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WHAT IS EXHAUSTION? On justice and contingency

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The end of life is always vivifying. Samuel Beckett (1979, p.195)

ABSTRACT

This paper considers Deleuze's account of exhaustion. Exhaustion is an implicit theme in several of his later essays, but is made explicit in his engagement with Samuel Beckett in 'The Exhausted'. I adopt and adapt the processes of exhaustion Deleuze describes to the idea of justice. In doing so, I present justice as orientated to specific regimes of power (sovereignty, discipline, and control), and argue that it is these orientations which should be exhausted. Consequently, I argue for another type of justice, one that is intensively dis-intensified – an exhausted justice, by which bare life becomes affirmed as the subtending of all human life. This bare life is contingent; yet, with exhaustion, this contingency is also a necessity - one in which it is illegitimate for human life to be left to die. As such, exhaustion neutralises the necro-thanatopolitical core of biopolitics. More prosaically, exhaustion is uncompetitive and, if justice should be exhausted, it is as a means for exhausting competition as that which gives value to human life. For this reason, the paper also touches upon the relation between competition and authority.

INTRODUCTION

Given Deleuze's admiration for the philosophies of Spinoza and Bergson, it is no surprise to consider his own work as being concerned with intensity (Duffy, 2006, Chapter 4) and vitalism. Indeed, as he famously said, "Everything I've written is vitalistic, at least I hope it is, and amounts to a theory of signs and events" (Deleuze, 1995, p. 143). What does this mean? Certainly we can understand it as valorising life as the specificity of *a* life lived as, and in relation to, a series of signs and events; but it should not be overlooked that, for a philosopher who is so in favour of life and vitalism, Deleuze displays a consistent interest in death; or, at least, in that point where life is at its most *dis-intensified* as something that is not quite, but yet as close as possible to, death or dispersal.

Despite the well-known antagonism to Freud, the death drive – as that which is beyond the pleasure principle – seems to find some favourⁱ in the Deleuzian system, most obviously in *Coldness & Cruelty, Difference & Repetition*, and the accounts of the body without organs in *Anti-Oedipus*. From this perspective, it is Deleuze's Nietzscheanism – specifically, the affirmation of the eternal return - that seems the most profound influence. Yet, it is not really a problem of working out which philosophy influenced Deleuze 'the most', but of taking this valorisation of the interpenetration of life and death seriously as a way of thinking and living. What are the consequences of valorising life at the point of death as its *most intense* manifestation? (Deleuze, 2001, p. 28)

On the face of it, it seems that such a vitalism holds little utility for the thinking of justice. Yet, it is obvious that Deleuze thought otherwise. In 'To Have Done with Judgment', it is the beatitude of the baby that displays the greatest will to power (greater than any man of war); and Deleuze notes of

the baby that one can only have an impersonal relationship to it. This does not make babies equivalent to each other but illustrates the depth or intensity of a bond (or, indeed, a rejection) that has nothing to do with character, personality, or individuality (Deleuze, 1998, p.133). If there is a sense of justice here, it is under the sign of cruelty or the raw flesh – of a life persevering but, too, of a life that will be forced to live.ⁱⁱ Earlier in the piece, Deleuze writes:

Artaud will give sublime developments to the system of cruelty, a writing of blood and life that is opposed to the writing of the book [of infinite debt], just as justice is opposed to judgment, provoking a veritable inversion of the sign. (Deleuze, 1998, p.128)

A truthful – or even ‘lawful’ - inversion of the sign. It would appear that the true sign of vitalism – its justice - is the one that points to its own reversal, away from life and toward death. Yet, at no point does Deleuze turn death into a principle or revealed truth; death does not replace life, being instead the thing that gives it the possibility of intensity. Death not only as the direction of life, but also as its sense: as what must be resisted whilst remaining inevitable.

The reference to Artaud already shows that, for Deleuze, this problem of the least-intense-as-the-most-intense has already been raised in literature. Indeed, Melville, Beckett, and Dickens (amongst others) all figure in Deleuze’s late writings on this theme. The focus of my essay is to consider this play of intensity – which, for the sake of brevity, I will refer to as exhaustion – drawing out some of its implications for the idea of justice.

EXHAUSTION

In *Essays Critical and Clinical*, the essay ‘The Exhausted’ considers Beckett’s works for television. Working from these, Deleuze presents a much more systematic presentation of the ‘processes’ of exhaustion than in his account of Dickens’ ‘disreputable man’ in ‘Immanence: A Life’ (Deleuze, 2001). Nevertheless, there are strong connections between the two essays. The disreputable man, approaching death, senses a growing soft sweetness emanating from those around him who had earlier viewed him with contempt (Deleuze, 2001, p.28). As his life recedes, and death gains the advantage, the care and warmth of these otherwise hostile onlookers seems to increase in proportion. More specifically, it is the *slender thread* of life that they respond to. Not his actual or realised life (the biographical life of the disreputable man), but what is indistinct in him as a life force (if ‘force’ is not too strong a word): “Suddenly, those taking care of him manifest an eagerness, respect, even love, for his *slightest sign of life*” (Deleuze, 2001, p.28 – my emphasis). The winding down that exposes a bare life or “*homo tantum*” (Deleuze, 2001, p.28) confounds the rule of entropy: the more formless and disorganised it becomes, and the more indistinct it seems to be, the more remarkable, unusual, and *informative* life paradoxically becomes. Here, where *a* life plays with death (Deleuze, 2001, p.28), the entropic arrow of time is not linear, nor unidirectional, and we find a sign or event appearing where we least expect it - at the moment of greatest indistinction.

The idea of a uniform void as entropic telos, where each part is the same as any other, is contrary to Deleuze’s philosophy. Instead, there are the non-discrete zones of the virtual, all of which have specificity or singularity, but which lack any fixed identity or externally related difference. This virtuality is what the disreputable man approaches as death takes hold or, better, it is what begins to become more apparent in him as he dies. Yet, death is not the only means of making it apparent, as ‘The Exhausted’ makes clear. In this account, Deleuze identifies four processes in Beckett’s works, which aim to stretch to the limit and to exhaust by,

- forming exhaustive series of things,

- drying up the flow of voices,
- extenuating the potentialities of space,
- dissipating the power of the image. (Deleuze, 1998, p.161)

With the exception of the final one, each of these procedures is an additional step, achieving a kind of meta-exhaustion of the previous process, until all that remains is an intensive field that gains its power by simultaneously being the least intensive and differentiated. Here, the affirmation or selection of any given 'part' is also, unavoidably, the affirmation and selection of every other part of the field: inclusive disjunction (Deleuze, 1998, p.154). Nothing can be excluded, but this does not mean that everything is thereby included if, by the latter, an absolute harmony or instant communicativeness is imagined. The exhausted is the point at which non-exclusion is also non-inclusion, and where all the parts are undifferentiated without becoming equal to, nor substitutable for, one another.

