



IMAGE: A MAP OF THE STARS OF THE ORION CONSTELLATION

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A Genealogical Journey through Time

Bina Nir

ABSTRACT

In this paper, we embark on a cultural- genealogical journey to trace the concept of time, observing the shifts in the concept of time in Western culture. Time concerns religions, science, philosophy, and cultural creation. The perception of time in any culture also dictates the form of thought within that culture. At the basis of Western culture is a linear concept of time that has its origins in Biblical texts, while in Eastern cultures, the concept of time is circular. The genealogical research in this paper examines the roots of the linear concept of time in Western culture and the fundamental changes that this concept has undergone over the generations amid processes of secularization, the growth of capitalism, and the penetration of digital technology. Today, we inhabit the seam between two technologies, one mechanical and the other virtual and digital. These shifts force us to examine our shifting cultural reality through many different lenses, including concerning our perceptions of time. Although our cultural inquiry about future changes in our perception of time in virtual spaces is only just beginning, it has already raised quite a few questions that we address here.

Keywords: western culture; biblical texts; linear time; digital age; temponomics.

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In this paper, we embark on a cultural-genealogical journey to trace the concept of time, observing the shifts in the concept of time in Western culture. Time concerns religions, science, philosophy, and cultural creation. The perception of time in any culture also dictates the form of thought within that culture. At the basis of Western culture is a linear concept of time that has its origins in Biblical texts, while in Eastern cultures, the concept of time is circular. The genealogical research in this paper examines the roots of the linear concept of time in Western culture and the fundamental changes that this concept has undergone over the generations amid processes of secularization, the growth of capitalism, and the penetration of digital technology. Today, we inhabit the seam between two technologies, one mechanical and the other virtual and digital. These shifts force us to examine our shifting cultural reality through many different lenses, including concerning our perceptions of time. Although our cultural inquiry about future changes in our perception of time in virtual spaces is only just beginning, it has already raised quite a few questions that we address here.

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I. INTRODUCTION

The subject of time has preoccupied countless thinkers across diverse disciplines throughout time. Questions such as whether time exists externally to us or whether we move within it, when time began, and what preceded it have been posed in both philosophy and physics. Does time

have some independent and absolute being, as Plato claimed, or is it rather dependent upon change or motion, as Aristotle contended (Shalin, 2016; Hagar, 2004, 10–11)? The great myths also concern themselves with the essence of time. For Chronos, the god of time in Greek mythology, time is eternal, continuous, perfect, and ceaselessly flowing. Questions such as whether time will cease or reach the end of history are raised in various religious contexts as well as in connection with scientific predictions of global warming (Shagiv, 2016).

Every culture's perspective on time dictates and circumscribes that culture's form of thought. All knowledge is time, for people live within the framework of time (Krishnamurti and Bohm, 2003). At different periods throughout Western culture, various conceptualizations of time have existed contemporaneously with one another, sometimes contradicting one another and other times complementing one another (Funkenstein, 1991). For this reason, discourses on the subject of time should not be confined to scientific or philosophical contexts exclusively and should instead be understood in light of broader cultural, political, and artistic contexts. Time stands at the very center of our conceptualization of our reality. As Virilio claims, reality offers us multiple, diverse layers of meaning from which we must extract a personal and cultural meaning (Virilio, 2006).

In this article, we shall undertake a genealogical investigation of time and its traces by studying both the changes that the concept of time has undergone as well as our attempts to understand the future of time. Although this engagement with genealogy shall have as its subject the past, its goal is the comprehension and critique of contemporary reality. Since culture is determined by foundational assumptions that are often so entrenched as to be completely invisible save in the hindsight of later era, disclosing the past

diminishes its power to completely determine our lives. Adopting a genealogical method for the sake of critique is further supported by both Nietzsche and Foucault (Deleuze, 2006, 2). In Foucault's opinion, the genealogical method enables one to take a new perspective on values (Foucault, 1977, 152).

