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From Rites to Realities (and Back Again): The Spectacle of Human Rights in The Hunger Games

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From Rites to Realities (and Back Again): The Spectacle of Human Rights in *The Hunger Games*

William P. MacNeil*

In her 2012 Griffith University Fitzgerald Lecture, Professor Hilary Charlesworth, a prominent Australian critical legal feminist and international lawyer, characterised the current condition of human rights as one of empty “ritualism” oblivious to any sort of tangible objective or outcome. Calling for a strategy that would turn this ritualism of human rights rhetoric into the reality of respectful and efficacious human rights protection, Charlesworth examined at some length a new “rite of passage” for the discourse and practice of international human rights: the travelling spectacle of the Universal Periodic Review. The “reality,” however, that this spectacular review process realises is one of a particularly staged and crafted televisual type; indeed, according to this Article, the Universal Periodic Review is a kind of assize version of Survivor, The Biggest Loser, The Eurovision Song Contest—or better yet, the most recent pop culture depiction of the “reality” TV programming phenomenon, Suzanne Collins’s bestselling novel, The Hunger Games. For there, at the story line’s very narrative centre, is a nationally broadcast “battle royal” between contestants of the various vassal states of Panem, a dystopian North American hegemon of the future, over that most basic of rights: to live or die. This Article will canvass The Hunger Games’s representation of rights, as well as its critique of that discourse, arguing that, in its climactic scene—with protagonists Katniss and Peeta, both forfeiting the ultimate prize, survival, by threatening to kill themselves—Collins’s novel may not only combust Panem (and our) legality, but also construct an alternative to it, suggesting a way out of the current impasse that, in the rite of the Universal Periodic Review, thwarts the real-isation of human rights. That way may lie in the hearty embrace, indeed exuberant celebration, of a “high ritualism” which, by saying “No” to outcomes and objectives, rearranges the legal, political

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and economic coordinates of international relations, thereby enabling the reimagination of an(O)ther law: one where “the odds” are, indeed, in everyone’s “favour.”

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I. THE HUNGER GAMES, THE FITZGERALD LECTURE, AND THE SCENE OF WRITING/RIGHTING

This Article arises from, and is informed by, two near synchronous scenes, one aural, the other visual—and at both of which I was present in March of 2012.¹ One was a Brisbane public lecture of the most rigorously socio-legal kind, which detailed the emergence of a new international regulatory regime of public accountability; the other was the Queensland premiere of an American blockbuster film of the most fantastic type, based on a best-selling trilogy of science fiction novels, which futuristically imagined the rise of a new system of governance of brutally spectacular sanction. Knitting together these two different sensory—and cognitive—events, at least for me as attendee at each, was a series of echoes and reverberations around and about the explicit topic of the former, and the implied or hidden agenda of the latter: namely, the discourse of rights, both in theory and

1. A third event must be noted here, at which, alas, I was not present; that was, of course, the occasion for this Article’s debut presentation at the “Law As . . . ? III: Glossalalia—Creating a Multidisciplinary Historical Jurisprudence” symposium held at the University of California, Irvine School of Law in March of 2014. Family circumstances beyond my control prevented my attendance, but I would like to convey my deep appreciation to Professor Christopher Tomlins of the University of California, Berkeley School of Law for his exceptionally gracious invitation to present, and my profound gratitude to Associate Professor Shaun McVeigh of the Melbourne Law School, University of Melbourne, for his superb ventriloquism of this Article, as a paper, on my behalf at the symposium. I would also like to thank the speaker whose lecture was this Article’s principal source of inspiration: the person whom I think of—and openly nominate here—as the Katniss Everdeen of critical legal theory, Professor Hilary Charlesworth of the College of Law, Australian National University, Canberra, Australia. Jurist and jurisprude, academic and activist, legal theorist and law-and-*litteratuse*, “may the odds be ever in [her] favour.”

practice. I will argue that, in each—the fiction (film/novel) and the faction (lecture)—the role and significance of rights are of overriding concern, even where their presence is most acutely felt as an absence.

In this Article, I will track that dialectic of rights' presence and absence, turning in this Article's second section to Professor Hilary Charlesworth's superbly executed and insightfully searching 2012 Fitzgerald Lecture, examining the efficacy of the United Nation's Universal Periodic Review (hereinafter UPR) as a human rights monitor amongst its member states, transforming the ritualism of signatory adoption into fully functioning "reality" of compliance.² I will then link, in the third section of this Article, this *presence* of rights—even as some lip service "ritual"—with a text that is most decidedly marked by the rights' seeming *absence*: the young adult dystopia du jour, *The Hunger Games*, both in its outstanding cinematic³ and literary forms.⁴

I contend that *The Hunger Games*, as a stellar example of what I have called elsewhere *lex populi*,⁵ is engaged in a kind of unspoken dialogue with Hilary Charlesworth, rendering her an avatar of Katniss Everdeen and Everdeen an avatar of her. I say so because both Charlesworth and Everdeen go through the rites of the (rights?) games in which each are situated, the two of them courageously working through and with the certainly perplexing and often daunting rules of, respectively, the Hunger Games and the UPR. But with this difference, for I hold in the fourth section of this Article that, at one point in Collins's gripping narrative, Katniss stops playing the game—or rather, plays the game to its (il)logical conclusion, thereby rearranging the coordinates of not only the Hunger Games but also the social order of which it is, devastatingly, symptomatic. In so doing, I maintain in the fifth section of this Article that *The Hunger Games*, as *lex populi*, as a legal fiction, may very well hold out, in the fashion of what Panu Minkkinen would call a "minor jurisprudence,"⁶ the prospect of a way forward for the legal faction of the UPR: a prospect that is premised, paradoxically, on *more* rather than less ritual, as well as *less* rather than more reality; and which, like Katniss, invites its defenders (and detractors) to take up the challenge that is the ultimately salvific process of

2. Hilary Charlesworth, Dir., Ctr. for Int'l Governance & Justice, Tony Fitzgerald Lecture 2012: Rights, Rituals and Ritualism: Making International Human Rights Law Work (Mar. 29, 2012). All subsequent citations will be to the following online transcription of the lecture. Hilary Charlesworth, 2012 Lecture, GRIFFITH U., <http://www.griffith.edu.au/criminology-law/school-criminology-criminal-justice/news-events/tony-fitzgerald-lecture-series-scholarship-fund/background/2012-lecture> (follow "Read transcript (PDF 367k)" hyperlink) (last visited Sept. 26, 2014) [hereinafter Charlesworth, 2012 Lecture].

