas Kuat, Peradilan Bermartabat (Jakarta: Mahkamah Agung RI, 2023), pp. 7–10; see also Putusan Mahkamah Agung No. 2893K/Pid.Sus/2017 and Putusan Mahkamah Agung No. 704K/Pid.Sus/2020.

⁸ Vincentius Setyawan “Pancasila as the Philosophical Basis of Law Formation in Indonesia”, *NUSANTARA: Journal of Law Studies*, 2 (1), 2023, pp. 1-8

justice as a discrete ideal—such as fairness, equality, or reconciliation—but establishes the conditions by which justice, utility (*kemanfaatan*), and legal certainty (*kepastian hukum*) can be realized together as an indivisible triad. It proposes that these principles, often treated as competing, must be aligned within a unified moral structure.⁹

The theory's philosophical orientation also resists reduction to doctrinal or instrumentalist categories. It critiques dominant legal epistemologies, particularly those shaped by Anglo-American positivism and realism. The works of H.L.A. Hart and Oliver Wendell Holmes, for example, reflect traditions that separate law from morality or frame legal meaning as derivative of judicial behavior. *Keadilan Bermartabat*, by contrast, integrates legal knowledge with ethical reasoning and cultural specificity.¹⁰ It holds that the legitimacy of law arises not from procedural validity alone, but from its fidelity to human dignity and national identity. Importantly, this epistemological positioning does not result in isolationism. The theory engages with global jurisprudential developments—especially in constitutionalism and dignity-based law—without surrendering to external paradigms. Its dialogue with international legal thought is selective and purposeful, affirming a sovereign legal identity while remaining conversant across traditions.

This framing leads to a key implication: all interpretation of law—whether judicial, legislative, or academic—must take place within a hermeneutic architecture grounded in *Keadilan Bermartabat*. Law is not a static system of rules, but a dynamic and ethical process oriented toward the telos of humanizing the legal subject.¹¹ That imperative infuses legal institutions with ethical responsibility and binds legal authority to social legitimacy.

The theory also invites comparison with other normative legal traditions, yet it avoids absorption into them. While it shares with natural law the emphasis on moral grounding, it does not posit universal or divine law as its foundation. Instead, it roots normativity in Pancasila—a synthesis of spiritual and civic values unique to Indonesia.¹² In contrast to constitutional dignity jurisprudence in India or South Korea, which evolves case-by-case, *Keadilan Bermartabat* operates at a pre-interpretive level. It is not just a tool for rights reasoning but a structuring principle for legal

⁹ Erin Daly and James R. May, *Dignity Law: Global Recognition, Cases, and Perspectives* (Buffalo, NY: William S. Hein & Co., Inc., 2020), pp. 45–61.

¹⁰ Tim Lindsey and Simon Butt, *Indonesian Law* (Oxford: Oxford University Press, 2018), pp. 16–25.

¹¹ Giovanni Le Moli, *Human Dignity in International Law* (Cambridge: Cambridge University Press, 2021), pp. 83–98.

¹² John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011), pp. 23–47

epistemology. Lastly, where critical legal studies often dismantle law to reveal latent power structures, *Keadilan Bermartabat* offers a reconstructive agenda. It aims to rebuild legal order through indigenous moral philosophy rather than deconstruct it in pursuit of abstraction or skepticism.¹³ Its originality lies in this affirmative stance: offering not only critique, but a coherent blueprint for law rooted in ethical nationalism and cultural integrity.

epistemological approach and methodology

Keadilan Bermartabat introduces a distinct epistemological claim within the landscape of Indonesian legal thought. It does not function as a theory that can be scrutinized from the outside or treated as an object of jurisprudential critique. Instead, it positions itself as the foundational architecture through which legal knowledge is produced, interpreted, and validated. In contrast to conventional theories, which reflect or interpret law, *Keadilan Bermartabat* defines itself as the legal science itself. From this vantage, legal understanding in Indonesia must originate within an Indigenous epistemic framework, not as a localized variant of foreign methodologies.

The core of this epistemology lies in the articulation of the *jiwa bangsa*—the living soul of the Indonesian nation. This spirit is equated with Pancasila, which serves not only as a normative foundation but as the metaphysical core of Indonesian law. Legal sources such as enacted legislation (*peraturan perundang-undangan*) and binding court decisions (*yurisprudensi*) are treated not merely as formal rules but as expressions of this collective spirit, akin to the *volkgeist* in German historical jurisprudence. This orientation rejects the strict separation of norm and value found in legal positivism, emphasizing instead the embeddedness of law in cultural, moral, and philosophical meaning.

Methodologically, *Keadilan Bermartabat* advances an interpretive approach that goes beyond textual analysis or doctrinal synthesis. It calls for a process of *rechtsvinding*—legal discovery—that is rooted in ethical reflection and contextual discernment. Legal meaning, in this framework, is not located in statutory language alone but emerges through principled interpretation that responds to the lived realities of society. The theory defines law not merely as a set of codified rules but as an integrated system comprising principles, institutions, procedures, and interpretive practices necessary to sustain juridical life.

¹³ Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press, 1986), pp. 9–36.

This holistic understanding has significant implications. Legal practice, legal education, and research in Indonesia are challenged to internalize *Keadilan Bermartabat* not as a subject of study but as a framework for inquiry. Law faculties must equip students with the tools to identify normative substance within legal form, while judges and lawmakers are urged to evaluate legal decisions and policies through the lens of ethical coherence. Central to this is the principle of humanizing the legal subject. Legal validity is thus inseparable from moral accountability, and legal knowledge is never neutral but always oriented toward human dignity. In this way, *Keadilan Bermartabat* not only redefines how legal knowledge is structured but also how it must be practiced. By anchoring methodology in national identity and moral responsibility, it asserts a vision of Indonesian law as a dynamic, dignified, and culturally sovereign system of justice.

Pancasila and the legal ontology of the indonesian Volkgeist

At the heart of *Keadilan Bermartabat* is the assertion that Pancasila functions not only as an ideological statement, but as the living legal soul, or *Volkgeist*, of Indonesia. It serves both as the *grundnorm* and *rechtsidee*, grounding all legitimate legal norms in this foundational source. It thus anchors the Indonesian legal system within a uniquely transcendental and indigenous framework. This addresses a critical gap in classical legal theory. While Savigny introduced the concept of *Volkgeist*, he left unspecified how one might identify the spirit of a people in practical legal institutions. *Keadilan Bermartabat* resolves this by situating Pancasila as the highest expression of Indonesia's legal consciousness.¹⁴ It reframes the *Volkgeist* as a concrete, principled foundation—not a nebulous essence. Under this theory, Pancasila represents the dialectical nexus of *arus atas* (divine thought) and *arus bawah* (human experience). This dual flow structures a legal system that is both spiritual and civic, rooted in moral values and responsive to historical social realities. As such, law emerges not solely from secular rationality, but from an integrated orientation connecting theology and cultural history. Importantly, Pancasila guides legislative processes, judicial reasoning, and institutional design. The five principles—belief in God, just and civilized humanity, national unity, deliberative democracy, and social justice—form an inseparable normative architecture. Its function is not symbolic: it defines the telos of law, ensuring the legal order consistently aims to *memanusiakan manusia*.

This ontological framework reshapes legal subjectivity. The individual becomes a legal subject whose dignity forms the basis for legal authority.

¹⁴ Idang Ramadhan et al., 'Pancasila-based Political Ethics as a Foundation for Fair Policies amid Plurality', Proceedings of the International Conference on Religion, Science and Education, vol. 4, 2025, pp. 673–679.

Sovereignty thus shifts from institutional power to moral legitimacy grounded in the Volkgeist. Legal validity depends on fidelity to Pancasila, not on procedural form alone. By elevating Pancasila to the core of legal ontology, *Keadilan Bermartabat* offers more than a national philosophy. It contributes to comparative jurisprudence by giving the abstract Volkgeist a justiciable, operational form. In doing so, Indonesia asserts intellectual sovereignty—not by rejecting foreign systems, but by reinterpreting them through an indigenous epistemological lens.

pancasila legal system structure

At its foundation, the Pancasila Legal System arises from a dynamic interplay between *arus atas* and *arus bawah* in Indonesian society. These dual currents shape a legal structure that is both transcendental and practical. Pancasila functions simultaneously as the Supreme Law and the foundational basis of Indonesia's legal order. It serves as the *Bintang Pemandu*—the guiding star of legal ideals—and as the *fondasi*—the ethical grounding for institutions and legislation. This framework moves beyond the traditional objectives of justice, utility, and legal certainty. Its highest aim is the humanization of legal subjects. Legal norms are not judged solely by logical coherence or procedural regularity. They are also evaluated for their capacity to protect dignity and foster human flourishing. This ethical orientation departs from liberal legalism's focus on individual autonomy and from socialist jurisprudence's emphasis on collective goals. Instead, it seeks to harmonize moral, communal, and spiritual values rooted in Indonesian identity. The five principles of Pancasila—belief in one God, just and civilized humanity, national unity, deliberative democracy, and social justice—form an indivisible normative structure.¹⁵ These principles are not isolated doctrines but integrated pillars. Together, they redefine the status of the citizen. The individual is not merely a regulated object but a *subyek hukum*—a legal subject whose dignity is the benchmark of legal legitimacy. This reconfiguration shifts the source of sovereignty. It moves from institutional authority to moral legitimacy grounded in the national spirit. Pancasila also informs Indonesia's constitutional vision of a “divine state” (*negara hukum yang berketuhanan*). This model avoids the binary of secularism versus theocracy. While belief in God is central, the state does not impose religious doctrine.¹⁶ Instead, it affirms pluralism and integrates spiritual values without subordinating the legal system to any one religious authority. This represents a distinctive model in comparative constitutionalism—a third way that blends transcendence with democratic

¹⁵ Constitution of the Republic of Indonesia, 1945, Preamble, fourth paragraph.

¹⁶ Krisnajatni Hutabarat, “Pancasila and Democratic Pluralism”, *Journal of Legal, Ethical and Regulatory Issues*, vol. 23, special issue 1, 2023, pp. 45–60.

inclusivity. Finally, the Pancasila Legal System reflects the orientation of sociological jurisprudence.¹⁷ It emphasizes the relationship between law and the lived experiences of its subjects. Echoing Eugen Ehrlich's "living law," this model focuses on how legal norms function within social life. Law is understood not as a static set of commands but as a value-driven tool for societal transformation. It is shaped by ethical responsibility and adapted to the moral intuition of the Indonesian people.

the role of jurisprudence and legal interpretation in the pancasila legal system

Within the framework of *Keadilan Bermartabat*, legal interpretation is not a technical exercise in textual precision. It is an ethical undertaking, rooted in the responsibility to actualize justice, dignity, and humanity through the law. This approach departs from the positivist model, which treats interpretation as the neutral application of statutory rules. Instead, it embraces a value-centered paradigm grounded in Pancasila and the *Volkgeist* of the Indonesian nation. The reconceptualization begins with how jurisprudence is understood. Although Indonesia follows the civil law tradition—where judicial precedent is not binding—in practice, decisions from the Supreme Court are frequently invoked by lower courts. *Keadilan Bermartabat* responds to this doctrinal ambiguity by asserting that jurisprudence carries more than persuasive weight. When judicial decisions reflect the ethical substance of Pancasila, they are expressions of the nation's living legal soul (*jiwa bangsa*). Under this theory, jurisprudence becomes an ontological expression of justice. It is a vehicle through which principles like fairness, proportionality, and dignity are translated into concrete rulings. Judicial reasoning thus transcends the application of legal norms. It becomes a moral enterprise in which judges must align their decisions with the foundational telos of Indonesian law, to humanize the individual. This shift has already influenced judicial practice. In criminal matters—such as Putusan No. 2893K/Pid.Sus/2017 and No. 704K/Pid.Sus/2020—the Supreme Court has prioritized ethical proportionality over rigid sentencing guidelines. In labor cases, such as Putusan No. 110K/Pdt.Sus-PHI/2014, the Court has emphasized fairness above procedural technicalities.¹⁸ These decisions reflect an emerging jurisprudential culture where authority is derived not from formalistic literalism but from fidelity to the values embedded in Pancasila.

¹⁷ Ayu Maulidyah Wardhani, "Sociological Jurisprudence in Indonesia: Harmonizing Law and Life", *Symposium on Indonesian Legal Culture*, 2022, pp. 102–115.

¹⁸ Mahkamah Agung Republik Indonesia, *Ringkasan Eksekutif Laporan Tahunan 2023: Integritas Kuat, Peradilan Bermartabat* (Jakarta: Mahkamah Agung RI, 2023), pp. 7–12.

Importantly, the act of legal discovery (*rechtsvinding*) is reimagined in this context. It is no longer a mechanical process of locating statutory meaning. Instead, it becomes a hermeneutic task—one that demands ethical judgment, cultural sensitivity, and contextual understanding.¹⁹ The judge is seen not merely as an interpreter of norms but as a moral actor situated within society, tasked with engaging the law in dialogue with the community's values. This interpretive model responds to the fragmentation and formalism that have often characterized Indonesian legal reasoning. Coherence is achieved not by procedural uniformity but by shared normative commitments. Precedent is not followed blindly but engaged critically and ethically. In this way, *Keadilan Bermartabat* fosters an interpretive culture that is principled, reflective, and morally aware. Ultimately, this approach positions Indonesian legal interpretation as a hybrid system. It integrates the moral foundations of natural law, the empirical realism of sociological jurisprudence, and the structural order of civil law. Yet, it remains firmly anchored in Indonesia's own philosophical framework. It transcends both positivism and realism by embedding interpretation within a culturally resonant structure defined by dignity, accountability, and humanization.

Application in Legal Practice and Education

The theory of *Keadilan Bermartabat* extends beyond philosophical abstraction or judicial hermeneutics. It redefines law as a system of moral architecture—a structure that regulates and restrains power ethically. In this view, development is not merely economic growth or technical progress. It is a teleological process aimed at the humanization of persons within society. This conception aligns partially with Mochtar Kusumaatmadja's *Hukum Pembangunan* (Law of Development), which understood law as a tool for social reform through interdisciplinary collaboration. However, *Keadilan Bermartabat* offers a critical refinement. It embeds normative evaluation into the legal function itself. The goal is not just transformation, but transformation that is culturally coherent, ethically constrained, and philosophically grounded in Pancasila as Indonesia's *Volkgeist*.²⁰ In this model, legal institutions are not neutral policy instruments. They are moral agents tasked with actualizing the ethical content of Indonesia's legal ontology. This imperative is institutionalized, for example, in the Supreme Court's 2023 Annual Report, which adopted the theme *Peradilan*

¹⁹ Brett G. Scharffs, Asher Pin, and Dmytro Vovk (eds.), *Human Dignity, Judicial Reasoning, and the Law: Comparative Perspectives on a Key Constitutional Concept* (London: Routledge, 2024), pp. 112–130.

²⁰ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumni, 1970)

Bermartabat (Dignified Judiciary).³ The report underscored commitments to integrity, contextual justice, and ethical proportionality—principles drawn directly from the theory’s humanization imperative. Operationally, the theory has shaped several institutional practices.²¹ It informs legal due diligence processes in state-corporate partnerships, especially in infrastructure development, as a mechanism for preventing corruption. It has also influenced judicial training programs, particularly in the military and administrative court systems, where modules increasingly focus on value-based adjudication. In academia, the theory has been incorporated into postgraduate curricula at leading Indonesian universities. It now serves as a grand theoretical framework in theses concerning constitutional law, administrative governance, and human rights.²² These developments show that *Keadilan Bermartabat* is not a speculative ideal. It functions as a normative compass—guiding how authority is obtained, exercised, and restrained. When political, economic, or bureaucratic actors seek power, the theory demands that such ambitions be evaluated through the ethical lens of Pancasila. This requirement challenges the instrumentalization of law and reframes legal authority as a responsibility, not a privilege. Law, then, becomes more than a scaffolding of enforceable rules. It is a system of ethical accountability. It synthesizes justice, utility, and legal certainty into a unified vision of dignified national development. Legal mechanisms—such as precedent, statutory interpretation, or institutional reform—are not judged merely by procedural soundness, but by their contribution to elevating the human condition. This ethical orientation reshapes governance. It requires that all legislation, adjudication, and regulatory policy be tested against the standard of human dignity. Citizens are no longer viewed as passive recipients of authority but as subjects whose rights and humanity define the limits of state power. Under this framework, development becomes a moral process, administered under the guidance of law as an ethical and cultural institution.

²¹ Representative examples of judicial application of *Keadilan Bermartabat* include: (1) Putusan No. 2893K/Pid.Sus/2017; (2) Putusan No. 2647K/Pid.Sus/2017; (3) Putusan No. 712K/Pid.Sus/2022; (4) Putusan No. 704K/Pid.Sus/2020; (5) Putusan No. 4056K/Pid.Sus/2020; (6) Putusan No. 110K/Pdt.Sus-PHI/2014; and (7) Putusan No. 144/Pid.Sus/PN. Brb. These cases demonstrate how Indonesian courts have applied principles of proportionality, dignity, and ethical reasoning to move beyond formalist adjudication. See: Mahkamah Agung Republik Indonesia, Ringkasan Eksekutif Laporan Tahunan 2023: Integritas Kuat, Peradilan Bermartabat, Jakarta: MA-RI.

²² Mulyadi and Teguh Prasetyo, ‘The Future Development and Practice of Law Based on Dignified Justice’, *International Journal of Advanced Research*, vol. 12, no. 12, 2024, pp. 1224–1230.

Law and Development in the Framework of Dignified Justice

Keadilan Bermartabat offers a critical refinement to existing Indonesian legal theories, particularly in response to Mochtar Kusumaatmadja's influential Law of Development. Kusumaatmadja emphasized law's instrumental role in promoting national progress through interdisciplinary collaboration. He viewed legal institutions as facilitators of social transformation, capable of supporting economic development, governance reform, and policy coordination. While *Keadilan Bermartabat* shares this developmental orientation, it moves beyond instrumentalism. The theory contends that interdisciplinary approaches are no longer aspirational—they are embedded in judicial and institutional practices. Legal mechanisms such as due diligence, contractual review, and ethical auditing are routinely applied, especially in public infrastructure projects. These practices are designed not merely to ensure efficiency, but to prevent corruption and safeguard dignity, particularly where state-owned enterprises and private actors intersect. In this way, law becomes both a guide and a guardian of development that is ethically constrained and normatively directed. In contrast to development understood as economic growth or technological advancement, the theory reframes development as a moral and cultural project. Its purpose is to humanize people within society. Law, in this paradigm, is not a neutral tool of administration. It is a normative framework that ensures development aligns with Pancasila and with justice understood as dignity, responsibility, and solidarity. Echoing Kusumaatmadja's claim that "development is reform," the theory insists that all change must be rooted in normative legitimacy. This approach rejects utilitarian models that reduce law to a vehicle for policy delivery. Legal effectiveness is not judged solely by procedural regularity or regulatory compliance. Instead, it is measured by the law's capacity to support ethical development—development that respects cultural identity, promotes social harmony, and protects human dignity. Crucially, the theory also addresses how law regulates power in development contexts. Whether exercised by politicians, administrators, or economic actors, power must be guided and restrained by normative frameworks rooted in Pancasila.²³ The law is not only a tool for ordering society; it is a moral boundary against abuse. Through binding jurisprudence, statutory provisions, and legal interpretation, *Keadilan Bermartabat* asserts that authority must be justified through public ethics—not elite interests or technocratic expediency. Under this framework, law is transformed from a procedural system into a moral architecture for national transformation. Its rules are not ends in themselves, but vehicles for embedding humanistic values into

²³ Ibrahim Hosen Azhary, *Negara Hukum Indonesia: Analisis Yuridis Normatif tentang Unsur-Unsurnya* (Depok: UI Press, 1995), pp. 102–110.

public life. This vision offers a corrective to legal formalism and technocratic governance. It affirms that sustainable development must be ethically accountable, culturally resonant, and legally humanizing.

Existing Conditions of Legal Practice in Indonesia

Despite the growing adoption of *Keadilan Bermartabat* in legal discourse, Indonesia's legal system continues to exhibit a disconnect between its normative aspirations and institutional realities. This gap is most visible in judicial inconsistency, formalist adjudication, selective enforcement, and an enduring reluctance to prioritize dignity as the legal system's ethical foundation. Each of these symptoms undermines the core telos of Indonesian law as envisioned by *Keadilan Bermartabat*: the humanization of the legal subject. Several judicial decisions illustrate this tension between philosophical ideals and institutional execution.

1. Putusan No. 144/Pid.Sus/PN.BrB

In this case, residents protesting land acquisition under the National Strategic Projects were prosecuted for disturbing public order. The court relied on a literal interpretation of public disturbance provisions, ignoring the broader justice implications. A dignity-based analysis would have understood the protest as a form of legal resistance by dispossessed citizens. Instead of objectifying them as administrative obstacles, the court could have affirmed their status as legal subjects entitled to procedural fairness.

2. Putusan No. 2893K/Pid.Sus/2017

This decision involved a reduced sentence for a public official convicted of bribery, justified by vague "mitigating factors." The ruling failed to articulate proportional reasoning or address public accountability. Under *Keadilan Bermartabat*, such leniency undermines justice (*keadilan*), legal certainty (*kepastian hukum*), and trust in institutions—particularly when contrasted with the harsher treatment often imposed on lower-level offenders.

3. Putusan No. 110K/Pdt.Sus-PHI/2014

In a labor dispute, the court upheld a dismissal by focusing solely on procedural compliance. It ignored the evident power imbalance between employer and employee. A dignity-oriented ruling would have emphasized employment as a site of existential security and social recognition, embedding proportionality into the decision to protect workers as rights-bearing legal subjects.

4. Putusan MK No. 91/PUU-XVIII/2020

The Constitutional Court found procedural flaws in the passage of the Job Creation Law (UU Cipta Kerja), yet allowed it to remain in effect during revision. This reflects a tendency to prioritize legal form over ethical substance. From a *Keadilan Bermartabat* perspective, such procedural

compromise undermines the legitimacy of governance and contradicts Pancasila's demand for justice, deliberation, and human-centered policymaking.

5. Environmental Cases (e.g., Ministry of Environment vs. PT BMH)

In environmental litigation, particularly cases involving recurring forest fires, courts have often failed to enforce judgments against corporate actors. Even when civil penalties are awarded, enforcement remains weak or delayed. This failure compromises environmental justice and violates communal and intergenerational dignity—central concerns within the *Keadilan Bermartabat* paradigm.

These examples reveal a legal system in transitional tension. While judicial institutions increasingly acknowledge the values of dignity and ethical proportionality, they remain entrenched in procedural formalism. The habit of reducing legal subjects to administrative classifications, or of applying law without normative reflection, highlights the interpretive deficit that *Keadilan Bermartabat* aims to resolve. More broadly, these inconsistencies indicate a deeper institutional inertia. Courts, legislators, and legal educators often operate in doctrinal silos, disconnected from the integrated value framework proposed by the theory. This lack of normative cohesion leaves the system vulnerable to politicization and weakens the moral legitimacy of legal outcomes. *Keadilan Bermartabat* calls for a paradigm shift: from law as a regulatory mechanism to law as a transformative force grounded in Pancasila. Courts must be assessed not only for procedural compliance but also for their fidelity to humanization. Legislation must be judged not only by its efficiency but by its ethical defensibility. Only through such epistemic integration can Indonesia's legal system evolve into a coherent, principled, and dignified order.

Policy Recommendation

The institutional realization of *Keadilan Bermartabat* requires more than philosophical recognition; it demands comprehensive structural reform across Indonesia's legal ecosystem. To embed its core values—dignity, justice, ethical governance, and humanization—these principles must be operationalized in judicial training, legal education, legislative procedures, and constitutional adjudication. First, judicial training programs must be reoriented to promote value-based interpretation. Judges—particularly at the first-instance and appellate levels—need more than procedural literacy. They must be equipped with philosophical and ethical tools that allow them to move beyond formalism. Training curricula should include dedicated modules on *Keadilan Bermartabat*, with emphasis on proportionality, contextual reasoning, and moral judgment

grounded in Pancasila. Ethical discretion must be developed not as intuition, but as a disciplined practice aligned with national legal philosophy. Second, the Supreme Court should issue formal jurisprudential guidelines that promote ethical coherence across decisions. While Indonesia does not adhere to *stare decisis*, the increasing reliance on precedent justifies a shift toward interpretive consistency rooted in shared values. Judicial precedent should not be applied as mechanical repetition. It should be approached as evolving ethical reasoning that reflects the collective conscience of the judiciary informed by dignity-based adjudication. Third, legal education must undergo epistemic restructuring. *Keadilan Bermartabat* should be integrated into the core curriculum of law faculties—not as an elective or theoretical curiosity, but as a foundational paradigm. This requires the introduction of courses on non-positivist legal reasoning, interpretive pluralism, and the intersection of indigenous jurisprudence with global legal developments. Students must be trained to understand law not merely as a system of rules, but as a culturally situated practice of ethical governance. Fourth, legislative development must incorporate normative filters based on Pancasila. The drafting and evaluation of laws should involve explicit dignity-based assessments alongside existing economic, technical, or regulatory reviews. Statutes should be tested not only for their feasibility but for their potential to protect vulnerable populations, advance social justice, and preserve the dignity of all legal subjects. Lawmaking must be understood as a moral act with constitutional consequence. Finally, the Constitutional Court must elevate *Keadilan Bermartabat* as a juridical principle within constitutional interpretation. Pancasila should no longer function as symbolic rhetoric; it must serve as a legitimate source of legal authority. In constitutional review, the Court should evaluate laws not only in terms of procedural compliance but also in light of their humanizing aims. This will affirm Indonesia's constitutional identity as a nation governed by dignity, not merely legality.