People in the West today, I would like to suggest, live according to two different earthly timelines. The first is the linear, historical, and cultural timeline that tends towards the end of days, the eschaton. Even though this timeline has undergone several permutations in connection with changing culture, it is fundamentally based upon a well-established religious narrative. The second timeline is that of "personal time" which characterizes capitalism and the culture of individualism. In addition to these two timelines, in the Judeo-Christian West, there is also an otherworldly dimension of time, namely, the spiritual. These various timelines, which together form our conceptualization of future time, are changing in this current period of global crisis. Most significantly, the eschatological narrative is becoming more prominent, beginning to penetrate and influence even "personal time". In addition, we shall consider the accelerated changes that are currently taking place in both the earthly timelines and the otherworldly, mystical dimension of time in connection with developments in virtual reality and other cultural shifts.

Narratives of living on the precipice of the apocalypse tend to become profuse in periods of crisis characterized by fear and uncertainty around the unknown and unknowable future. Such narratives originally emerged out of a religious worldview deeply embedded in Western culture. Accordingly, there is a pervasive feeling that our experience of the present moment—on the heels of the Covid-19 pandemic and in the midst of the climate crisis—ought to be characterized as life on the verge of the apocalypse, for ours is a period of great uncertainty and fear. Yet, while this may seem to be a warning about the nature of time itself (Lebovic, 2020), and while the apocalyptic sensibility of believing that one is living at the end

of time tends to arise principally in periods of crisis, at the same time, such a view is built upon foundations deeply embedded in the culture of the West.

The genealogy of time begins with the religious sources of Western culture. Various systems of thought and cultural values are reflected in the religious doctrines of a given culture. Both Western culture and Christianity are based on Jewish scriptures, the latter of which were scattered throughout the provinces of the Roman Empire and then preserved and disseminated by Christianity (Malkin, 2003, 44). Accordingly, we shall investigate the roots of the Western perspective on that timeline that is directed towards the end of days, the eschaton, and we shall locate the basis for this apocalyptic perspective in both biblical and other Christian religious texts. We shall also investigate the parallel development of the personal timeline. Thus, we shall also investigate the changes that occurred in these perspectives under the influence of capitalist culture vis-à-vis the influence of virtual reality.

II. LINEAR TIME

One of the philosophical characteristics of our time is our inability, as humans, to imagine a "beginning" and an "end" of time. The monotheistic religions describe the creation of the world as an event that occurred at "the beginning of time," but human achievement has been able to discover that there were events that took place even before the Earth came into existence. According to the Western Judeo-Christian tradition of thought that we inhabit, time has both a beginning—"in the beginning God created" (cf Gen. 1:1)—and an end—"in the end of days" (cf Isa. 2:2). Linear biblical time is irreversible, eternally aimed towards the eschaton and the reign of the divine kingdom (Leibowitz, 2002). The prophets assure us that we exercise influence over the nature of this end rather than it being a preordained future: "But if ye thoroughly amend your ways and doings...then I will cause you to dwell in this place, in the land that I gave to your fathers, forever and ever" (cf Jer. 7:5-7). In the Bible, people exist in time; at every moment they

are likely to encounter some trial in which they can either carry out or fail to carry out the will of God (Rauch, 1978, 10–11). Earthly time in the Bible is also linear but it is not discussed explicitly save in connection with the cosmology of the creation narrative. For example, Moses' mission has an implicit sense of linear time, for it contains within it the expectation of some future success. This expectation both for and of the future, which we first encounter in the Bible and which supplanted the antique world's conceptualization of a preordained future, brought with it a new perspective on faith. According to this perspective, time is not cyclical, but is rather unidirectional and irreversible. The observance of divine commandments in the present is simultaneously the hope for a better future, a future in which one receives a reward. This perspective is expressed when God says to Abraham: "Now the Lord said unto Abram: 'Get thee out of thy country and from thy kindred and from thy father's house, unto the land that I will show thee. And I will make of thee a great nation, and I will bless thee and make thy name great'" (cf Gen. 12:1–2).