3. THE HUNGER GAMES (Color Force 2012); *see also* THE HUNGER GAMES: CATCHING FIRE (Color Force 2013).

4. SUZANNE COLLINS, THE HUNGER GAMES (2008) [hereinafter COLLINS, HUNGER GAMES]; *see also* SUZANNE COLLINS, THE HUNGER GAMES: CATCHING FIRE (2009) [hereinafter COLLINS, CATCHING FIRE]; SUZANNE COLLINS, THE HUNGER GAMES: MOCKINGJAY (2010) [hereinafter COLLINS, MOCKINGJAY].

5. WILLIAM P. MACNEIL, LEX POPULI: THE JURISPRUDENCE OF POPULAR CULTURE (2007).

6. Panu Minkkinen, *The Radiance of Justice: On the Minor Jurisprudence of Franz Kafka*, 3 SOC. & LEGAL STUD. 349, 357–59 (1994).

Žižekian “subjective destitution,”⁷ prompted by Badiouian “event[-al]” love.⁸ In so doing, the UPR might very well roll out a system of equitable checks and balances, in which the last word belongs neither to Katniss Everdeen nor to Hilary Charlesworth but, as I conclude in the sixth section of this Article, to that unlikely but nonetheless, by my lights, most perspicuous of legality’s critics, *The Hunger Games*’s outlandish stylist, the inimitable Effie Trinket.

II. THE “CASCADE OF WORDS”: GLOSSOLALIA, “RIGHTS TALK,” AND THE UNIVERSAL PERIODIC REVIEW

In her 2012 Brisbane-delivered and Griffith University-sponsored Fitzgerald Lecture, “Rights, Rituals and Ritualism: Making International Human Rights Work,” prominent critical legal feminist and international lawyer Professor Hilary Charlesworth characterised the current state of human rights as one of empty “ritualism.”⁹ According to the regulatory theory cited most fully by Charlesworth—notably that of the Australian National University’s John Braithwaite,¹⁰ and before him, Robert Merton¹¹—“ritualism” is oblivious to any sort of objective or outcome, so that, in the context of human rights law, lip service is paid by nation-states as signatories to the ever proliferating raft of human rights instruments—treaties, covenants, declarations, and so forth—all the while tolerating, even perpetuating, violations, if not outright abuses.¹² To that end, Charlesworth meticulously itemises the means and modalities by which nation-states evade, nullify, and obscure the obligations that they have undertaken by signing up to human rights’ “[c]ascade of words”¹³—that is, its polyphonic, even cacophonous, juridical glossolalia of “rights talk.” States do so, for example, by minimally amending their own domestic laws, leaving them largely untouched by the benchmarks of the international instruments;¹⁴ or by a perfunctory monitoring and reportage of human rights abuses and/or their roll outs;¹⁵ and finally, by invoking claims of culture to justify, validate, and, indeed, legitimise what would be flagrant violations of international human rights law, especially around the hot topics of free speech, gender equity, and sexual difference—to name a few.¹⁶ A sorry spectacle, indeed; and one in which even

7. Slavoj Žižek, *Love Beyond Law: A Review of Bruce Fink’s The Lacanian Subject: Between Language and Jouissance*, 1 J. PSYCHOANALYSIS CULTURE & SOC’Y 160, 160–61 (1996).

8. See ALAIN BADIOU, BEING AND EVENT 175 (Oliver Feltham trans., Continuum 2005) (1988).

9. Charlesworth, 2012 Lecture, *supra* note 2.

10. JOHN BRAITHWAITE ET AL., REGULATING AGED CARE: RITUALISM AND THE NEW PYRAMID (2007); see also JOHN BRAITHWAITE, REGULATORY CAPITALISM: HOW IT WORKS, IDEAS FOR MAKING IT WORK BETTER (2008).

11. ROBERT K. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE 238–41 (enlarged ed. 1968) (1949).

12. Charlesworth, 2012 Lecture, *supra* note 2.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

Australia, my adoptive country, was a participant—principally for its exemption of religious schools from gender equity provisions, thereby joining the infamous rogues’ gallery of Iran, Syria, Libya, and so on.¹⁷

Calling for a strategy that would turn this “ritualism” of human rights rhetoric into the *reality* of respectful and efficacious human rights protection, Charlesworth examined at some length a new rite of passage for the discourse and practice of international human rights: the spectacle of the UPR.¹⁸ Conducted under the auspices of the UN’s Human Rights Council and consisting of a travelling assize of representative member states, the brief of the UPR was and is to scrutinise, every four years, each UN member state on its humans rights record, judging them and, if warranted, finding them wanting.¹⁹ Charlesworth hailed the UPR as a breakthrough, not the least because it put paid to the notion, through its processes of *peer* rather than *expert* review, that there are no essentially “good” human rights-sensitive nations as well as no essentially “bad” human rights-hostile ones.²⁰ In fact, the underlying presumption of the UPR is this: that *all* nations, as signatories, aspire to be rights oriented and, at least, have the best of intentions to act in accordance with international norms.²¹ By the same token, *all* nations will have shortfalls, even abuses of human rights, within their domestic system that the peer-refereeing process will alert them to. Not that, for Charlesworth, this peer-refereeing process was without its problems.²² While it may have levelled the playing field between the hitherto “expert” developed world and the previously “abusive” developing world, the UPR opened up a host of other even more considerable problems that would plague it; for example, in those sweetheart deals between reviewers and reviewed, the quid pro quo arrangements of which threatened to permanently stall human rights’ movement from “ritualism” to “realism,” miring it forever in the rite of review that, itself, becomes a type of highly staged managed and contrived nomological “reality.”²³

III. THEATRICALISING NOMOLOGICAL REALITY AND REPRESENTATION: BATTLE ROYALS, REALITY TV, AND INTERNATIONAL RELATIONS

This theatricalisation of nomological reality that the UPR portends suggests a moving image analogue, which is very much a media “sign of our (interesting) times”: namely, *reality* television. For what is the UPR but a kind of globalised

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Universal Periodic Review*, UNITED NATIONS HUM. RTS., <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last visited Sept. 27, 2014).