Conclusion

Keadilan Bermartabat provides Indonesia with a practical legal framework that addresses documented judicial failures: inconsistent sentencing, excessive proceduralism, weak environmental enforcement, and legislative overreach. This study demonstrates how Pancasila-based jurisprudence can resolve these problems through three mechanisms: dignity-centered judicial reasoning, proportionality-based legislative review, and ethics-integrated legal education. The research identifies specific implementation requirements. Courts need mandatory ethics training for judges, emphasizing moral reasoning alongside legal precedent. Law schools must incorporate indigenous legal traditions and non-positivist

methodologies into core curricula. Legislative bodies require Pancasila-based impact assessments before bill passage. These reforms address the documented gap between legal procedure and substantive justice in Indonesian courts. Current judicial training prioritizes technical compliance over ethical reasoning, producing decisions that follow form but ignore social impact. Legal education separates doctrinal study from moral analysis, creating lawyers unprepared for dignity-based reasoning. Legislative processes lack normative filters, resulting in laws that conflict with constitutional values.

Keadilan Bermartabat offers measurable solutions: judicial decisions that balance precedent with proportionality, legislation that undergoes dignity-impact review, and legal graduates trained in both technical skills and ethical reasoning. Implementation requires institutional commitment, but the framework provides clear pathways for aligning Indonesian legal practice with constitutional principles.

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CRIMINOGENIC FACTORS OF RURAL CRIME IN THE REPUBLIC OF MOLDOVA

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Abstract: *Crime in the rural environment represents a distinct segment of criminology, determined by the interaction between exogenous factors and specific endogenous factors, most often represented by the level of employment, lifestyle, local traditions, as well as socio-cultural relations characteristic of rural communities. In the current context, marked by hybrid warfare, political instability and insecurity of the eastern border on the transnistrian segment, the rural environment in the Republic of Moldova is becoming increasingly vulnerable to specific forms of crime, such as electoral corruption crimes, migrant trafficking, smuggling, environmental crimes and transnational organized crime. The research has highlighted that gender inequality, correlated with various socio-economic factors, constitutes a distinct cultural factor that significantly influences the increased prevalence of domestic violence in the rural environment, compared to the urban one.*

Keywords: *criminality, crime, causality, criminogenic factors, endogenous factors, exogenous factors, rural environment, urban environment.*

Introduction

Following the historical course of evolution of criminological science, we notice that the attention given to urban crime prevailed in relation to the attention shown to rural crime. We consider such a concern to be natural, being largely determined by the context of the global industrial revolution, which recorded a massive migration of the population to the cities. Therefore, the predilection of criminologists on urban crime research has

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led to a fictional perception that crime is primarily an urban phenomenon. The criminogenic situation proves to us that the countryside is not without crime, and the idea of a rural idyll is an illusion that can be misleading and dangerous. In essence, rural crime directly influences the good development of community life in the rural environment, depriving communities of the necessary resources for existence, thus stimulating migration to cities.

In criminological science, valuable studies on regional types of crime have been carried out by various authors (for example, Buonanno and Leone¹, Ceccato², Cracolici and Uberti³, Entorf and Spengler⁴, etc.). In Michálek's view, crime in rural areas shows tendentious growth rates, and in some regions, it reaches such a high level that it causes quite serious social problems. Valuing the criterion of geographical regions, the author rightly concludes that rural crime is qualitatively and quantitatively different from urban crime, each of them having its own profile⁵.

Carcach remarks that there is no universally accepted notion regarding rural criminality. This fact conditioned during the last decades the need to study this type of criminality, by addressing the specific link in which crime and victimization are manifested in rural communities⁶. According to Zabryansky, rural crime is characteristic to settlements in the agrarian sector, being statistically represented by a number of crimes committed on the territory of these settlements and the inhabitants who committed them⁷.

The Romanian authors Banciu, Rădulescu and Dâmbroveau highlighted the increase in the recrudescence of violent crimes committed especially in the rural environment, an environment considered to be more "conservative" and more "traditional", compared to the urban one. According to the Romanian statistical records, it is clear that lately the rural

¹ Paolo Buonanno, Leonida Leone, *Education and Crime: Evidence from Italian Regions*, in: Applied Economic Letters, 13 (1), 2006, Abingdon-on-Thames, Oxfordshire, pp.709-713.

² Vania Ceccato, Robert Haining, *Short and Medium term Dynamics and their Influence on Acquisitive Crime Rates in the Transition States of Estonia, Latvia and Lithuania*, in: Applied Spatial Analysis and Policy, 1, 2008, Dordrecht, pp. 215-224.

³ Maria Francesca Cracolici, Teodora Erika Uberti, *Geographical Distribution of Crime in Italian Provinces: A Spatial Econometric Analysis*, in: Review of Regional Research, 29, 2009, Abingdon-on-Thames, Oxfordshire, pp.1-28.

⁴ Entorf Horst, Spengler Hannes, *Socio-Economic and Demographic Factors of Crime in Germany: Evidence from Panel Data of the German States*, in: International Review of Law and Economics, 20 (1), 2000, Amsterdam, pp.75-106.

⁵ Anton Michálek, *Rurálna kriminalita a rurálne okresy Slovenska so zvýšenou kriminalitou*, in: Geografický časopis, 62(4), 2010, Bratislava, pp. 329-345.

⁶ Carlos Carcach, *Size, Accessibility and Crime in Regional Australia*, in: Trends and Issues in Crime and Criminal Justice, 175, 2000, Canberra, pp. 1-6.

⁷ Grigory Zabryansky, *Criminological Problems of the Village (Methodology and Research Techniques)*, Rostov-on-Don, 1990, p. 43.

environment has been subjected to “attacks” from both outside and within it, which has contributed to the increase in the number of violent crimes committed by the residents of rural areas⁸.

The trends of crime in rural areas are also characteristic to the Republic of Moldova. After analyzing statistical data for the years 2017-2023, it was found that the **average** ratio between rural and urban crime is 38.1% - 61.9%.: in 2017, rural crime constituted 37.08%, and urban crime 69.92%; in 2018 – 36.76% and 63.24%; in 2019 – 36.24% and 59.33%; in 2020 – 40.67% and 59.33%; in 2021 – 39.67% and 60.33%; in 2022 – 38.39% and 61.61%; in 2023 (6 months) – 37.18% and 62.82%. According to the same statistics, there is a gradual increase in domestic violence in rural areas - about 626 cases reported in 2017, followed by a gradual increase, reaching a peak of 767 crimes in 2021.

There is no constant research regarding the rural crime in the Republic of Moldova, but the statistical data presented above reveal a rather prominent coefficient of rural crime in the total gear of criminality. Therefore, insisting on this field of knowledge, the *direct objective* of this study is to reveal and characterize the criminogenic factors that directly or indirectly determine rural crime in the Republic of Moldova. As a result, it provides researchers with substantiated scientific premises, based on empirical data for the scientific explanation and description of rural crime, ensuring knowledge of the factors that determine this type of crime. In order to decode the complexity and character of the criminal phenomenon in rural areas, the criminological study dedicated to the analysis of criminogenic factors requires, being natural for any type of crime, a “multifactorial approach”. Starting from this premise, in order to systematize the study, when characterizing the criminogenic factors of rural crime, their classification into *exogenous factors* and *endogenous factors* will be used.

The indirect, more distant objective of the study is the development of preventive measures, of an economic, social, cultural and legal nature, which would ensure a more effective social control over the tendencies of crime spreading in the rural environment. The implementation of the *results* will contribute to the remodeling of the crime prevention policy in the Republic of Moldova, with an impact on ensuring criminogenic security in the rural environment.

Methodology

A number of theoretical and empirical research methods were used to develop the present study: *the method of critical analysis*, method that

⁸ Dan Banciu, Sorin Rădulescu, Cristina Dâmbroveau, *Violent Crime in Rural Communities*, in: Romanian Journal of Sociology, Year XVII, 3-4, 2006, Bucharest, pp.199-218.

allowed the synthesis and critical examination of multiple scientific approaches from the specialized doctrine regarding the criminogenic factors of rural crime; *the method of classification*, offered the possibility of classifying the criminogenic factors of rural crime based on different criteria; *the statistical method*, the statistical data of the General Information Department and Operative Records of the Information Technologies Service of the MIA of the Republic of Moldova were used; as well as of the General Police Inspectorate of the MIA of the Republic of Moldova; the National Bureau of Statistics of the Republic of Moldova. The use of statistical data allowed us to establish the quantitative characteristics of rural crime, the trends, the geographical distribution and the intensity of the rural criminal phenomenon at the national level; *opinion poll (selective)* carried out during the period 01.11.2023-06.11.23, *on-line* regime, with the survey of 84 women living in rural areas of the Republic of Moldova, regarding the establishment of the determining factors of domestic violence.

Heterogeneous Criminogenic Factors

Geographical Factor

In general, the geographical factor is a natural element that particularizes rural crime in relation to urban crime. By all means, the rural physical environment, with its climatic and geographical peculiarities, cannot alone determine criminality, but only in interaction with socio-economic, cultural and individual factors, thus shaping the specifics of crime in these areas.

The natural environment and geographic isolation can have a considerable impact in shaping of rural crime, influencing both directly and indirectly deviant behaviors in these areas. Rural communities, often marked by low population densities and extended distances between homes, present an increased risk of crime due to difficulties in surveillance and limited access to services, thus creating a breeding ground for committing crimes without detection.

The isolation of rural communities can undermine the effectiveness of police surveillance, amplifying criminal opportunities. This is especially true for the Republic of Moldova, where the lack of police officers in rural areas makes police surveillance difficult, increasing the vulnerability of potential victims and creating favorable conditions for crimes' committing. The geographical isolation of rural localities generates specific crime categories, such as: cultivation of drug-containing plants, trafficking in human beings, illegal hunting, etc. Malpractice cases in rural areas are largely determined by geographic isolation, an aspect that causes deficiencies in ensuring quality medical services. Climate variations and environmental transformations, followed by the degradation of natural resources, can exacerbate tensions

related to access to essential resources such as water and land. These pressures can culminate in acts of violence and environmental crimes, as communities struggle to preserve their traditions and sources of income in the context of various economic transformations, which in the view of the inhabitants are not favorable to them.

Quantitative indices and qualitative indices of rural crime may vary by geographic area. For example, in the Republic of Moldova, in 2022 there is a clear discrepancy between the number of crimes committed in the regions of the North of the country in relation to the South of the country. In some cases, the number of crimes committed in the southern extremity in the rural environment (Cahul district) exceeding 2.1 times the number of crimes committed in the northern extremity (Briceni district).

The geographical factor can cause certain types of crimes to be committed in certain regions of the country, such as border areas. Thus, according to the data provided by the IPSOS research company, the volume of illegal cigarette trade in the Republic of Moldova has increased significantly from 4.1%, in October 2021, to 7.4%, in October 2022. The results of the study also showed a doubling of the illicit trade in tobacco products in the regions located on the border with Ukraine, from 7.6% to 14.4%, affecting the towns of Briceni, Dondușeni, Caușeni. Also, during the same period, illegal trade at the border with Romania increased from 4.6% to 9%, in the localities of Hîncești, Nisporeni, Ungheni, Edineț, Leova, etc.⁹. The illegal trade in cigarettes usually involves committing the acts of smuggling criminalized in art. 248 and art. 248¹ of the Criminal Code of the Republic of Moldova, and the proximity of rural residents to border areas is favorable to them and facilitates the commission of these crimes.

Regarding the national factor, the conclusion that is imposed from the analysis of the statistical data for the years 2018-2021 is that the majority of crimes in the rural environment were committed by Moldovan citizens, with a proportion of 98%. This trend reflects a predominantly internal dimension of rural crime in the Republic of Moldova, indicating a need to address the criminogenic factors specific to the native population.

Economic Factors

Economic factors play a significant role in the genesis and evolution of rural crime. Economic factors such as income level, unemployment rate and access to resources are often analyzed in terms of their ability to determine the emergence or intensification of criminal behavior in rural areas, highlighting the complexity and multidimensionality of the causes of crime in these areas.

⁹ IPSOS study: *Tobacco illicit trade in the Republic of Moldova doubled in October 2022*. Available: <https://www.ipsos.com/ru-ru/ipsos-study-tobacco-illicit-trade-republic-moldova-doubled-october-2022>.

T. Pop, considered the founder of Romanian criminology, offers a balanced perspective on the role of economic factors in the generation of criminal behaviors, emphasizing their fluctuating and context-dependent character. The author mentions that *by the importance of the influence of factors on crime, heredity comes first, followed by education, and after that, by economic conditions*. Therefore, economic factors constitute a significant component in the causal set of crime, their importance varying according to specific circumstances. The same author emphasizes that there is no absolutely predominant criminogenic factor; the influence of the economic factor can range from marginal to central, depending on the social, cultural and temporal context in which crime manifests itself¹⁰.

Within the context of rural crime, unfavorable economic conditions, such as crises and economic instability, poverty, low living standards, unemployment and other similar factors, can contribute to the decline of the physical and mental state of individuals, creating a breeding ground for criminal activities. These unfavorable conditions weaken mental and physical resistance, exhaust, demoralize and discourage individuals, diminishing barriers against deviant behavior and stimulating negative tendencies.

In rural areas, these economic pressures can be considered predisposing factors for specific types of crime, especially those related to obtaining of illicit income. In this case, the unsatisfied material needs drive towards breaking the law. As the notions of poverty and wealth are relative, namely the discrepancy between aspirations and the legitimate means to fulfill them, it is a significant driving force behind economic crime in rural areas, underscoring the complexity and need for multidimensional approaches to prevent and combat this phenomenon.

In this sense, the most eloquent example is the smuggling offenses criminalized in art. 248 and 248¹ of the Criminal Code of the Republic of Moldova¹¹, which, against the background of the interaction of the geographical and economic factors, are most frequently committed in rural border areas. Involvement in smuggling activities by the inhabitants of the villages is determined by economic dissatisfaction, the possibility of making easy money, geographical location and perception of favorable places, including the influence of customs officials, who are most often from the same locality, etc. According to the data provided by the research company IPSOS, the growth rate of smuggling crimes in the rural environment is about 2 times higher than in the urban environment. For example, in 2022 the number of cigarette smuggling offenses increased in rural areas from 5.4% to 9.1%, and in urban areas from 2.5% to 5.4%.

¹⁰ Train Pop, *Criminology Course*, Cluj, 1928, p.611-613.

¹¹ *The Criminal Code of the Republic of Moldova no. 985-XV of 18.04.2002*. Reprinted: Monitorul Oficial of the Republic of Moldova no.72-74/195 of 14.04.2009.

There are crimes that, due to the lack of economic motivation, are committed less often in the urban environment than in the rural environment. The most eloquent example is drug trafficking committed in the form of selling narcotic or psychotropic substances. Due to a “restricted market”, the attractiveness of selling drugs in the rural environment does not have an eloquent economic justification for traffickers as the same motivation exists in the urban environment. According to some studies, students from urban areas are offered drugs at school 4.5 times more often than those from rural areas (82.6% and, respectively, 17.4%)¹². Therefore, drug trafficking by trading is a crime with a higher proportion of crimes committed in urban than in rural areas.

However, international studies conclude on a potential increase in the number of drug users due to their supply with the use of informational networks. Internet connection, apart from its natural benefits, offers the possibility of a greater opening of drug markets in rural areas, especially in remote ones¹³.

However, drug traffickers use, as a priority, and in some cases particularly ingeniously, the rural environment for the growth of drugs containing plants in natural climatic conditions through: the use of abandoned agricultural land; recruitment of landowners; the use of clandestine and well-camouflaged greenhouses, etc. Internationally, the United Nations Office on Drugs and Crime recognizes that “illegal cultivation of opium poppy and coca is directly linked to rural poverty”¹⁴.

An economic factor determining the impact of rural crime is unemployment. In particular, unemployment induces an acute disruption of the individual’s well-being, causing heightened emotional instability and the erosion of the sense of personal and financial security. The rural environment in the Republic of Moldova offers few employment opportunities in the field of work. Employment in the Moldovan countryside is more difficult than in the urban environment. The largest part of the rural population is engaged either in agricultural activities, mostly unofficial, or in the public sector (education, health care, culture, social assistance), the largest share still falling to agriculture.

¹² P. Oprea, O. Cobileanschi, C. Oprea, M. Oprea, *The Drug Phenomenon in the Republic of Moldova: Medical and Social Aspects*, in: Materials of the 3rd Congress of Family Doctors, 2012, Chisinau, pp.265-269.

¹³ Susanne Stenbacka, *Chasing Moving Targets in Rural Spaces: Local Policing and Drug-Related Interventions*. In: The Professional Geographer, 74(2) 2021, Abingdon-on-Thames, Oxfordshire, pp.377-383.

¹⁴ *Alternative Development - Drug Control through Rural Development*. Available: https://www.unodc.org/pdf/publications/alt-development_rural-development.pdf.

The context of insecurity caused by unemployment can catalyze the emergence of antisocial behaviors, in response to the individual's inability to achieve their goals through legitimate means. Illicit behaviors will manifest themselves not necessarily by committing economically motivated crimes, but also by aggressive behaviors conditioned by anxiety, depression, alcohol consumption, hostility towards society, alienation, etc.

The analysis of the period 2017-2023 in the Republic of Moldova highlights the significant consequences of economic crises on social stratification and crime rates. According to the United Nations Development Program¹⁵, in 2021, 24.5% of the population of the Republic of Moldova lived in absolute poverty. In the given chapter, the situation is much more dramatic in the rural environment, where 32.8% of the population lived on the poverty line, compared to 11.9%, in the urban environment. Several selective studies in the Republic of Moldova have established that almost every fourth citizen lives in absolute poverty and the rural poverty rate is almost five times exceeding the urban poverty rate.

Socio-Cultural Factors

In criminology, socio-cultural factors have a predominant role in the positive or negative socialization of individuals¹⁶. Numerous theories regarding the causes and conditions of the emergence of criminal behavior fall into the large group of sociological theories. These theories mainly focus on socio-cultural factors and highlight the inconsistency between cultural values and aspirations on the one hand and the norms and legitimate means on the other, hence the emergence of individuals who seek to achieve their individual aspirations originates, as well as ideals and goals through the use of illicit means.

In order to reveal the criminogenic factors of domestic violence against women, between 01 and 06 November 2023, the authors conducted an anonymous *online* opinion survey, with the participation of women from rural areas¹⁷. As a result, it was found that most of the women surveyed were

¹⁵ UNDP Moldova, *25 countries have halved multidimensional poverty in 15 years, but 1.1 billion people remain poor, while the impact of the COVID-19 pandemic has not yet been assessed*. Available: <https://www.undp.org/ro/moldova/press-releases/25-de-tari-au-redus-de-doua-ori-saracia-multidimensionala-decursde-15-ani-insa-11-miliarde-de-oameni-raman-saraci-timp>
ce#:~:text=%C3%8En%20Republica%20Moldova%20femeile%20se,p%C3%A2n%C4%83%20la%2036%2C9%25.

¹⁶ Sorin Rădulescu, Dan Banciu, *The Sociology of Crime and Criminality*, Șansa – SRL Publishing House, Bucharest, 1996, Bucharest, p.181.

¹⁷ *Opinion survey (selective) conducted between 01.11.2023-06.11.23*, online, with the questioning of 84 women living in rural areas of the Republic of Moldova, regarding the establishment of the determining factors of domestic violence in rural areas.

subjected to domestic violence at least once in their lives - about 77%. Most of these women continued to live with the aggressor in the same home, the only justification being the financial impossibility of finding another home. The factors that determined the application of violence were: poverty 41.0 %; consumption of alcohol or narcotic substances 21.7%; jealousy 32.5%; education rooted in gender inequality 20.5%.

A criminogenic factor of impact, deeply rooted in the pattern of criminal conduct of family violence in the rural environment of the Republic of Moldova, is **gender inequality**. According to the study “Men and Gender Equality in the Republic of Moldova”, it was found that “violence against women remains deeply rooted in gender imbalance”. Thus, 90% of the men interviewed in this representative survey of perceptions believe that for a woman the most important role is to take care of the house and the family¹⁸. The majority of survey participants (94.8% men and 86.3% women) believe that gender inequality is more evident in rural areas, and 81% of men and 89.8% of women believe that gender inequality in rural areas is a phenomenon tolerated by women¹⁹.

Within the context of another study developed within the United Nations Organization Project “Consolidation of the National Statistical System”, in collaboration with the National Bureau of Statistics and with the support of the United Nations Development Program, UN Women and UNECE²⁰, it was found that 68% of women from rural areas in the Republic of Moldova were subjected to some form of violence, compared to 57% of women from urban areas. Also, the same study highlights that only 66% of women reported physical or sexual violence from their partner to the competent authorities²¹.

In another vein, the family educational regime proved to be the main cause of failure in the integration process and, implicitly, the essential cause of minors’ behavioral deviance²². Vulnerable families can constitute a harmful environment for the formation of children’s personality through their assimilation of deviant and illegal behaviors. The category of

¹⁸ *Study Men and Gender Equality in the Republic of Moldova*, carried out by the SocioPolis Women’s Law Center. Available: <https://sociopolis.md/barbatii-si-egalitatea-de-gen-in-republicamoldova>.

¹⁹ Ibidem.

²⁰ *The Profile of Female Victims of Violence. Demographic Characteristics of Women Victims of Violence* Available: https://statistica.gov.md/files/files/Cooperare_internationala/PNUD/10_tablouri_femei_RM/Infografic_Femei_victime.pdf.

²¹ Ibidem.

²² Mihai Mizdran, Băloi Florentina Cristina, *Family and Criminogenic Factors: Family Desocialization and Family Conflict*, in: *The National Law Review*, 1(247), 2022, Chisinău, pp.177-190.

vulnerable families includes violent families, immoral families and disorganized families

Violent families are considered to have the highest criminal potential, these types of families are often found especially in rural Moldovan society. The model of aggressive behavior is the basis of the formation of the personality of the minor, who turns from a potential victim in the future into a potential aggressor. Following and assimilating the violent behavior of the parents, the minor learns to solve his community conflicts through the acts of violence.

Immoral families are depraved families in which coexistence and intra-family relations are not based on minimal moral rules. This group includes families in which one or both parents systematically use alcohol, drugs, practice criminal activities, etc. Children are deprived of education, care, supervision, moral and material support in such families. Therefore, children are vulnerable to outside influences and may adopt criminal behavior patterns. It is not excluded that these behaviors are learned even from their own parents.

Disorganized families are families with divorced parents, gone abroad or in which the supervision and education of children is neglected. The atmosphere in disorganized families, the lack of parental authority, supervision and affection, leads children to commit misdemeanors/crimes. In addition, disorganized families are a great source of victimization for children, who become victims of sexual exploitation, child trafficking, prostitution and sexual abuse, etc. According to the studies carried out by the Institute of Penal Reforms from the Republic of Moldova, in 90% of the monitored cases, the children with the status of defendants come from socially vulnerable, incomplete families. In about half of the prosecuted cases, young criminals live with a parent, often formally, without permanent mutual contact²³. Regarding victimization, according to the statistical data provided by the MIA, in the first nine months of 2020, the reasons behind the suicide attempt were: family problems – 25 cases; poor financial situation – 1; love/jealousy – 19; revenge – 3; the cause could not be determined – 23.

Political Factors

Political instability, measured by frequent changes of the regime, by disturbances and violence, is perceived as a counterproductive source in the development of a state. The phenomenon of corruption could be also added here, which, not infrequently, fueled political instability, increasing the risk

²³ Vladislav Schibin, *Crime Among Children is a Major Problem for Society*. Available: https://irp.md/activity/justice_children/88-criminalitatea-n-rndul-copiilor-o-problem-major-pentru-societate.html.

of regime change²⁴. The political and democratic processes in the Republic of Moldova were and are strongly influenced from outside, a fact that fuels political instability, state capture and chronic stagnation of economic and social development.

Political instability is a generalizing factor of crime, which conditions the existence of several criminogenic factors: low standard of living, unemployment, vulnerability of power in the decision-making process; corruption in the public sphere; the inefficiency of the criminal policy manifested especially through the modification of criminal laws and their lobbying to the detriment of social values, etc.

We can talk about the predilection of some categories of crimes on a political basis in the rural environment of the Republic of Moldova. First of all, it is about the “corruption of voters”, generated, on the one hand, by the decision-making vulnerability of the electoral authorities, and, on the other hand, by the poverty and low standard of living of rural residents, who in exchange for some material favors become easily corruptible and manipulable. Within the context, electoral corruption in rural areas is the “serial killer” of democratic processes at the local level, but also at the central level. Secondly, it is also about corrupting of rural residents to participate in protest actions in order to influence political processes in the Republic of Moldova. For example, during the years 2021-2023, the remuneration for a day of participation in actions of this kind was estimated on average at around 10-30 euros.

War, as an instrument of politics, is the most violent form of manifestation of social conflict, between large groups of people, constituting a criminogenic factor triggering criminal behavior. The war of aggression that is taking place in Ukraine has also influenced to a certain extent the criminogenic situation in the Republic of Moldova, including in the rural areas. In particular, the crimes of organizing the illegal crossing of the border have intensified, actions aimed at evading the mobilization of Ukrainian citizens; cigarette smuggling offences; scams; human trafficking, etc. For example, the fees for illegally crossing the border between Ukraine and the Republic of Moldova for the purpose of evading mobilization is between 5,000 and 18,000 euros. In the rural areas where the 1992 war on the Dniester between the Republic of Moldova and the Transnistrian separatist regime took place, strongly supported by the Russian Federation, generated massive arms trafficking.