"In the beginning God created"—this is the beginning of time. In the debate surrounding the question as to whether the universe has a beginning, and if so, how it began, there are two main schools of thought. The first, the monotheistic, maintains that the universe was created *ex nihilo* and that the human race is evolving. "However, there was nothing prior to the heavens and the earth.... And were it not for these being made by You, nothing would exist at all" (Augustine, 2001, 294). The second school assumes the worldview that follows from the God of Plato and Aristotle. According to this perspective, God is conceptualized as an architect or a designer, but not as a creator. Relatedly, the matter from which the world is formed is conceptualized as eternal, not as created. "If the world be indeed fair and the artificer good, it is manifest that he must have looked to that which is eternal" (Plato, 1999, 530). "God...finding the whole visible sphere not at rest, but moving in an irregular and disorderly fashion, out of disorder

he brought order, considering that this was in every way better than the other" (*idem.*, 531).

"The end of days" refers to the end of time. In the first verse of Genesis, the foundation for an end of time is also assumed, for if something has a beginning, it also has an end. The biblical, linear vision of time marches on from the creation until the end of days, and history proceeds along this continuum (Dan, 2000, 19). The procession of time yields generation after generation, event after event, up until the present moment, from whence the continuation of history shall proceed directly unto the endpoint, i.e., the end of days (Zeligman, 1992, 102–3). The Prophets of Israel were very interested in the end-times, whose arrival, they asserted, depends upon the behavior of the Israelite community: "Thus saith the Lord: Refrain thy voice from weeping, and thine eyes from tears; for thy work shall be rewarded, saith the Lord; and they shall come back from the land of the enemy. And there is hope for thy future, saith the Lord; and thy children shall return to their own border" (cf Jer. 31:15–16).

In Christianity, this belief in the end of days was expressed principally in the Book of Revelation. The book was written under the influence of the apocalyptic visions of Daniel; Daniel became a model for subsequent apocalyptic works. "And he said: "Behold, I will make thee know what shall be in the latter time of the indignation; for it belongeth to the appointed time of the end"" (cf Dan. 8:19). The events that occurred in this vision became a sort of touchstone for the Western perspective on history. Empires would come and go, conquering and displacing each other, but the general structure and its principle would remain the same, namely, the course of history would have as its ultimate goal the consolidation of the entire process in that necessary motion towards the end of time.

The principles implicit in the Book of Daniel were developed in the Second Temple Period, in the wake of the destruction of the First Temple (Flusser, 2009, 131–2). Some claim that this literature was written out of despair and a profound loss of belief in the power of religious worship to effect either individual or collective

redemption (Dan, 2000, 38). The roots of viewing the end of days as part of the new covenant lie already in the Bible (Efron, 2004, 269–70). In contrast to most ancient Eastern cultures, biblical belief disregards otherworldly dimensions and instead focuses on human reality as it unfolds in uni-dimensional earthly time. In this view, the end of time is included within historical existence. Biblical sources do not present a coherent image of redemption, but rather a series of apocalyptic motifs which emphasize the desire for redemption and repair at the end of days. Klausner (1999) emphasizes that Israel was unique among the peoples of the ancient world in possessing a messianic vision. This inheritance was bequeathed to the Western world by way of Christianity.

Augustine (2001) was responsible for adapting the Jewish structure of history and time to Christianity (Russell, 2001, 231). Augustine defines time as an internal experience, identifying the past with historical memory and the future with expectation. In his view, human civilization advances and develops persistently. At the same time, Augustine emphasizes the eternal time of God, i.e., mystical time. “In eternity, by contrast, nothing passes away, everything exists” (Augustine 2001, Book XI, 297). Augustine attempts to find a solution, connecting two positions that seem to contradict one another: i.e., mystical, eternal time, on the one hand, and linear, earthly time, on the other. As a result, in the Christian West, there are two dimensions of time—the otherworldly, mystical, divine-cosmic dimension of time, and the historical, earthly dimension of time. Meanwhile, Christian history, that is to say, Augustinian history, is linear.