The contrary of exhaustion today is competition, and I will return to this below; but it can be highlighted here that competition is not only that which pits subject against subject, and life against life, in its attempts to incarnate the exception to the *exclusion* of all else; it is also the relentless pursuit of possibilities: the assembling of a desire that seeks yet another innovation, and yet another communication, and yet more growth, and yet greater efficiency. Competition, in this sense, pursues the impossible (and so tiring) dream of realising every possibility and of leaving nothing undifferentiated. In relation to Beckett, Deleuze writes,

... one can never realize the whole of the possible; in fact, one even creates the possible to the extent that one realizes it. The tired person has merely exhausted realization, whereas the exhausted person exhausts the whole of the possible. The tired person can no longer realize, but the exhausted person can no longer possibilize. (Deleuze, 1998, p.152)

As things are realized, or actualised, then their possibility – as something that existed before the actualisation – becomes a thinkable representation or calculation; but only with hindsight. Thus, realization can never have done with the possible; indeed, to realize a possibility is to make it nothing, to discharge it with an intensity that only ever wants *yet more intensity*, a greater hit (Deleuze, 1998, p.153). The Beckettian procedure, in contrast, is to exhaust the possible before any realization of it can occur – the baby “is exhausted before birth” (Deleuze, 1998, p.152). Here, the contingency of a life is shown to be something altogether different from its possibilities;ⁱⁱⁱ yet, it would be an error to think of this contingency as being at the beginning or the end (e.g. I, or my parents, or my grand-parents, etc. might never have been born; and, too: one day the sun will become too hot to support life on earth); rather it is here, now, always in the middle (Deleuze, 1998, p.157; Moore, 2012).

There is, then, a task or project to exhaustion that should not be equated to merely tiring work. If human life is contingent and insignificant in terms of what is, we cannot make a necessary and significant principle out of this insight; to do so would be a false move, inasmuch as it would attempt to identify, and then realise, only that which seems *most* possible. Instead, exhaustion will impose something worse: to live, but without ever knowing if one has lived or not, because death is already here in the middle, and its border with life cannot be finally made out or realised: “...At what point do separate moments of existence make up a whole, a life”? (Gontarski, 2015, p.180). This makes of exhaustion the task of repetition: “The only uncertainty that makes us continue is that even painters, even musicians, are never sure they have succeeded in making the image” (Deleuze, 1998, p.161).

Of course, to fail again. However, we might wonder: is there anything *effective* in any of this? Isn't the exhausted merely the one who has finally sunk into themselves, operating their own

combinatory processes and sleeping their private, dreamless sleep? At the end of 'To Have Done with Judgment', Deleuze rejects any notion that what I have here indicated by 'exhaustion' is simply a subjective matter. The reason is because the subject inevitably has its preferences: it would like to include something and to exclude others. In short, this subject is only ever the subject of the exception and of immunity – to which I will return below. But to be exhausted is to be without preference when it comes to the available possibilities. Instead, the point has to be reached where the affirmation of one choice is simultaneously the affirmation of all choices; and this means that a social dimension, exceeding the subject, is always operative in the work of exhaustion.

THE FORMULA AND THE BULBS

In his treatment of Melville's 'Bartleby, the Scrivener', Agamben (1999) focuses upon the potential and impotential of the copying (and other) work that Bartleby prefers not to undertake. In doing so, Agamben's analysis says little about Bartleby's employer, the attorney. For Deleuze, the relationship with the attorney features much more prominently – indeed, it becomes increasingly clear as Deleuze's account develops that he understands Bartleby and the attorney to form a kind of pair, through which an idealised fraternity replaces charity and philanthropy. The latter are exhausted, clearing the ground for a much more treacherous yet also, perhaps, incestuous relation between the two: "a community of celibates" (Deleuze, 1998, pp. 84-85). Bartleby's formula – 'I would prefer not to' – seems to bear down upon the attorney much more than upon Bartleby himself; it is the attorney – and through him, the world that he inhabits – that is driven towards exhaustion and dis-intensification. It is the inclusive disjunction at work, by which to either affirm copying or not-copying automatically selects the excluded opposite as well. Through this procedure, the attorney loses his bearings without falling into an entropic, uniform void; instead, he suddenly finds that everything is both much closer and much further away than he had imagined. Rather than a coordinated space and a linear time, both begin to collapse into themselves and into each other but, in doing so, reveal a world of intensive zones or singularities, with each of the zones being distinct but without any externally related difference between them. Not a difference *between*, but difference in the very middle and core of each: "...against the particularities that pit man against man and nourish an irremediable mistrust; but also against the Universal or the Whole, the fusion of souls in the name of great love or charity" (Deleuze, 1998, p.87)

We should not fail to see another great exhausted figure from literature: Ralph Ellison's Invisible Man. The Invisible Man relates his story whilst remaining invisible within the book itself, except for its margins, at the 'Prologue' and the 'Epilogue', in which he tells us where and what his adventures – if that is the right word – have led him to. At the beginning and the end, the Invisible Man addresses us from the bright, warm hole of his abode. An underground hole in which he both hides – and this hiding is the condition for achieving a certain form and thus semblance of visibility (Ellison, 2001, p.6); and from which he addresses us, or the world. Indeed, the epilogue again makes it clear – as clear as Bartleby's effect upon the attorney – that the exhausted does not retreat from the world so much as make the world disappear to itself. In the Epilogue, the Invisible Man's intentions are clear: he will exhaust the world. In doing so, he will return to it the lessons it had imposed upon him: "When one is invisible he finds such problems as good and evil, honesty and dishonesty, of such shifting shapes that he confuses one with the other, depending upon who happens to be looking through him at the time" (Ellison, 2001, p.552).

This does not mean, of course, that the Invisible Man has become a sort of wise sage – quite clearly, he continues to be invisible to himself, at least to the extent that he continues to imagine that the

world is full of possibilities (Ellison, 2001, p.556); but, the truth is that he is already in the process of exhausting that possibility – which is why he must stay in his underground hole: “So that even before I finish I’ve failed” (Ellison, 2001, p.559). Failing before he has finished is the formula specific to the Invisible Man, through which he condemns and affirms, “say no and say yes, say yes and say no” (p.559). Even more specifically, all of this is to come or, better, is deferred at the same moment that it is being affirmed. It is not to be mistaken for the dream – for example, the dream where one runs without getting anywhere – and Deleuze outlines his antagonism to the dream in ‘To Have Done with Judgment’, preferring a dreamless sleep or insomnia. The Invisible Man is also dreamless, being in a state of sleepless hibernation in the light of 1,369 bulbs. He *will* take action, yet he will not leave his hole. He has come out of hibernation, but only to relay an invisible speech, as if the lips were moving, and the pen were scratching, but the voice is out of phase, and the lines are all of a jumble. It is *his* motivation, yet it has already escaped him to form zones of indiscernibility, as if his invisible speech were the words of others: “Who knows but that, on the lower frequencies, I speak for you?” (Ellison, 2001, p.561). More than anything, the Invisible Man traces the trajectory of a boomerang – not a dialectical spiral (Ellison, 2001, p.6), but a continuous reversibility that shows the darkness in the light, and the light in the darkness. Beginning and ending in a brightly lit hole, where the light does not so much give form as submerge it.

JUSTICE

For want of a better word, might not the exhausted then show us a *superior* justice? This requires some explication of ‘justice’. In his historical review, *Concepts of Justice*, Raphael identifies two elements to the Western thinking of justice: requital of desert and impartiality (Raphael, 2001, p.235). These two elements, that Raphael distinguishes from fairness and equality (moral or social justice), have no intrinsic bond: their combination as justice is simply “the result of history” (Raphael, 2001, p.241). Raphael’s concept of justice here falls under the banner of institutional justice, as this is described by Sen (Sen, 2010). It is a matter of established procedure. Although it is not clearly demarcated in *Concepts of Justice*,^{iv} moral or social justice seems to fall more on the side of consequentialist justice (Sen, 2010). Likewise, Rawls (2005) and Nozick (2001) are examples of institutional justice (the original ‘veil of ignorance’; historical acquisitions and exchanges) where justice is achieved through the application of a contractually agreed (or historically embedded) procedure. Consequentialist justice – as advocated by Sen – is not trapped in history but is able to review outcomes in light of current patterns and distributions (moving it towards Raphael’s description of moral or social justice).