²⁴ Valentina Ursu, *Social-Political Instability, the Role of the Political Class in Stability Ensuring*. International Scientific Conference The Security Strategy of the European Union within the Context of the Metamorphoses of International Relations (1), 2021, Chisinau, pp.252-259.

Demographic Factors

Demographic changes in the Republic of Moldova, such as population decline, demographic aging, intensive labor migration abroad and urbanization, have a significant impact on rural crime. They influence the social and economic structure of rural communities, creating favorable conditions for certain types of crime.

The impact of demographic change on rural crime is primarily driven by population decline and demographic aging. These trends are leading to a reduction in the working population in rural areas, leaving behind a largely elderly population that is often more vulnerable and less able to defend itself against crime such as theft, fraud or abuse. In the same context, the significant migration of the adult population, especially men, in search of economic opportunities abroad, leaves behind communities with fragmented family structures and an acute lack of supervision of minors. This can increase vulnerability to deviant behavior such as drug and alcohol use and increase the rate of juvenile delinquency.

Endogenous Criminogenic Factors

Gender, Age and Occupational Criteria

Investigating the structure of crime *according to the gender criterion* reveals “specific criminogenic peculiarities, thus providing the necessary perspective for the development of adapted prevention and intervention strategies”²⁵. In the Republic of Moldova, there is a male predominance among rustic criminals, statistical data indicating that men commit approximately 90% of all crimes. For example, in 2022, out of the total number of 5225 people who committed crimes in rural areas, 343 or 6.56% were women, and 4882 or 93.34% were men.

Depending on the *criterion of gender and that of employment in the field of employment*, the study of statistical data from the Republic of Moldova reveals the following statistical indices of male criminals from the rural environment who at the time were unemployed or without professional occupations: in 2018 – 52.53%; 2019 – 45.33%; 2020 – 38.99%; 2021 - 43.53%. In the case of unemployed women or without professional occupations, the following statistical picture has been revealed: in 2018 – 1.40%; in 2019 – 1.79%; in 2020 – 2.61%; in 2021 – 1.75%²⁶.

The study of the age of people who have committed crimes in the rural environment of the Republic of Moldova reveals the following statistical

²⁵ Igor Ciobanu, *Criminology (Volume I)*, Museum Printing House, Chişinău, 2003, p.78-80.

²⁶ *The statistical data provided by the General Department of Information and Operational Records of the Information Technology Service of the MIA*, Reply no. 8/6-1-F-295/23 of 23.08.2023.

data: up to the age of 15 – 3.3%; 15 and 18 years – 11.7%; 18 and 30 years – 78.3%; 30 and 55 years – 48.3%; more than 55 years old – 1.7%.

This statistical disproportion underscores the need for an in-depth analysis of the sociocultural, psychological, and biological factors that influence women's and men's differential predisposition to deviant behavior. The study of crime reveals different criminal patterns as well as different criminogenic factors in women than in men. From a criminological point of view, it is essential to identify the types of crimes that women/men commit more frequently, the circumstances and motivations that lead them to engage in such acts. This study involves examining traditional gender roles, power dynamics and social inequality as contributing factors to criminal behavior. It is important to emphasize that, as the socio-economic structure and gender roles in the rural environment transform, it is possible to witness a diversification and change in the dynamics of rural crime, both in terms of gender and the typology of crimes committed. Some Romanian authors "use the concept of social mobility, which means geographical movement of the human population (also called horizontal mobility), professional or social (also called vertical mobility)"²⁷.

Criminal Reasoning

In the study of rural crime, the issue of *motivation* plays a crucial role in understanding and addressing of criminal behavior. The concept of reason or motive is essential, defined as the factor that triggers, sustains and directs an action²⁸. In addition to reasons, incentives are also identified - external elements that can incite action by activating an internal need, such as the need for water in case of thirst. In rural environments, these motivational mechanisms are often influenced by specific socio-economic conditions, limited access to resources and geographic isolation. These aspects can generate stress, frustration and other emotions that become reasons for deviant behavior, including delinquency. For example, the lack of economic opportunities can become a strong incentive for illegal activities as a means of survival or improving of living conditions.

The *primary motives or reasons* of human behavior can be interpreted within a specific setting, influenced by the unique characteristics and challenges of life in rural communities. These fundamental motives, such as the tendency for self-preservation and the need for security, can be amplified by difficult economic conditions, limited access to resources and geographical isolation. The tendency to self-preservation, for example, may

²⁷ Gheorghe Nistoreanu, Costică Păun, *Criminology*, Didactică and Pedagogică R.A. Publishing House, Bucharest, 1995, p. 186-187.

²⁸ Alexandru Roșca, *The Reasons for Human Actions*, Universitatea Publishing House, Cluj, 1943, p. 85.

take the form of an acute need to secure basic resources in an environment where job opportunities are limited and incomes are often insufficient. Under such conditions, the pressure to secure basic needs may push individuals to illegal activities. The tendency for self-assertion and the desire for social recognition can also be exacerbated by the lack of opportunities for personal and professional development in the rural environment. This can lead to deviant behavior in an attempt to gain status and recognition through illegal means or by joining criminal groups.

As for the *derived reasons or motives*, they may have deep roots in the particularities and challenges of life in rural communities. Beyond primary needs and desires, unique rural conditions may influence the development of complex and persistent emotional states that may contribute to deviant or criminal behavior. For example, feelings of isolation and social distancing, common in rural areas due to low population density and limited access to services and resources, can intensify feelings of loneliness and the desire of membership. These emotions may drive some individuals to seek recognition and acceptance in illegal groups or activities, such as gangs or criminal networks, where they feel they can satisfy these needs for connection and recognition.

Resentments caused by personal or professional failures, amplified by economic limitations and opportunities in rural communities, can also become powerful motivators for criminal behavior. Individuals may develop feelings of envy or frustration towards those who appear to have more success or access to resources, leading to acts of vandalism, theft or even violence as means of expressing resentment or as desperate attempts to “assimilate” the perception of social inequity. In addition, unfulfilled desires and frustrated aspirations, especially among young people in rural areas, where educational and professional prospects may be limited, can fuel tendencies towards deviant behavior. These desires, when hindered by social and economic barriers, can generate feelings of alienation and despair, increasing susceptibility to negative influences and making risky decisions in an attempt to overcome perceived constraints.

Finally, among the psychic motives or reasons certain interests appear and develop. In the specific context of rural communities, the motivations and interests that lead to criminal behavior can be deeply influenced by the particularities and challenges of the rural environment. These communities often face limited access to resources, limited economic opportunities, and social isolation, factors that can uniquely shape individual interests and motivations²⁹.

²⁹ Ion Oancea, *Criminology Problems*, ALL Educational S.A. Publishing House, Bucharest, 1994, p. 142-143.

Conclusions

Rural crime is driven by specific criminogenic factors largely represented by the intrinsic challenges of rurality, including depopulation, infrastructural deficits and isolation, facilitating the emergence of conditions conducive to crime and perpetuating feelings of community insecurity. The development, conceptualization and implementation of rural crime prevention policies is indispensably conditional on knowing the particularities of criminogenic factors in rural areas and the way these factors interact to shape criminal behavior.

Prevailing social values and norms in rural communities, including the particularities of traditional restorative justice, can influence both the typology of crime and community reactions to crime. In the rural environment, psychological factors gain major importance, because both the natural and social influences are assimilated at the psychological level through the prism of the individual's mental states. These external factors influence the individual at a psychological level, giving rise to various needs that later motivate him to resort to criminal acts.

Gender inequality, in interaction with other socio-economic factors, constitutes a specific cultural factor that determines the increased level of family violence in the rural environment compared to the urban one. The difficulty of preventing domestic violence in the rural environment is largely due to the increased latency, determined by the most frequent cases of the victim's reluctance to notify the authorities.

Criminogenic factors such as economic disparities, restricted access to education and resources, along with geographic isolation and lack of adequate infrastructure, etc., intersect, generating a fertile ground for criminal manifestations specific to rural crime: smuggling crimes widespread in the border area; cultivation of drugs containing plants; environmental crimes manifested more frequently in the form of poaching and illegal cutting of forest vegetation; thefts, etc. The vulnerability of the natural environment in relation to crimes related to resources, underlines the need to adopt specific policies to prevent environmental crime interspersed with sustainable development policies in rural areas.

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CLIMATE CHANGE AND ITS EFFECT ON ABIOTIC COMPONENTS OF THE ECOSYSTEM

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Abstract: Climate change is one of the major global challenges of the 21st century, significantly affecting abiotic environmental factors that influence Earth's ecosystems. This paper explores the complex impacts of climate change on key abiotic components such as temperature, precipitation, and pH, and highlights how these changes are reshaping ecosystems worldwide. This paper presents a thorough review of current research and modeling efforts, emphasizing the critical need for proactive actions to mitigate climate change and protect the environment. It primarily focuses on temperature variability, addressing the impacts of rising global temperatures, changes in thermal regimes, and their effects on soil and water temperatures. Additionally, it examines the consequences for species' survival, migration patterns, and ecosystem productivity. The paper concludes by providing specific examples of ecosystems impacted by climate change, such as coral reefs and the Arctic tundra, to offer a clearer illustration of the discussed issues. Finally, the article explores potential solutions to the problem of ocean acidification and changes in pH.

Keywords: abiotic factors, climate change, temperature, precipitations, soil degradation, ecosystem.

Introduction

The Earth's biosphere is a delicate equilibrium of biotic and abiotic components, both of which are essential for the survival and functioning of

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ecosystems. Abiotic factors, which are the non-living elements that shape an environment, play a pivotal role in determining the conditions under which organisms can flourish. Such variables include, but are not limited to, temperature, precipitation, pH, sunlight, wind patterns, soil composition, and others. Collectively, these abiotic factors exert a profound influence on the distribution and abundance of species, the productivity of ecosystems, and the dynamics of biogeochemical cycles.

Climate change represents one of the most significant global challenges of the 21st century, affecting the full range of abiotic factors that sustain life on Earth¹. The primary driver of climate change is anthropogenic activity, particularly the burning of fossil fuels and deforestation. This has resulted in a marked increase in global temperatures, commonly referred to as global warming. Furthermore, there has been a notable shift in precipitation patterns, with some regions experiencing heightened droughts and others experiencing more frequent floods.

At the same time, the Earth's atmosphere is undergoing transformations due to increasing levels of carbon dioxide (CO₂) and other greenhouse gases. These not only drive warming but also contribute to phenomena like ocean acidification. The resulting extreme weather events, such as hurricanes, heatwaves, and wildfires, are becoming more frequent and severe. This is exacerbating the stress on abiotic factors and pushing ecosystems beyond their thresholds of resilience.

In this context, understanding how climate change influences abiotic environmental factors is crucial for predicting its broader ecological impacts. The following paper explores the ways in which shifts in temperature, precipitation, and other abiotic factors are altering ecosystems, affecting species interactions, and posing challenges for future environmental stability.²

Consequently, it is important to highlight the abiotic factors most affected by climate change:

1) Temperature – Climate change is driving a rise in average global temperatures, leading to more frequent and severe heatwaves.

2) Water – Shifts in precipitation patterns are causing more intense droughts in some areas and flooding in others, greatly affecting agriculture, freshwater ecosystems, and biodiversity.

3) Air – The accumulation of greenhouse gases, particularly carbon dioxide (CO₂), contributes to global warming and can also degrade air quality by increasing pollutants like ground-level ozone, which negatively

¹ Intergovernmental Panel on Climate Change (IPCC). *Climate Change 2021: The Physical Science Basis*. Cambridge University Press, 2021.

² Rosenzweig, C., et al. Attributing physical and biological impacts to anthropogenic climate change. *In: Nature*, p.353-357, 2008.

impact human health and plant life.

4) Soil – Climate change disrupts soil moisture levels, damaging soil health, which in turn affects agricultural productivity and the capacity of ecosystems to sustain diverse plant and animal species.

These abiotic factors are interconnected, and their changes due to climate change can have cascading effects on biotic components, ultimately impacting ecosystem health and resilience.

This paper will explore several key areas where climate change is having a significant impact, including its effects on species survival, ecosystem productivity, and the broader environmental changes such as shifts in precipitation and hydrological cycles, impacts on soil moisture, and alterations to freshwater systems. Additionally, we will examine how climate change is influencing oceanic salinity levels, ocean acidification and pH changes, and the effects on marine ecosystems, as well as the long-term impacts on marine ecosystem functioning. By examining these interconnected aspects, we intend to raise our population awareness to better understand the comprehensive nature of climate change's influence on our planet's ecological balance.

The Impact of Climate Change on Species Survival

As global temperatures rise, many species are compelled to adapt, migrate, or face extinction. Such shifts have significant implications for biodiversity and ecosystem structure. The capacity to tolerate elevated temperatures and the subsequent physiological stress that results from such exposure represent a significant challenge for many species. Those species unable to tolerate elevated temperatures are susceptible to thermal stress, which can impact their metabolic processes, reproductive capabilities, and immune functions. To illustrate, coral reefs are particularly susceptible to temperature increases. When exposed to warmer waters, corals expel their symbiotic algae, which can result in coral bleaching and, if prolonged, coral death. Similarly, species such as amphibians and fish that rely on specific temperature ranges for breeding may experience a reduction in reproductive success as temperatures deviate from their optimal range.

As a consequence of rising temperatures, a considerable number of species are undertaking migrations to cooler areas. Such adaptations may entail a shift in geographic range, either poleward or to higher altitudes where temperatures are more favorable. For example, alpine flora and fauna are shifting to higher altitudes, while marine species are migrating towards the poles. It should be noted that not all migrations are successful. Some species may encounter barriers to their movement, such as unsuitable habitats, human developments, or competition with other species, which limits their ability to adapt to new regions.

Eventually, the timing of biological events, such as flowering, breeding and migration, collectively known as phenology, is closely correlated with temperature. The phenomenon of climate change has resulted in alterations to the timing of these biological events, with a considerable number of species now experiencing earlier spring occurrences, such as the flowering of plants or the emergence of insects. However, these shifts can potentially lead to inconsistencies within the ecosystem. To illustrate, if plants begin to flower at an earlier stage due to the warming of the climate, yet their pollinators, such as bees or butterflies, do not adapt their migration or emergence patterns, this can result in a reduction in pollination success and, subsequently, harm to plant populations.³

Ecosystem productivity

Temperature increases can also have significant impacts on ecosystem productivity. Among them, we can mention:

1. The process of primary production, which is defined as the conversion of energy and nutrients from the environment into organic matter by autotrophic organisms. In terrestrial ecosystems, elevated temperatures can enhance the rate of photosynthesis, resulting in a transient surge in plant growth, particularly in regions where temperature constraints productivity, such as in northern latitudes. However, this increase in productivity is frequently accompanied by elevated rates of evapotranspiration, which can result in water stress and, subsequently, a reduction in productivity in regions with limited water resources. In tropical ecosystems, where temperatures are already near the optimal range for many plants, further warming can result in temperatures exceeding the threshold for plant tolerance, leading to a reduction in productivity.⁴

2. Aquatic Productivity: In aquatic ecosystems, alterations in temperature can have a disruptive impact on the food chain. An increase in surface water temperature can lead to a reduction in nutrient upwelling from deeper, colder waters, which in turn results in a decline in phytoplankton growth. This, in turn, represents a fundamental disruption to the marine food web. This reduction in primary production has a knock-on effect on the entire ecosystem, including fish populations that rely on phytoplankton and zooplankton as a food source.⁵

³ NASA. *Global Climate Change: Vital Signs of the Planet*. 2021. Available: <https://climate.nasa.gov/>

⁴Land Governance: *A Review and Analysis of Key International Frameworks*. United Nations Human Settlements Programme (UN-Habitat), 2017. Available: https://unhabitat.org/sites/default/files/downloadmanagerfiles/Land%20Governance%20_A%20Review%20and%20Analysis.pdf

⁵https://www.unccd.int/sites/default/files/2018-06/5.%20Land%2BTenure%2Band%2BRights__E_Kasimbazi.pdf

3. Furthermore, temperature variability exerts an influence on forests and agricultural systems. An increase in temperature can lead to an elevated risk of wildfires, particularly in regions characterized by prolonged periods of dry weather, such as the Mediterranean and western North America. In the context of agriculture, the occurrence of extreme temperatures can result in a reduction in crop yields, an adverse impact on soil health, and an increase in the prevalence of pests and diseases. This, in turn, can lead to a deterioration in food security.

The increasing variability in temperature driven by climate change is significantly altering the abiotic environment, with far-reaching consequences for ecosystems and species. From soil and water temperatures to shifts in species distributions and phenology, these changes challenge the resilience of ecosystems globally. In order to develop strategies to mitigate the negative effects of rising global temperatures on both natural and human systems, it is essential to gain an understanding of the complexities of these impacts.

Another problem is that climate change has significantly affected global precipitation patterns, which disrupt the natural balance of the hydrological cycle. These shifts manifest in various ways, including changes in rainfall distribution, the frequency of extreme weather events such as droughts and floods, and the availability of water resources across different ecosystems. As precipitation patterns change, the cascading effects on soil moisture, freshwater systems, and oceanic salinity levels become increasingly evident, threatening both natural ecosystems and human livelihoods.⁶

One of the most visible effects of climate change is the alteration in rainfall intensity, duration, and frequency. Some regions are experiencing an increase in heavy rainfall events, while others are witnessing prolonged dry periods, either facing droughts, floods, or altered water availability. This can also lead to desertification, particularly in vulnerable regions like the Sahel in Africa and parts of Australia and the American Southwest. In contrast, other regions are facing more intense and frequent flooding due to increases in heavy rainfall. Floods cause significant erosion, leading to soil degradation and loss of fertile land. Additionally, floods contaminate freshwater resources with pollutants and sediments, reducing water quality and harming aquatic ecosystems. The uneven distribution of rainfall is causing regional disparities in water availability. Areas dependent on seasonal rainfall, such as the monsoon regions of Asia and West Africa, are experiencing shifts in the timing and intensity of rains, leading to challenges in water management. Glacier-fed rivers are also at risk, as rising temperatures reduce glacial ice, threatening long-term water supplies for millions of people and ecosystems.

⁶ Orr, J. C., et al. Anthropogenic Ocean acidification over the twenty-first century and its impact on marine calcifying organisms. *In: Nature*, 437(7059), p.681-686, 2005.

Impacts on soil moisture

Changes in precipitation directly affect soil moisture, a critical factor for plant growth and ecosystem health.⁷ The process of drying soils can be defined as follows: In regions where precipitation levels are reduced or where evaporation is increased due to higher temperatures, soil moisture levels decline. A reduction in soil moisture can result in vegetation stress, as plants are unable to access the water necessary for growth and photosynthesis. Furthermore, prolonged soil drying can result in land degradation, reduced crop yields, and biodiversity loss in both natural and agricultural ecosystems.

Conversely, regions experiencing an increase in the frequency and intensity of rainfall events may face problems associated with waterlogging. The presence of excess water in the soil, particularly in low-lying areas, can prevent the air from reaching plant roots, which can in turn lead to a reduction in soil fertility. Furthermore, heavy rainfall can result in soil erosion, whereby nutrient-rich topsoil is stripped away, leading to further degradation of the land. This is particularly prevalent in areas that lack vegetation cover or proper soil management.

Also, alterations in soil moisture can create feedback loops that exacerbate climate change. For instance, in regions where soils dry out, plants become stressed and less productive, reducing their capacity to sequester carbon through photosynthesis. This decline in carbon storage contributes to further increases in atmospheric CO₂, accelerating global warming.⁸

In addition to influencing terrestrial and freshwater systems, shifts in precipitation and hydrological cycles are affecting the salinity of the world's oceans, which plays a pivotal role in regulating ocean currents and marine ecosystems.

The impact of freshwater input and salinity changes on marine ecosystems is a significant area of research. In regions where precipitation levels increase, the greater input of freshwater from rivers dilutes ocean salinity, particularly in coastal areas and estuaries. To illustrate, the Arctic Ocean is undergoing a reduction in salinity as a consequence of the melting of polar ice and an increase in freshwater input from rivers. This could have an impact on ocean circulation patterns, including the Atlantic Meridional Overturning Circulation (AMOC), which plays a significant role in regulating the global climate.

Conversely, in regions where precipitation is declining or evapotranspiration is increasing, the salinization of coastal waters is

⁷ Lal, R. Soil carbon sequestration impacts on global climate change and food security. *In: Science*, 304(5677), p.1623-1627, 2004.

⁸ Smith, P., et al. How to measure, report and verify carbon sequestration. *In: Global Change Biology*, 22(3), p.1445-1465, 2016.

becoming a significant issue. This phenomenon is particularly evident in semi-enclosed seas, such as the Mediterranean, where reduced freshwater input and higher evaporation rates lead to increased salinity, which in turn affects marine species that are sensitive to salinity changes. Alterations in ocean salinity can impact marine species, particularly those that rely on stable salinity levels for reproduction and survival, such as coral reefs and certain species of fish and invertebrates. Salinity changes can also influence the density and stratification of ocean waters, which can, in turn, affect nutrient cycling and the distribution of marine life.

Shifts in precipitation and the hydrological cycle, caused by climate change, have enormous impacts on ecosystems and water resources worldwide. Understanding these impacts is crucial for developing adaptation strategies to manage water resources sustainably, protect ecosystems, and ensure that both natural and human systems can withstand the growing challenges posed by a changing climate.⁹

Ocean Acidification and pH Changes

The world's oceans play a pivotal role in moderating the Earth's climate system, with an estimated 30% of anthropogenic carbon dioxide (CO₂) emissions being absorbed annually.¹⁰ This absorption is particularly evident in marine ecosystems, where elevated CO₂ levels have been observed to affect marine life and ecosystems. While this absorption process helps to reduce the concentration of CO₂ in the atmosphere and mitigate the pace of global warming, it comes at a significant cost to the marine environment. As more CO₂ is absorbed by the oceans, it reacts with water to form carbonic acid, which lowers the pH of seawater, a process known as ocean acidification.

Ocean acidification represents one of the most significant consequences of climate change, with far-reaching effects on marine ecosystems, particularly those involving calcifying organisms such as corals, shellfish, and certain plankton species. As ocean pH declines, the ability of these organisms to form and maintain calcium carbonate structures is compromised, threatening the balance and health of marine ecosystems.

As such, the dissolution of CO₂ in seawater results in the formation of carbonic acid, which subsequently dissociates into hydrogen ions (H⁺) and bicarbonate ions (HCO₃⁻). This increase in hydrogen ions results in a reduction in pH, thereby rendering the water more acidic. The pH of the ocean has already decreased from its pre-industrial level of approximately 8.2 to 8.1, representing a 30% increase in acidity. Projections indicate that

⁹ Pörtner, H.O., et al. Ocean systems. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability*. Cambridge University Press, 2014.

¹⁰ Steffen, W., et al. The trajectory of the Anthropocene: The great acceleration. In: *The Anthropocene Review*, 2(1), 81-98, 2015.

by the end of the century, the ocean pH could decline by an additional 0.3 to 0.4 units, resulting in conditions that many marine organisms are not adapted to.

At the same time, the increase in hydrogen ions reduces the availability of carbonate ions (CO_3^{2-}), which are essential for the formation of calcium carbonate (CaCO_3) structures, such as the skeletons and shells of marine organisms. A notable fact, is that ocean acidification is not uniform across the globe. Polar regions are acidifying more rapidly due to colder waters' ability to absorb more CO_2 , while coastal areas experience more fluctuations due to factors like runoff and upwelling.¹¹

Effects on Marine Ecosystems

A very important aspect that should be tackled, is the fact, that the declining pH of the oceans has profound effects on marine ecosystems, especially those that depend on calcifying organisms and corals. Coral reefs are some of the most biodiverse ecosystems on the planet, providing habitat for nearly 25% of all marine species. However, they are highly vulnerable to both ocean acidification and global warming. Ocean acidification hampers the ability of corals to produce calcium carbonate, which they rely on to build their skeletons. As a result, corals become weaker and more susceptible to damage from other stressors like rising sea temperatures and pollution. Rising sea temperatures cause coral bleaching, where corals expel the symbiotic algae (zooxanthellae) that provide them with energy. While bleaching itself is not directly caused by acidification, weakened corals are less resilient to temperature stress. Acidification also makes it harder for bleached corals to recover by reducing their ability to regrow their skeletons.

As coral reefs degrade, the entire ecosystem built around them is jeopardized. Fish species, invertebrates, and other marine organisms that rely on coral reefs for shelter and food are at risk of decline or extinction.

It should be noted, that calcifying organisms, such as shellfish, mollusks, sea urchins, and certain types of plankton, rely on carbonate ions to build their shells and skeletons. Ocean acidification reduces the availability of these ions, making it difficult for these organisms to maintain their structures. Eventually, this has cascading effects throughout the marine food web.

In addition to its effects on calcification, ocean acidification can alter the behavior and physiology of marine organisms. Studies have shown that increased acidity affects the sensory abilities and behavior of fish, making it harder for them to detect predators, find food, and navigate their environments. For example, some species of fish become bolder and

¹¹ Trenberth, K.E., et al. Extreme weather and climate events and their impacts on health. *In: Nature Climate Change*, 5(7), 673-686, 2015.

aggressive under acidified conditions, increasing their risk of predation.