For Western history, just as in the holy scriptures of the West, there is both a beginning and an end of time (Bloch, 2002, 56–57). The entirety of Christian thought unfolds within a sequence of time, and therefore within history. The story of the history of mankind, as it is related in the West, assumes the existence of progress and development that trend ever upward, as expressed in the arrow of biblical time (Carr, 1986, 120–125). This linear conception of history and its division into sections that both proceed towards

and add up to the end of time became dominant in virtually all cultural domains since the biblical basis served as a universal foundation for all their worldviews (Dan, 2000, 265–308). Indeed, the foundation for such [a worldview] already exists in the book of Genesis.

In the created world, there is a place for history, for only with this perspective is it possible to deflect a theory of the eternal return of events that have already come to pass: A procession of generations, with no beginning and no end, would transform history into a cyclical phenomenon without either any hope or any end. In the eyes of Christianity, the fate of humanity, suspended between the Fall and Judgement Day, is like a continuous adventure. And yet at the same time, in Christianity, theology isn't derived from the future, but rather from a promise. Even though human existence is in fact an encounter with time, and while man's actions occur within time, for Western civilizations, there are also great expectations of that time—in contradistinction to other cultures. In the West, people who are inclined towards action continuously learn lessons from the past (Bloch, 2002, 56–57).

III. SPIRITUAL TIME AND EARTHLY TIME

There is a widespread assumption that the Bible's view of time is linear in contrast to cultures whose views of time are cyclical (Zakay, 1998, 90–93). However, some oppose this generalization as well as the assumption that the Greeks' conceptualization of time was primarily spatial, while the Bible's conceptualization of time is primarily temporal and finite, as illustrated by its division into fixed periods. According to these latter approaches, two different conceptualizations of time can be found in both the writings of the Greeks and the Bible. There are some also who attribute to the Bible both linear and cyclical conceptualizations of time, both of which are expressed in the calendar: While the cyclical conceptualization is manifest in the attention the Bible pays to the annual cycle of seasons in the land of Israel (Schweid, 1984, 14–15), but the adherence to this calendar invokes a historical, linear memory. Belief in a single, otherworldly Creator-God removed power from the forces of

nature and deterministic fate that underlay cyclical time. The Biblical Jew is pushed through time towards a better future at the end of days by the divine will, and yet the biblical framework sees in linear history a process external to God.

That is to say, there are two types of time in the Bible: mystical-spiritual, eternal time that belongs to God, and linear, historical time that flows from the beginning to the end, i.e., earthly time. For biblical man, earthly time is distinctly linear and dependent upon the fulfillment of God's commandments, though meanwhile, God exists outside of this time, eternally. In the Bible, time appears to be something that belongs to God; a sort of resource that He freely grants to man, as the Psalmist expresses it: "Thine is the day, thine also the night; thou hast established luminary and sun...thou hast made summer and winter" (cf Ps. 74:16–17). People can only experience and participate in the holy, mystical dimension time when they are specially granted to do so; i.e., at designated times wherein they withdraw from earthly, linear time. The Creator unto whom all time belongs expropriates the Sabbath day from linear time, from the linear sequence, and transforms it into a period of holiness, thereby moving it into divine time. Linear time is a time of labor, of working hard towards some final purpose. The Sabbath becomes a holy day by way of its being distinguished from the other ordinary days of the week and their continuous procession: "but the seventh day is a Sabbath unto the Lord thy God, in it, thou shall not do any manner of work....and He rested on the seventh day, wherefore the Lord blessed the seventh day and hallowed it" (cf Ex. 20:9–10).

God is an eternal being, described in terms of eternal time. Support for this idea can be found in examining the etymology of God's name, Yahweh, which is derived from the same root used to describe existence in the present tense. In the Catholic world, mystical time is bound up with religious experience.¹ The Church promises unconditional love to whoever takes refuge therein and urges people to believe that God forgives them and loves them. The world was an

easy place to understand: humanity stood at its center and would dwell in either heaven or hell in the future to come; i.e., in the promised mystical time. Indeed, this future was derived from the promise, i.e., from eschatology. As processes of secularization came to take hold in Europe towards the end of the Middle Ages and Renaissance, human longing for eternal, spiritual time diminished (Arbel, 2002, 87–88), and it was linear, earthly time that became the significant dimension of time.