If it is not too reductive, the *American* assemblage of justice draws a line between process and outcome and then debates the extent, nature, and placement of this line. This is evident, for example, in the more recent development of intersectionality. As described by Hill Collins and Bilge (2020, Chapter One), the intersectional approach combines a range of social perspectives as a method for promoting consequentialist justice over the institutional. Intersectionality looks at current distributions and interrogates how these have come about and – beyond the observance of juridically sound processes – whether those distributions are fair.

What these discussions indicate is that, if the line between institutional and consequentialist justice cannot be stabilised, it is because neither is capable of grounding itself. No legal procedure can legitimate itself; but neither can any critique of that procedure either. Approached from either direction, the aporia of justice is inevitably encountered: there is the procedure of the law, and there is the application of the law. Or, as Virno recounts in his discussion of Wittgenstein, a rule cannot

determine the rule of its own application (Virno, 2008, p.107). However, if law is not to slide into the abyssal crater of its own lack of foundation, it must split itself and use each half as an obstacle for the other. The question then is: what is the specificity of this double game in any given instance?

It seems clear that the Indo-European tradition always considers justice to be doubled or twinned: as Deleuze and Guattari write (following the work of Georges Dumézil),^v we keep encountering the combination of the one-eyed and the one-armed (Deleuze & Guattari, 1988, p.351). Nevertheless, such twins still need an orientation and frame of reference. Here, Foucault's tripartite description in the *Governmentality* lecture (Foucault, 2000) seems apposite, tracing what might be considered as three juridical orientations: territorial sovereignty, normative discipline, and circulating governmentality.^{vi} In terms of justice, what is the orientation of territorial sovereignty? The proper allocation of rights and obligations according to status. Infringement of this allocation calls for restitution to be made in terms of blood, money, or goods. With normative discipline, justice calls for proper distinctions to be drawn between people, and for each member of the resulting category to be treated as alike as possible. Broadly, these cover the two historical accidents identified by Raphael: requital of desert and impartiality.

With circulating governmentality (or 'control'), justice involves an amplification of these two features. Requital becomes communicative, and impartiality becomes a chance outcome. As such, justice becomes orientated by problems of logistics, management, and uncertainty. In the case of the former, justice becomes expressive, as David Garland has observed (Garland, 2002, Chapter One). More than this though, communication itself becomes a type of justice, perhaps best illustrated by ideas of restorative justice (Liebmann, 2007, Chapter One).

With chance, the normative basis of statistical governance not only centralises probability but also uncertainty (Ewald, 1991). In this case, justice takes on a doubled perspective, moving forward whilst learning from past mistakes (Diamantides & Schütz, 2017, Chapter Four) – that is, reacting to what were previously unforeseen risks - and at the same time, there is the valorisation of uncertainty itself, that plays out in a number of ways: as a prop for libertarian freedom (O'Malley, 2004, Chapter One) and as a retrenchment of Nozick's view that, so long as the process is historically 'just', then the outcome – no matter how unforeseeable or presumably undesirable - must be just too. Even arbitrary outcomes of the process can appear as impartial and, therefore, as a 'natural' or apparently self-regulated result, free from 'external' interference.

Taken together, communications and chance outcomes find their articulation in competition. Competition is the mode of evaluating by which a successful outcome must be at the cost of less successful outcomes. Competition co-ordinates and compares results so that there can be 'winners' only on condition that there are 'losers'. At best, competition depends upon the communication of envy but, at worst, it must make the non-competitive visible as those who have been left to die. These constitute the unfortunate collateral damage of a system geared towards the realisation of all of the 'best' possibilities. If the winners are valorised, this is because of their luck and skill in mastering chance – they are the ones able to identify and select the range of possibilities and, through these exceptional abilities, place themselves in the position where they deserve to win. By chance, the distribution of 'goods' appears to result from the individual skill and luck of the player, rather than from the structural affordances of the game itself.

At root, the orientation of justice under control is essentially competitive: the most competitively achieved outcome is the most just one even if arbitrary, because arbitrariness, in this context, is only the unforced outcome of the competitive process. Similarly, if one takes an unfair or uncompetitive advantage by forcing the procedure in some way, giving oneself an unequal opportunity, then there

is injustice. Yet, there is obviously paradox and circularity here: if a capricious outcome is nevertheless apparently just (because unforced and/or unpredictable), how to decide when an intervention or move is inappropriate – that is, arbitrary or capricious *in the wrong way*?^{vii} It is this that calls for constant communication and discussion and, by which, the most communicated can also become the most just (not to mention the most true).^{viii} In this context, it is not so much the *loudest* voice that is just, but the one that circulates the most. Obvious to say, this leaves the means of being competitive open and malleable. The account of intersectionality given by Hill Collins and Bilge seems aligned to this debate albeit, perhaps, with some ambivalence:

For example, the FIFA World Cup case suggests that competition is not inherently bad. People accept the idea of winners and losers if the game itself is fair. Yet fairness is elusive in unequal societies where the rules may seem fair, but differently enforced through discriminatory practices. Fairness is also elusive where the rules themselves may appear to be equally applied to everyone, yet still produce unequal and unfair outcomes: in democratic societies everyone has the “right” to vote, but not everyone has equal access to do so. (Hill Collins & Bilge, 2020, pp.238-239)

The orientation of justice is not one that departs from competition, but one that seeks to ensure a more just and equal framework for competitive actions to take place in. Not the absence of competition but *better* competition, through equality of opportunity.

In this sense, competition is the most effective means for tiring us out today. For this reason, it deserves further description. Can competition be exhausted?

COMPETITION

Competition is the ideal of neoliberal regimes (Foucault, 2008; Dardot & Laval, 2013; Brown, 2015). This means the infusing of all social, political, and economic life and practice with the spirit of competition so that it becomes the legitimation for those practices, their truth, their entrepreneurialization, their promise of growth and prosperity, and the adjudicator on who will live and who will be allowed to die. If competition is tiring, it is because it never rests – the game calls for constant vigilance and preparedness so as to bring forth the most perfect logistical solutions. Being inextricably linked to the ‘correct disposition of men and things’ (Foucault, 2000, p. 208), competition calls for never-ending itineration and nomadism (Moore, 2013). If we cannot rest it is because, crucially, there is nothing ‘natural’ or self-given about competition – not only must it be fostered and brought forth (Foucault, 2008, p. 120), it must become *the* project to which all are dedicated and committed to bringing about. As Foucault, Brown, and Dardot & Laval have all outlined and explored, competition is an essence, a dream, and a goal that it is the duty of all – at even the most micro and seemingly inconsequential levels of individual life – to realise and promote.

Brown and Dardot & Laval have been particularly concerned to identify the dangers that such a promotion of the competitive entails. These dangers can be crudely described as coalescing into a unified and basic threat for the democratic tradition wherever it has taken hold: competitive neoliberalism is anti-democratic. At the same time, none of these authors are blind to the shortcomings and failures evident in the history of democracy in practice^{ix} yet, as an ideal, it persists if for no other reason than “the negative one that we should not be ruled by others” (Brown, 2015, p. 203). If governing ourselves is identified as a ‘good’, it is because it allows for the articulation of difference and disagreement - of contestation - not with the aim of necessarily realising the potential of each and every difference but, instead, of negotiating a never-ending series of moves in the hope of fostering and tending such disagreement and differentiation.