Consecutively, the reproductive systems of some marine species may also be compromised by ocean acidification. Fish larvae and invertebrates in early life stages are particularly vulnerable, with many species showing reduced survival rates and slower growth in more acidic conditions.

In such a way, ocean acidification can alter the metabolism of marine organisms, affecting their ability to maintain energy balance. This can lead to reduced growth rates, increased susceptibility to disease, and diminished resilience to other environmental stressors.

Long-Term Impacts on Marine Ecosystem Functioning

The ongoing acidification of the oceans represents a significant risk to the overall functioning of marine ecosystems. The decline of foundation species, such as corals and shellfish, results in the loss of essential ecosystem services, including habitat structure, coastal protection, and biodiversity support. The loss of these services can have a cascading effect on both marine biodiversity and human communities that depend on the oceans for food, tourism, and coastal protection.

The economic impacts of this phenomenon are manifold. The fisheries and aquaculture industries are facing direct threats as a result of the decline in shellfish populations and other valuable marine species. Such developments have the potential to have significant economic repercussions for coastal communities around the globe, particularly those that rely heavily on marine resources for their livelihoods.

The maintenance of healthy marine ecosystems, particularly coral reefs and seagrasses, is of significant importance in terms of carbon sequestration and the regulation of the global climate. The deterioration of these ecosystems may diminish the oceans' capacity to function as a carbon sink, thereby accelerating climate change.¹²

To enhance our article on climate change and its impact on abiotic environmental factors, we thought of incorporating some case studies to significantly improve engagement and comprehension.

1. *Coral Reefs-High Ocean* temperatures between 2014 and 2017 affected 70 per cent of the world's coral reefs. In some parts of the Great Barrier Reef, 83 per cent or more of the coral died. Globally, an estimated 4,633 square miles of coral died. This situation predicts a catastrophe. Before the 1980s, mass coral die-offs were unheard of. But global warming, caused mainly by the burning of fossil fuels, has turned up the heat in the oceans and made them just a little too hot to handle. A few degrees Fahrenheit may not seem like much, but think of it as a fever - like humans,

¹² Le Quéré, C., et al. Global carbon budget 2018. *In: Earth System Science Data*, 10(4), 2141-2194, 2018.

reefs don't cope very well with temperatures outside the normal range. A fever that lasts a day won't kill you, but one that gets too hot or lasts too long will. It's the same with coral bleaching. Coral reefs are highly sensitive to temperature changes, with increased sea temperatures leading to coral bleaching.¹³ This phenomenon occurs when corals expel the symbiotic algae (zooxanthellae) that provide them with nutrients and color.

2. Amazon Rainforest - Changes in precipitation patterns are affecting the Amazon rainforest, leading to increased drought frequency and intensity, which threaten biodiversity and carbon storage. Changes in precipitation patterns have been shown to have a significant impact on the Amazon rainforest, leading to increased drought frequency and intensity, which pose a serious threat to its biodiversity and carbon storage capabilities. As temperatures rise due to climate change, the region is experiencing longer dry seasons and more severe droughts, which disrupt the delicate balance of this complex ecosystem. Research indicates that approximately 20% of the annual precipitation in the Amazon is derived from tree transpiration, a process crucial for maintaining moisture levels in the atmosphere. However, deforestation and changes in land use are drastically reducing this transpiration, with the result that there is a potential 55% to 70% decrease in annual precipitation, which in turn exacerbates drought conditions further. Furthermore, the interaction between deforestation and climate variability creates a feedback loop that intensifies these effects. As trees are removed, the immediate moisture is recycled back into the atmosphere, and the overall regional climate becomes increasingly unstable. This instability can lead to critical transitions within the ecosystem, such as shifts from dense forest to savanna-like conditions, fundamentally altering habitat availability for countless species. The consequences of these alterations extend beyond local biodiversity, as they also jeopardize global climate stability by diminishing the Amazon's capacity to sequester carbon, thereby contributing to a cycle of climate change that affects ecosystems worldwide.¹⁴

In conclusion, the phenomenon of ocean acidification, which is caused by the increased absorption of CO₂ in the atmosphere, represents a significant threat to marine ecosystems and biodiversity. Marine organisms that rely on calcium carbonate are struggling to survive in more acidic conditions, which is leading to declines in ecosystem resilience and

¹³ Hughes, T.P., Kerry, J. T., Álvarez-Noriega, M., Álvarez-Romero, J.G., Anderson, K. D., Baird, A. H., ... & Wilson, S. K. Spatial and temporal patterns of mass bleaching of corals in the Anthropocene. *In: Science*, 359(6371), 80-83, 2018. Available: <https://doi.org/10.1126/science.aan8048>

¹⁴https://wwf.panda.org/discover/knowledge_hub/where_we_work/amazon/amazon_threats/climate_change_amazon/

functioning. In order to mitigate these impacts, urgent efforts to reduce carbon emissions and develop conservation strategies for vulnerable marine habitats are essential.¹⁵ By implementing adaptive and mitigation strategies, we can work towards minimizing the adverse effects of climate change and building a more resilient and sustainable future for both people and the environment.¹⁶

Conclusions

The facts presented in this paper highlight the significant impacts of climate change on abiotic environmental factors, which are critical to the functioning of Earth's ecosystems. As global temperatures increase and precipitation patterns change, the delicate balance of key abiotic elements, such as temperature, water availability, air composition, and soil conditions, is being increasingly disrupted. These alterations not only pose a threat to biodiversity but also weaken the resilience of ecosystems that are vital for human survival.

The examination of climate change's impact on abiotic factors reveals a complex, interconnected system where even small changes in one variable can lead to significant consequences across ecosystems. Rising global temperatures have caused shifts in thermal regimes, affecting soil and water temperatures. These changes have profound implications for species' survival, migration patterns, and overall ecosystem productivity. Warming climates are altering the distribution of life, forcing species to move, and, in many cases, pushing ecosystems to the edge of collapse. **Shifts in precipitation and hydrological cycles** – manifesting as droughts, floods, and altered rainfall patterns – have a direct impact on soil moisture, water availability, and freshwater ecosystems. These changes not only threaten agricultural productivity and food security but also disrupt the delicate balance of oceanic salinity levels. Extreme weather events exacerbate these shifts, further stressing natural systems.

Ocean acidification, caused by the increasing absorption of CO₂ by oceans, is rapidly decreasing pH levels, which threatens marine ecosystems, particularly coral reefs and calcifying organisms such as shellfish. The widespread consequences of acidification can already be observed in coral bleaching and the collapse of vital marine habitats.

Overall, the collective impact of climate change on abiotic factors such as temperature, precipitation, and pH are transforming ecosystems globally. These changes have cascading effects on biodiversity, ecosystem

¹⁵ Schuur, E.A.G., et al. Climate change and the permafrost carbon feedback. *In: Nature*, 520(7546), 171-179, 2015.

¹⁶ Rockström, J., et al. A safe operating space for humanity. *In: Nature*, 461(7263), 472-475, 2009.

services, and human societies. As we move forward, it is crucial to prioritize research that deepens our understanding of how climate change will continue to reshape abiotic factors globally. Long-term monitoring and modeling efforts will be essential to predict future trends and inform effective policy decisions. Furthermore, engaging local communities in conservation efforts and sustainable practices can foster resilience at both ecological and societal levels.

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LEGISLATIVE ASPECTS REGARDING THE PROTECTION OF MINORS' RIGHTS

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Abstract:

Objectives: *The paper aims to analyze the new legislative provisions regarding the protection of minors' rights. Our approach has an interdisciplinary nature, requiring knowledge from the fields of legal sciences, legal psychology and behavioral sciences. The problems presented attempt to obtain a balanced vision, according to the new provisions of national legislation, with the role of creating an adequate environment for the development of the minor in the conditions of a separation of the natural or adoptive parents.*

Research methods: *The topic was treated through the method of Comparative Law both in terms of legislation and jurisprudence from the Anglo-Saxon legal system, a comparative theoretical, historical, sociological, philosophical approach, not of course related to the possibility of understanding the child and the possibility of legislative education of the parents.*

Results and implications of the study: *According to the amendments brought by Law no. 123/2024 in the field of legislation on the protection of minors' rights, parental alienation appears as an important criterion in assessing the best interests of the minor and combating its occurrence is an obligation of the extended family, but especially of the parent with whom the minor lives. On the other hand, the existence of suspicion of parental alienation requires the intervention of specialized personnel within public services, of the departments within city halls to protect the minor by offering counseling activities to minors and parents and by conducting specialized expertise.*

Keywords: *legal norm, family, alienation, legislation, minors' rights*

Introduction

In the sphere of family relations, the dissolution of marriage or the separation of a couple has considerable effects on the situation of minor children, starting from the acceptable and foreseeable ones, such as the change of the child's domicile, the temporary separation of the child from a parent and going to cases in which the minor becomes a real instrument

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through which one of the parents seeks to carry out acts of manipulation, blackmail, and settling scores against the other parent.

Most of the time, the imminent consequence of such conduct is represented by the creation of a state of estrangement, distance and alienation between the parent and the child, with the consequence of significantly affecting or even compromising the relationship between the two.

Since at a social level, such situations, which obviously contradict the best interests of the minor, are not at all rare, the legislator sought to create a legal framework that would provide the legal means to discourage, combat and sanction acts of parental alienation.

With reference to the exercise of parental authority exclusively, we note that the provisions of the Romanian Civil Code offer a lacunary regulation, the only cases when this is possible being if the other parent dies, is declared deceased by court decision, is placed under a restriction order, is removed from the exercise of parental rights.

In Romania, specifically, the situation was remedied by Law no. 123/2024, which amends Law no. 272/2004 on the protection of the rights of the child, the notion of parental alienation was defined as that "form of psychological violence by which one of the parents", the extended family or the substitute family, "intentionally, intentionally or assumed and appropriated, generates, accepts or uses a situation in which the child ends up manifesting unjustified or disproportionate restraint or hostility towards either parent."

According to the amendments brought by Law no. 123/2024 on the legislation on the protection of minors' rights, parental alienation appears as an important criterion in assessing the best interests of the minor and combating its occurrence is an obligation of the extended family, but especially of the parent with whom the minor lives.

In the Republic of Moldova, at the beginning of 2025, an announcement was made about the opening of public consultations on a legislative proposal to amend some draft laws to improve the legal protection of minors' rights.

The Secretary of the Committee on Human Rights and Internal Affairs announced that public consultations are being organized and held on a legislative proposal to amend certain legislation to improve the legal protection and rights of children.

During the consultations, it was also revealed that the parliamentary platform will address this type of mistreatment, which can be characterized as a form of moral abuse of the minor.

At the same time, it was planned to discuss the need to regulate parental alienation as a distinct phenomenon.

Children look for models in their parents, and they in turn want to raise little geniuses. For each parent, their child is a "golden nugget". He sees him

as beautiful, good, smart, because he has watched him grow up, he knows details about the periods of his early childhood.

Always the environment, the family climate, through its concrete elements, components, influences in relation to his nature, the personality of the child.

J.S. Bruner believes that, admitting that all people are essentially human, this humanity is given by the type of childhood they lived.¹

Family – the first model of development

The family must be convinced that a good education and not only depends on its lifestyle, and measuring the educational effects according to the time given by the parents to the child is a wrong practice.

It is not the number of gifts, not the hours of physical presence with the child in the family that are important (although these also have their role), but the content of the activity and the actions carried out in the family.

Parents must understand well the relationship between the deed and its educational measure and that, if in nature all meteorological factors such as heat, cold, rain, snow, wind are necessary and useful, each having its role, so in the educational climate all its hypostases are necessary - severity, gentleness, love, sobriety, generosity, strictness, all however in measure and on time, any excess being detrimental in the sphere of human formation.

The role of the family is to create the necessary conditions and an appropriate climate for play, individual study and rest for the child.

The tone in which discussions are held, their content, everyday gestures, even the simplest ones, such as greetings, forms of address between family members, adults' observance of a daily schedule - all of these together make up the family atmosphere in which the child is educated.

Education, that is the lesson from the family, is indelible and is imprinted in our souls for the rest of our space and existence.

Our hectic world is becoming increasingly complex, and mental overload is becoming a general problem. Expectations, demands are increasing. The plans and expectations of adults are formed in childhood and we grow up trying to meet these expectations.

Parents are the first models of life and behavior for children. Children observe the behavior of their parents from an early age and become role models. The model has a guiding function in education; Therefore, it must be used in all educational means at an early age, because with advancing age, the child seeks his own life and professional models, parents take care that these are the desired ones. Just as »the basin is filled with water, the

¹ J.S. Bruner, *"The role of dialogue in language acquisition"*. In A. Sinclair, R.J. Jarvella, and W. J. M. Levelt (Eds.), *The Child's Conception of Language*, New York: Springer-Verlag, 1978, pp. 241–256

fire is lit with fire and the soul of man is shaped by the soul of another man
»(Rabindranath Tagore)².

Multidisciplinary vision on the family balance of the minor

Parental alienation is a profound subject that touches not only legal and psychological dimensions, but also philosophical ones.

From a philosophical perspective, we can discuss:

1. The identity of the minor – What does it mean for him to be emotionally separated from one of the parents. Philosophers such as John Locke or Rousseau emphasized the importance of early relationships in the formation of the self. Parental alienation can be seen as a fracture in the process of building identity.

2. The ethics of manipulation – Is it moral for a parent to influence the child's perception of the other parent, even in the name of protection? Here we enter into Kantian dilemmas about autonomy and respect for the person as an end in itself.

3. The freedom of the child – If a child ends up rejecting a parent, the question arises whether this is a free choice or the result of subtle coercion. The philosophy of freedom, from Mill to Sartre, would propose that we analyze how authentic the will expressed by the child is in such contexts.

4. Relational justice – Parental alienation raises questions about justice within family relationships. Who has the right to the child's affection and how do we balance the child's needs with the parents' rights?

In Romania, the phenomenon is recognized and regulated by Law no. 272/2004, supplemented by Law no. 123/2024, which define parental alienation as a form of emotional abuse and provide for protective measures for the child. The concept is increasingly present in legal and psychological debates, but also in philosophical ones. Some authors propose replacing the term "alienation" with "parental alienation", precisely to emphasize the relational and not just psychological dimension of the phenomenon.

According to philosophy, the alienation of the minor – especially in the family context – raises profound questions about freedom, identity and moral responsibility.

In this sense we can reflect on:

1. Child autonomy – Philosophers such as Immanuel Kant or John Stuart Mill would ask: is the child's will truly free when he rejects a parent or is it the result of an external influence that distorts his ability to choose?

2. Self-formation – Alienation can be seen as a rupture in the process of identity construction. In the existentialist tradition (Sartre, Heidegger),

² Rabindranath Tagore, *Gitanjali*, Publisher Printed at The Chiswick Press for The India Society, London 1912, p. 112-114

authentic relationships are essential to becoming “who you are”. If a child is forced to deny part of his roots, the question arises, what impact does this denial have on his or her becoming?

3. Ethics of relationships – Relational philosophy (Martin Buber, Nel Noddings) emphasizes the authentic “encounter” between people. Alienation breaks this encounter, transforming the relationship into an instrument of conflict, not of mutual growth.

4. Justice and balance – From the perspective of justice theory (Rawls, Nussbaum), the child has the right to equitable development, which includes access to both parents. Alienation violates this principle, affecting equal opportunities for a good life.

Viewed through the lens of political philosophy, the alienation of the minor acquires profound valences related to power, authority and fundamental rights.

It is essential to analyze some aspects, as follows:

1. The State and child protection – Liberal political philosophy (Locke, Mill) argues that the state has a duty to intervene only to protect individual rights. In the case of alienation, the question arises: when state intervention in family relations becomes justified, is alienation a form of abuse that legitimizes the limitation of parental authority?

2. The rights of the child as a citizen – In the contractualist tradition (Rawls), the child is a future citizen who must benefit from equal opportunities. Parental alienation can be seen as a violation of the principle of equity, as it affects the child’s emotional and social development, limiting their access to a balanced relationship with both parents.

3. Symbolic power in the family – Drawing inspiration from the thinking of Michel Foucault, we can perceive alienation as a form of exercise of symbolic power: one parent controls the child’s discourse, memory and perception of the other. Thus, the family becomes a microcosm of power relations, in which the child is caught between imposed loyalties.

4. Alienation as a form of structural injustice – Martha Nussbaum and Amartya Sen, through capabilities theory, would argue that parental alienation limits the fundamental capabilities of the child: to love, to build relationships, to trust. It is, therefore, a form of injustice that requires institutional reparation.

We can continue with a parallel between parental alienation and the concepts of hegemony (Gramsci) or biopolitics (Agamben).

Gramsci defined hegemony as domination by consensus, not just by force. In the context of the alienation of the minor, the alienating parent can

exercise a form of symbolic hegemony over the child: he controls the discourse about the other parent, imposes a version of reality that becomes the child's "truth"³.

Thus, alienation becomes an act of domestic hegemony: the child internalizes an imposed vision, without realizing that it is the result of a power struggle within the family.

Foucault spoke of biopower: the way in which institutions control the lives, bodies, and behavior of individuals. In the case of alienation, the alienating parent becomes an "institution" that regulates the child's emotions and relationships⁴.

Agamben takes the idea further and introduces the concept of "bare life" – an existence reduced to survival, devoid of real rights. The alienated minor can be seen as a "bare life" in a symbolic sense: he is physically present, but is denied the right to an authentic relationship with both parents.

Parental alienation, analyzed through these concepts, is not just a family drama, but a form of governance of the child's soul. It is a struggle for emotional hegemony and a form of domestic biopolitics, in which the child becomes the battlefield of symbolic and affective forces.

We therefore continue with an even deeper foray into political philosophy. We will look at the alienation of the minor through two provocative concepts: the state of exception (Giorgio Agamben) and posthumanism⁵.

Giorgio Agamben has shown that in times of crisis, states can temporarily suspend laws in the name of public safety—a gray area between legality and illegality. In parental alienation, the family becomes a private "state of exception," that is, when one parent suspends the natural rules of attachment, replacing them with a symbolic regime of emergency: "You have to be against the other parent because he/she hurts you."

Thus, the child lives in a liminal zone, where ordinary affective norms no longer apply. It is a form of "normalization of the exception"—a constant emotional drama transformed into the new normal.

Posthumanism, in the view of authors such as Rosi Braidotti, questions the classical boundaries of the individual and human relationships. In a posthuman world, identity is not fixed but fluid, composed of multiple networks of influence⁶.

³ T. Bates, *Gramsci and the Theorie of Hegemony*, Journal of the History of Ideas, Vol. 36, No. 2 (Apr.-Jun.), 1975, pp. 351-366

⁴ M. Foucault, *The History of Madness in the Classical Age*, Humanitas, 2nd ed., p. 36-40

⁵ <https://www.quodlibet.it/giorgio-agamben-la-medicina-come-religione> accessed on June, 06 2025

⁶ R. Braidotti, *The Posthuman*, Polity Press, 2013, p.111-113

Parental alienation, in this view, becomes a form of “emotional editing”: the child is transformed into a reconfigured relational subject, disconnected from an essential part of his or her affective network—the rejected parent. Thus, the alienated child is no longer just a victim, but also a hybrid construct born of manipulation, tension, and contradictory narrative spaces.

Parental alienation, analyzed through these lenses, is more than a relational rupture: it is a form of affective, symbolic, and existential governance, a reality in which power is exercised not through physical force, but through the control of narrative, memory and emotion.

However, there are numerous works of art that, while not explicitly using the term “parental alienation,” explore profound themes such as alienation, narrative control, symbolic power, and family trauma—all rooted in the philosophical concepts discussed.

For example, relevant to the concept would be:

-in the field of literature:

- Shakespeare's "King Lear" – Illustrates the manipulation of parent-child relationships, in which love is conditioned and used as an instrument of power. Lear is alienated from his sincere daughter, Cordelia, in favor of those who flatter him.

- Franz Kafka's "Metamorphosis" – Although not about parental alienation in the strict sense, Gregor Samsa is rejected by his family after his transformation, reflecting the idea of "bare life" (Agamben) and symbolic exclusion⁷.

- “The House of Bernarda Alba” by Federico García Lorca – A drama about absolute maternal control and the repression of individual desires, evoking domestic biopolitics and affective hegemony.

-in the field of visual art:

- “Kramer vs. Kramer” (1979) – An emblematic film about custody and parental conflict, in which the child becomes the emotional battleground. It subtly illustrates narrative hegemony and the struggle for affective legitimacy.

- “The Squid and the Whale” (2005) – An exploration of divorce and divided loyalties, in which minors internalize their parents’ discourses, losing their emotional autonomy.

- “Custody” (Jusqu’à la garde, 2017) – An intense French film, which shows how a child is caught between two conflicting parents, reflecting domestic biopolitics and the state of exception.

- Louise Bourgeois – Her works, especially sculptures and installations about motherhood, trauma and memory, can be interpreted as expressions of alienation and tension in family relationships.

⁷ G. Agamben, *Opus Dei*, Tact, 2016, p. 124-130

- Tracey Emin – Her confessional art explores vulnerability, abandonment and dysfunctional relationships, often from the perspective of the wounded child⁸.

Impacting Research and Trending Legislative Interpretation

There are many definitions of parental alienation and much speculation about it in proceedings between divorced parents in the courts. The law defines parental alienation as a form of psychological alienation from a parent. Intentionally, deliberately or willfully obtaining and using, creating, accepting or exploiting a situation that results in the child being exposed to abuse or providing data that creates hostility towards a parent. Most parents blame themselves for parental alienation. It is sad when you accept a professional opinion that it is not parental alienation and see the anger of the parent who asked for the opinion. The same is true for false accusations of sexual abuse by one parent against the other. Some parents have so much discord between them that the hatred and desire for revenge reach a level that clouds their thinking and impairs their parenting skills. In these situations, judges can obtain separation if it is proven that the parent is mentally incompetent. This parental separation, also known as legal parental separation, can be established by a court at the request of one of the parties and will also be notified at the request of the General Directorate of Social Assistance.

Returning to the topic under analysis, we can say that parental alienation exists when a child, whose parents are separated or divorced, shows rejection towards one of the parents, completely refusing to have contact with them, without thinking twice. The diagnosis of this communication disorder is more difficult to achieve, requires more time, more methods and sources of information, which can be: interviewing the parents, individual conversation with the child, observation of the relationship between the child and the rejected parent.

Minors need predictability and consistency in their lives. Divorce is a period of change in terms of disagreements between parents. First, parents can understand and apply the principles of child cooperation, which means that the child's needs must be a priority for the parents. They discuss the child's problems, agree on and enforce the same rules of conduct and

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Cogita – Multidisciplinary Research Journal](https://www.google.com/search?q=tracey+emin&sca_esv=7f596aed715dcda1&sxsrf=AE3TifNw83gS2_enxcx-kfeZgaZHiQ1Rgw%3A1750196395145&source=hp&ei=q-BRaIPDBs24i-gPofW-oAM&iflsig=AOw8s4IAAAAAaFHuu8E_RQk_5I9MNUSmoeD1y6VWbD6s&gs_ssp=eJzj4tTP1TcwNC2uKDdg9OIuKUPMTq1USM3NzAMAWNYHrg&oq=Tracy+Emin&gs_lp=Eg dnd3Mtd2l6GgIYAiIKVHJhY3kgRW1pbioCCAAyBxAuGIAEGAoyBxAAGIAEGAoyChAA GIAEGAoyYwEyChAAGIAEGAoyYwEyChAAGIAEGAoy accessed on June, 20 2025</p></div><div data-bbox=)

behavior for the child, and adjust their parenting schedules to meet the child's needs.

Alternatively, parents can discuss their worries, concerns, and problems separately or together with the child. Children of many divorced people often have fantasies about family reunification, feelings of guilt, or responsibility for the divorce. Conflicting loyalties prevent a child from expressing what they believe.

The most recent research on the potential effects of parental separation on children was funded by the American Bar Association (2013)⁹ and found in the behavior of minors loneliness, depression, anxiety, substance and illicit drug abuse, failure to maintain sexual boundaries, unhealthy eating habits and socioeconomic disorders, direct effects of parental separation on which the authors of the research, Clawar and Rivlin (2013) stated: "No matter how safe a child is, he or she cannot fully neutralize its harmful effects". In conclusion, we show that it is necessary to know the support of the child by his or her parents or guardian, who goes through the process of family reorganization after divorce.

This American research exemplifies that the involvement of the non-custodial parent in the minor's life, after the separation of the parents, but especially the material support (alimony and others), depends directly on the premarital relationship between the two¹⁰.