The loss of connection with religious, mystical, and spiritual time occurred gradually. In pre-industrial, agrarian society, people lived according to the calm and orderly rhythm of the seasons and the cycles of working the land. The belief that there existed a realm of eternal time beyond these events of time instilled in people a certain faith in time. Conversely, the transition away from the calendar and eternal time and towards a life governed by the clock, coupled together with processes of secularization, instilled in people living in Western cultures new norms and worldviews concerning time. Secular humanity was expelled from the Garden of Eden forever, cast out into earthly time, and his new freedom aroused within him both fear and a desire for competition, success, and fame (Nir, 2016).

IV. THE PERSONAL TIMELINE

Most consider the Renaissance to be the period in which the individual in the modern sense was born. However, the Renaissance's discovery of humanity was not a complete innovation, but rather a new way of conceptualizing a phenomenon whose roots are in the foundations of Western culture. Individualism is bound up with the birth of that self-consciousness that is necessary for the development of the individual. Although self-consciousness began to develop already in the classical and ancient Jewish worlds, the development of individualism in its modern form only became possible with processes of secularization (Shanahan, 1992, 56; Fromm, 1975, 51). Individualism allowed the individual to abandon his connection to the moral structures of

¹

a divine world, and accept whatever “truth” he or she discovered.

Though it might seem paradoxical, individualism developed in Christianity despite the lack of freedom under the rule of the Catholic church. Christianity teaches the individual to distinguish between good and evil and permits him to “realize himself.” For the Jews and Greeks, individual responsibility is less important than it is in Christianity: Christian tradition emphasizes the power of spiritual activities and the individual’s potential to expand his capacity for divinity by way of spiritual labor. In this way, Christianity supports the development of self-consciousness, and it is precisely this self that attains its perfection in the Renaissance (Fromm, 1975, 53).

The process of secularization also influenced the Western preoccupation with history. Until the thirteenth century, Christian historiography was bound up with theology, that is to say, with the religious establishment, which firmly fixed which sources were fitting—and unfitting—to use as/in history (Arbel, 2002, 87–88). In the Renaissance, people adopted the approach of Cicero, who called history “life’s teacher,” and focused on human drama, on the relationships between people and exposing their weaknesses and victories (ibid, 90). History underwent a process of secularization whose basis was the arrow of biblical, earthly time. That is to say, understanding human experience in the past aids in our understanding of the present, and may even possibly serve to predict the future.

The race in earthly time towards the future brought about, among other things, the development of the modern conceptualization of time (Levine, 2006, 51–67) together with an increasing role for competition in society. In this process, minutes became precious and time became a resource so valuable that people felt as though they should not waste it on that which was useless (Fromm, 1992, 47). For example, the Renaissance artist Alberti Battista began each day by organizing his schedule so as to make the most of his time (Bluedorn, 2002, 227). Humanity became the master of its own fate and time became a personal resource. Linear-earthly time

becomes the only significant time that remains (Debord, 1992).

With the intensification of capitalism and the process of secularization, the people of the West began to live in two parallel timelines. On the communal and cultural plane, the linear timelines of the grand narratives of history, democracy, and capitalism are found. On a personal and authentic plane, a Western person is in an individual race for future success that is also based on linear thinking and expectation for the future, but that exists on a separate, personal, and authentic timeline. As for the religious basis of the linear axis, one must distinguish further between perspectives that see God as responsible for redemption and perspectives that see people as having the ability to influence their fate and set the wheels of redemption in motion. When a person believes that he or she can influence his future, since the latter is not predetermined, he develops the motivation to race in time after some future, personal, authentic form of success. Although this motivation is religious at its core, it has undergone processes of secularization.