This appears, though, to raise a question: if contestation is a 'good', isn't this in fact promoted by competition? What is the difference between competition and contestation that makes one anti-democratic and the other democratic? The core of this difference is consensus – competition seeks consensus.^x Brown, for one, has drawn a clear picture of what is at stake with the promotion of consensus (Brown, 2015, p.68, pp.139-142, and pp.207-8), so I will limit myself here to the point that competition makes consensus the horizon of its own operation, in a way in which democratic contestation (potentially) does not. Not only does competition demand that all compete but, more than this, that all accept or recognise that there is *no alternative to competing*. It is this latter point that makes neoliberalism curiously fragile, and in need of constant state (and institutionalised inter-state) support. Seemingly, competition cannot compete on its own terms, and so must become the complete horizon of possibility; it aims to neutralise any alternative before the latter can even emerge as such (Melinda Cooper, 2008, Chapter Three).

What marks a critical development here is the transformation undergone by the image of authority. In the 1950s, Arendt was able to speak of a crisis of authority (Arendt, 1954), and this crisis has not abated. Rather, it has become a foundational tenet – somewhat unremarked upon – of contemporary competitive neoliberalism that, not only is authority in crisis, but authority has itself lost its authority. This is the core of the neoliberal demand for consensus: not only that authority has failed, but that it will keep on failing. This reiterates, of course, the political theological dimension (Agamben, 2005; Esposito, 2010; Diamantides & Schütz, 2017) of neoliberalism itself, and it demands that we all accept and agree upon the fact that there is no authority, and that there can be no authority. This also illustrates why the neoliberal demand is so fragile: it attempts to make the failure of authority, its crisis, its own authorising moment. The operative contradiction is that competition is seemingly immanent, producing winners and losers without having to justify or explain this beyond it being the 'outcome' of competition itself. Competition does not then exercise any authority – it is a 'neutral' process - and this is why it has authority.

The ideal of democracy is far too broad a subject to do any justice to here. As a starting point, Cristina Lafont's arguments in favour of *institutionalised* democratic deliberation provide a useful framing, even if (or because) they are not finally conclusive.^{xi} How is democratic contestation different from neoliberal competitive consensus? The elimination of contestation that such a consensus aims at highlights the significance of authority once more. If authority is to appear as de-authorised, it is necessary to obscure its most basic operation; that operation through which authority is repeatedly re-authorised. In other words, authority appears only to the extent that it is continuously re-inaugurated. It is this which enables society and politics to have a past, a history. The neoliberal fostering of competition is part and parcel of its rejection of the past, to the extent that the latter shows the histories of contestation, disagreement, refusal, consolidation, etc., etc., which point to the potential of things having been otherwise. Looked at from a pro-democratic perspective, institutional democracy does not seek to erase its links to the past – indeed, it will make those links another site of contestation for its own negotiated unfolding, returning again and again to the fact that consensus has not been possible. Against this, neoliberal consensus must draw a sharp line between now and then, so as to maintain that competition has only now brought the violence and injustice of history to a close. History is (of course) over and, going forward, we can all agree that it will be best to maximise our advantages. Rather than re-inaugurations, there will only be 'celebration' after 'celebration'.

What is at stake in this difference between contestation and consensus? Counter-intuitively, consensus does not bind or tie but individualises; more than this, to the extent that consensus becomes normative, it *dividualises* (Deleuze, 1995). Neoliberalism takes a huge amount of resources

to produce a minimal gesture: that we have been abandoned by authority and, being so, we are now each free, without limit or constraint. Obvious to say that the performative contradiction is that such competitive freedom without limits is itself a limit, an authority. To this extent, neoliberalism conceals its own re-inaugurations in catastrophes and crises (Klein, 2008), by which its intervention is immediately legitimated because there is no alternative – there is no time to think, to consider potentials, to contest. Every moment is an exceptional one where, apparently, nothing is being authorised but, instead, what plays out is the only rational and sensible choice that can play out: the imposition of more competition. Nothing is being founded here, but each disaster reveals the ‘truth’ of our world – that we are without authority.

On the other hand, the claim I would like to advance is that contestation, in the context sketched out by Lafont, is potentially productive of a solidarity that holds people together in their differences. Of course, this has been the dream of the discourses of emancipatory otherness from post-structuralism on, but it is a project that must be maintained; indeed, it is in need of re-inauguration. This is where we can encounter the idea of exhaustion once more. However, we should be clear that exhaustion will take us well beyond difference – certainly in any democratic sense – but that it will be, nevertheless, the condition for any such democracy.

EXHAUSTED

I noted above that exhaustion means being exhausted before birth. What does this mean? At stake here is the idea of possibility: in any given arrangement or dispositif, what is possible? To be born is to be faced with possibilities but, too, it is also the narrowing of possibilities: one is born into this or that life and, from there, a certain necessity is in play: one *has been* born. For sure, life is made up of choosing between possibilities – but to what end or purpose? For the achievement of a pre-defined aim or goal? To this again, we must respond with a ‘yes’: humans can produce, and work towards, specific ends. The point, though, is that none of this can legitimate, nor justify, human existence; more importantly, nor does it justify specific ways of life above others. What serves as necessary in life is only the outcome of contingencies – this is the basic insight of governmentality (and control). Counter-intuitively (perhaps), we find the governmental in close proximity to the poetic. Quoting Novalis, Hacking writes: “The individual is ‘individualized by one single chance event alone, that is, his birth.’” (Hacking, 1990, p.147).

Necessity comes by chance, and rationality comes out of the irrational (Hacking, 1990, p.147). What might come into being is understood only by reference to what already has – this is as clear in statistics (Ewald, 1991) as it is in the conceptualisation of potential (Virno, 2015, pp.76-78). To exhaust the possible means to also exhaust that which is already known, and from which we model the possible. Exhaustion is then also the exhaustion of purpose. If to have been born is to have been fated, exhaustion is the experience of this contingency: that is, the contingency by which chance and necessity are welded together (Hacking, 1990, p.148). It can be experienced, following Deleuze and Guattari (1994), in three modes: philosophy, art, and science. Philosophy as the thinking of exhaustion; art as the perception and sensibility of exhaustion; and science as the paradigmatic referentiality of exhaustion. In all three modes, impersonalisation takes place – but this is not the erasure of the subject-who-was-born, but instead its loss of purpose, preference, and possibility, thereby becoming bare life encountered as intensive dis-intensification.

Agamben has shown how, politically, the imposition of bare life has been a disaster for humanity. Yet, this is because bare life itself – as exhaustion – has not been grasped with sufficient directness.

The plight of *homo sacer* has been as the victim of sovereign decision, but this has made of the exhausted only a consequence or epiphenomenon of sovereignty itself. The task is to turn exhaustion back onto sovereignty – this is the formula of Bartleby.

What would it mean to exhaust sovereignty? It is not a question of reaching what is impossible, because the impossible still only exists by reference to what is and to what has been born. In any case, such impossibility has already been claimed by sovereignty, as its most proper possibility, in the Schmittian designation of the exception. The exception is where sovereignty defends itself most strongly against the exhausted, by bolstering the stage of possibility with the prop of impossibility: if it cannot ground itself, this inability will become the authority by which it will ground itself. At the most, the sovereign exception is the means to simply keep adding possibilities. Why is this a problem?