The verbal connection between former spouses who remained only parents after the divorce is better evidence of the involvement of the non-custodial parent than the relationship situation existing with the minor before the legal separation.¹¹

From overseas research sources, it emerged that the parent who has very limited contact with the minor after legal separation communicates on various situations: the relationship with the other parent and his/her objections, the father's reasons such as obligations at work or those related to his/her new wife, or those who are too interested in something else, and even the significantly large distance at which he/she lives.¹²

An extremely important and relevant research is that of Dr. Lorandos who, analyzing court decisions in the US and Canada, wrote about dozens

⁹ Michelle Kelly, Klasterman K., „The Case for examining and treating the combined effects of parental drug use and interparental violence on children in their homes”, *Aggression and violent Behavior*, Vol.15, nr.1, 2017

¹⁰ Constance Ahrons, Miller, Richard, *The effect of the Post divorce Relationship on Paternal Involvement: A longitudinal Analysis*. *American Journal of Orthopsychiatry*, 63(3), 1993, p. 441-450

¹¹ Michael Kock, Lowery C., *Visitation and the Noncustodial Father*. *Journal of Divorce*, 8(2), 1984, p.47-64

¹² James Dudley, *Increasing Our Understanding of Divorced Fathers Who Have Infrequent Contact with Their Children*. *Family Relations*. 1991, p. 40, 279-28

of cases over a twenty-five year period in which North American courts not only recognized parental alienation, but intervened decisively to provide appropriate mental health and legal interventions.¹³

After updating his research and findings, Dr. Lorandos published his 2020 chapter, “Parental Alienation in U.S. Courts, 1985 to 2018,” in the book *Parental Alienation—Science and Law*, in which he found thousands of cases across the United States in which the term “parental alienation” or “alienation” or some variation thereof was discussed. Narrowing his search to focus on cases in which an independent expert evaluator testified on the subject of parental alienation (whether or not the expert found parental alienation) or in which the court found, on any basis, that parental alienation existed (whether or not there was expert testimony), Dr. Lorandos and his team identified 1,181 cases in which admissible, probative, and parent-relevant material was identified and discussed.¹⁴

For the practitioner who is skeptical about the American family court’s acceptance of the phenomenon of parental alienation, the full list of 1,181 cases, containing the recognition of parental alienation by both trial and appellate courts, is found in the appendix of the book, *Parental Alienation—Science and Law*.

In an attempt to simplify matters, to avoid esoteric terminology, and perhaps to inject some common sense into the practical issues at hand, family court judges have recognized that parental alienation is the reverse of a concept long used by courts to decide contested custody issues; namely, the opposition between the child and the parent and the promotion of another relationship. In analyzing this basic concept of American custody law, the courts have generally focused on “interference” by one parent in the other parent’s relationship with the minors in a manner inconsistent with their best interests. In parental alienation cases, a parent’s behavior is transformed, usually through expert testimony, from “interference” to more intentional, blatant, and far more damaging “alienating” behavior.

While detractors continue to generate controversy over the phenomenon of parental alienation—particularly regarding Parental Alienation Syndrome (PAS)—American courts have been quick to define the condition and intervene where they find evidence of alienating behaviors. For example, in *Meadows v. Meadows*, the Michigan Court of Appeals defined parental alienation as “the process by which a parent attempts to undermine and destroy, to varying degrees, the relationship the child has

¹³ James Dudley, *Increasing Our Understanding of Divorced Fathers Who Have Infrequent Contact with Their Children*. Family Relations. 1991, p. 40, 279-28

¹⁴ D. Lorandos, *Parental alienation in U.S. courts, 1985 to 2018*. In Lorandos, D., & Bernet, W. (Eds.), *Parental Alienation: Science and Law*, Charles C. Thomas, 2020, 370–371

with the other parent.” It is important to note that the court in Meadows focused more on the “process”—the alienating behaviors by which the alienating parent attempts to “undermine and destroy” the relationship the child has with the targeted parent.

On the other hand, in *McClain v. McClain*, the Tennessee Court of Appeals, in defining parental alienation, focused on the mental state of the minor and defined the phenomenon as, for example, a description of the psychological state of a minor. Recognizing the essential characteristic of parental alienation on which mental health professionals agree, the court in *McClain* opined: “The essential feature of parental alienation is that a child . . . strongly allies himself with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification.”¹⁵

In a 2018 Decision, a New York court judge examined the concept of parental alienation and offered a legal definition of the phenomenon, concluding that “There is no doubt that parental alienation exists.” Struggling with the somewhat amorphous concept of “unreasonable conduct” by an estranged parent, the judge fought for a “broader definition of parental alienation to more explicitly describe the concept of what constitutes “unreasonable conduct.” Despite the variations in how family courts have defined parental alienation, all seem to agree that there are certain behaviors that, when exhibited by an alienating parent, result in the deterioration of the child’s relationship with the other parent. These behaviors do not have to be intentional; they could even be inadvertent, but they still end up causing significant damage to a parent-child relationship. Sometimes, family court judges have even seen a parent engage in alienating behavior right before their eyes, as one domestic relations judge in Cook County, Illinois, recounts.

Mental health professionals and experts have used different terms to describe these behaviors. For example, Dr. Stanley Clawar, a sociologist, and Brynne Rivlin, a social worker, have used the terms “programming,” “brainwashing,” and “indoctrination” when describing behaviors that cause parental alienation. The authors explained that these behaviors hinder the child’s relationship with the other parent because of jealousy, or draw the child closer to the communicating parent because of loneliness or a desire to gain an ally. These techniques can also be used to control or distort the information a child gives to an attorney, judge, mediator, relatives, friends, or others, as in cases of abuse.

Dr. Richard Warshak, a clinical professor of psychiatry, has coined the term “pathological alienation” to describe such alienating behaviors: a disorder in which children, usually in the context of sharing negative

¹⁵ *Idem*, p. 372-373

parental attitudes, experience an unreasonable aversion to a person or persons with whom they previously had normal relationships or with whom they would normally develop affectionate relationships. At times, judges have used terms other than “parental alienation” to criticize the behaviors underlying the condition, but have chosen to call it by another name. In *Martin v. Martin*, the Nebraska Supreme Court found that a custodial parent had used “passive-aggressive techniques” to undermine the noncustodial parent’s relationship with the minors. While the words “parental alienation” were not used by the Nebraska court, its detailed discussion of the custodial parent’s alienating behaviors and strategies leaves no doubt that the court addressed the phenomenon of parental alienation. Ultimately, the consensus among courts, experts, and mental health professionals seems to be that parental alienation involves “a child’s unwillingness or refusal to have a relationship with a parent without a valid reason.”

Regarding how parental alienation occurs, the research of Dr. Amy J. L. Baker and her colleagues describing the Five-Factor Model of Parental Alienation, which is discussed in detail in Chapter 4 of the book “Presenting a Parental Alienation Case in Court,” is widely used and accepted by mental health professionals. As one of the five factors that must be carefully assessed before making a diagnosis of parental alienation, Dr. Baker describes seventeen alienation strategies that are most prevalent in the alienation process. These include limiting contact, trusting the child, asking the child to spy on the targeted parent, referring to the targeted parent by first name, withholding important information from the targeted parent, and undermining the targeted parent’s authority. Not all strategies need to be present for alienation to occur. A case of parental alienation, even severe parental alienation, may be present with fewer than half of the seventeen strategies in play.

A thorough and robust forensic analysis of the allegations of abuse is necessary not only to rule out the possibility of alienation, but also to verify the presence of any alienating behaviors and the possibility of changing these behaviors. Domestic violence is about control and dominance. A perpetrator of domestic violence is likely to continue his “violent” pattern by controlling the minors as well. Research has shown that “abusive ex-partners are likely to try to alienate children from the other parent’s affection, but also to change their behavior along the way.”¹⁶

Courts are often interested in admitting expert evidence precisely because of the commonly used term parental alienation and, consequently, are asked to judge whether “Parental Alienation Syndrome” has sufficient

¹⁶ P. Jaffe, Johnston, J., Crooks, C., & Bala, N., Custody disputes involving allegations of domestic violence: Toward a differential approach to parenting plans. *Family Court Review*, 46(3), 2008, pp.500–523.

scientific validity and reliability, or general acceptability among the scientific community, to be admissible as expert evidence. A parent who is accused of engaging in alienating behaviors may attempt to raise the issue of expert opinion that “parental alienation syndrome” has no scientific basis and, therefore, the court must ignore any and all evidence of parental alienation. This is a problem, and family law practitioners who represent estranged parents in court must rise to the challenge of reframing the issue for the court. The focus of the researcher should not be on the “syndrome,” but rather on the alienating behaviors, but it is important to understand this so-called controversy.

Legal Considerations and Comments

Legally speaking, the recognition of PAS by courts is preliminary, without consensus, in any country. There have been cases of PAS labeling in Canada¹⁷, United States of America¹⁸ where the change between the custodial parent and the non-custodial parent has been decided, precisely influenced by this recognition¹⁹, as well as insignificant situations from different areas. There are cases based on documents²⁰, and previous situations, given that in the rest of the countries there is also a lack of creativity and global attitudes regarding the approval of the existence of PAS as well as the situations in which the courts can decide.

- USA: Parental alienation is a controversial topic. Although it is not officially recognized as a mental disorder in the 5th edition of the Manual of Mental Disorders regarding the diagnosis and statistics in the field, the courts take this phenomenon into account in child custody cases, especially when there is clear evidence that one parent favors the other.

- Brazil: One of the first countries to enact specific laws against parental separation. Law 12318/2010 defines and punishes this behavior and provides protection for children and affected parents.

- Norway and Denmark: In these Norwegian countries, the emphasis is on the health of the child. Although there is no specific law on parental separation, courts and social services closely analyze child custody cases to prevent any form of abuse or emotional exploitation.

¹⁷ Nicholas Bala, Fidler, Barbara-Jo, Goldberg, Dan and Houston, Claire, *Alienated Children and Parental Separation: Legal Responses in Canada's Family Courts*, Queen's Law Journal, 2007, p. 38: 79–138

¹⁸ Jane Forti, *Children's Rights and the Developing Law*. Cambridge University Press. 2003, pp. 263

¹⁹ J.A. Hoult, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law, and Policy*. Children's Legal Rights Journal 26 (1), 2006

²⁰ Jean Haines, Matthewson M., Turnbull M., *Understanding and Managing Parental Alienation*, Routledge London, 2019, p. 314-317

Regarding the admission of the existence of PAS in legal form – in our country, this is accepted including in Romanian jurisprudence, but also by the European Union.

We quote Decision no. 1 of the ECHR in the case R.R. against Romania from the end of 2009: “In the judgment of the summer of 2006²¹ a court in Romania admitted the action and issued an order against D.J. for leaving the country with the child without the consent of the other parent. In making this decision, it noted that the mother of the minor had left the country twice with him, without a legal visa as a tourist, staying abroad for a very long time. In return, the plaintiff agreed that the relationship with his child would be damaged, such as the separation of the parents”-²². I quoted from the Civil Judgment from the summer of 2008, pronounced in the file initiated by the plaintiff at the trial court: "The plaintiff stated that the defendant's father's permanent opposition to creating close relationships between her and the child causes humiliation of the "husband", and normal behavior, in fact, does not allow the minor in this situation to do so."²³

After almost 10 years of neglect, the president announced changes to a bill that will change the fate of tens of thousands of children and, in veiled terms, tens of thousands of parents. Parental alienation is finally recognized as a form of abuse, with Romania being the first country in the European Union and the second country in the world to legalize it as a form of abuse. This is Law no. 123/2024. The legislation has two main objectives:

- The central goal, namely, addressing the real levels of parental separation that are found in practice in very large numbers and that significantly affect the increasing number of children.
- The secondary and hidden goal, which is to combat situations in which unfounded accusations of parental alienation are made, is usually to cover up the person's aggressive behavior towards the child or the other parent.

In Romania, Law no. 123/2024 introduced the concept of "parental alienation" as a legal institution, precisely to combat both real cases of alienation and unfounded accusations that may hide abusive behavior.

According to the amendments to Law no. 123/2024 on the laws protecting the rights of minors, parental separation emerges as an important criterion in assessing the best interests of minors and in combating the degree to which remaining with parents becomes a responsibility, especially on behalf of families of young children. On the

²¹ Richard Gardne, *The Parental Alienation Syndrome (PAS): A Guide for Mental Health and Legal Professionals*, Creative Therapeutics, 1998, p. 345-348

²² European Institute of Romania Case R.R. v. Romania, Guide on Article 5 of the European Convention on Human Rights.

²³ Richard Gardner, *op. cit.*, p.325-326

other hand, the presence of suspicion of parental separation requires the involvement of specialized personnel from government social assistance services and many social and child protection agencies to provide assistance and childcare services to parents. and the performance of expert assessments by specialists.

In terms of its objectives, the Law achieves the following objectives: defines the legal entity called parental alienation, describes the patterns of behavior commonly encountered in the context of conflict between parents and the national term "parental alienation";

There are two important criteria for the existence of parental separation, namely:

- The child demonstrates dependence or hostility towards one of the parents;

- The behavior of the parents is considered alienated when it comes to the child.

The situation was described in detail in a previous legal provision, that is, still from a version repealed upon the entry into force of Law no. 123/2024, establishes the main hypotheses for the exercise of parental authority, substance abuse by one of the parents, rape of the child or one of the parents, convictions for drug trafficking, such as drug trafficking in connection with human trafficking in connection with the parents, substance abuse by one of the parents. child abuse, parental authority.”

Subsequently, through the amendments to Law no. 123/2024, the legislator changed parental alienation as a concept appropriate to the exclusive exercise of parental authority, including serious or repeated abuse by one of the parents to prevent each other from working together to make joint decisions regarding the child. As regards establishing the separation of the parents, the court is the only competent authority to decide this, but in case of doubts regarding the existence of the separation, one of the parents may be notified regarding the custody of the child, under the terms of the law, the other who wants to maintain contact with the child, has the duty to inform the competent authority if, after verifying that the child is in the home of the persons in custody and protection to whom the child has been entrusted, they refuse contact with the child, or the social welfare representatives refuse to carry out the separation (or there is another child at parental risk caused by abuse or neglect), so that the co-arrangement is not will take place, as well as requesting the issuance of a court decision, in order to ensure emergency assistance for the child, the family, or support with home service.

The decision issued in the aforementioned circumstances will determine the establishment of the measure of hospitalization in relation to minors and even the removal of the exercise of parental authority.

Confirmation of the separation of the parents can be requested from the court at the place of residence of the child, whether in a primary or emergency situation, in any case involving measures regarding the child's parents, the social assistance department being important.

In addition, the existence of a regime of separation of the parents creates the general impression that the exercise of parental authority by the alienating parent, such as establishing the child's sole residence, is not in the best interest of the child.

In this case, if the special circumstances of the case also require that the child remain with the divorced person, respectively with the mother, the court is obliged to take into account the following rules: establishing a program of personal contacts with the minor, which must include, necessarily provide, to take into account how personal relationships are maintained based on the best interests of the minor, developing neutrality towards the other person in the relationship with the child, with or without taking into account how the relationships between the interested persons are maintained in the immediate service of the child.

The same terms are used for greater clarity, namely to clarify the circumstances in which a parent creates or accepts a hostile situation of a child with the other. Provisions have also been added regarding joint custody of siblings and protection against parental alienation or other forms of violence. The law defines parental alienation as a form of psychological alienation from a parent. Intentionally, deliberately or willfully obtains and uses, creates, accepts or exploits a situation that results in the child being exposed to abuse or provides data that creates hostility towards a parent.

The phenomenon of parental alienation was officially recognized in Romania in 2016 and was defined as a severe form of mental and emotional abuse of a child, in which one parent is systematically abused by the other with the intention of alienating the child and alienating the other parent.²⁴

The first definition of parental alienation appeared in the works of Richard Gardner in 1985, as we have already emphasized, who showed that it represents a conscious effort on the part of one of the parents to interrupt and intentionally destroy the child's relationship with the other parent.²⁵

²⁴ Provision no. 2 of February 12, 2016 for the recognition of the phenomenon of parental alienation; Protocol on the recognition of parental alienation, concluded between the Institute of Forensic Psychology and the Romanian Association for Joint Custody, published in the Official Gazette with no. 144 of February 25, 2016.

²⁵ Richard Gardner, *The Parental Alienation Syndrome (PAS): A Guide for Mental Health and Legal Professionals*, Creative Therapeutics, 1998, p. 1

This phenomenon was already recognized by the legislations of other states and taken into account by foreign courts when pronouncing judgments in trials involving minors, so it was a transitional stage for Romanian legislation to legally regulate this reality. Moreover, even the ECHR referred to parental alienation in several decisions, including a famous 2006 judgment against Romania.²⁶

An undated report submitted by the Government and drawn up by psychologists who attended the applicant's sessions with his son showed that the latter had expressed certain doubts in all the initial sessions as to whether the relationship had improved in his father's presence or in the games. However, the child refused to spend a whole week with his father. In another report drawn up in the same manner and presented by the author, it can be seen that the child's calm behaviour was the result of the influence of the mother who, indirectly, felt happy to be with her father.

It is encouraging that, even before the official recognition of the phenomenon of parental alienation as a form of emotional abuse, the courts had taken it into account when pronouncing judgments. Thus, the Brăila Court, in a decision pronounced in January, no. 504/2015, held that all the legal conditions provided for in art. 104-105 of Law 272/2004 on the protection and promotion of the rights of the child were met and admitted the petitioner's request, ordering the temporary delegation of parental authority (all parental rights and obligations) regarding the minor MBT born on 12.03.2007, to the respondent SI for a period of one year starting with the date of the decision on 28.01.2015.²⁷

In this case too, the Court recognised the parental alienation syndrome, which is frequently recognised in the practice of the ECtHR through its numerous decisions in which the Court recognised violations of parental alienation, namely of the provisions of Art. 8 relating to private and family life, due to the failure of the State to protect parents with regard to the phenomenon of parental separation (e.g., the case of Mincheva v. Bulgaria, decision of 2 September 2010, Public Rule Zavrel v. Czech Republic of 18 April 2007)

Specifically, according to a definition given in the specialist literature, alienation means that, through the way of thinking, the way of acting and more or less orthodox methods, the child is subjected to emotional abuse, indoctrinated – what is called brainwashing – by one of the parents as an enemy or by suggesting his hostility or inferiority. The alienating parent

²⁶ European Court of Human Rights, 3rd Chamber, Case of Lafargue v. Romania, Application No. 37284/02

²⁷<https://www.avocatura.com/speta/94091/exercitarea-autoritatii-parintesti-judecatoria-braila.html#ixzz9BN5YSdpz> accessed on June 12, 2025

tries, through his behaviour, to attract the child to his side and turn him against the other parent.

Based on the child's mental immaturity and lack of experience, the court decided that the father deprived the child of the ability to distinguish right from wrong. In the circumstances listed, the child stated that his father taught him and believed what he told him, however, as a result of the psychological examination report presented, the minor, although unable to realize, the child shows strong attachment to both parents and especially to the mother.

For all these considerations, the court considered that the minor's major interest is for him to stay with his mother, to whom he is still emotionally attached (...). The court therefore considered that, by establishing the minor's residence with the father, there is a major risk that the process of parental alienation from the mother will become complete and irreversible²⁸.

It is commendable that the courts have managed to identify such forms of abuse and, moreover, to order the necessary measures to defend the best interests of the minor and to place him in shelter, at a time when parental alienation was not yet legislated as a form of maximum hostility.

In the jurisprudence of the courts, but also in the jurisprudence of the ECHR (see, in this regard, the decisions rendered in the Micnheva vs. Bulgaria Case of 2.09.2010, the Zavrel vs. Czech Republic Case of 18.04.2007, etc.), the violation of art. 8 of the Convention, holding: "Specifically, in a definition given in the specialized literature, alienation means that, through thoughts, actions and verbal or non-verbal actions and manners, a child is emotionally abused, indoctrinated ("brainwashed") in order to make him believe that the other parent is an enemy or to suggest his hostility or inferiority. The other parent is spoken of badly in front of the child by the alienator, the child's visits to the alienated parent are restricted or the alienator tries to control the activities that the child will do when he is with the other parent. The phenomenon of parental alienation is a form of emotional abuse of children against which they cannot defend themselves. This phenomenon occurs regardless of the sex of the alienator (whether it is the mother or the father), the age (the child's grandparents can be very strong alienators) or the level of education of the alienator. Through his behavior, the alienating parent tries to attract the child to his side and introduces against the other". In that case, it is noted that "due to the minor's psychological immaturity and lack of experience, the alienating parent deprives the child of the possibility of discerning between good and evil, the child being influenced and manipulated".

²⁸ Brăila Court, *Civil Section*, Civil Sentence no. 287 of January 22, 2015 pronounced in File no. 19843/196/2014

This phenomenon is recognized by the definition given by Law no. 127/2003 for the prevention and combating of domestic violence and psychological violence. From a scientific point of view, on 1 February 2016, the recognition and necessity of combating parental alienation was achieved by recognizing the protocol signed by the Institute of Forensic Psychology and the Romanian Association for Joint Custody, a protocol to which the College of Psychologists of Romania also acceded, through a provision published on 25 February 2016, in the Official Gazette.

The current regulation of Law no. 123/2004, amended by Law no. 123/10.05.2024, legislates extremely clearly that parental alienation ("parental alienation") is a form of psychological violence, which is ascertained through psychological assessments, being a reason for sanctioning the alienating parent with the loss of parental rights.

At the time of the adoption of Law no. 123/2024, the courts had already been sanctioning alienating parents for a long time, including with the loss of the minor's home.

However, the loss of parental rights for parental alienation, as psychological abuse, represents a first, especially since the lower court pronounced this solution prior to the legislative amendment by Law no. 123/2024. We are therefore once again in a situation where the legislator, taking a step back, has only enshrined the jurisprudential solutions at the legislative level.

Identified and described since the 1990s by American psychologists²⁹, the syndrome of parental alienation has been recognized, and its sanction has been codified at the level of legislation in the most developed countries in the world, including at the level of legislation in Romania.

A recent decision of the Constitutional Court – Decision no. 18/2019, published in the Official Gazette of August 20, 2019 – brings back to the forefront an extremely controversial subject: the method of enforcing court decisions regarding minors. The recent "Sorina Case" represents the perfect example of parental alienation and demonstrates that, faced with the impotence of civil norms for the forced enforcement of court decisions regarding minors, only resorting, in extremis, to forceful measures by criminal jurisdiction bodies, was able to restore legality, in the interest of the child.

Starting with 2016, by Provision no. 2/2016 of the College of Psychologists, the phenomenon of parental alienation has also been recognized in Romania as a form of severe psychological abuse of the child. This usually occurs at the time of divorce or the termination of cohabitation

²⁹ M. Walsh și J.M. Bone, *Parental Alienation Syndrome: An Age-Old Custody Problem*, 71 Fla. B.J. 93 (June 1997); Douglas Darnall, Ph.D., „Three Types of Parental Alienators”; Warshak R.A. – Current controversies regarding Parental Alienation Syndrome. *American Journal of Forensic Psychology*, 19 (3), 1997, pp. 29-59.

between the child's parents and is, unfortunately, the most accessible weapon for the resident parent to take revenge on the other parent who leaves the family home and is thus physically separated from the minor. Psychologists emphasize in their specialized works the risks that parental alienation can lead to and why it is a very serious form of abuse: "blaming one parent by another has repercussions on the construction of parental images and can influence the child's subsequent way of relating to those around him. Thus, if a child is presented with negative images, he may end up blaming one of the parents, and by identifying with him he may develop a negative image of himself. The result could be that of rejecting the parent in question, an attitude that can go as far as denying filiation".

Unheard of in practice until 2013, the phenomenon of parental alienation has become particularly widespread with the entry into force of the New Code of Civil Procedure. Art. 910 – 914 regulate, for the first time, special rules regarding the execution of court decisions rendered in matters of minors and family and introduce the minor's refusal as an absolute impediment to the execution of an enforceable and/or final court decision. Instead of consolidating the act of justice – the decisions rendered in disputes in which it is decided, on the merits and with the authority of *res judicata*, what is or is not in the interest of a minor – the legislator shifts the center of gravity to the stage of execution of the court decision already rendered, and leaves it to the arbitrariness of a child, no matter how small, to carry out the magistrates' decision.

This legal gap was the fertile ground for the emergence of parental alienation. Physically separated from one of his parents, sometimes even completely isolated from him, the child becomes a "plasticine" in the hands of the resident parent, who has no hesitation in manipulating him, precisely in order to enter into the hypothesis of the text of art. 913 C.pr.civ. and obtain the child's refusal to accompany, even for a few hours, the parent from whom he was separated. In practice, if we could ignore the drama of these scenes, it would be downright comical to observe how the power of a court decision - carried out by the bailiff, accompanied by psychologists, representatives of the DGASPC and sometimes even by the law enforcement agencies - stops at the refusal of a 3-4 year old child, who mechanically repeats that he "does not want to leave with mom/dad", without understanding what he is saying.

By Decision no. 18/2019, the Constitutional Court rejected the exception of unconstitutionality of the provisions of art. 913 of the Code of Civil Procedure regarding the minor's refusal to leave the debtor and accompany the creditor parent, on the occasion of the forced execution of court decisions regarding minors. The author of the exception brought into discussion the extremely sensitive issue of parental alienation. In

motivating the exception of unconstitutionality, the author essentially showed that the criticized legal provisions are unconstitutional, as they have determined the multiplication of cases of alienation of children from their parents, this being likely to prevent the existence of a family life and the development of a normal parental relationship in the context of the separation of the parents. Thus, the procedure established by the provisions of art. 910-914 of the Civil Procedure Code, in order to enforce decisions regarding minors, requires almost 12 months to complete, which prevents the case from being resolved within a reasonable time, as it is known that, with regard to children, time is a key element, and once the connection with the other parent is broken or irreparably damaged, this separation produces irreversible and difficult to quantify effects on the child's psyche, a future adult. Also, the same procedure suspends ineffectively family life, which is contrary to the best interests of the child.