22. Charlesworth, *2012 Lecture*, *supra* note 2.

23. *Id.*; UN: *Mixed Results for New Review Process*, HUM. RTS. WATCH, <http://www.hrw.org/news/2008/04/18/un-mixed-results-new-review-process> (last visited Sept. 27, 2014).

version of *Survivor*,²⁴ *Big Brother*,²⁵ or better yet, the *Eurovision Song Contest*,²⁶ with all participating states, like the contestants in the above named shows, in *competition*—sometimes working against each other, sometimes collaborating with each other—but all dedicated to securing a winner’s title for their teams and/or themselves by mustering enough votes. This, of course, is the whole point of reality TV: what is so *real* about it is that it engages *us*; that is, the audience, whose yeas or nays are constantly solicited, and whose support—or lack thereof—can mean a winner’s laurels and crown of victory, or the ignominy of defeat, being voted off the programme or out of the house. If the reader thinks it ludicrous the comparison being drawn here between the whimsical spectatorship of reality television—voting with their hearts, stomach, feet, sexual organs, anything but their minds—and the broad-based consultation carried out by the UPR, then think again. I say so because the *governments* involved in this process would find such a comparison anything but ludicrous; in fact, each behave much like studio executives, doing all they can to cherry pick presentations and even screen, if not thwart, dissenting access to the process. Consider the case of China, cited by Charlesworth. During its UPR, China’s government jammed the Internet for the duration of that process,²⁷ censoring any possible sources of dissensus.

So here we have the shared commonalities of audience manipulation, crafted conflict, and the rule-bound process of gamesmanship. Given that both law’s politics (such as the UPR) and the global media (from the *Biggest Loser*²⁸ to *Ladette to Lady*²⁹) are saturated with this kind of “reality” programming, is it any wonder that

24. *Survivor* (Mark Burnett Productions, May 31, 2000–present). *Survivor* is a phenomenally successful U.S. reality game show, premised on the survival of one member of one or more “tribes” left to fend—and be filmed—for themselves in remote locations, such as Borneo, the Marquesas, Outback Queensland, and so forth. The show is based on an earlier Swedish programme. *Expedition: Robinson* (Strix Television 1997–2012).

25. *Big Brother* (Endemol 1999–present). *Big Brother* is a popular reality game show that brings a group of disparate individuals together under one roof, subjecting them to constant, 24/7 camera surveillance, à la George Orwell’s totalitarian dystopia, *Nineteen Eighty-Four*. *Big Brother* tracks the housemates’ emotional ups and downs, their group conflicts, and their personal amities. *Big Brother*’s ultimate winner is the one contestant who survives the weekly evictions that the housemates nominate and the TV audience decides. Devised and screened first in the Netherlands in 1999, *Big Brother* has been a tremendous hit around the world, with many countries—United Kingdom, Australia, and so on—having their own version of the series.

26. *Eurovision Song Contest* (European Broadcasting Union 1956–present). The granddaddy of all televised talent contests, *Eurovision Song Contest* is the forerunner of such current televisual hits as *Pop Idol*, *The X Factor*, *Britain’s Got Talent*, and so on. Commencing in 1956, and open to all member states of the European Broadcasting Union, *Eurovision* invites each participating nation to field a “team”—a recording artist or group—that wins by popular vote. Celebrated for its high camp entertainment value and often unintentionally hilarious performances, *Eurovision* launched the careers of 1960s pop diva Sandie Shaw, Québécoise power balladeer Celine Dion, and of course, Swedish singing sensation ABBA.

27. Charlesworth, *2012 Lecture*, *supra* note 2.

28. *The Biggest Loser* (25/7 Productions 2004–present). *The Biggest Loser* is an American reality show centered around weight loss, hence, the winner being “the biggest loser.”

29. *Ladette to Lady* (RDF Television 2005–2010). A contemporary take on *My Fair Lady*, this United Kingdom reality show takes a group of “ladettes” (raucous young women, usually of working

one of the best-selling novels of late is Suzanne Collins's young adult fiction, *The Hunger Games*? For at the narrative centre of Collins's novel—and its trilogy follow-ups, *Catching Fire* and *Mockingjay*—is an elaborate televised contest between contestants of the various states—"districts," thirteen in number—of Panem,³⁰ a dystopian North American hegemon of the distant future, wantonly cruel in its totalitarian political practices (think of the "Avoxes," offenders who have had their tongues ripped out,³¹ not to mention "the mutts"³² and other genetically engineered abominations³³) as it is emptily hedonistic in its over-the-top pleasure pursuits (think of the bizarre body augmentations, mentioned throughout the series, where, for example, cat's whiskers on a human face are a fashion statement³⁴). These two cultural points—of cruelty and hedonism, violence and pleasure; in short, "enjoyment" as Žižek³⁵ and the post-Lacanian³⁶ would put it—each come together, aligning axially, in the series' eponymous Hunger Games. For the stakes are high in the Hunger Games because, as the title of the contest implies, the games are not about national prestige or recording, acting, or modelling contracts—like our reality shows—but rather, are about actual physical need at the most basic bodily level; and not just about whether one is hungry or satiated, but whether one is to live or die. This is because the winning victor of the Hunger Games not only vanquishes his or her rivals: he or she *kills* them in a *battle royale*(e) to the death.³⁷

I reference "*battle royale*" because, of course, *The Hunger Games* bears an uncanny resemblance to the Japanese young adult fiction³⁸ and cult film³⁹ of the

class background) and turns them into "ladies" of a peculiarly dated kind—cutglass accents, Sloan-ranger fashions, and gentrified "county" preoccupations such as horses, gardening, *Cordon Bleu* cookery, and so forth.