The more possibilities there are, the more tiredness. This is the link between competition and exception: we must compete for the exception. This gives the lie to the apparent sovereign monopoly of the exception – competitive responsabilisation is its diffusion. This has been analysed by Esposito in terms of immunity – meaning a dispensation, protection, and defence against community (Esposito, 2010, p.12). The exceptional people are the ones immunised against the claims (and threat) of community. Indeed, a better formulation might be: sovereign are they who decide upon immunity. However, the counter to this is not to simply re-valorise community – as Esposito shows, throughout the history of the Western tradition, the problem of the withdrawal of presence and legitimacy (finding its modern articulation as *immunitas*) is already there from the start, with community, and always undermining it from within (Esposito, 2010, Introduction).

What is increasingly clear, as the world becomes globalised and *urbi et orbi* pass into each other (Nancy, 2007, Chapter One), is that with the addition of evermore competitive possibilities to achieve immunity, then the more humanity is exposed to contamination and infection. This is the full necropolitical (Mbembe, 2013) horror of governmentality and control – not that individuals and groups will be *identified* as enemies for legitimate targeting (which, with its long history, is horrifying and absurd in its own right); but that whole swathes of humanity will be simply ignored, being the barely living residuum of sovereign exceptionalism. Not targeted kills, but the unfortunate collateral damage of those who will be *allowed to die*. Competitively unviable life.

Following Esposito, what calls for exhaustion are community *and* immunity as these have been hitherto thought up to, and including, their modern articulation as competition. Only if this is achieved can justice be re-orientated away from the American debates about institutions and consequences and, more significantly, might the valorisation of competition itself be neutralised. In his unpicking of the etymological tie between community and immunity – *munus* – Esposito shows how the two, together, serve to mutually block or obscure their paradoxes and contradictions, thereby making them reciprocally functional. Historically, this functioning of Western political philosophy has been a dance around the problems of obligation, duty, and gift (Esposito, 2010, p.4), but it is the latter, according to Esposito, that has been the most unstable and often, and too quickly, obscured by being reduced to exchange. As he writes, “...this is the gift that one gives because one *must* give and because one *cannot not* give” (Esposito, 2010, p.5. Emphasis in the original). He goes on to describe it as a subtraction or loss; yet, might we not also consider this gift as exhaustion? Rather than ‘loss’, it is better to think in terms of filtering, not in a quest for purity but, rather, a sufficient degree of stability or *reduction in chaos* so that a life can take hold. If this sounds like a negentropic gesture, it is – but it is not one without simultaneously pursuing the line of entropy to the extent that what is filtered out is too much information and too much potential. Then a life takes hold - but this double articulation of entropy - as a measure of both disorganisation and

predictability (Janich, 2018, p. 47) - spins out into the intensive dis-intensification that fascinates Deleuze.

The gift that one cannot not give implies exchange and debt – but it is not an exchange with, nor a debt owed to, other subjects or sovereigns. Rather it is a debt owed to life itself – more specifically, to bare life, as that which has compelled us to live, ‘prior’ to any demarcation of exceptionalism or sovereign omnipotence. This ‘prior’ is accessible through philosophy, art, and science: the exhausted. Here, the gift is owed for the receipt of what the recipient did not want, demand, or expect: bare life which, in this sense, is the refutation of *all exceptionalism*. There is no human life that is exceptionally not bare life; and not just in the restricted play of a before and after, but continuously, in the very middle and core of every lived life. There is no legitimate basis for allowing life to die, and no sovereignty by which life can be decided against even ‘passively’, nor made justifiably unviable. American jurisprudence serves to conceal this logic, whilst competition helps us all to ‘live with it’ because, after all, at some point it will come down to ‘you’ or ‘me’, and to ‘us’ or ‘them’. This should be refused.

The fact of humanity’s existence, including all the lives and deaths that have constituted it, is contingent. Human existence is not necessary (Meillassoux, 2008, p.10), and it is this lack of necessity which is common to all. The *donum* of *munus* is the conversion – or, better, the inseparability – of contingency into/as necessity in the sense of *a* life that, in being born, takes its singular formation or specificity as something other than itself and, yet, as the thing most intimate to it. *It* lives in us, as the gift that will not enable nor sanction a division into community and immunity, nor society and individual. The cruelty of this exposure cannot, nor should not, be focussed or allocated to one group of humans rather than another; the attempt to do so always results in sovereign exceptionalism. Instead, politics must take as its point of reference the exhaustion that philosophy, art, and science all demonstrate: we have no right to be, and there is no right to foster our being at the expense of any other. Bare life is simultaneously *de facto* and *de jure*. It cannot be distributed nor decided upon. This is not a naïve assertion that ‘all lives matter’ – such a statement is either solipsistic at best or racist at worse; rather, it is the argument that ‘no lives matter’^{xii} - and it is in light of this that we must live.

FOUR PROCESSES

Above, I noted four processes of exhaustion that Deleuze extrapolated from Beckett’s works. Each of these processes can be considered in light of four orientations or characteristics of justice, so as to progressively exhaust the latter. Swapping the final two around, this gives the following set of pairings:

- | | | |
|--|---|--------------------------------|
| 1) forming exhaustive series of things | - | sovereign restitution |
| 2) drying up the flow of voices | - | disciplinary impartiality |
| 3) dissipating the power of the image | - | governmental communicativeness |
| 4) extenuating the potentialities of space | - | controlled competitiveness |

- (1) Sovereign restitution enacts what Raphael refers to as requital of desert. This can cover both the imposition of punishment for legal infractions and, less obviously, reward for the conferral of benefit (Raphael, 2001, p.234). As Raphael notes, reward will often

remain uncrystallised in the sense that it will likely find expression in terms of gratitude, and a diffuse feeling of obligation or indebtedness. Nevertheless, like punishment, it operates in reference to an ideal equilibrium of proper distributions, the disturbance of which (by crime, for example) demands restitution. This presupposed distribution itself originates out of a common sensical measure of equivalence by which the original distributions can be known, and their disturbances measured. The key to exhaustion here is in this notion of equivalence; the latter involves an abstract orientation by which quantities can be compared (so that the punishment can 'fit' the crime). It is this talionic measure, and the resultant combinations of equivalence, that will be exhausted.

Through exhaustion, any one formation of combinatorial equivalence (this crime = this punishment) will be as good as any other, bringing to a halt the tiring discussions about whether a wrong has been appropriately defined, evidenced, decided upon, and/or punished: apparent acquittal and/or endless postponement (Deleuze, 1995, p.179) but, as well, Masoch's reversal of 'crime and punishment', demanding that the latter comes first so as to justify the former (Deleuze, 1989, p.88), are both modes of exhaustion. At this level, guilty and not-guilty pass into each other, with the affirmation of one affirming its opposite. Given that decisiveness is at the core of the legal process, the affirmation of this process is the simultaneous affirmation of all of the possible outcomes it might produce, without distinction between them. However, we remain at the level of Nozick unless the combinatorial is extended beyond the legal process to become active in the communal imagination of 'requital of desert' as an ideal: to have immunity is nevertheless to also be contaminated, given that it cannot take place except in the midst of community. In this regard, immunity is like the 'bad' immanence described by Jean-Luc Nancy in *The Inoperative Community*, or a certain undecidability running through the decision itself (for example, the inclusion of dissenting or minority judgments in the law reports; the possibility of appeal).