Consistent with its own previous case law (Decision no. 299 of 12 May 2016 and Decision no. 710 of 9 November 2017), by Decision of the Constitutional Court no. 18/2019, the Constitutional Court rejected the exception of unconstitutionality and considered that the legal provisions analyzed are constitutional and that there are no reasons to revisit the rulings given on this issue. However, the reasoning behind this decision holds our attention. Based on the case law of the ECHR, which gave precedence to the best interests of the child, which, depending on its nature and severity, may prevail over the interests of the parent, the Constitutional Court considers in the considerations of the decision that the minor cannot be forced to have personal relations with the divorced parent and that, precisely for this reason, it is necessary to go through a stage of psychological counseling, from which the real option of the child can clearly emerge. Thus, the child cannot be sanctioned for no longer wanting to have personal relations with one of the parents, but this desire of his is analyzed with the help of a specialized psychologist, capable of detecting the real opinions of the minor from the attitudes conditioned by a possible conflict of loyalty or by the manipulation of the parent to whom the child has been entrusted.

Therefore, even if it concludes that the text does not present any flaw of unconstitutionality, the Constitutional Court emphasizes the need for the competent authorities to act expeditiously in order to resolve these delicate situations related to family life, also pointing out with reference to the ECHR case law that, if it is not desirable for children to take coercive measures in this delicate area, recourse to sanctions should not be excluded in case of illegal behavior of the parent with whom the children live.

By Decision no. 18/2019, the constitutional court confirms the position adopted by more and more national courts in recent times, when it finds that the minor's refusal to have contact with one of the parents is due to the

manipulation of the other parent to sanction the alienating parent. Since 2012-2013, courts have begun to issue decisions sanctioning such behavior, going as far as changing the minor's residence from the alienating parent and even the loss of parental authority by the latter. In the motivation of these decisions, it is noted that, due to the minor's psychological immaturity, the alienating parent deprives the child of the possibility of discerning between good and evil, the child being influenced and manipulated. In such cases, we find ourselves in the hypothesis of illegal behavior that must be sanctioned, to which the Constitutional Court refers in the motivation of the aforementioned decision.

As a critical note on the CCR Decision, we point out, however, that practice often contradicts these abstract reasonings, especially since the legal text attacked with the exception of unconstitutionality does not provide any kind of concrete remedy in the situation where, following the psychological assessment and counseling, it is found that the minor is the subject and victim of the parental alienation syndrome. Even in the situation where the conclusions of the report of the psychologist assigned to counsel the minor (who continues to live permanently with the alienating parent all this time) are in the sense that he is subject to manipulation, the procedural text remains equally opaque, the minor's refusal to have contact with the non-resident parent remaining "a final refusal".

The modification of the measures, going as far as changing the minor's residence from the alienating parent and even the loss of parental authority by him, sounds very drastic on paper, but in practice, they are just as difficult to implement, due to the same rules of forced execution that have passed the constitutionality control examination this time too. In practice, the absurd situation arises in which all rights over the child (the right to decide on housing, education, health, development, etc.) are exercised by a person from whom the courts have withdrawn those rights, when they found that they were being exercised abusively, against the interests of the minor.

Just as in the "Sorina Case" the little girl from Baia de Aramă was unlawfully detained by foster parents, who scared and manipulated her, instilling in her the idea that the adoptive parents would torture her and then abandon her in America – so too the alienated child cannot be separated from the alienating parent, even if the latter has lost all natural rights derived from parental status.

Regarding the "Sorina Case", which fully demonstrated that the impotence of the civil enforcement procedural norms (those found to be constitutional by Decision no. 18/2019 of the Court) was what determined the resort to the intervention of the criminal authorities and the forcible taking over of the little girl, through a regrettable but ultimately effective operation. The cries, screams and writhings of the manipulated and

frightened child depict in all its ugliness the phenomenon of parental alienation and contrast with the brilliance and serenity in the eyes of the same child who arrived, a few weeks later, in a climate of normality.

The Parental Alienation Syndrome is also constantly recognized and sanctioned in the practice of the ECHR through its numerous decisions in which the Court found violations of art. 8 regarding private life and family, because the state did not protect the parent regarding the phenomenon of parental alienation (Case Micnheva vs. Bulgaria of 2.09.2010, Yavrel vs. Czech Republic of 18.04.2007).

In Romania, the recognition of parental alienation as a form of severe psychological abuse has taken a tortuous path, the courts' perspective not being uniform in dealing with this extremely serious problem. Some courts – especially those in Bucharest – are more receptive to the harmfulness of this phenomenon and order the alienating parent to be sanctioned by civil courts by losing the minor's home or even parental authority.

As a comparative law study, we show that other European states, confronted for a longer time with this phenomenon of parental alienation and its effects, have already moved to much more drastic solutions.

For example, in Italy, the manipulation of a minor as a consequence of parental alienation was considered a crime: “ill-treatment of a minor as a consequence of the arrest of the alienating parent”. Only after applying this extreme measure could the alienation be put to an end, and the other parent could effectively enforce the court decisions issued by the civil courts.

Also, in Israel, whenever the guardianship courts are notified of a case of parental alienation, an urgent judicial procedure is initiated that lasts a maximum of 1 month. The solutions that are issued, even with provisional enforcement, are affected by a deadline, and the alienating parent's failure to comply with the measure thus established attracts his immediate detention, upon notification to the civil judge.

In Romania, the solution found by the court is to increase the duration of interactions between the alienated child and the target parent of the alienation, so that the syndrome, although it has appeared, cannot become permanent. The child must be in the presence of the other parent, as much as possible, the parent from whom he is separated in order to re-establish a natural, emotional, parent-child relationship. The child regains trust in the parent, finds that the negative aspects highlighted by the alienating parent do not exist in reality and thus, the child rediscovers the parent from whom he was removed and rediscovers the joy of spending time with him, respectively a gradual visitation program.

Thus, in the motivation of a court decision rests whereby, after the court recognizes the existence of a form of parental alienation: the child presents a mild form of parental alienation, highlighted by the forensic psychologist's

report, as a result of the mother's personality defects and frustrations, caused by the behavior of the defendant-visitor during the marriage, the minor managed to gradually regain her father's trust and had a natural father-daughter relationship, the two are proposed to meet at the DGASPC headquarters within 2 months, under the supervision of a psychologist designated by the DGASPC director, and for another two months after another supervision, the child can sleep in the non-resident parents' house for another two months.

This is another way to bring the child and the parent from whom he or she has been separated closer together: gradually, carefully and under the supervision of specialized persons, whose role is not limited to supervising the meeting but to supporting the two - father and child - to redevelop a natural and harmonious relationship.

Moreover, the involvement of specialists in the field in restoring the parent-child relationship is also confirmed by the practice of the ECHR.

In this regard, we refer to a 2013 decision of the Court of Cassation in France³⁰ by which, not only was the existence of this syndrome recognized - as it is defined in French law - but, moreover, it was assessed that the decision of the Court of Appeal by which the child's domicile was changed from the mother to the father, on this ground, is fully justified. In the French court decisions by which late penalties are established, or, in those that resolve appeals to enforcement, the courts refer to and sanction, even indirectly, such forms of abuse.

Moreover, in our legislation and in our judicial practice, one of the criteria taken into account for establishing the residence of a minor is the capacity of each parent to meet the needs of the child and to respect the rights of the other parent.

The change of residence of a minor from one parent to another can be done in the situation where the circumstances that existed when the child's place of residence was first established have changed significantly and, in the current situation, are no longer in the best interests of the child.

Even though this situation has been provided for by law for a short time as a form of serious assault against a child, as we have been able to observe, judicial practice has found ways to sanction alienating parents and protect children.

Now that the courts and specialists in the field have a legal text as a weapon of war, we hope, on the one hand, that the fight against parental alienation of children will be more efficient and, on the other hand, that parents will behave more carefully in their relationship with children and former life partners and will consider not only that they can be sanctioned,

³⁰ Droit de la Famille, *Revue mensuelle Lexisnexis Jurisclasseur* - novembre 2013, Court of Cassation, France, Civil Section 1, Decision 12-14.392 of June 26.

but also that their actions may have negative consequences over time for the children.

Conclusion

An adequate understanding of the new evidence law is essential for all those involved in juvenile cases, as the success of the new provisions will also depend on the implementation process.

Specifically, Law 123/2024, applicable from May 10, amends Law 272/2004 on the protection and promotion of children's rights, so that a phenomenon very often encountered in our country, parental alienation, is reduced in scope.

As defined in the new law, parental alienation is a form of psychological violence through which one of the parents or members of the extended or substitute family, intentionally, intentionally or assumed, generates, accepts or uses a situation in which the child ends up manifesting (unjustified or disproportionate) restraint or hostility towards either parent.

In particular, social workers must recognize that their role in all conflicts involving children has been fundamental, that they have been assigned specific responsibilities and that a high degree of professionalism and participation is expected of them. They can no longer hide behind legal ambiguities or arbitrary interpretations of the powers they hold.

Judges must also understand the clearly stated intention of the legislator to effectively address situations of parental alienation through effective and rapid measures. The identification of such a disorder should no longer take years and should no longer be based on complex psychological tests, consistent patterns in court files, differences in processing levels between them and different purposes, but on an empirical test of whether the existence of the situation is satisfied by the situation, by the law or not.

In fact, parents must understand that today there are two types of toxic behavior in the eyes of the law: behavior intended to separate a child from one of the parents; and random accusations that the parent is alienating the other parent, who is trying to hide his own violent behavior.

Now that the courts and specialists in the field have a legal text as a weapon, we hope, on the one hand, that the fight against parental alienation of children will be more effective and, on the other hand, that parents will behave more carefully in their relationship with children and former life partners and will think not only that they can be sanctioned, but also that their actions can have negative consequences in the long term for the children.

It is also important to reiterate that capturing this legitimate trend is a success for Romania. Although most democracies accept the existence of parental alienation, their laws do not reflect social reality, they do not reflect

it because it is separated into several normative laws that do not explicitly reflect it. The phenomenon is particularly widespread and, if not prevented by an express legal order, parents will always find subterfuges to explain abusive behavior with the child.

It is also essential that in the very absence of adequate legal regulation, courts in European countries but also in the USA take rapid action because they recognize the existence of parental alienation as a phenomenon, taking into account that the acceleration of such processes is in favor of the child.

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SYMMETRY BREAKING IN ELIF SHAFAK'S 10 MINUTES 38 SECONDS IN THIS STRANGE WORLD (2019)

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Abstract: *This article examines symmetry breaking as a narrative strategy in Elif Shafak's 10 Minutes 38 Seconds in This Strange World (2019), applying Gérard Genette's theory of narrative discourse to explore how structural disruptions challenge gendered power structures. Originating in physics and chaos theory, symmetry breaking refers to the disruption of balance in a system, leading to new, unpredictable configurations. In literature, this translates into fragmented storytelling, destabilized identities, and non-linear progression, all of which Shafak employs to challenge gendered hierarchies and social exclusion. The novel exemplifies symmetry breaking by rejecting conventional temporality, unpacking the protagonist Leila's post-mortem consciousness through a sequence of disjointed memories rather than a traditional life-to-death line. This narrative disrupts the finality of death, transforming memory into an active force that resists closure. The fragmented structure, marked by shifts in temporal order and narrative perspective, reflects a shattered order. At a social level, symmetry breaking dismantles rigid gender and class binaries, exposing the patriarchal mechanisms that render marginalized individuals invisible. Leila, denied dignity both in life and in death, defies this erasure as the novel shifts focus to Istanbul's outcasts, redefining kinship beyond biological ties. This study concludes that the novel reconfigures storytelling as a site of resistance, evoking symmetry breaking to challenge and subvert dominant power relations.*

Keywords: *Symmetry breaking, Gérard Genette, Narratology, Shafak, Gender*

Introduction

Traditional narratives often follow symmetrical structures, marked by linearity, coherence, and closure. However, some literary works intentionally disrupt this balance, fracturing time, memory, and identity to produce alternative meanings. In *10 Minutes 38 Seconds in This Strange World*¹, Elif Shafak employs a narrative strategy akin to symmetry breaking, rejecting conventional chronology in favor of a fragmented structure that mirrors social

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¹ E. Shafak, *10 Minutes 38 Seconds in This Strange World*, London: Bloomsbury, 2019.

exclusion and instability. The novel follows Leila Tequila, a murdered sex worker whose consciousness endures for ten minutes and thirty-eight seconds, during which she recalls critical moments from her past. These fragmented recollections replace a traditional life narrative, revealing how Leila's experiences, shaped by gendered violence, displacement, and systemic exclusion, construct an identity outside of dominant social frameworks. As her body is destined for the Cemetery of the Companionless, her chosen family of fellow outcasts attempts to reclaim her. Through this structure, the novel critiques the rigid binaries of gender and belonging, emphasizing how those on the margins are denied both narrative and historical recognition.

Borrowed from physics and chaos theory, symmetry breaking refers to the disruption of balance in a system, resulting in the emergence of new, unpredictable states.² Applied to literature, it bears the potential to provide a framework for understanding how nonlinear storytelling and destabilized identities challenge fixed ideological structures. Shafak's fractured narration and temporal dissonance reflect the instability of gendered power, rejecting imposed order in favor of fluidity and multiplicity. The novel's structural resistance reflects its thematic concerns, illustrating how women like Leila, invisible in dominant narratives, can reclaim agency through disruptions in form and content. By adopting symmetry breaking as an analytical lens, this study extends existing scholarship by showing that Shafak's narrative disruptions not only reflect oppression but actively subvert it. Unlike previous studies that emphasize thematic critiques of marginalization, this research explores how formal asymmetry operates as resistance.

Literature Review

Existing scholarship has mainly examined Leila's marginalization and the novel's critique of patriarchal norms. The novel has attracted substantial academic attention, with scholars approaching it through feminist, intersectional, and narratological lenses. The recent studies focus on how the novel exposes the marginalization of women, particularly through the character of Leila, whose experiences as a sex worker and social outcast reveal the structural forces that shape gendered oppression. Atta Ullah et al.³, using Simone de Beauvoir's⁴ feminist framework and Fairclough's Critical Discourse Analysis,⁵ argue that the novel presents a subversive

² Stanford Encyclopedia of Philosophy, *Symmetry Breaking*, Stanford University, n.d. Retrieved March 5, 2025, from <https://plato.stanford.edu/entries/symmetry-breaking/>.

³ Atta Ullah, M., M. Ayub, A. Kazmi, and A. Raza, "Gender and Power: A Feminist Critical Discourse Analysis of Elif Shafak's 10 Minutes 38 Seconds in This Strange World", *Psychology and Education*, 2021. 58 (5), pp. 5770-5782.

⁴ S. de Beauvoir, *The Second Sex*, trans. H. M. Parshley, London: Vintage Books, 1953.

⁵ N. Fairclough, *Language and Power*, London: Longman, 1989.

reworking of the dominant gendered discourse, showing how patriarchal institutions regulate and limit women's agency. Similarly, Salami and Taheri⁶ employ Judith Butler's feminist theories to argue that the novel problematizes the patriarchal construction of womanhood by revealing how female identity is shaped by commodification, objectification, and systemic violence. They emphasize that Leila's post-mortem narrative resists this erasure, as her memories construct an alternative history, one that challenges the dominant social structures that sought to silence her. Mehdi, Moen, and Abbasi⁷ take this argument further by applying Julia Kristeva's theory of abjection⁸, stating that Leila, as a prostitute, is confined to the margins of social order, treated as an impure entity whose erasure is sanctioned by cultural norms. The study focuses on how the Cemetery of the Companionless becomes a metaphor for institutionalized exclusion, reinforcing how state and religious authorities contribute to the marginalization of those deemed socially undesirable.

Some scholars have examined the novel through intersectionality theory, emphasizing how gender, class, and migration intersect in shaping Leila's experiences. Wandira, Datau, and Wulan focus on structural and representational intersectionalities. They posit that the novel reveals how sex workers are erased not only from legal and economic systems but also from cultural narratives that construct who is worthy of social recognition. For them, Shafak challenges these exclusions by presenting Leila's memories as counter-history, reclaiming stories that would otherwise be lost.⁹ Kaur and Sharma examine sexual violence and institutional complicity, arguing that the novel reveals how patriarchal systems perpetuate cultures of impunity in which such violence is simultaneously normalized and suppressed. They emphasize how Leila's early experiences of sexual abuse are not isolated events but part of a broader system in which female suffering is met with silence and complicity.¹⁰ Although existing scholarship engages with the novel's sociopolitical treatment of gender and

⁶ A. Salami, Y. Taheri, "Silenced Voices: A Feministic Study of Elif Shafak's 10 Minutes 38 Seconds in This Strange World", *Günümüz Dil-Edebiyat ve Filoloji Araştırmalarında Yenilikçi Eğilimler: Kuram, Yöntem ve Teknikler*, 2022, pp. 25–36.

⁷ M. Mehdi, U. Moen, and S. Abbasi, "Abjection and Marginalization of Females: A Critical Review of Leila's Character in Elif Shafak's Novel 10 Minutes 38 Seconds in This Strange World", *Pakistan Journal of Gender Studies*, 2022. 22 (1), pp. 67–82.

⁸ J. Kristeva, *Powers of Horror: An Essay on Abjection*, trans. Leon S. Roudiez, New York: Columbia University Press, 1982.

⁹ D. P. A. Wandira, R. O. Datau, and N. Wulan, "Understanding Intersectionality through Tequila Leila's Experience in 10 Minutes 38 Seconds in This Strange World (2019)", *Poetika: Jurnal Ilmu Sastra*, 2023. 11 (2), pp. 96–105.

¹⁰ H. Kaur, G. Sharma, *Beyond the Silence: "Unraveling Sexual Harassment in Elif Shafak's 10 Minutes 38 Seconds in This Strange World"*, *International Journal of Research Culture Society*, 2024. 8, pp. 31–36.

class, it tends to neglect the role of formal elements in shaping that critique. These analyses focus primarily on thematic content, without examining how narrative structure itself functions as a vehicle of resistance.

Beyond gender and social exclusion, the novel's narrative structure has been central to critical discussions. Thomas adopts a postmodern narratological approach, arguing that the novel resists closure by rejecting conventional narrative unity and employing fragmentation to reflect the instability of identity and historical representation.¹¹ She argues that Shafak's disjointed timeline reflects the instability produced by trauma, marginalization, and displacement, reinforcing the view that storytelling becomes an act of defiance. Building on scholarship that associates Shafak's fractured chronology with trauma and exclusion, this study advances the analysis by examining symmetry breaking as a structural response to gendered power.

The absence of sustained narratological analysis, particularly in relation to Gérard Genette's categories of order, duration, and voice reveals a critical gap in existing interpretations of the novel's structural politics. As such through Genette's narratological categories, it investigates how narrative disruptions in *10 Minutes 38 Seconds in This Strange World*¹² unsettle hierarchical norms. As the first study to apply symmetry breaking to Shafak's novel, it offers a new perspective on how formal dissonance functions as a mode of resistance.

Method

This study employs a close reading of narrative structure to examine how symmetry breaking potentially operates as a storytelling device in *10 Minutes 38 Seconds*. By focusing on nonlinear temporality, fragmented memory, and disrupted causality, the analysis applies Gérard Genette's¹³ narratological framework to trace how the novel resists conventional narrative symmetry. A central aspect of this method is the study of temporal manipulation, particularly how Leila's consciousness after death challenges linear time, disrupting the reader's expectations of progression and resolution. This method identifies and analyses:

- Instances of analepsis that dislocate the reader from the present moment of Leila's posthumous consciousness.
- Temporal asymmetry, where memories emerge in an irregular, non-

¹¹ L. Thomas, "Reclamation of the Istanbul city and the migrant flâneuse in Elif Shafak's *10 Minutes 38 Seconds in This Strange World*", *Urban Feminism Review*, 2023, 19 (3), pp. 110-118.

¹² Hereafter abbreviated as *10 Minutes 38 Seconds*.

¹³ G. Genette, *Narrative Discourse: An Essay in Method*, New York: Cornell University Press, 1980, p. 40.

causal order rather than as a structured recollection.

- Shifts in focalization, particularly how different perspectives complicate narrative coherence.

This approach establishes a basis for Shafak's novel in examining storytelling as a structural mode of disruption and attempts to understand how symmetry breaking in narrative form can potentially articulate fragmentation, instability, and resistance to closure.

Theoretical Considerations

Feminist literary critics, particularly those influenced by Judith Butler's theory of gender performativity, argue that gender is not a stable or symmetrical construct but rather a fluid and contested space.¹⁴ In a symmetrical gendered system, women's social value is often contingent on purity, domesticity, and reproductive roles, yet Leila's existence breaks this structure by rejecting these constraints. Shafak's depiction of Leila resists the rigid categorizations imposed by patriarchal society, particularly through her status as a sex worker, a role that places her outside traditional female respectability narratives. Her death, rather than serving as a moral resolution to her transgressive life, becomes the site of narrative resistance, where her fragmented memories actively reclaim a history that society seeks to erase. Hélène Cixous's concept of *écriture féminine* is relevant here, as Shafak's fluid and fragmented narrative mirrors Leila's marginalization, replacing patriarchal order with a structure grounded in disruption, plurality, and resistance.¹⁵ Linda Hutcheon's discussion of historiographic metafiction, provides another framework for understanding symmetry breaking in Shafak's novel.¹⁶ Postmodern narratives often challenge grand historical narratives, destabilizing authoritative voices and foregrounding marginalized perspectives. In a similar fashion, the novel refuses a singular, authoritative account of Leila's life, instead offering a mosaic of subjective experiences that resists any fixed, totalizing truth. This situation evokes Jean-François Lyotard's¹⁷ critique of metanarratives, where fragmentation becomes an epistemological stance against dominant ideologies. By breaking narrative symmetry, the novel questions who controls memory, who dictates whose stories matter, and how marginal voices resist erasure.

¹⁴ J. Butler, *Gender trouble: Feminism and the subversion of identity*, London: Routledge, 1990.

¹⁵ H. Cixous, *The Laugh of the Medusa* (K. Cohen, P. Cohen Trans.), *Signs*, 1976. 1 (4), pp. 875–893.

¹⁶ L. Hutcheon, *A Poetics of Postmodernism: History, Theory, Fiction*, London: Routledge, 1988.

¹⁷ J. Lyotard, *The Postmodern Condition: A Report on Knowledge*, Manchester: Manchester University Press, 1984.

The absence of a unified, symmetrical narrative reflects the social instability experienced by those excluded from hegemonic structures, showing how narrative form contributes to the novel's political and thematic concerns.

From a narratological perspective, establishing symmetry breaking as a literary framework requires a strong theoretical foundation. In this context, Genette's concept of anachrony proves especially valuable, as it challenges Aristotelian unity and linear causality. He formalizes temporal disruptions in narrative through the concept of anachrony, which he defines as "reserving the general term anachrony to designate all forms of discordance between the two temporal orders of story and narrative".¹⁸ Leila's post-mortem recollections unfold in fragmented sequences. As such, it reinforces the instability of memory and identity, reflecting the uncertain and excluded status of marginalized individuals.

Narrative Disruption and Temporal Asymmetry

In the novel, Elif Shafak radically reconfigures narrative structure by severing the conventional link between chronology and storytelling. Gérard Genette's narratological model offers a precise framework for analyzing this disruption. He proposes a distinction between story (the signified or narrative content), narrative (the discourse or textual realization), and narrating (the act and context of production).¹⁹ This triadic model is essential for a novel in which story, narrative, and narrating no longer operate in synchrony. Shafak opens with the protagonist's death, bypassing birth, life, or conventional exposition: "She now realized with a sinking feeling that her heart had just stopped beating... there was no denying that she was dead."²⁰ Death, conventionally the end point, becomes the narrative's point of departure. This reversal exemplifies what Genette terms anachrony, defined as "all forms of discordance between the two temporal orders of story and narrative."²¹ Rather than reconstructing Leila's life through retrospection, the narrative unfolds as a series of memory fragments, each triggered by sensory stimuli such as smells, tastes, textures rather than causality. The structure follows analepsis, or the backward movement in narrative time: "any evocation after the fact of an event that took place earlier than the point in the story where we are at any given moment."²² Shafak's use of analepsis generates a temporal framework that resists linear development, replacing sequence with emotional and experiential intensity. The narrator observes: "Her memory surged forth, eager and diligent, collecting pieces of a life that was speeding

¹⁸ G. Genette, *Narrative Discourse*, p. 40.

¹⁹ *ibidem*, p. 27.

²⁰ Shafak, *10 Minutes 38 Seconds*, p. 6.

²¹ Genette, *ibidem*, p. 40.

²² *Ibid.*, p. 40.

to a close... the past and the present inseparable.”²³ The phrase “pieces of a life” foregrounds fragmentation; Leila’s identity is not reconstructed as a whole, but pieced together from isolated, affectively charged recollections. This suspension of narrative time is reinforced by Genette’s category of pause, in which discourse expands beyond the duration of the event it describes. As Leila’s body deteriorates, her consciousness persists: “Her brain was resisting, a fighter till the end. It entered into a state of heightened awareness, observing the demise of the body but not ready to accept its own end.”²⁴ This prolongation delays narrative finality, producing a liminal temporal zone where death is not yet narrative closure. Conversely, summary condenses long spans of story-time into brief narrative units. As Leila recalls: “Three minutes had passed since Leila’s heart had stopped, and now she remembered cardamom coffee—strong, intense, dark.”²⁵ This moment exemplifies how narrative duration diverges from physiological time. As Genette explains, narrative time is subject to “modulation, expansion, and contraction” rather than mirroring lived time.²⁶

Spatial metaphor further unsettles this dislocation. Leila reflects: “If a border existed between the Realm of Life and the Realm of Afterlife, Leila decided, it must be as permeable as sandstone.”²⁷ Here, spatial instability mirrors temporal instability, dissolving the boundary between life and death and refiguring memory as a force that exceeds biographical and bodily limits. The narrative’s insistence on memory as an ongoing act, not a past event, disrupts linear temporality and reorients narrative purpose.