30. COLLINS, HUNGER GAMES, *supra* note 4, at 21.

31. *Id.* at 94 (exemplifying Avoxes by describing Katniss's server in the run-up to the Games).

32. They take the form of ferocious wolves all bearing the faces of slain contestants in *id.* at 400–14; in COLLINS, CATCHING FIRE, *supra* note 4, at 369–77, they take the form of enhanced and highly aggressive monkeys; and last but certainly not least—indeed, worst for last, in COLLINS, MOCKINGJAY, *supra* note 4, at 360–67, they take the form of human-reptile hybrids who seem hardwired to hunt down Katniss, destroying all in their way, including each other.

33. "Tracker jackers" (killer bees) and "jabberjays" (spying birds) in COLLINS, HUNGER GAMES, *supra* note 4, at 51–52, 224–25, are both dangerous, if not deadly. Not all "muttations" are as malign; for example, the "mockingjay," itself, is one, the by-product of the unintended mating of escaped jabberjays and mockingbirds in the wild. *Id.* at 52.

34. COLLINS, CATCHING FIRE, *supra* note 4, at 60.

35. For a sustained treatment by Žižek of this concept of transgressive *eros*, first his political treatment, see SLAVOJ ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO: ENJOYMENT AS A POLITICAL FACTOR 2–11, 30–31, 220–21, 231–41, 253–54, 271 (1991), and then, for an aestheticisation of it, see SLAVOJ ŽIŽEK, ENJOY YOUR SYMPTOM! JACQUES LACAN IN HOLLYWOOD AND OUT 143, 154, 177, 227 (1992).

36. See, e.g., RENATA SALECL, THE SPOILS OF FREEDOM: PSYCHOANALYSIS AND FEMINISM AFTER THE FALL OF SOCIALISM 6, 15, 21–22, 28, 78, 85–88, 100–03, 108, 132, 141 (Teresa Brennan ed., 1994); ALENKA ZUPANČIČ, ETHICS OF THE REAL: KANT, LACAN 23, 30, 55–56, 80–81, 99–100, 108, 135, 155–57, 190, 201, 217, 240–42, 249–55 (2000).

37. See COLLINS, HUNGER GAMES, *supra* note 4, at 21–22.

38. KOSHUN TAKAMI, BATTLE ROYALE (Yuji Oniki trans., VIZ Media, LLC 2003) (1999).

39. BATTLE ROYALE (AM Associates 2000).

same name, the story arc of which is one of a contest, indeed competition, to the death between a group of select teenagers. Now, before any reader mutters to themselves “rip-off,” and starts to speed-dial their favourite copyright lawyer, bear in mind that Suzanne Collins—who has been, hitherto, scrupulous about her sources—maintains that she was not aware of either the film or fiction.⁴⁰ This claim rings true, particularly given how quick she was to acknowledge her debt to Greek mythology (and the Theseus legend with its tale of the sacrifice by Athens of seven young people every seven years to the Cretan minotaur⁴¹) and Roman politics (with its imperium of *panem et circenses*, or the “bread and circuses,”⁴² of which the Hunger Games are the gladiatorial equivalent of the appropriately monikered Panem).⁴³ All of which drives home the point that in the hermetically sealed context which Collins inhabits—an edgy, xenophobic America, on the back foot since 9/11 and, most definitely, in decline—*is* a twenty-first-century Panem, the parochial narcissism of the latter being all too in evidence here in the former, with a best-selling novelist who hasn’t even heard, let alone read or screened, the Asian precursor of her own blockbuster. But, more than that, what the synchronicity of *Battle Royale* and *The Hunger Games* suggests is that, in their shared plot lines—of fierce combat, gory violence, and graphic death—there is most definitely *something* in the global *zeitgeist*—American, Asian, Antipodean, and elsewhere—which is reflected by and resonates in these tales of murderous gamesmanship, of do-or-die *spiel*.

IV. THE CRITIQUE OF RIGHTS IN THE HUNGER GAMES: HILARY CHARLESWORTH AS KATNISS EVERDEEN

I want to suggest here that this “*something*,” this hitherto unnamed “x” that these narratives not only speak to but are spoken by, are *rights*, themselves now subject, in their discursive ubiquity, to the kind of overexposure beloved of the postmodern society of spectacle, and of which the protocols of the UPR are the most recent procedural instantiation. In light of this, one might very well find, as fair and reasonable comment, the analogisation of that locus of high ritualism, the UPR’s “rites of rights,” as a version of reality TV-as-international relations. But where, you may ask, are rights in *The Hunger Games*? Certainly, a desperate scramble over resources is all too in evidence; and, of course, sanctions, indeed punishment, abound, as well as a sadistically “playful” gamesmaster, chopping and changing the “rules of the game,” even the very level playing field of the contest’s pitch with fire, flood, earthquake, and all manner of “muttation.”⁴⁴ But rights? Rights seem to have

40. Susan Dominus, *Suzanne Collins’s War Stories for Kids*, N.Y. TIMES MAG., Apr. 10, 2011, at MM30, available at http://www.nytimes.com/2011/04/10/magazine/mag-10collins-t.html?pagewanted=all&_r=0.

41. See 1 ROBERT GRAVES, *THE GREEK MYTHS* 273–343 (Kenneth McLeish ed., The Folio Soc’y ed. 1996) (1955).

42. Coined by Juvenal, the first century Roman critic and satirist.

43. *Interview with Suzanne Collins*, SCHOLASTIC BOOK CLUB, <http://world.club-kids.scholastic.co.uk/clubs.content/18832> (last visited Oct. 17, 2014).