In today’s consumer capitalist technological society, time has become a unique and precious resource connected with success and achievement. Today, social and economic success is measured in terms of the ability to achieve maximum efficiency and results in a limited timeframe, while those who do not “arrive” on schedule are deemed failures. Benjamin Franklin’s first uttered his famous refrain “Time is money” (Levine, 2006, 9) in 1748. Later, the connection between time and money in the West yielded an economic expression of the value of time: *temponomics*, literally a combination of time and economics. *Temponomics* is based on the assumption that time is a resource that should be managed just like money, and for that reason, it is possible to “earn time,” “save up time,” and “sell time” (Zakay, 1998, 93–94).

Time “passes,” time “runs away” and time “runs out.” Western people feel as if time itself is in motion. Time is experienced as a resource that is being depleted (Davidson, 2004). It is a unit of value, a currency, a commodity for investment

and consumption, and, above all, an important resource for success (Nir, 2016). Some even deem modern people to be “drunk on time” (Ayil, 1996, 141). Our current Western mythos is that we are chronically lacking time. In the secular life of the West, for those who do not believe in life after death, the general experience of time is that time progresses linearly until it runs out. On their personal or individual timelines, people in the West live with the sense of time as passing biologically, i.e., moving towards death and the annihilation of the individual.

An individual’s perception of time changes during their lifetime. In the West, time as experienced by young people is not the same as that experienced by older adults or the elderly. During adolescence, there is a fundamental change in a person’s perception of time, when individuals begin to see the “hourglass running out.” We no longer ask how old we are, but rather, how much time we have left (Eyal, 1997). Phrases like “one’s biological clock is ticking” express an image of life as a sort of organic clock, whose time is limited and predetermined. From the 1960s, this image took on a very tangible meaning, following an experiment by Leonard Hayflick (1965), which showed that human fetal cells in vitro divided about 50 times before they stopped dividing. This finding appears to indicate that death is genetically dictated and that the “biological clocks” in our bodies’ cells start “ticking” from the moment of our first heartbeat (Ashkenazi, 1991).

V. TIME IN THE DIGITAL EXPANSE

In the digital space wherein we spend most of our time, the concept of time undergoes numerous changes in response to our changing perception of reality. The digital age itself is undergoing rapid and substantial changes, each of which has consequences for our perceptions of time and space. Cyberspace is a network of digital databases that has been made available to users where they can visit and access a wide range of information, “which resides in a certain space created as a result of interaction between a user and a computer and requires a navigator” (Rosen, 2016, 21). Cyberspace refers not to any real space,

but rather to a virtual space that developed as a result of the use of computers.

In the age of digital information, a space of information flow has been created which has in turn created a culture characterized by a timeless time and a spaceless space that are indistinguishable. Events unfold on the screen before us, here and now, with only a click of the mouse. The mechanical world, slow and fragmented, has disappeared, and an electronic, computerized world, simultaneous and unified, has sprouted in its place, chafing against the limits of our physical body and consciousness (Rosen, 2009). Cyberspace is a compressed space full of a vast amount of information that reaches us at light speed and yet it is not a space completely independent of time, for information reaches the web surfer’s consciousness within his reaction time. Thus, while one is surfing the web, one experiences “the compression of space and time” (Rosen, 2016, 23).

This space does not follow the rules of Euclidean geometry, for geometry in this space is non-linear. One of the characteristics of space-time is simultaneity. Simultaneity constitutes a violation of the logical sequence since in Euclidean geometry a point in space cannot occupy two places at the same time. In classical physics, events that are simultaneous to one observer appear simultaneous also to a second observer who moves at a constant speed relative to the first observer. However, according to the theory of relativity, time is relative and not absolute, and the coordinates of time and space get mixed up when switching between descriptions of events by different observers (Garnot, 2016). In the high-speed motion of cyberspace, the linear perspective is flattened, so that the distance between different objects that have become two-dimensional grows shorter.

People today live simultaneously in the virtual world and the real, physical world. The digital revolution has given us a reality in which space and time can no longer be distinguished, as they were for Newton. New forms of media have thus led to the development of “a new space-time” (Moses, 2003). Time is neither external to us nor

distinguishable from space. Rather, we move within time as we occupy virtual space, and we can “exit” it into physical space and that “other” time, i.e., classical Newtonian time.