Exhaustion makes any formula of restitution equally viable and, in so doing, brings to the surface the Wittgensteinian point that a rule or norm cannot contain the rule or norm of its own application. Exhaustion is the ungrounding of law to the extent that no-one combination has preference over another, and justice ceases to be expressive or referable to a sovereign centre.

- (2) Requital of desert is only possible through an ideal of similarity or sameness, whereby likenesses between the elements of a case, claim, or action can be established so as to 'justify' equal treatment by analogy. The possibility of equality, or impartiality, presupposes the existence of the same, or of common forms active in different situations. Justice is then the process of identifying these commonalities. In actuality, the reverse is the case: a tremendous work of distinction is undertaken through which differences can be filtered out, so as to produce the same: "To avoid showing favour is to ignore 'irrelevant' inequalities, that is to say, inequalities other than the inequality of desert" (Raphael, 2001, p.234). For this reason, impartiality does not yet attain the status of non-preferentiality, because it is derived from a myriad of partialities that must be distinguished between in the first place. A decision must be made on the relevant and irrelevant differences if the same is to take form. The reason why we must begin with difference comes back to the need for justice to exist in the first place – justice is not self-evident and therefore not self-administering. If sameness existed outright, justice would

occur naturally and be, for this reason, imperceptible; yet the decision, sentence, norm, etc. must be articulated. This articulation or announcement presupposes that a moment of normativity can be extracted or isolated within the system of norms itself.

Ewald's account of norms makes it clear that they exist only as a multiplicity: the normal and the abnormal are not 'opposites' but points on a spectrum that pass into each other (Ewald, 1991, p.157). It is not necessary to fully superimpose the norm upon the average (Canguilhem, 1989, p. 151 *et seq*) to nevertheless see that, to the extent that it functions as an averaging (filtering) mechanism, the norm is extracted from a range of divergences or abnormalities (no specific example coincides with the average of which it is an example).

Impartiality first requires the differentiation of instances so that their commonality (average) might be calculated. Impartiality is therefore a second order process for dealing with partialities, obviously dependent upon the latter as such. Each partiality is a possible world (Deleuze, 1998, p.157), holding out the possibility of justice itself – not so much as a specific decision or outcome but as a multiplicity of voices. It seems that, if all of these worlds and voices could be added up or combined, justice might be achieved. Yet, this remains at the level of an ideal that pre-supposes the possibility of such a totality, with clearly individualised and articulated voices being combinable. The mode of exhaustion undermines such impartiality, with its implied hope of a superior and complete pan-partiality, by confusing all of these voices, of receiving them as a clamour of indistinct murmurs: "Who knows but that, on the lower frequencies, I speak for you?" (Ellison, 2001, p.561). Capable of being neither partial *nor* impartial, normal *nor* abnormal, the voice of justice becomes a whisper that one cannot quite hear.

- (3) The clamour of voices is not a problem of quantity (too many voices), but the result of a qualitative indistinctness which does not reduce them all to the same voice but, rather, makes each voice its own specific type of indistinctness or partiality. The voice already differs from itself. For the purposes of competition this difference can be normalised and, as such, stabilised as the appearance of this or that world in competition with other worlds; but it nevertheless remains operative as something to be continuously averaged out. Such differences are an image – not as something represented nor actualised, but as presupposed in an 'image of thought' (Deleuze, 1994, Chapter Three) - by which a 'background' or 'context' is taken as given, so that something average can be said or communicated. Needless to say, this image is highly unstable, and constantly threatens the norms of good communication. At the very least, the image must enable a basic distinction to be made between the content of a communication and its form or articulation:

... the understander must pre-suppose self-reference in the communicator in order to use this self-reference to separate information from utterance. Therefore every communication expresses the possibility that self-reference and utterance diverge. (Luhmann, 1995, p.151)

Distorting somewhat, we can nevertheless understand this to mean that the image constitutes self-reference and, in so doing, restrains the dangers posed by double contingency (Luhmann, 1995, Chapter Three). It seems as if, potentially at least, the

image is something that we can share or have in common. Yet the image – whilst allowing for the separation of content and utterance necessary if interpretation is to take place at all – does not guarantee its ‘proper’ nor ‘effective’ deployment in any given communication. For sure, straining language in the direction of nonsense and agrammaticality begins to display (and challenge) the presumed observance of the image (or norms of self-reference), and shows that the image is in fact constructed through the very processes of self-referentiality that it otherwise apparently provides for; but even before this (artistic) point is reached, the ‘proper’ day-to-day use of communication cannot guarantee its truth or correctness. Not only is it essential that meaning and statement diverge (I cannot directly say what I mean) if communication is to be anything more than a set of triggers or stimuli, but this divergence can also be exploited (e.g. the statement: ‘I always lie’).

The tension – evident in fake news and alternative facts – is that the exploitation of the internal ambivalence of communications can be used for competitive advantage; indeed, at some point, truth (to the extent valorised through processes of self-reference) loses its competitive edge. At the same time, the technological dimension of communications increasingly becomes the relevant image or reference for *all* communications, such that the fact of *being communicated* becomes the pertinent self-reference, or image of truth (the more something is communicated, the truer it becomes), inducing the type of simulations described by Baudrillard (Baudrillard, 1983). Exhaustion must therefore dissipate the image so as to make communications glitch or stutter.

This requires making the silences and the voids of the image apparent. Such silences exist, because the image is operative through being pre-supposed, rather than by being articulated. It is what must remain unsaid so that something else (another possibility) can be voiced or said. The exhaustion of the image is not the saying (nor seeing) of what would otherwise remain unarticulated, because this would simply be a tiring process of trying to give voice to all potentials; rather, exhaustion is the undermining of communication from within, giving the conditional inarticulateness and incommunicativity of the image a consequential force or intensity *outside of any actual communication*. Writing of Benveniste, Esposito refers to this as the third person:

What is put into play with the third person is no longer a relationship based on exchange between a ‘subjective person,’ indicated by the *I*, and a ‘non-subjective person,’ represented by the *you*, but the possibility of a non-personal person, or more radically, of a non-person. (Esposito, 2012, p.106)

The image of the non-person is the collapse of differentiation but not of specificity. It is the level of pre-personal flows concerned not with the relations between two terms (e.g. between ‘you’ and ‘I’ as two persons) but in the relationality itself, free of any such related terms.^{xiii} The particular non-persons that we already are, as the bare life subtending what we say, see, and do: “When you start thinking in images, without words, you’re well on the way” (Burroughs & Gysin, 1979, p.2)

- (4) As Deleuze describes it, the problem of the image is also the problem of space (Deleuze, 1998, p.160). Competitiveness involves incessant movement (Moore, 2013), both virtual and actual: one must move from place to place whilst also being ‘innovative’ and

‘creative’ at the same time. The figure of the curator perhaps sums this up for us today, ceaselessly combining communicative elements for exhibitions and platforming, and ‘moving’ it all from place to place in search of attention.

Competitive (or curatorial) space is self-coordinating, no longer having the relative stability of institutional references (or moulds).^{xiv} It seems close to exhaustion but is more cunning: it grounds itself on its own lack of ground (i.e. authorises itself by its own lack of authority), applying this as a means to keep on endlessly adjusting itself and displacing its own internal limits (Deleuze & Guattari, 1984, pp.222-240). It is the space of possibility, inhabited by Nietzsche’s ‘higher man.’^{xv} Those that lack mobility will be allowed to die where they fall. In this regard, the heterotopias described by Foucault (Foucault, 2000b, p.175 *et seq*) did not go far enough, because they only gave place to the ‘others’, ‘transgressions’, and ‘taboos’ that regular space used to distinguish itself by comparison. Whether these other spaces are concealed as guilty secrets under discipline, or ‘celebrated’ through inclusivity under control, does not matter so much in terms of neoliberal operation. If the latter is to become exhausted, space must become an ‘any-space-whatever’ (Deleuze, 1998, p.160). Such a space does not become defined by exclusions and inclusions, but forms an assemblage of elements that imparts a space rather than filling it up or being contained by it. Here, space becomes an event prioritising the relation rather than the related terms.