44. See COLLINS, *HUNGER GAMES*, *supra* note 4, at 212.

gone on walkabout here, having been replaced by Panem's crass, crude, and ham-fistedly authoritarian power politics, with all of its distributive *in*justice. Consider the Capital's relentless drain on its tributary districts, sapping them of vital supplies: food staples (District 11⁴⁵), coal (District 12⁴⁶), fisheries (District 4⁴⁷), manufactured goods (District 3⁴⁸), and even drugs du jour (District 6⁴⁹). Further, recall its vengeful culture of brutal reprisal, not just for major offenses such as "the uprising"⁵⁰ some seventy-five years before (for which the Hunger Games are the retributive punishment⁵¹), but even for the most trivial of infractions (such as that of "peacekeeper" Darius, one of the friendlier guards, turned into an Avox for intervening on behalf of a set-upon Gale Hawthorne, Katniss's love interest⁵²). With this ever changing array of *ukases*, *diktats*, and "orders from on high" interdicting what had hitherto been tolerated, if not encouraged—like the "black market" of the Hob, flourishing one day,⁵³ ruthlessly shut down the next⁵⁴—Panem is very much of the kind of totalitarian society that Lon Fuller would decry as law-*less*, its legality's "inner morality" having gone on walkabout, permanently.⁵⁵

So again, where are rights here? Surely, this is precisely the kind of rights-free dystopia that scholar-activists such as Hilary Charlesworth would have nightmares about: a bleak wasteland of pronouncements, where fearful obedience to the "command of the sovereign" is rife, but where the law as liberal democracy understands it—that is, as the rule of law, with rights at their centre—is in ruins, much like District 12's dilapidated courthouse, the "Justice Building," against whose collapsing façade the reaping takes place.⁵⁶ Here Charlesworthian rights have no place—if, that is, we are talking about Hilary Charlesworth in her current instantiation as a staunch advocate—in fact, jurist—of rights. Then, for her, Panem is a society evacuated of *recht*. But an earlier instantiation of Hilary Charlesworth—one who, like a juridical version of Katniss Everdeen, made her name as one of the common law world's most forthright and courageous critics, especially *feminist* critics of human rights,⁵⁷ ever deconstructing a discourse which had for far too long privileged "man" in *human*—*that* Charlesworth, the critical legal Charlesworth,⁵⁸

45. *Id.* at 245.

46. *Id.* at 244–45.

47. See COLLINS, CATCHING FIRE, *supra* note 4, at 200.

48. See COLLINS, HUNGER GAMES, *supra* note 4, at 264–65.

49. See COLLINS, CATCHING FIRE, *supra* note 4, at 350, 375.

50. COLLINS, HUNGER GAMES, *supra* note 4, at 21.

51. *Id.*

52. COLLINS, CATCHING FIRE, *supra* note 4, at 135, 262.

53. COLLINS, HUNGER GAMES, *supra* note 4, at 13.

54. COLLINS, CATCHING FIRE, *supra* note 4, at 155–56.

55. LON L. FULLER, THE MORALITY OF LAW 33–38 (rev. ed. 1969).

56. See COLLINS, HUNGER GAMES, *supra* note 4, at 20.

57. See, e.g., HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS (Dominic McGoldrick ed. 2000); Hilary Charlesworth, *Feminist Methods in International Law*, 93 AM. J. INT'L L. 379, 379–94 (1999).

58. This is a persona not so distinct from the current Hilary Charlesworth, and in fact, is coextensive with it. See, e.g., Hilary Charlesworth, *The Women Question in International Law*, 1 ASIAN J.

would have recognised rights by their *negative* presence in Collins's fictional representation of what Hardt and Negri might call "Empire" in futuristic fancy dress.⁵⁹ By "negative" here, I mean negative in the photographic sense of inversion, whereby light becomes dark, and dark becomes light, the fundamental effect of which is to throw what, until then, was *unseen* into bold relief, making explicit what was implicit, outing the hidden.

That is precisely how Collins, whether consciously or more likely *not*, writes *right* into the picture here, as inverted by critique, thereby *highlighting* what has hitherto remained concealed, hived off as some dark, even dirty, secret. Take, for example, the opening scene of the Hunger Games proper: the scramble for precious goods—weapons, camping material, foodstuffs, water—that occurs in the mad dash to the appropriately monikered "Cornucopia," and its representation of the grim slaughter that occurs along the way, a third—at least—of the contestant combatants literally stopped dead in their tracks.⁶⁰ Is not this scene of murder and mayhem a crude literalisation of not only the crass relationship of exploitation that obtains between Panem's periphery and its centre—the career tributes of the prosperous districts carting off the bulk of the goods, as they cut down their weaker rivals from the client districts—but, even more, a restaging in highly vivid terms of "the war of all against all" that social contract theory, from Hobbes⁶¹ to Nozick,⁶² has taught was the *degré zéro* of humanity's "original position"? An originary position which is prior to the imposition of the Law (i.e., the contract itself), but nonetheless, in which all and sundry are in full possession of their *rights*, particularly the rights to kill and be killed.⁶³ This death-dealing potentiality only intensifies, as Locke drives home, with possession, ownership—indeed property; that is, the threat to one's *things*, the product of one's labour—cultivated land, crafted objects—prompting tension, conflict, and open violence.⁶⁴

This is exactly what happens in the Hunger Games and, especially, at the Cornucopia: a vividly lurid violence over things that is the occasion of proprietorial conflict, the blood-soaked aftermath of which leads to a kind of *parody* of the social contract. I refer, of course, to those grotesquely strategic alliances between individuals and groups—to which Peeta is party, at least initially, and under extreme duress⁶⁵—that are intended to inaugurate anything but the lasting peace of the social contractarians; instead, they are designed with a definite sunset clause in mind. That is, these contracts, so-called, are operative as long as they work to the mutual

INT'L L. 33, 33–38 (2011). All of which goes to show that one can make law—as a jurist—and be a critic of it, at one and the same time.

59. MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* (2000).

60. See COLLINS, *HUNGER GAMES*, *supra* note 4, at 185.

61. 1–3 THOMAS HOBBS, *LEVIATHAN* (Noel Malcolm, ed., Clarendon Press 2012) (1651).

62. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974).