Genette’s concept of mood, the modulation of narrative information through distance and perspective, also clarifies how Shafak grants readers access to Leila’s interiority. Genette writes: “One can tell more or tell less what one tells, and can tell it according to one point of view or another... Distance and perspective... are the two chief modalities of that regulation of narrative information that is mood.”²⁸ Shafak minimizes narrative distance by situating the reader within Leila’s disintegrating consciousness. The result is a narrative that unsettles objectivity, moving between internal focalization and lyrical detachment to create a disoriented and paradoxical experience of time. As these literary examples demonstrate, symmetry breaking in this context is not a stylistic device but a formal necessity, one that transforms the novel’s structure into a mode of resistance against the closure imposed by dominant narrative traditions.

²³ Shafak, *10 Minutes 38 Seconds*, p. 11.

²⁴ *Ibid.*, p. 7.

²⁵ *Ibid.*, p. 15.

²⁶ Genette, *ibidem*, pp. 86-87.

²⁷ Shafak, *10 Minutes 38 Seconds*, p. 20.

²⁸ Genette, *Narrative Discourse*, p. 161.

Fragmented Identity and Marginalization

While the novel's disrupted temporality unsettles narrative symmetry, it also fractures the representation of identity. Leila's selfhood, like the narrative form that contains it, resists cohesion and linearity. Her identity is not stable or continuous but formed through disjointed recollections, sensory triggers, and episodic returns. The narrative details specific periods, such as her arrival on the street at age seventeen, her relationship with D/Ali, her marriage, and eventually her life off the street. Her friendships, too, are formed through specific encounters and develop over time. The narrative structure itself, with sections titled by the minutes after her death and the sensory trigger, reinforces this episodic construction of her final consciousness and selfhood. Furthermore, Leila actively shapes her identity. She insists her name "is Tequila Leila"²⁹, never to be spoken of in the past tense, even when dead. Looking in a mirror near the end of her life, she sees her "past self" and makes "peace with her"³⁰, acknowledging the different stages of her identity and reconciling them.

Leila is introduced as a body under erasure, yet one that resists disappearance through the persistence of memory. Her identity, however, is already marked by contradiction: "She was to be Leyla Afife Kamile, full of virtue, high in merit... she was a walking embodiment of imperfection."³¹ This ironic juxtaposition reveals the dissonance between the symbolic expectations imposed upon her and the lived realities of her social positioning. Leila's very name becomes a site of narrative agency. In a moment of self-reinvention, she explains her deliberate spelling: "When men asked... why she insisted on spelling 'Leyla' as 'Leila', she would laugh and say that one day she went to the bazaar and traded the 'y' of 'yesterday' for the 'i' of 'infinity'".³² She consciously changed the spelling of her birth name Leyla to Leila, a deliberate act of moving away from a fixed past towards a concept of ongoing existence. The narrative focalization here is filtered through Leila's perspective, yet distanced by a third-person frame that preserves both immediacy and reflexivity. Genette's category of focalization, "the selection of narrative information with regard to the knowledge or position of the narrator or character"³³, clarifies this technique as one that varies between internal and external positions to dramatize fragmented subjectivity. One moment of focalization shift occurs when the narrative moves from Leila's internal reflections to an external observer's detached perspective: "The medical examiner hunched over his desk, his brow furrowed in

²⁹ Shafak, *10 Minutes 38 Seconds*, p. 1.

³⁰ *Ibid.*, p. 161.

³¹ *Ibid.*, p. 27.

³² *Ibid.*, p. 28.

³³ Genette, *Narrative Discourse*, p. 190.

concentration. He had no desire to learn who this woman was or what kind of a life she may have led". This abrupt shift from internal to external perspective reinforces Leila's social invisibility, particularly in death, where even her body is reduced to an anonymous entity.

The fragmentation is also corporeal. Leila's perception of her body is disarticulated, alienated, and shifting. As she ages, the narrative observes: "Her breasts had turned into strangers, a pair of snobs... Every day she checked her face in the mirror... as though half expecting to see someone else."³⁴ Here, identity is presented not as cohesive but as disconnected from a body defined by gender norms and social exclusion. The narrative perspective blends internal focalization with metaphorical dissonance, constructing a version of the self that is fragmented, unstable, and resistant to linear representation. What emerges is a portrait of identity as sedimentary, composed of affective and discursive traces rather than coherently shaped by memory or time. Leila articulates this disruption in a moment of epistemic uncertainty: "She didn't know what to believe in any more... Everything was the same. And nothing would be from now on."³⁵ The narrative's selective presentation of information, as Genette's theory of mood suggests, intensifies this instability by intermittently granting and withholding access to Leila's thoughts. The result is a fragmented interiority that reflects the unstable social position of the protagonist.

Shafak's treatment of identity corresponds to Genette's view that narrative mood is a constructed element, shaped by decisions about distance, access, and perspective. Through these mechanisms, the novel introduces symmetry breaking in presenting a sense of selfhood that resists resolution within conventional narrative and social frameworks.

Resistance and Memory: The Individual Reborn in the Collective

In *10 Minutes 38 Seconds*, memory does not follow a fixed sequence or resolve into coherence. Instead, it emerges discontinuously, shaped by sensory impressions rather than by narrative logic. As the narrator observes, "Her memory surged forth, eager and diligent, collecting pieces of a life that was speeding to a close. Time became fluid, a fast flow of recollections seeping into one another, the past and the present inseparable."³⁶ This disruption reflects what Genette calls anachrony, defined as a deviation between the order of events in the story and their arrangement in the narrative.³⁷ The structure resists linear progression and

³⁴ Shafak, *10 Minutes 38 Seconds*, p. 87.

³⁵ Ibid., p. 43.

³⁶ Ibid., p. 11.

³⁷ Genette, *ibidem*, p. 40.

instead reconstructs the past in fragments, challenging the notion of memory as ordered and complete. Leila does not control the sequence of her memories, just as she does not control how her life is socially narrated or historically remembered. This initial lack of narrative control parallels her marginal position, and the structural limits imposed on her identity. This strategy transforms individual memory into a space of resistance. The novel begins inside Leila's consciousness, but it gradually shifts focus to her friends, individuals similarly cast outside dominant social narratives. In doing so, the novel reframes memory as a shared and ongoing act. It does not conclude with death but continues through the collective remembrance of the marginalized.

Narrative voice in Shafak's novel functions as both a structural device and a political gesture. Gérard Genette defines narrative voice as "not only the person of the narrator, but the moment and degree of his involvement in the story."³⁸ In *10 Minutes 38 Seconds*, the narrative voice begins in close proximity to Leila's interior consciousness, at once observing and echoing her final memories, and later transitions outward to her friends, a marginalized collective. This narrative shift signals a displacement of narrative authority from a singular subject to a dispersed, communal form of witnessing. Leila's death, initially reported through internal focalization, is reframed through a public and collective lens. The newspaper headline, "Prostitute Found Slain in City Waste Bin: Fourth in a Month. Panic Spreads Among Istanbul's Sex Workers"³⁹ is anonymizing, erasing subjectivity through institutional language. In contrast, the narrative disrupts this erasure by extending the narrative voice to the perspectives of Leila's friends, each socially marked by forms of exclusion, trans identity, sex work, religious nonconformity. Their collective memory and action constitute a secondary narration that refuses the dominant framing of Leila's body as disposable. For instance, The Cemetery of the Companionless is described as a place where those buried, often migrants or others without connections, have graves marked only with numbers, "rarely names".⁴⁰ This suggests the erasure not only of individual identity but also of their stories and histories from any form of collective memory tied to the site of burial.

Instances of collective memory are also shaped by the narrator's involvement in the unfolding of the story. The narrator presents detailed stories for each of Leila's friends (Nalan, Sinan, Zaynab¹²², D/Alı, Humeyra). These sections critically and politically explore the friends' pasts, inner thoughts, and personal histories, information that Leila could not have known in such detail, especially in her dying moments. For instance:

³⁸ Genette, *Narrative Discourse*, p. 255.

³⁹ Shafak, *10 Minutes 38 Seconds*, p. 29.

⁴⁰ *Ibid.*, p. 307.

“Once, and for a long time, Nalan was called Osman, the youngest son of a farming family in Anatolia.”⁴¹ This narrative strategy corresponds to what Genette considers the temporal and ontological involvement of the narrator. As he notes, narrative voices must be understood in terms of their moment and degree of involvement.⁴² The narrator begins as omniscient and detached but gradually becomes immersed in the emotional and social lives of the characters. This inward shift intensifies the novel’s affective dimension while expanding its ethical reach. The narrative moves beyond Leila’s individual experience to encompass the acts of resistance carried out by those who remember and mourn her.

The intersection between personal history with collective storytelling exemplifies Genette’s concept of metadiegetic narration, which complicates narrative boundaries by embedding past narratives within the present discourse.⁴³ For instance, Leila remembers the scent of cardamom, which immediately transports her to her childhood kitchen, where “The air was thickened by the scent of cheap perfume, the taps encrusted with deposits of limescale and the ceiling coated with the sticky brown stains of nicotine and tar from years of tobacco smoke”.⁴⁴ This sensory cue creates a recursive structure where memories are not merely recalled but reenacted within the diegetic framework of the novel.

The intertextual layering of different narrative levels reflects Leila’s struggle against patriarchal and social erasure where her life is framed not as an individual experience but as part of a recurring, systemic narrative of marginalized women. Shafak breaks narrative symmetry through metadiegetic storytelling, where secondary narratives are embedded within the main diegetic structure. These story-within-story moments disrupt the novel’s primary timeline, reinforcing the instability of narrative structure and identity. One such instance is when Leila’s existence is compared to Anatolian folk narratives, positioning her life and death within a broader cultural framework: “She would become yet another number in the Cemetery of the Companionless, yet another pitiable soul whose life echoed the opening of every Anatolian tale: Once there was, once there wasn’t”.⁴⁵ By incorporating multiple storytelling levels, Shafak disrupts the symmetry of a singular, linear narrative, reinforcing the idea that identity is not fixed but fragmented and subject to reinterpretation. This metadiegetic layering subverts hierarchical storytelling norms, positioning Leila’s fragmented memories as acts of resistance against gendered erasure. In other words, her

⁴¹ Shafak, *10 Minutes 38 Seconds*, p. 57.

⁴² Genette, *ibidem*, p. 163.

⁴³ *Ibid.*, p. 228.

⁴⁴ Shafak, *10 Minutes 38 Seconds*, p. 46.

⁴⁵ Shafak, *10 Minutes 38 Seconds*, p. 189.

disjointed timeline, extended consciousness, and collective storytelling all resist the imposed symmetry of patriarchal narratives.

In reclaiming Leila's body and story, the narrative becomes a site of defiance. One of the most direct articulations of this occurs late in the novel: "She would fight back, the way she had always done... No one had the right to cast aside Leila's body as though she didn't matter and never had."⁴⁶ The voice here blurs the line between narrator and character, internal conviction and external narration. What emerges is a politicized narrative voice that functions not to represent reality but to challenge the ideological conditions that structure invisibility and disposability. This is further reinforced by a metanarrative observation: "How pathetic it was to try to relegate death to the periphery of life when death was at the centre of everything."⁴⁷ The novel presents death not as an end, but as a narrative space where memory, identity, and dignity are retrieved and reasserted. The displacement of narrative voice to Leila's chosen family disrupts the normative logic of biological kinship and hegemonic mourning practices. It is a form of structural and ethical symmetry breaking: the narrative refuses to be completed by the moment of death, extending instead into a plural, resistant afterlife. Then, the narrative voice in the novel is not merely a device for diversifying perspective, but a deliberate undoing of narrative closure and hierarchical authorship. By refusing to let a single voice dominate the account of Leila's life and death, Shafak redefines narration as a practice of collective memory and, in doing so, a form of resistance.

Conclusion

In our contemporary age, where gender inequalities persist in both visible and pervasive ways, literary narratives have continued to serve as powerful instruments for challenging patriarchal norms and reconfiguring social discourse. *10 Minutes 38 Seconds* has exemplified this role by breaking the symmetry of traditional storytelling to reflect the instability of women's experiences under patriarchal oppression. By resisting linearity, coherence, and singular authority, Shafak has demonstrated how narrative structures themselves can serve as ideological interventions, exposing the fragility of the systems that marginalize women, particularly those who exist on the fringes of social acceptance. The significance of literary disruptions in contemporary feminist discourse has become increasingly urgent, as gendered oppression persists in forms that silence, erase, or marginalize non-conforming identities. As such, this study has demonstrated that Shafak's *10 Minutes 38 Seconds* employs symmetry breaking not merely as a narrative device but as a structural and political method. Using Gérard

⁴⁶ Ibid., p. 200.

⁴⁷ Ibid., p. 190.

Genette's narratological categories such as order, duration, mood, focalization, and voice, this analysis has demonstrated how the novel's formal disruptions operate as critical interventions, destabilizing normative conceptions of temporality, identity, and narrative authority. Specifically, the study has indicated that the novel breaks temporal symmetry by opening at the point of Leila's death and unfolding through a sequence of non-linear analeptic memory fragments.

Furthermore, this study has shown that Shafak's use of narrative mood and focalization fragments Leila's identity in ways that reflect her social marginality. Genette's claim that narrative mood is regulated by "distance and perspective" has contributed to explain how the novel manipulates proximity to consciousness. The text's selective and shifting access to Leila's inner world produces a disjointed representation of selfhood, mirroring the instability imposed by gendered and class-based exclusions. The analysis has further shown that the novel's transition in narrative voice from Leila to her friends marks a structural reorientation that challenges conventional narrative authority. According to Genette, narrative voice involves "the moment and degree of [the narrator's] involvement in the story."⁴⁸ Shafak increases this involvement by pluralizing the narrative, allowing the perspectives of Istanbul's outcasts to reclaim Leila's memory. Through Genette's narratological lens, this study has concluded that the structural deviations can be understood as forms of symmetry breaking that challenge dominant ideological and aesthetic conventions. In doing so, it emphasizes that storytelling is not merely an artistic practice but a site of contestation for visibility and agency.

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LATE MODERNITY AND ITS LANGUAGE*

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Abstract: *The current paper theorizes the ontological dissimilarities between Classic and Late Modernity. It compares the classic modern logic of 'either/or,' which is embodied in certain grand-narratives and social-cultural patterns, to the late modern logic of 'both/and', which encourages agents to rely on their subjective actorness, and revise all sorts of external references in a reflexive and critical way. The proposed argument suggests that the various structural and individual dynamics of Late Modernity are tracing back to one generative shift, which is the collapse of Truth-based Rationality that contrasts the self to the Other and its otherness by biased framings formulated in meta-culturally patriarchal language-forms.*

Keywords: *Late Modernity, Other, language, Truth, justification*

Late modernity as a new era

Modernization is a non-linear historical process with often changing progressive and regressive stages. Theorists of Late Modernity (in other names, Reflexive Modernity and Liquid Modernity), most notably Anthony Giddens, Ulrich Beck, Scott Lash, and Zygmunt Baumann, underline that what we notice in our time are only new tendencies.¹ These are dynamics that embrace the possibility for future changes. Lyotard said that Postmodernity is the era when all grand-narratives are ceased.² To paraphrase this statement, Late Modernity is the era when agents realize that it is a *new* grand-narrative to claim that all grand-narratives are ceased. In other words, late modern subjects are aware of the revolving mechanism that every attempt to deconstruct the diverse domains of our lifeworld (our

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¹ A. Giddens, *The Consequences of Modernity*, Cambridge: Polity, 1990; U. Beck, A. Giddens and S. Lash, *Reflexive Modernization. Politics, Tradition and Aesthetics in the Modern Social Order*, Cambridge: Polity, 1994; S. Lash, *Another Modernity. A Different Rationality*, Oxford: Blackwell, 1999; Z. Bauman, *Liquid Modernity*, London: Polity, 2000.

² J.-F. Lyotard, *The Postmodern Condition: A Report on Knowledge*, Minneapolis: University of Minnesota Press, 1984, pp. 23–25.

social, natural, and objectified surroundings) is immanently a struggle for a new and better (more justified) reconstruction.³ And independently from the outcomes of these efforts, the competency itself to construct is an unalienated agency of all human beings. This constellation makes these individual struggles emancipative. So, grand-narratives do not need to be substituted – they rather have to be ideationally-emotionally subjectivized in a reflexive and critical way. Reflexivity means that the subjective character of these narrative framings is acknowledged, while criticism refers to the actorness to continuously revise these individual understandings.

Byung-Chul Han says that the classic modern society is based on negativities manifested in *prohibitions* and *musts*.⁴ An ever penetrating rationalization serves for the mass production of common-sense epistemic categories. Searching for Truths is the foundation of this rationalized form of giving meanings.⁵ Truths are supposed to harmonize individual ways of thinking (ideational substances) and ways of doing things (praxes) into predictable attitudes and behaviors. In contrast, Han argues that the late modern society is grounded in the limitless and endless abundance of infinite positivity.⁶ Instead of prohibitions and musts, *permissions* and *possibilities* are the driving dynamics in this era. Therefore, in the late modern context epistemic categories are not framed as common-sense Truths. Instead, unique subjectivity is the generative background of (self-emancipative) understandings. In light of this, the late modern positivity (*do what you want/live the life you want*) is not the oppositional end to the classic modern negativity (*do what you should/live the life you should*). The main difference is not that positivity advises to follow what is desired, while negativity expects to respect what is conventionalized. The core dissimilarity between them is that positivity urges to rely on an internally constructed subjectivity (be a truth-candidate), while negativity highlights the importance of choice, i.e. to choose from externally developed identities (be a Truth-propagator).

Of course, subjects may be tired of the social pressure to take the chance of permissions and possibilities. Han rightly stresses that. But he misleadingly pours all his criticism on Late Modernity.⁷ He does not realize that those people who experience that late modern positivity that

³ R. Rorty, *Objectivity, Relativism and Truth: Philosophical Papers I*, Cambridge: Cambridge University Press, 1991, pp. 211–222.

⁴ B.-C. Han, *The Burnout Society*, Redwood City: Stanford University Press, 2015a, pp. 8–11.

⁵ R. Rorty, *Truth and Progress: Philosophical Papers III*, Cambridge: Cambridge University Press, 1998, see especially in chapter 10.

⁶ B.-C. Han, *Psychopolitics: Neoliberalism and New Technologies*, London: Verso, 2017, particularly in chapter 1.

⁷ B.-C. Han, *The Transparency Society*, Stanford: Stanford Briefs, 2015b, pp. 1–14.

aggressively demands from them to be singularly distinctive, they are, in fact, classic modern agents living in an era enriched with late modern tendencies. Instead of an internal motivation and inspiration, they feel to individualize themselves and their ideational substances and praxes due to external insistence. These people do not constitute, they rather consume their subjectivity in forms of self-searching and self-realizing experiences. Classic modern agents, thus, treat their experiences as mere commodities. They hastily gather artistic and aesthetic insights, mental contemplations, emotional impressions, psychological observations, diverse enjoyments and delights for body and soul, political activism, public-life-involvements, and subcultural fulfillments (i.e. chic and groovy pleasures in connection with what to possess, eat, drink, and wear, where to go out or visit, what do as sport, how to relax, etc.). However, these experiences are not qualitatively relevant encounters with the self in the process of becoming. These are only CV-compatible achievements, gratifications, satisfactions, amusements, self-accomplishments, and triumphs which have quantified values. So, classic modern people collect experiences in the same way as they seek to possess symbolic objects – commodification affects both tangible and intangible domains of life in this era.

Accordingly, agents seek to create an authentic lifestyle for themselves, yet not based on unique subjectivity (perspective of the 'I'), but according to consumable pattern-identities (perspective of the 'me'). This is because they are still stuck in the classic modern logic of *either/or* – argued by Beck and Grande.⁸ This epistemic rationale makes them feel that the permissions and possibilities of the late modern positivity are nothing different compared to the prohibitions and musts of the classic modern negativity. Both are demanding social expectations. So, the repeated self-choice-situations are becoming more and more exhausting for these agents, since they consider these trials as something externally pressured. The ocean of commercial advertisements and self-help messages urge the subjects to pick themselves, to make the best out of their individual capacities and competencies, and to enjoy their moments, however as consumers this is exactly what they are unable to do. Because the *either/or* logic distorts all forms of (self-) identifications,⁹ and paralyzes the uniqueness of subjectivity. Through this lens, the attempt to *identify with* is always shadowed by the negativity of *distantiate from* (differentiation).¹⁰ Thus, agents constitute themselves not

⁸ U. Beck and E. Grande, *Cosmopolitan Europe*, Cambridge: Polity, 2007, pp. 28–30.

⁹ In this paper, the term '(self-)identification' is used for the individual act of subjectively understanding the world-out-there with all its social relations, events, links, objects, natural entities, etc. This is because all understandings of the world-out-there are also framings about the self who proposes these ideas. Therefore, identification always has two sides – how the subject understands something it is immanently the subject itself.

¹⁰ L. Borns, 'Othering, an Analysis' *Transcience*, Vol.6, No.1, (2015): 69–90.

inside-out (for something) but outside-in (against something). This pathological prism of (self-)identification does not open up confirmable theoretical positions for the subject to construct itself. On the contrary, it narrows them down. It supports the acceptance of black-and-white sorts of framings, binary meanings and categories, unequivocal narratives and understandings, as well as the affirmation of unambiguous Truths and incompatible vocabularies. Due to the either/or logic, agents pursue the experience of being consummated and concluded. To question is tolerated as long as subjects are unhesitant to look for consistent answers – both about themselves and the diverse domains of their lifeworld. Rationality, as a set of rationale attached to the either/or logic, does not exclude the possibility of improvement or more general development. Yet it very much dislikes uncertainties and ambiguities. So, the classic modern subjects' self-progression is not about the *journey* of being contingent.¹¹ It is only about the *arrival* to feel completed. And about a rushed departure to see whether the next arrival brings something better. However, this hastiness turns the whole process of self-progression into a quantified record of attempts for self-searching and self-realizing experiences. Agents are consuming more and more from their pattern-identities to fill the void inside. Their biographies are like shopping lists (more conveniently called bucket lists). This is why the classic modern subjects are tempted to burn out, and be anxious, depressed and constantly stressed in the era of late modern positivity (and this is what Han misinterprets in his book about burnout society). Because the permissions and possibilities at hand are transformed into tiring prohibitions and musts to self-search and self-realize more vehemently, to experience more intensively without emotional and mental internalization, i.e. to consume more excessively. Late Modernity, thus, becomes the age of excess for the classic modern subjects paralyzed with the either/or logic.¹² The agents do not find their true self, so they consume more, but exactly this consumed subjectivity is the obstacle of self-constitution.

To understand the late modern positivity as not something externally imposed, subjects have to shift their ways of thinking and doing things from the either/or to the *both/and* logic.¹³ The late modern permissions and possibilities infuse the subjects' social interactions with risks.¹⁴ Grand-narratives or cultural patterns (e.g. norms, social rules, codes, taboos, customs, conventions, etc.) cannot offer solutions to these uncertainties and ambiguities because – as Beck argues – the reference value of these

¹¹ R. Rorty, *Contingency, Irony and Solidarity*, Cambridge: Cambridge University Press, 1989, see: part I or chapter 1, 2 and 3.

¹² A. Phillips, *On Balance*, New York: Farrar, Strauss & Giroux, 2010.

¹³ U. Beck and E. Grande, *Cosmopolitan Europe*, p. 29.

¹⁴ U. Beck, *Risk Society: Towards a New Modernity*, London: Sage, 1992.

semantics are lost (or at least fundamentally questioned).¹⁵ Late modern positivity means that the common constraints (the once standardly followed prohibitions and musts) of the classic modern era become invalid and null. Of course, agents often try to stick their ideas and praxes to these narratives and patterns without any revision. However, in intersubjective situations, again and again, they need to cope with the experience that these semantics are not guidance for others, but mere symbolic framings with rather useless content. Late Modernity urges the subjects to deconstruct all the prohibitions and musts of their social surroundings, and rely, instead, on their reflexive and critical agency. It is because this phase of modernization is attached to a global level structural change.

Under a common name these trends can be called *flows* that lead to institutional abstractions. Giddens says that after the Second World War and especially since the fall of the bipolar world order in 1990–91 when the Soviet bloc collapsed, Globalization has emerged as an irreversible process.¹⁶ This perception is due to the experience that in our lifeworld a rapid diffusion of flows is progressing.¹⁷ On the one hand, we are witnessing flows of people (tourists, students, guest workers, temporary residents, migrants, refugees, etc.), products and services, innovative techniques and best practices, automatized and robotized solutions, digitalized information and Big Data, business and financial interventions, as well as cultural and intellectual streams (in the various fields of art, science, fashion, architecture, lifestyle, etc.). On the other hand, global flows of different threats and hazards like ecological and health crises, terrorism, state-failings, financial crises, cyber and international crimes, energy-dependencies, as well as fake news and data corruptions are also observable. And this globally interlinked and accelerated lifeworld of diverse flows seriously undermines our local structures, i.e. the realm of formal (regularizing and socially hierarchizing) and informal (culturally reproductive) institutions we are living with as traditional frameworks.¹⁸ Globalization facilitates similar tendencies everywhere. These processes trigger the local structures and agents to react. While institutional and subjective reactions may differ to some extent, from a global perspective these dissimilarities have moderate significance. Therefore, an institutional abstraction proceeds in the late modern context.

So, this should be seen as an interrelated mechanism of causes and

¹⁵ U. Beck, *World Risk Society*, Cambridge: Polity, 1998, pp. 133–152.