Even so, space remains inextricably linked to extension but, with any-space-whatever, the inhabitation of it, and movements across it, disallows divisions and exclusions: the space cannot be portioned out in proper plots; friend and enemy cannot be identified; law fails to achieve order and orientation; and nothing belongs nor is disqualified. Yet, the space has its own specificity or singularity that exceeds any possible judgment or decision on it. It is the space of an original bare life where each element is exposed to all of the others such that, whilst no equivalence between these elements is possible, they have an equality of status deriving from the mere fact of their *being together*. This is not the state of nature, nor a chance outcome, but the inseparability of contingency and necessity: they have been thrown together. Any decision that particular elements should be allowed to die or perish for the advantage of other elements is disqualified at this level. What forestalls this decision is not an original veil of ignorance but something even more unreasonable: exposure to life, or abnormality without average. This provides no means by which ‘interests’, ‘preferences’, or ‘ends’ could be identified or pursued. Instead, any-space-whatever is a pantheistic/panpsychic raw flesh that is not harmonised or integrated with itself, and across which affects and percepts are felt and suffered. The earth ceases to be a divisible surface, becoming a constellation of intensive spaces that all pass through each other.

Considered phenomenologically, these spaces constitute the infra-world described by François J Bonnet: the sensibility of the raw flesh that subtends any possible representation (Bonnet, 2017, p.91), and which always fails to be exhausted by them. Of the infra-world, Bonnet writes:

Everywhere, it oozes, it crouches in the shadows. Beneath language, beneath sensations. A quaking world. The infra-world is not a speculative reality. It is the mute and blind portion of the real, its accursed share. It is the worlds of exiled impressions and actions, but it is not

an absent world. The infra-world is the world that withdraws from the infra-liminal world of perception. It is what fails to make a world. (Bonnet, 2017, p.90)

Failing to make a world should be understood as the condition for any viable democracy. As Marguerite Duras wrote:

You will think the miracle is not in the apparent similarity between each of the particles that make up those millions of men in their continuous hurling, but in the irreducible difference that separates them from each other, that separates men from dogs, dogs from film, sand from sea, God from the dog or from that tenacious gull struggling against the wind, from the liquid crystal of your eyes, from the sharp crystal of the sands, from the unbreathable foul air in the hall of that hotel after the dazzling light of the beach, from the word, from each sentence, from each line in each book, from each day and each century and each eternity past and future, and from you and from me. (Duras, 1993, pp.35-36)

INJUSTICE

Communication and chance outcomes: the competition for justice is also the justice of competition. To operate as such, it is necessary to divide the institutional from the consequential so that this divide might be communicated about, and the acceptable collateral damages decided upon. Justice has become a world of possibilities.

In a remarkable intervention, Nicola Masciandaro homes in on what is at stake: law as ontology and law as ethics (Masciandaro, 2014, p.6). Law as it is (institution) and as it should be (consequence). Through this paradigm not only is the justice of what *is* (as existent) rejected but, too, a space is opened up by which the individual can know itself as existentially worried and fearful (Masciandaro, 2014, pp.13-14). This replaces the beatitude of justice with decisions upon – and as the competitive demand for – justice. From this perspective, the demand for justice itself becomes an *injustice*.

But what is the justice of what is? It pertains to the bare fact that there is life but that this life, as such, cannot be experienced nor lived *directly*. Masciandaro describes it as akin to a force of attraction, around which lived lives curve without incarnating it. It is the superior justice that *must* exist because “everything takes place *as if* [it] did not exist.” (Daumal quoted in Masciandaro, 2014, p.10). It is the death that attracts life to it, continuously pulling it into orbit. This force is de-individualising and impersonal. It is exhaustion, or

... a real source of imperishable sweetness immanent to everything that infinitely exceeds *me*, namely, the so-and-so who lives according to the illusory right of telling Reality what it should be like or do. (Masciandaro, 2014, p.18)

The superior justice is the exhaustion of the difference between law as it is and law as it should be. However, given that humanity is - perhaps in essence – the entity that individualises itself by insisting upon this difference, it cannot do without law. If humanity does not coincide with the reality of its own bare life, law nevertheless provides the chance for something more – but here, ‘chance’ is not simply the unexpected outcome of an established process but, rather, an immediate affirmation of what is – chance in the more Nietzschean sense of something without cause or justification and which, as such, can only appear, suddenly, as necessity:

Law is the chance that the refusal of sweetness *deserves*. It is a chance to stop worrying, not because keeping the law promises removal of the object of worry ... so that now one need only worry about

keeping the law, but because keeping the law *instructs* in the needlessness and evil of worry in the first place. (Masciandaro, 2014, p.30. Emphasis in the original).

The refusal of sweetness is the refusal of the nondifferentiation between ontology and ethics. Law is the best that humanity can manage having made such a refusal – not in terms of the content of law, but that it exists:

Ontologically, law is what is *proven* in life and in the living. Ethically, law is how life is made worth living and the living make themselves *worthy* of life. (Masciandaro, 2014, pp. 27-28)

Therefore, for humans, it is just that there is law and, to the extent that humans must nevertheless call for justice, this is also the injustice that is proper to them. Justice and injustice become indistinguishable in the same way that necessity and chance do. That law exists is relevant to all humans and, I suggest, this relevance is best lived through the type of institutional democracy outlined by Lafont (see above). In terms of what the law is and should be, contestation is preferable to consensus – to elide contestation with consensus immediately returns us to the acceptance that somebody will have to be allowed to die. Contestation is the inability to finally decide between what the law is and what it should be. Consensus is the always exceptional handing down of what the law is, as if it were a rule that already contained the rule of its own application.

Yet how might this be lived? Given the state of the world, isn't it scandalous to argue that the demand for justice is already a profound injustice? Shouldn't we accept as an inevitability that we must worry, fear, and condemn? After all, doesn't the perceived need for me to justify myself here already point to this contradiction? It is helpful to return to the contingency of human life and existence: because it is not necessary for human life to exist, it is necessary to care for it and to foster it. In place of such fostering, the lack of human necessity can lead to three errors.

First error. As human life lacks necessity, a war of all-against-all is not only justified but unavoidable. There is no reason why any given human life cannot use the full means at its disposal to advance its own interests, no matter what harm or misery is caused to other lives as a consequence. Here, the contingency of human life is turned into a principle to legitimate the pursuit of whatever aims actual specific lives happen to incarnate. This might look like the non-differentiation of chance and necessity but it is, rather, the expulsion of contingency so as to produce an apparently necessary right of action, that seeks to securitise itself against chance by continuously adding to its power. Rather than exhaustion, it wants a virility without end that accounts for, and masters, every possibility in advance. In action it allows for (and 'justifies') allowing others to die, making of power just that: necro-potency (the separation of the winners from the losers).

Second error. Producing a model of what is universally best or good for human life, and then applying this in the name of human rights and protection. On this, nothing more needs to be added to Arendt's account (Baehr, 2000, pp.31-45) that identifies the operational paradox here: only those that have rights have the *locus standi* from which to claim rights. In pursuing what is best for all, other lives will still be allowed to die, albeit now with expressions of regret that this should be so.