According to the Newtonian perspective, there is only a single timeline. In contrast, in large software systems such as Facebook and Twitter, each computer has its own timeline and time is not absolute—as Lorenz and Rosenan demonstrated using the room reservation system at Booking.com. In such a large software system, two different users in two parts of the world can attempt to reserve the same room, and the room will simultaneously be both available and unavailable. Thus, in the space of the internet, just as in the space of the actual universe, time is not absolute. Every computer has its own timeline, which is to say, a separate timeline from all other computers. Therefore, although each computer taken in itself behaves predictably, the behavior of the entire software system, considered as a whole, is unpredictable with respect to the user. The order of events may be different in each timeline, and it is difficult to synchronize them (Lorenz and Rosenan, 2016). The absolute timeline to which we were accustomed has thus been replaced by countless different timelines.

In the digital age, I would like to suggest, there is also a sort of return to conceptualizing time as eternal from the “divine” perspective, which in the past was connected with the mystical-eternal conceptualization of time. Cyberspace has brought us back, in a way, to the divine perspective, for now it is possible to see and experience the world as a whole, simultaneously, through a vast systems memory—such as previously would have been possible only for a sublime power like God (Rosen, 2016). Using virtual, 3D representation software such as Google Earth, the web surfer can see the world from a perspective previously impossible—he can fly to every corner of the earth and see satellite images, maps, and 3D buildings from the galaxies of outer space to the ocean canyons. The web replaces real space-time and acts as a gateway to interactive virtual worlds. With the click of a mouse, one can navigate the entire galaxy using images and information provided by NASA and other space agencies

(Rosen, 2016). This new point of view, made possible by the internet, has unwittingly brought us to the perspective of Spinoza. According to Spinoza, the fullest and most complete perspective of reality is achieved only from the viewpoint of eternity (Weinrib, 2011, Vol. 1). When we consider things that happen in time, we do not see them as they truly are. Only from the divine perspective do we obtain the complete picture, since God, according to Spinoza, is eternal in the sense that He exists outside of time. Complete understanding is obtained only through the viewpoint of eternity (Morgan, 2002).

Information in cyberspace exists in an “over-space” that can be navigated and “browsed” electronically. In Big Data—i.e., a large quantity of data is collected from a wide variety of sources—information is stored without being deleted and allows for the analysis of content in diverse fields, such as meteorology, trade, cyber warfare, military, and police intelligence. The ability to quickly retrieve information and identify patterns and connections that could not otherwise be perceived by humans, using millions of pieces of information remote in time and space, endows us with powers of simultaneous vision and action, thereby in a sense restoring us to a divine perspective. A large and cohesive picture of the world, in which all things are closely connected, is created, similar to the cosmos symbolized in medieval art. Such a perspective results not simply from being able to virtually view the world as a whole, as on Google Earth, but rather from the ability to make connections and predictions based on a vast amount of information. This image is consistent with Leibniz’s metaphysics. According to Leibniz, God created the world so that there is a pre-existing harmony among all the details; at every moment, all created monads operate to be in harmony with one another. For Leibniz, only the divine monad, i.e., the simultaneous monad, views the world through Laplace’s universal formula, while we experience the world through a formula that is deficient, ever-changing, and transitory. In contrast to Spinoza, whose point of departure is the one whole that includes everything, Leibniz’s point of departure is the existence of individual things

(Weinrib, 2011, Vol. 3). The world is made up of details, yet there is a predetermined harmony between all the monads such that they work together. Further, the harmony is complete despite the lack of mutual influence between the monads.

The return to a simultaneous conceptualization of time is expressed also in Augmented Reality. In 1994, Paul Milgram proposed that rather than conceptualize two extreme possibilities—one being the real world and the other being the virtual world—we should instead think about a continuum existing between the two possibilities and accept various iterations of mixed reality (Friedman, 2006). This area is called Enriched Reality or Augmented Reality. With Enriched Reality, there is also a return to a simultaneous conceptualization of time. This is a space-time that includes everything: past, present, and future. Further, this concept of time is foundational to modern physics, in contrast to the linear sequence of Newtonian physics in which time flows from the past to the future (Hagar, 2004). For example, in the present, reality can be enriched by the addition of a virtual dinosaur from a bygone era that nevertheless seems to exist. Thus, this is a simultaneous time in which several realities can be found side by side, the past coexisting together with the present. In Enriched Reality, the coexistence of different times breaks the Newtonian linear sequence.