63. See 1–3 HOBBS, *supra* note 61; NOZICK, *supra* note 62.

64. JOHN LOCKE, *TWO TREATIES OF GOVERNMENT* 100–209 (Ian Shapiro ed., Yale Univ. Press 2003) (1690).

65. COLLINS, *HUNGER GAMES*, *supra* note 4, at 193.

advantage of the parties. So even as cooperative an arrangement as contract, with all of its imperatives of mutuality and bargaining in good faith, has become, here, a modality that is politically cynical, crassly goal oriented, and intended to be jettisoned when no longer expedient. For the social context in which these contracts are situated—that of the Hunger Games—is one that is ever shifting, always uncertain, radically indeterminate, its rule system up for grabs, so much so that two winners are allowed one day⁶⁶ (facilitating the Peeta-Katniss alliance, and *faux* love story⁶⁷), then discontinued the next⁶⁸ (provoking the “tragic choice” of one, the other—or, as it turns out, both⁶⁹). With this kaleidoscopic world of altering rule patterns, even skewed playing fields—tranquil one moment, ablaze the next; soldering, then sundering professed contracts—the following, perhaps inevitable, inference arises: is this not a vision of the way in which, as a matter of *praxis*, a certain form of law plays out? The law referred to here is, of course, *bourgeois*-liberal legality and its aspirational ideology of the Rule of Law, with rights at its centre. For it is precisely that *nomos* which is seen as woefully deficient, not just by *The Hunger Games*, but also according to the critical legal studies movement, which sees in its rule indeterminacy; in its equality, unequal advantage and disadvantage; and in its “law of laws”—the “social contract”—nothing but politics.⁷⁰ Indeed, so closely does *The Hunger Games* echo, in all of its gruesome detail, a kind of *lex populi* critique of law here, that sometimes I wonder if Suzanne Collins, like Hilary Charlesworth before her, studied critical legal theory under “the greats” of that movement at Harvard—antinomian jurists such as Duncan Kennedy⁷¹ and Roberto Unger,⁷² themselves all critics of *rights* as (re)conceived, by conventional *marxist* leftists, as a right to violence.

V. PLAYING TO LOSE IN THE HUNGER GAMES:

PEETA AND KATNISS’S “SUBJECTIVE DESTITUTION” AS END GAME

The violence of the Hunger Games, however, is more than just a stripping back of humanity to their murderous natural *right*—what the Freudians might call the *death* drive, ever beyond the pleasure principle.⁷³ On the contrary, the “Games” are very much about engaging with pleasure; specifically, the pleasure one takes in pain—only here, that pleasure serves what might be called, superegoically, a

66. *Id.* at 295.

67. *Id.* at 164.

68. *Id.* at 416.

69. *Id.*

70. See, e.g., THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 1982).

71. See, e.g., Duncan Kennedy, *Law School As Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE, *supra* note 70, at 40, 40–64; Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 BUFF. L. REV. 205 (1979).

72. See, e.g., ROBERTO UNGER, POLITICS: A WORK IN CONSTRUCTIVE SOCIAL THEORY (1987); see also ROBERTO UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1986).

73. 18 SIGMUND FREUD, THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD (James B. Strachey et al. eds. & trans., The Hogarth Press 1955) (1920–1922).

“higher” and profoundly retributive purpose. For the real point of this bizarre tournament is not just to give a perverse form of pleasure to the jaded spectators of Panem, ever eager to “enjoy” in the darkest Lacanian⁷⁴-Žižekian⁷⁵ sense of that term, atrocity in all its “permut(t)ations”; rather, it is to serve as a spectacular form of sanction, a vividly dramatic punishment to Panem’s vassals, themselves guilty of disloyalty, having risen against the monstrously maternal Mother Country seventy-five years prior.⁷⁶ This, incidentally, is precisely how that “critic of critics” Karl Marx said that rights, contract, and the Law operated; its claims of freedom, equality, and fair treatment looking like, when one drills down beneath the surface, a hard kernel of punishment, a core of brute sanction.⁷⁷ Evoking, with heavy irony, that “Eden of the innate rights of man,” Marx writes of its penalising “primal scene” where comes “[the] capitalist; [and] the possessor of labour-power [who] follows as his labourer. The one with an air of importance, smirking, intent on business; the other, timid and holding back, like one who is bringing his own hide to market and has nothing to expect but—a hiding.”⁷⁸ It is this punitive “*hiding*” that is, indeed, hiding beneath the discourse of rights: a hiddenness that Marxist legal theory is intent on disclosing, and which I would argue Suzanne Collins enacts, however unwittingly or consciously—she, after all, wrote *The Hunger Games* with the idea of critiquing the society of consumption.⁷⁹

So sanction and violence, as well as politics and its machinations, coupled with the desperate dash for resources—this is the *mise-en-scene* of *The Hunger Games*, its contest-as-“battle royal” reverberating with judicial meaning, with jurisprudential insight. Quite simply, that rights are not all that they seem and are in fact driven by something else: economic imperatives, political strategy, and disciplinary motives. Except when, of course, Katniss hives off these external control mechanisms—economy, politics, and discipline—and takes matters literally into her hands with a handful of poisonous nightlock berries and, with them, exercises her own *rights* in tandem with Peeta: namely, the most autonomic of all rights, the right to terminate one’s own life.⁸⁰ Such a right-*ful* act is one that philosopher Slavoj Žižek would call “subjective destitution”⁸¹—which, as here, means playing dead for and to the Symbolic Order; not just, literally, killing yourself but, figuratively, killing the “Big Other” by refusing to play by its rules, thereby disrupting its regime of control, arresting its mechanisms of power, creating a space for change. This is precisely

74. JACQUES LACAN AND THE OTHER SIDE OF PSYCHOANALYSIS 292 (Justin Clemens & Russell Grigg eds., 2006).

75. ŽIŽEK, *supra* note 35.

76. COLLINS, HUNGER GAMES, *supra* note 4, at 21–22.

77. 1 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 172 (Frederick Engels ed., Samuel Moore & Edward Aveling trans., Progress Publishers, 1954) (1867).