Third error. Given its lack of necessity, human life should simply abort itself. However, this is to make of contingency a principle in the same manner as the first error, except (perhaps) from a position of relative 'weakness' rather than 'virility'. It is contradictory to make the meaninglessness of human life *its meaning*; to do so only allows anthropocentrism to creep in by the backdoor.

Against these three errors, the contingency of human life means a radical egalitarianism (life as an intensive dis-intensification) that precludes any one part, or combination of parts, from deciding when it is acceptable or legal for other lives to be allowed to die. It follows that, given that humanity

is condemned to live, it cannot legitimately do so (that is, it cannot do so without forgoing the sweetness of justice) in any manner that allows parts of it to die. Lives exist contingently. Consequently, it is necessary to foster them all. This is the justice of exhaustion: the chance that, through law, humanity must foster itself in its entirety.

Perhaps through a lack of modesty, I suggest three strategies relative to this:

- a) Reclaim institutions as sites of contestation rather than consensus.
- b) Tax the rich.
- c) Pay every human on this planet a universal basic income and/or provide them with the necessary means to live.

CONCLUSION

Exhaustion is not the wearisome regret that life has no meaning. Rather, it is the affirmation of life as something intense and non-anthropocentric, as being without human necessity. This affirmation rests with Deleuze's notion of the virtual, and the processes of exhaustion by which it is made apparent by certain literary authors. I have applied these processes to the idea of justice, arguing that it must be considered as something more (or less) than the empowerment of actions, by which the justice proper to each regime (sovereignty, discipline, control) becomes achievable. This is not an argument 'against' requital of desert, impartiality, communications, and chance outcomes. It is an argument against competition as the horizon of human life and human justice. It is this horizon that this paper aims to exhaust.

Although I did not have the space here to go into detail on the harms diffused by neoliberal competition, I relied upon the work of Wendy Brown and Dardot and Laval and, in particular, the anti-democratic implications of competition that they identify. Again, I did not have space to expand on the meaning of democracy, but I referred to the account of Cristina Lafont as orientating my understanding. Within this context, I focussed on how each of the justices pertinent to the Foucauldian/Deleuzian regimes of power might be exhausted. This led to the idea that it can never be legitimate that sections of humanity be left to die; the reason for this is that exhaustion allows for no exceptional space or image from or by which a decision that leaves humans to die can be affirmed. Exhaustion is the affirmation that all human life, past and present, is contingent and that, consequently, no part of it can claim to be 'more' necessary than any other part of it.

Although not developed here, I suggest that this contingency is the bare life subtending all human projects and that it makes thinkable a 'radical' egalitarianism. The condition of this, however, is that such egalitarianism cannot be reduced to equality or equivalence: one life is not substitutable nor exchangeable for another. It is this difference between equality and equivalence that exhaustion operates in: it shows the beatitude of specific and unique lives that, in their specificity and uniqueness, cannot be compared to other lives. At the same time, exhaustion disallows any ranking or priority of such differences. This is the promise and horror of exhausted life: that it will be of *its* space and image, of *its* language and voice, alone. For this reason it is *necessary* that we humans *should* foster it. Thus, the problem of signs and events continues: "from impenetrable self to impenetrable unself by way of neither" (Beckett, 1995, p.258)

ⁱ For an excellent overview of Deleuze's engagement with the death drive – which is more complicated than I suggest here - see (Ansell Pearson, 1997, Chapter 3)

ⁱⁱ As John Bowlby noted, along with others, in comparison to other primates the human infant, born after nine months gestation, is born prematurely (Bowlby, 1958, p. 367). Left by itself, the infant would not live and so must be made to live through a degree of care. If care is necessary, it is because the infant's life is not.

ⁱⁱⁱ In a different context, and with different yet still pertinent terminology, see (Ayache, 2010) on the difference between contingency and probability. Note that for Ayache, contingency can only be written into existence, whether as a derivative or some other form. In this regard, Borges' story *Pierre Menard, Author of Don Quixote* is of recurring significance for Ayache (Ayache, 2010, 4).

^{iv} See Chapter 21 in particular

^v For an interesting engagement with Dumézil's writing on Mitra-Varuna, see (Haldar, 2012)

^{vi} For brevity, I will refer to the latter as 'control', accepting, yet leaving to one side, the distortions this involves between Foucault and Deleuze. See 'Postscript on Control Societies' in (Deleuze, 1995)

^{vii} Prime Minister Tony Blair was quick on the uptake of this problem, presenting it in terms of 'respect.' Although he did not couch his thinking in terms of communication in 2002, he did make reference to community, stating that it was respect that "makes us a community, not merely a group of isolated individuals." He went on to talk of it as a new social contract that "says with rights and opportunities come responsibilities and obligations." In hindsight, we can see this as being in keeping with strategies of responsabilisation, as discussed by David Garland (Garland, 2002) and Andrew Ashworth (Ashworth, 2004) and that (according to Blair) aimed to rebalance individual choice and social rights. The connection to competition begins to emerge when the Prime Minister went on to state, "our new approach starts with opportunity." Implicit here is the re-positioning of the individual as a competitive player that capitalises on opportunity whilst, nevertheless, playing by the rules. What remains unstated is the degree to which the rules can be re-negotiated. All quotes are from Tony Blair's 2002 Queen's speech, 'My vision for Britain'. Available on The Guardian website, and accessed 10 February 2021: [My vision for Britain: by Tony Blair | Queen's speech 2002 | The Guardian](#)

^{viii} For more on the propensity of communications technologies to refer only to themselves, see (Baudrillard, 1983) and (Moore, forthcoming)

^{ix} For an overview of the current difficulties thrown up by this history, see (Lafont, 2020, Chapter Seven)

^x See (Dardot & Laval, 2013, pp. 259-260) on the resultant 'entrepreneurial subject' who must find ways to live this consensus.

^{xi} See (Lafont, 2020, Chapter Seven). For the sake of specificity, the reader should read me as utilising Lafont's take on what democracy should be when I use the term 'democracy'. This might raise a question about the term 'institutional' – Lafont's preferred mode. It is clear that she has a more nuanced usage of this word than we find in American jurisprudence, one that I consider as linking into processes of abstraction rather than legitimation. The institution is a technology for decision making without every single person having to be involved in that making. The advantages of this do not foreclose the ongoing possibility of reconfiguring the institution (the institution is useful, not exceptional). Perhaps the strongest type of critique that could be made of an institution would be to show the irrelevance of its alternatives: that all decisions produce the same outcome. This is what Bartleby does to the attorney's office.

^{xii} Unlike the common deployment of 'all lives matter' as a refutation of 'black lives matter', I do not consider 'no lives matter' to be contrary to the latter. Rather, I take it as being implicit in the necessity of asserting that 'black lives matter,' pointing to the illegitimate exceptionalism of that sovereignty which fraudulently seeks to ground itself by deciding that, as all lives matter, some lives will matter more than others.

^{xiii} Deleuze discusses such a 'pure' relationality in (Deleuze, 1994). See his account of the calculus, and the formula dy/dx , at pp. 170-176

^{xiv} Deleuze describes moulds as being a feature of disciplinary society, whilst control is constantly in modulation. See 'Postscripts on Control Societies' in (Deleuze, 1995).

^{xv} See 'The Mystery of Ariadne according to Nietzsche' in (Deleuze, 1998)