¹⁶ A. Giddens, *Modernity and Self-Identity. Self and Society in the Late Modern Age*, Cambridge: Polity, 1991.

¹⁷ A. Giddens, *Runaway World: How Globalization is Reshaping Our Lives*, London: Profile, 1999.

¹⁸ H. Rosa, *Social Acceleration. A New Theory of Modernity*, New York: Columbia University Press, 2013.

impacts. Globalized dynamics of flows penetrate the local lifeworld and its structural and cultural domains; the induced institutional responses at the local level are fundamentally similar everywhere; these responses combine into a global level institutional abstraction (*universalized institutional unification*). At the same time, due to the shaken local lifeworld and because of the risks triggered by these institutional changes, people revise their reference-based ideational substances and praxes; they start to rely more on their reflexive competencies and critical agencies to de- and reconstruct individually satisfying understandings and practices for themselves; this explosion of individualization (not egoist individualism but subjective constitution of the self) facilitates further risks to the traditional social order; so, continuous de- and rebuilding of the local structures and cultures accelerates even more as the agents strive hard for autonomous subjectivity (*universalized individualization*). So, the core trend of Late Modernity is the interrelation among the processes of Globalization, institutional abstractions, production of risks, and individualization.¹⁹ These are the tendencies behind the late modern positivity and its permissions and possibilities.

Individualization in itself is the emergence of the both/and logic.²⁰ It is much more than a quest for individual uniqueness or a desire to be respected as a sole, distinctive, and unrepeatable subject. It is a process of endless *becoming* without the praxis of othering, i.e. to contrast the self and its being to the Other and its otherness. This is not an ethical shift but an ontological revision of one's epistemic prism. Every self is an Other for others. This constellation is eternally given irrespective to any context. However, in the classic modern era, due to the either/or logic, agents could comfort themselves by the perception that 'me' as part of the collective 'us' (in the name of sameness) is protected from the Other and its dangerous (irrational) otherness by keeping a proper distance. In the late modern era, agents have to change their stance from 'me' to 'I' because there are no references that would tell them comparatively to whom and according to what aspects they are the same with similar ones (i.e. they could feel 'me' among 'us'). The 'I' is the reflexive and critical self who is ready to revisit the grand-narratives and cultural patterns of its lifeworld; who realizes that there are no 'me' and 'us' only 'we,' i.e. similar people with dissimilar perspectives. Of course, it would be misleading to read the late modern future as a sudden elevation to human oneness. Talking about tendencies, it is less naïve to claim that the collapse of social-cultural grand-narratives and references, and the emergence of the both/and logic entail a much simpler ramification – people learn to live with internal and external contingencies. They do not want to see themselves as consummated, and

¹⁹ U. Beck, *What is Globalization?* Cambridge: Polity Press, 1999.

²⁰ U. Beck, *Cosmopolitan Vision*, Cambridge: Polity Press, 2006, cf. chapter 2.

they do not seek to consider their lifeworld as fixed. They rather accept the void inside and the ambiguities of the world outside. They agree with Bakhtin in the principle that

*If I am consummated and my life is consummated, I am no longer capable of living and acting. For in order to live and act, I need to be unconsummated, I need to be open for myself – at least in all the essential moments constituting my life; I have to be, for myself, someone who is axiologically yet-to-be, someone who does not coincide with his already existing makeup.*²¹

Feminizing the other

The classic modern either/or logic imposes on the subjects a set of rationale based on dualities. Through this lens everything is reducible to oppositional binaries, and it is up to the subjects to gather enough information in order to rationally identify the more favorable alternative for them. This set of rationale does not exclude diverse modes of reasoning. The either/or logic tolerates the pluralism of understandings and the various praxes grounded in these different ideational substances. It allows the tense coexistence of rival epistemological framings because already at an ontological level it tries to paralyze the subjects' act of (self-)identification. The either/or logic attempts to bar all agents from the perspective of the 'I.' Classic Modernity is interested only in the multitude of 'me' – in people who treat their objectified, natural, and social surroundings, as well as themselves instrumentally. Instrumentally means that every complexity should be broken down into partials.²² The Total as such is unacknowledged. Only partials can gain meanings. The 'me' is cornered into a contemplative and detached position allows only for the act of giving instrumentally framed and egoistically rational meanings (see the concept of reification in Honneth's interpretation²³). Although individual dissimilarities can emerge from these diverse rationalizations, yet the series of acts are common for all 'me' – a praxis based on categorizations, classifications, labels, and tags; then comes the rational comparison of these partials; and finally the selection of favored (tangible/intangible) commodities. So, there is a double distortion in this stance. On the one

²¹ M. Bakhtin, *Art and Answerability: Early Philosophical Essays*, Dallas: University of Texas, 1990, p. 13.

²² Gy. Lukács, *History and Class Consciousness*, Cambridge: MIT Press, 1971, see chapter entitled *Reification and the Consciousness of the Proletariat* (1923).

²³ A. Honneth, *Reification: A New Look At An Old Idea*, Oxford: Oxford University Press, 2008.

hand, all kinds of (self-)identifications are both confirmations and negations at the same time using either/or-framed contrasts. The 'me' cannot identify any object, natural entity, or human being, just as it cannot address itself, without differentiation at the same time. The attraction of certain partials implies the estrangement of others. This is how the 'me' giving rationalized meanings. The act of becoming entails othering, the narrative-performative presentation of being necessitates that something has to be othered.²⁴ At the same time, this distorted contemplativeness pushes the self to consume more from the favored partials. The self wants to see the 'me' (i.e. itself) as consummated by all partials that are preferable for it and for the collective 'us.' This is the reproductive vicious circle of the way in which the self is both othering and instrumentally treating itself.

In order to stabilize the either/or logic as a rational standard, Classic Modernity cannot ease the rigidity of oppositional binaries. The current argument claims that the most fundamental antinomy at the background of all dualities is the Man vs. Woman epistemological framing. Simone de Beauvoir was among the firsts who recognized that one is not born but rather becomes, i.e. socialized to be man or woman.²⁵ Her statement was formulated on Freud's and Lacan's theories of psychogenesis and psychosexual development. Both of them argued that the relationship between body and gendered (feminine or masculine) subjectivity is neither necessary, nor arbitrary – the former would be biological determinism, while the latter would completely deny the relevance of body. For Freud the fate of anatomy explicitly matters, the sexed subject has to mentalize its bodily given material structure (through identification and object-choice).²⁶ Lacan emphasizes other aspects. He conceptualizes sexual differences on a language-based ideational approach.²⁷ This interpretation seems to avoid essentialism. However, as it will be shown below, it implicitly invokes the very same Freudian anatomical causality proposed from a patriarchal perspective. In spite of the justified criticism against Lacan, his theory sheds light on important dynamics.

To briefly summarize, Lacan stresses that there are no feminine and masculine substances only feminine and masculine signified meanings.²⁸ These meanings are relationally constructed, so in order to grasp their

²⁴ L. Borns, 'Othering, an Analysis', pp. 69–90.

²⁵ S. de Beauvoir, *The Second Sex*, New York: Vintage Books, 1971, p. 301.

²⁶ I. Alfandary, 'Identity between Sex and Gender in Freud and Lacan' *Journal of the CIPH*, Vol.95, No.1, (1999): 22–43.

²⁷ C. Soler, *What Lacan Said about Women: A Psychoanalytic Study*, New York: Other Press, 2006, cf. chapter 2 "Che Vuoi?"

²⁸ W.F. Bracken, *Becoming Subjects: The Agency of Desire in Jacques Lacan's Return to Freud*, PhD. dissertation, Department of Philosophy, Harvard University, 1998.

adequate and relevant significations other meanings need to be known.²⁹ Hence, for the task to describe (or interpret) a meaning which represents something, other meanings are mobilized for explanatory motivations. Representation, thus, cannot escape the *realm-of-language* and enter the *realm-of-substances* whether there is a *world-out-there* or not. According to the Lacanian approach masculine and feminine signified meanings are framed in a relational sense, and the master signifier of this language-structure is the *phallus*.³⁰ The phallus should not be confused with the (erected) penis. However, as Moi points out, this confusion stems from Lacan's own writing.³¹ In his essay 'The Meaning of the Phallus,' Lacan argues that '[The clinical facts] *go to show that the relation of the subject to the phallus is set up regardless of the anatomical difference between the sexes.*'³² This statement claims that the symbolically functioning masculine and feminine positions can be taken regardless of the subject's body. Yet at the same time Lacan suggests that women (as a rule) take up a feminine position, and men (as a rule) take up a masculine one. Why so? It is because the phallus represents the threat of castration.

For Lacan the entry into the symbolic order, into language, is a particularly important phase of both psychogenesis (becoming a subject) and psychosexual development (becoming sexed, i.e. taking up a feminine or masculine position).³³ The phallus distributes human beings into two symbolic (ideational) sexes. Not along anatomical features, Lacan argues, but because it subjectivizes them as speaking beings. Therefore, entering the symbolic order or language is a fundamental subjection to castration.³⁴ It is being subjected to an abstract Power (name of the symbolic-ideational Father in relation to the Oedipus complex) penetrates all relationally interlinked signifiers and signified meanings of language. For Lacan the conscious and the unconscious are both structured like language. So, all forms of subjective observations, mentalizations, understandings,

²⁹ Following on this path, Judith Butler emphasizes that not only the gendered (feminine or masculine) subjectivity is relationally constructed, but also the meanings which refer to the material structure of body. So, even though there are obvious differences on bodies of men and women, but these anatomical features are signified by linguistic meanings as well – these are not mere substances out of the realm-of-language either. J. Butler, *Bodies That Matter: On the Discursive Limits of 'Sex'*, New York: Routledge, 1993.

³⁰ N. Chodorow, *Femininities, Masculinities, Sexualities: Freud and Beyond*, Lexington: University Press of Kentucky, 1993, pp. 54–55.

³¹ T. Moi, 'From Femininity to Finitude: Freud, Lacan, and Feminism, Again' *Signs*, Vol.29, No.3, (2004): 841–878.

³² J. Lacan, 'The Meaning of the Phallus' in J. Mitchell and J. Rose (eds.), *Feminine Sexuality: Jacques Lacan and the Ecole Freudienne*. New York: Macmillan, 1985, p. 76.

³³ J. Gallop, *Reading Lacan*, Ithaca: Cornell University Press, 1985, pp. 133–156.

³⁴ J. Mitchell, *Psychoanalysis and Feminism: A Radical Reassessment of Freudian Psychoanalysis*, Harmondsworth: Penguin, 1974, pp. 74–93.

reflections, fantasized imaginations, dreams, narrative interpretations, and performative self-expressions are inseparably attached to language-use. And language itself is inherently sexualized, and makes human beings sexed (feminine- or masculine-positioned) speaking beings.³⁵ However, Moi rightly asks back – based on this theory, why women should take up a position as feminine more often than men?³⁶ And the only answer Lacan gives is the very same anatomical reasoning developed by Freud. Even though girls and boys are similarly threatened by castration, the traumatic experience of the Lack is different for girls and boys. Girls desire *to be* the phallus because they cannot have it, while boys desire *to have* the phallus, to possess it as their own. Both sexes thus desire the phallus, to control that powerful master signifier that structures the whole signification of language and all subjects. Yet women have to perform a masquerade, they have to mask that in absence of a penis they cannot have the phallus ever. However, it is still unclear why the penis is so symbolically powerful against, for instance, the breast? It is due to the logic – Moi argues – that language is not sexualized per se, but from a patriarchal perspective. And therefore, women are the othered ones and not men. So, sexual differences are ideationally constructed signified meanings, but the two sexes are not equal in this language-framed constellation. The masculine position is differentiated from the feminine one by othering, by distantiation from the feminine otherness. Lacan is remarkably right to claim that beyond institutionalized cultural constraints, language, as mediation for interaction and subjectivation, is normatively sexualized. However, he is absolutely wrong to claim that this logic of language is unchangeable. Of course, it is not. This is not an essentially inherent dynamic of language, because language itself does not have any substantial status either. It is relationally constructed as well. Like all its signifying meanings. So, what Lacan explored and described, it is nothing else than the meta-cultural language of the (pre-modern and) classic modern era infused with the ontologically distorted either/or logic. He was right to identify a patriarchal master signifier in this language. The phallus is, in fact, the generative Power beneath the dynamics of othering.

Oppressions against women originate from a much earlier time than Classic Modernity and the capitalist mode of production attached to it. The either/or logic and its meta-culturally gender-biased patriarchal language, as well as the othering of women obviously trace back to a pre-modern era. However, these dynamics – in a certain sense – are fundamental features of the classic modern age too. The objective and universal (in fact, subjective

³⁵ K. Horney, *Feminine Psychology*, New York: Norton, 1973, pp. 37–70.

³⁶ T. Moi, T. 'From Femininity to Finitude: Freud, Lacan, and Feminism, Again', pp. 867–871.

and particular) form of Rationalization continuously challenge the reference value of the either/or logic. Yet due to its Truth-orientated (in diverse contexts Truth means profitable, valuable, lawful, scientifically true, etc.) epistemological approach, which urges for unequivocal ideational and praxis-related distinctions, Rationalization is unable to really shake the rigid framings of the either/or logic. While it has successfully dismantled the pre modern era's traditional-religious semantics, which were collective lifeworld-explanations imposed by a few powerful agents on many powerless others, the classic modern over-rationalization, instead, installed a new set of rationale in accordance with *common-sense facts* could be perceived and understood individually. Therefore, Classic Modernity has decentralized and diffused the either/or logic to all subjects under the guise of self-interest-based, egoistically rational comparative categorizations and calculations applied from a socially detached and contemplative position. Due to these limitations, the patriarchal language and the othering of women as ontologically flawed foundations have remained almost intact during this phase of modernization, which is the age of individualism (instrumentally treated 'me' and 'us') that has to be proceed by the late modern individualization (subjectively constructed 'I' and 'we'). The rational self, who search for Truths relentlessly, can reveal epistemological category-mistakes and immoralities along discriminative binary codes,³⁷ but it is unable to reveal the either/or logic's generative distortedness. It would be irrational to accept that the rational is not rational. This is the vicious circle of Classic Modernity. It was a historically necessary era in the course of modernization, but its alleged finitude has to be opened up for infinite progressivity.

When speaking beings use a patriarchal language to communicate, interact, and (self-)identify their lifeworld, they not just other women for their perceived otherness, but they also feminize everything distantiated as an Other. The either/or logic and its mediating language designate women as the ultimate Other. So, if something is othered it has to be feminized to some extent. Therefore, something is not othered due to its substantial feminine status. It is, instead, feminized because it is simply rejected. Irrespective to the speaking beings' masculine or feminine position, if agents apply either/or kinds of ideational and praxis-related (self-) identifications, then they more or less feminize the Other at the same time. When something is othered, it is framed as a not-Truth, and therefore it is considered as irrational. Yet Truth, as it was mentioned above, has diversely contextualized meanings. During its historical evolution, the either/or logic has always applied the Man vs. Woman opposition as the generative

³⁷ A. Honneth, *Reification: A Recognition-theoretical View*, Tanner Lectures on Human Values, Berkley, University of California Press, 2006.

antinomy structured into a linguistic form. However, in different times, or to put it in Marxist terms, in various stages of the mode of production (antique, slaveholder, feudal, capitalist), the either/or logic had different kinds of authoritative binary codes. It is only since the capitalist era that one distinguished code tries to over-dominate all other binaries. The code of profitable/unprofitable, just as its subversions of productive/unproductive, innovative/non-innovative, competitive/uncompetitive, etc., is a duality that strives to function as the sole (determining) binary of the either/or logic. This tendency has two milestone-consequences. On the one hand, everything that is considered as unprofitable, is labeled as irrational too, and therefore it is feminized. This trend leads to the discriminative feminization of whole sectors, social roles, professions and vocations, positions, scientific disciplines, artistic streams, passions, forms of recreations and relaxations, etc.³⁸ On the other hand, due to this tendency, masculine rationalization with its flawed logic and language, as well as biased ideational and praxis-related othering is unmasked in more and more contexts.³⁹ So, its reference value becomes instable. Accordingly, while Classic Modernity pushes for growing capitalist profitability, productivity, innovativeness, and competitiveness, which is in fact the Globalization of flows described above, it urges its own ending.⁴⁰ Of course, in the pre-modern and also in the early stages of the classic modern era discriminative feminization was much more radical and aggressive than in our contemporary times. This statement is especially true if we focus on the Western civilization, i.e. on the native land of Capitalism and its rationalized, administered-registered, bureaucratized, industrialized, technologized, nation state-based mode of operation overarched by the egoistically instrumental individualism. However, the capitalist mode of production, just as once the feudal one, has reached its dialectical point of tenseness in the last decades. Nowadays, the conditions it creates enable the agents for a different kind of mode of production. There is no sharp caesura to realize, there are only shifting trends to observe – a chance to progress from Classic to Late Modernity, and to gradually replace the capitalist-individualist mode of production with a critical-reflexive individualized one.⁴¹

The language of late modernity

³⁸ H. Frigga, 'Feminizmus és marxizmus' ['Feminism and Marxism'] *Eszmélet*, No.32, (1996): 27–44.

³⁹ U. Beck and E. Beck-Gernsheim, *The Normal Chaos of Love*, Cambridge: Polity, 1995.

⁴⁰ A. Kapitány and G. Kapitány, *Szellemi termelési mód [Intellectual mode of production]*, Budapest: Kossuth, 2013.

⁴¹ U. Beck and E. Beck-Gernsheim, *Individualization: Institutionalized Individualism and its Social and Political Consequences*, London: Sage, 2002.

According to the either/or logic, there is a world-out-there as our objectified, natural, and social surrounding, and there are also *Truths-out-there*. So, this logic is foundationalist, representationalist, and essentialist. It claims that if the agents try to enrich and expand their knowledge vertically, then they are able to get closer to something higher, deeper, hidden or veiled – to essential Truths.⁴² The either/or logic treats the world-out-there and the *world-inside-the-self* similarly. Both are there to be grasped, to be understood. Everything has a most inner foundation covered by outer layers of attributions, characters, and features as partials. The links, connections, and mechanisms among these partials are important to be observed and described, because this is the way how everything can be rationalized based on ‘facts.’ Both the world-out-there and the world-inside-the-self represent themselves, so their intended meaning just needs to be perceived adequately.

In contrast, the both/and logic has a fundamentally different ontological prism. It says that even there is a world-out-there, there are absolutely no Truths-out-there, because all kinds of truths are sentence-based subjective constructions cannot be separated from the subjects who created, formulated, and argued them. As Rorty describes:

To say that the world is out there, that it is not our creation, is to say, with common sense, that most things in space and time are the effects of causes which do not include human mental states. To say that truth is not out there is simply to say that where there are no sentences there is no truth, that sentences are elements of human languages, and that human languages are human creations. Truth cannot be out there – cannot exist independently of the human mind – because sentences cannot so exist, or be out there. The world is out there, but descriptions of the world are not. Only descriptions of the world can be true or false. The world on its own – unaided by the describing activities of human beings – cannot.⁴³

So, nothing, neither in the world, nor inside the self speaks for itself, only human beings as subjects do so. The claim that there are factual Truths refers to a belief that everything, all entities of the universe and among them also the self, has an intrinsic nature which is still not fully understood by human

⁴² R. Rorty, *Objectivity, Relativism and Truth: Philosophical Papers I*, pp. 211–222.

⁴³ R. Rorty, *Contingency, Irony and Solidarity*, p. 5.

beings.⁴⁴ From the perspective of the both/and logic this argument leads to unanswerable questions and unknown super authorities such as God, Nature, Spirit, Rational Mind, Authentic Self, etc. which all somehow constrain the reflexive competencies and critical agencies of subjects to construct and reconstruct themselves. To strive for the acquisition of something higher or deeper essence, something used-to-be-unknown by discovering and describing factual Truths is a hegemonic praxis tries to mute rival arguments.⁴⁵ It is nothing else than one understanding with its own vocabulary imposes sentence-based narratives on other framings from the same horizon of human subjectivity by claiming vertical elevation or depth for its status. It is a misleading statement of certain agents who assert that they managed to explore knowledge fragments of something non-human, that they succeeded to decode and transpose the secret language of something worshiped into our common sense language. Both pre-modern and classic modern subjects appreciated this illusion of the world (and the self) as it is created by something which has its own, still not fully translated language, and factual Truths are sentence-shaped meanings explored from this non-humanly established knowledge. Due to this belief '[...] *it is easy to start capitalizing the word 'truth' and treating it as something identical either with God or with the world as God's project. Then one will say, for example, that Truth is great, and will prevail.*'⁴⁶ The practice driven by this ontologically distorted idea is simple judgment rooted in the either/or kinds of confrontations (confirmation of the rational/true 'me/us' and negation of the irrational/untrue Other).

The both/and logic, instead, urges for justifications.⁴⁷ It has a meta-culturally non-patriarchal and unbiased language respects the richness of different vocabularies. This logic is the ontological stance of the 'I' who does not need to other the Other in order to identify itself or any entity in its lifeworld. As it was said before, the 'I' does not treat the Other instrumentally because it does not reify itself either. It is aware of the diversity of individual subjectivities. Thus, the 'I' strives to embrace the humanness [or in Marxist term: the *speciesness* (*Gattungswesen*)] of the Other instead of estranging it for its otherness. The subject 'I' (self-)identifies its lifeworld in appreciation of the motto of *sameness in differences* – people are dissimilar and exactly this diversity makes them similar. In contrast, the 'me' sees only the *sameness in exclusivity* – people are dissimilar, but certain ones can form a group based on their distinguished similarity. The former approach, since it has a focus on

⁴⁴ R. Rorty, *Truth and Progress: Philosophical Papers III*.

⁴⁵ R. Rorty and P. Engel, *What's the Use of Truth*, New York: Columbia University Press, 2007.

⁴⁶ R. Rorty, *Contingency, Irony and Solidarity*, p. 5.

⁴⁷ U. Beck, *Cosmopolitan Vision*, see chapter 3.

human beings as a Totality, enables for universal and pan-relational togetherness (self-transcending connectedness), while the latter, since it concentrates on instrumentally framed partials, allows just for particular belonging (self-enhancing bond among superiors).

The 'I' is able for these ideational framings and praxes underpinned by justifications produced in both/and-driven deliberative discourses because it gives up the language of generative antinomies. The 'I' is devoted to learn a new language since it accepts that vocabularies are constructed and variable. There are no Truths, no 'essences,' no 'facts,' no reality-matching correspondences or representations – there are only more or less coherent vocabularies describe the world-out-there and the world-inside-the-self in a more or less useful way – as Rorty argues in most of his books.⁴⁸ Usefulness, in this sense, refers to an agreement among reflexive and critical subjects about how to give a detailed account of 'reality' in sentences. It is not a full consensus achieved by compromises, nor an ultimate or eternal harmony of oneness in understanding our objective, natural, and social surroundings. It is rather a commitment to the procedure of repeated deliberative justifications which can never be discriminatively unjust even to those who do not accept the majority-favored descriptions of our lifeworld. Subjects commit themselves to justification because they acknowledge that everybody has the actorness to be a truth-candidate but nobody is able to tell the Truth. This does not mean that all people's arguments are equally true. It cannot be the case, because true is what is justified – justified not by one, but by many. This acknowledgement rather means that everybody can argue a truth-proposal which does not deny others' agency to constitute their subjective truths.

Of course, there are vehement criticisms against this argument of *truth is made and not found*. Those who disagree with this claim emphasize that majority-supported justifications are not guarantees for anything – the majority can be brutally unjust and merciless. The problem with this counterargument is that it is said from the perspective of the either/or logic, and this logic cannot refute the both/and one, simply because they have fundamentally different ontological prisms. There is no dialogue between these logics since they apply totally incompatible languages. The either/or logic's language is considered as a medium between the self and its 'reality.' The both/and logic's language is rather a tool – a tool in the hand of the self to communicate and interact with others in order to describe our lifeworld in a more useful way. For the progressive recognition to stop the quest for Truths and all the unequivocal 'facts,' it is indispensable to give up the idea that language relates us to the intrinsic nature of the world-out-there and the world-inside-the-self, that language can give common sense meanings

⁴⁸ R. Rorty, *Philosophy and Social Hope*, New York: Penguin, 1999.

to the unambiguous ‘essences’ discovered. As long as people believe that language mediates between the self and its reality, as long as they are convinced that human language can translate the secret language of the world-out-there and the world-inside-the-self by searching out newer and newer Truths from these hidden knowledge-realms, they won’t give up to instrumentally treat each other (and also themselves) along reductionist binary codes. Simply because this ontological lens and the meta-culturally patriarchal and biased language attached to it make them to affectively feel and cognitively think that they are closer to something worshiped, something non-human source of existence. Since this source, whatever is claimed about it, is utter speechless, then the Other has to be othered (negated) in order to open the way for the self to identify (confirm) itself. So, it is not God, Nature, Spirit, Rational Mind or Authentic Self who gives special exclusivity to the ‘me/us,’ but the rejected dissimilarity of the Other. The either/or logic’s language, as Lacan stated, is relational, i.e. all meanings are meaningful just in relation to other meanings, and in relation, of course, to the master signifier of the phallus. Language is relational because it cannot be supported by anything external to it. This conclusion is right since language, just as truth, is made and not found. But this relational constellation is used by the either/or logic for judgment – to produce rationalized and masculinized Truths by judging irrationalized and feminized untruths. This is the language of othering. It makes people unable to realize that not verbal meanings but speaking beings (i.e. themselves) are the ones who are (pan-)relationally attached to each other.

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