78. *Id.*

79. Hannan Trierweiler Hudson, *Q & A with Hunger Games Author Suzanne Collins*, SCHOLASTIC, <http://www.scholastic.com/teachers/article/qa-hunger-games-author-suzanne-collins> (last visited Mar. 26, 2015).

80. COLLINS, HUNGER GAMES, *supra* note 4, at 417–18.

81. Žižek, *supra* note 7, at 160–61.

what Katniss's act does here: it interrupts the smooth operation of the Hunger Games which, for all its blood and gore, has gone pretty much according to plan, until, of course, *now* when Katniss (and Peeta) disrupt the Games' eleventh hour twist—that they must now “battle royal” against each other—by electing to jointly commit suicide, thereby depriving the Games of any winner.⁸²

VI. “WHAT YOU ASPIRE TO AS REVOLUTIONARIES
IS A NEW MASTER. YOU WILL HAVE ONE!”⁸³:
JURIDICO-POLITICAL LESSONS FROM THE HUNGER GAMES

Snow, of course, instantly sees the possibility of revolt in this moment and its act of defiance, and would have, as the uncrowned presidential “king” of Panem, ordered the instant execution of each, both Katniss and Peeta.⁸⁴ Executions, of course, follow—with the efficiency of a Stalinist purge. Think of head gamemaker, Seneca Crane, who is dispatched, summarily, for allowing—indeed not even anticipating—this piece of bravado showmanship of Katniss and Peeta's rights;⁸⁵ a plan of action that, by the way, can suggest a path forward for member states under the UPR. Specifically, instead of bristling with anger like Australia did when criticised by Iran for its poor prison conditions and gender inequity,⁸⁶ that, on the contrary, the nation take it on the chin with equanimity and hold out a hand of solidarity—rather than a fist of retaliation, as then-shadow Foreign Minister (now actual Foreign Minister) Julie Bishop wanted to do⁸⁷—that would acknowledge, indeed own up to, its own shortcomings and failures *first*, then soliciting the other to do likewise.⁸⁸ In short, Australia would take the plunge into critical reflection, even self-negation on a collective level, and thereby experience as a nation the kind of “subjective destitution” that Katniss and Peeta did on an individual level. Who knows? It might actually produce change, even an insurrection, as it does in *The Hunger Games*.⁸⁹ For what Katniss and Peeta's act of symbolic disruption through subjective destitution did was open up a sluice, creating an aperture for what Alain Badiou would call an “Event”⁹⁰ of transformation, upsetting and forever rearranging the coordinates of Panem's Symbolic through revolutionary praxis.

Wherein lies this “Event” than in an act of pure love, which Badiou itemises as one of the four event-inspired and inspiring “truth” procedures, the others being

82. COLLINS, HUNGER GAMES, *supra* note 4, at 417–18.

83. JACQUES LACAN AND THE OTHER SIDE OF PSYCHOANALYSIS, *supra* note 74, at 207.

84. COLLINS, CATCHING FIRE, *supra* note 4, at 24.

85. *Id.*

86. Charlesworth, 2012 *Lecture*, *supra* note 2.

87. Julie Bishop, Shadow Foreign Minister, Statement on U.N. Universal Periodic Review (Mar. 2, 2011), *available at* <http://juliebishop.com.au/shadow-ministerial-statement-un-universal-periodic-review/>.

88. Charlesworth, 2012 *Lecture*, *supra* note 2.

89. COLLINS, MOCKINGJAY, *supra* note 4, at 12.

90. BADIOU, *supra* note 8, at 175 (defining an “eventual site”).

art, politics, and science,⁹¹ all of which are knotted here and have their source in this relationship of the two: the lovers. The lovers I speak of, however, are not Peeta and Katniss—whose relationship, initially, is forced and contrived: to wit, a media stunt.⁹² Love *does* come to them, yet quietly, slowly, inexorably—as Katniss especially, but Peeta also, recover from their respective psychic damage, and grow into an affectionate partnership, as the epilogue to *Mockingjay*, the third in the series, tells us, living together back in District 12, raising children and content in their middle-aged marriage of true minds.⁹³ The love I speak of, however, is not this one of passive contentment but, rather, that of wrenching *affect*, the charge of which carries the possibility and potential to mobilise its witnesses, energising them to action, functioning as a call to arms. That love is present in *The Hunger Games*, indeed, it is vividly on display in the Katniss-Rue relationship, the latter being a stand-in for the former's very reason for being in the Games: as a substitute for her younger sister, Primrose Everdeen.⁹⁴ That Rue reminds Katniss so much of Primrose is one of the key reasons that they bond in a relationship that while working to their advantage (each saves the other⁹⁵), is most definitely *not* strategic; that is, not constrained and limited by the imperatives of the Hunger Games. For is there anything less like the peculiar “ethos” of the Hunger Games—which, ordinarily, would celebrate a foe's death—than the highly touching, indeed loving final scene between Rue and Katniss, the latter waking her dead friend with a moving song (art), commemorating their sisterly alliance of shared knowledge (science), and thereby, awakening Rue's own district, soliciting not only sympathy but sedition (politics).⁹⁶ Is this not love as the Event?

As suggested above, this is an event which has aesthetic consequences (giving us a auditory sign and symbol of change, the “mockingjay”⁹⁷), scientific consequences (constituting, as it does Katniss's first real kill, initiating her into the procedures and protocols of the Games' laboratory of destruction⁹⁸), and especially political consequences (comprising a bold departure from the usual ruthless triumphalism that accompanies death here, and functions as a clarion call to arms, as much as a poignant tribute⁹⁹). All of which opens up a space within the hitherto closed Symbolic of Panem—hitherto, all strong policing and absolutist control—for a resistance movement that will in subsequent volumes, grow into an open rebellion and result in revolution.¹⁰⁰ Allied with, then leading, the rebellion against

91. ALAIN BADIOU, *MANIFESTO FOR PHILOSOPHY* (Norman Madarasz ed. & trans., State Univ. of N.Y. Press 1999) (1989).

92. COLLINS, *CATCHING FIRE*, *supra* note 4, at 28.

93. COLLINS, *MOCKINGJAY*, *supra* note 4, at 454–55.

94. COLLINS, *HUNGER GAMES*, *supra* note 4, at 283 (stating that Katniss sang to Rue like she would sing to her sister and accidentally called Rue by Prim's name).

95. *Id.* at 229.

96. *Id.* at 282–87.

97. *Id.* at 256–57.

98. *Id.* at 282 (stating that Katniss shot and killed the boy from District 1).

99. *Id.* at 286–87.

100. COLLINS, *MOCKINGJAY*, *supra* note 4, at 12.

the Capitol is the hitherto dormant District 13, an underground Sparta-like society of collective discipline and painfully egalitarian distribution of the best command society kind, *from each, according to their abilities, to each according to their needs*.¹⁰¹ That District 13, and the tactics they utilise—ordering the bombing of the children human shields Snow has conscripted to protect his White House-style presidential mansion¹⁰²—turn out to be worse than the old peacekeepers of Panem is one of the bitter ironies of *The Hunger Games*, its representation here touching upon the political insight adumbrated by Lacan that revolutions often end up reproducing, in new and unusual forms, the very injustices that they decried—and were intent on rectifying—in the first place by the (re)installation of mastery: “What you aspire to as revolutionaries is a master,” he responds to the rioting *soixante-buitards*, “You will get one!”¹⁰³ This is precisely what Katniss-as-revolutionary targets when she coldly and clinically directs her arrow away from ex-President Snow, scheduled to be executed, and instead shockingly assassinates President-elect Alma Coin, the leader of District 13, shooting her dead.¹⁰⁴

Why? Because in addition to having killed Primrose, Coin is intending to reinstall the Hunger Games, only this time its contestants will be drawn from Panem’s most prominent families, as a reprisal against the conquered imperial city.¹⁰⁵ This truly Byzantine form of payback is one which Katniss, paradoxically, votes for initially, but then, inadvertently, thwarts by staging her own act of *vengeance* against Coin.¹⁰⁶ This act is, for all its psychotic *passage à l’acte*,¹⁰⁷ *fortuitous*: the right act for the wrong reason, because it calls to a halt the seemingly endless spiral of violence—with the unending call and response of “you have violated my rights, I want restitution”; “no, you have violated my rights, I want restitution”—that underpins the Hunger Games and may inform the UPR. This is a critical legal roundabout that we might be able to end by, so the suggestion runs here, shooting the enemy within (the Americans? the Europeans? the West? the powers that be? ourselves?), thereby enabling *resurrection* as much as *insurrection*. For that is precisely what Katniss’s act does here: in killing Coin, paradoxically, she calls herself back from the dead of subjective destitution. And not just herself, but Peeta too, himself

101. *Id.* at 10 (“Those over fourteen have been given entry-level ranks in the military and are addressed respectfully as ‘Soldier.’”).

102. *Id.* at 404–06.

103. JACQUES LACAN AND THE OTHER SIDE OF PSYCHOANALYSIS, *supra* note 74, at 292.

104. COLLINS, *MOCKINGJAY*, *supra* note 4, at 434.

105. *Id.* at 430–33.

106. *Id.* at 433–34.

107. DYLAN EVANS, AN INTRODUCTORY DICTIONARY OF LACANIAN PSYCHOANALYSIS 136–37 (1996) (defining the term as a French psychiatric term with legal consequences, akin to the common law’s insanity defence and absolving perpetrators of criminal acts that are the direct result of a psychotic episode).

tortured, *à la* Agamben,¹⁰⁸ into a sort of Musselman-like, even *homo sacer* kind of living death, his mind filled with a paranoid-schizophrenic plague of fantasies.¹⁰⁹

This recall to life, however, privatises her once again, disconnecting her literally from Panem—still the centre of action under the new regime and of which Gale Hawthorne, tellingly, is a key bureaucratic player, the reformed radical now turned establishment figure; as well as detaching her, figuratively, from the symbolic mandate as the leader of the “Mockingjay” movement and its revolt.¹¹⁰ To what end, though, does this disconnection and detachment tend? Naturally, to heal; for both Peeta and Katniss are victimised survivors, each dealing with respective posttraumatic stress disorders.¹¹¹ But more than that, to create a space, indeed a place, to ponder their respective situations, to make sense of their past, and to (re)create their future, and with it, the laws of each, especially in terms of rights. For is there a right more sacred than the right to be left alone to reinvent the world—both its *cosmos* and *logos* anew—without regard to immediate pay-off? Which might be not only Collins’s but my own friendly and collegial riposte to a scholar whom I very much respect and admire, Hilary Charlesworth: that instead of less “ritual” and more reality, rights on the contrary need more “ritual” and less reality. But, perhaps I debate with a straw(wo)man here because—when all is said and done—this is the position, fundamentally, of Hilary Charlesworth herself. For her real objection, with respect to rights, is to an empty “ritualism” of rights rather “ritual” per se; indeed, rituals, according to Charlesworth, are as necessary as they are desirable, ensuring that right-ful process is observed, regardless of policy outcomes, bottom lines, and/or key performance indicators.¹¹² Far then from condemning the UPR, or other rights-sensitive agents, to some Sisyphean task of never-ending inefficacy, such an adherence to the rites of rights would, in the end, liberate jurists to rethink a *spiel*, a game, a rule system: in short, a law in which “the odds,” as the irrepressible Effie Trinket herself might put it, are most definitely in everyone’s “favour.”¹¹³

108. See generally GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Werner Hamacher & David E. Wellbery ed., Daniel Heller-Roazen trans., 1998).

109. COLLINS, *MOCKINGJAY*, *supra* note 4, at 209–10.

110. *Id.* at 12, 448.

111. See, e.g., *id.* at 446 (describing Katniss’s dream where she is at the bottom of a grave and sees every dead person she knows).

112. Charlesworth, *2012 Lecture*, *supra* note 2.

113. COLLINS, *HUNGER GAMES*, *supra* note 4, at 23.