The digital revolution also constitutes a return to eternal time in that it contains both a promise of remaining in eternal time and an illusion of eternal life. In the Renaissance, earthly glory—i.e., a man's name and deeds remained in the history books after his death (Burckhardt, 110) came to replace religious glory and that earthly glory compensated for both one's insecurity in this world and one's longing for eternity. In the current digital age, the yearning for eternal life has taken on new fervor. As an example, LivesOn, a Twitter-based company, promises to continue tweeting on behalf of a person even after their death: "When your heart stops beating, you'll keep tweeting" (Tzezana, 2013, 112). Indeed, today we are surrounded by the ghosts of deceased Facebook users, their profiles transformed into

memorial pages (117). In the digital space, one finds the promise of escaping that linear time which is always running out, and thereby "killing time"—i.e., transforming linear time into eternal time. As Lewis Carroll describes it in his *Alice's Adventures in Wonderland*, the clocks do not move because the Hatter "killed time" (Lewis 1954, 78–80).

VI. EPILOGUE

We have embarked upon a genealogical journey tracing the concept of time to understand the future of time. In the beginning, we considered the sources of the linear conceptualization of time that is oriented toward the future. As we saw, the biblical arrow of time that serves as a basis for Western culture, which moves us from the beginning towards the end, is also found in the major narratives of the modern era. The concept of historical progress has been popular for a long time, and at its basis lies the assumption of a beginning and an ending on the model of the biblical arrow of time. A cyclical concept of time, which differs from the dominant narrative in the West, appears in the Bible in Ecclesiastes: "The thing that hath been, it is that which shall be; and that which is done is that which shall be done: and there is nothing new under the sun." (Eccles. 1-9 KJV).

At the same time, in the new consumer culture, which moves along the personal and authentic timeline, a more personal and subjective conceptualization of time is emerging. In societies that live according to cyclical or mystical time, distinctions between everyday activities and communal, religious, or holy times were abundant, for example, there was designated ritual time (Van Gennep, 1986, 107–110), celebration time, play time (Huizinga, 1966, 44–45), and ascension time. In contrast, in consumer capitalism, free time becomes times for consumption and/or bought time, i.e., time as a commodity. We thus live with a false consciousness of time (Debord, 2000, par. 158). In the secular life of the West, where people do not believe in life after death, the general perception of time is one of progress up to the point of annihilation. The future is understood as

different from the past. Time is flowing, uni-dimensional, and real.

As we have seen, these two linear timelines, i.e., the cultural and the personal, are undergoing rapid change, and it is difficult to predict what our perception of time, as a culture, will look like in the future, mainly in light of rapid changes and the introduction of new technologies such as artificial intelligence (AI).

Yuval Noah Harari (2015) claims that the digital revolution is no less significant than the industrial revolution. The industrial revolution shattered the natural environment, and the digital revolution threatens to do the same to the political environment. Technology indeed enriches and augments our lives. However, while technology adds something to our lives, it also takes something away; and while what technology adds is always glamorous, what it subtracts from us is often obscure and almost invisible (McLuhan, 2003).

In the digital age, we are witnessing the growth of various alternative conceptualizations of time, including changes in the experience of linear time in digital space (Rosen, 2016, 199). Today, Augmented Reality has also made it possible to technically break the linear continuum by allowing the past, present, and future to coexist together, simultaneously in a virtual universe that is nevertheless perceived as real. In these spaces, time becomes relative and has no independent existence, as Newton previously claimed (Michon, 1985, 57).

Western time was created with the creation of the world, the latter of which can now in turn be likened to the creation of a simulated, virtual environment. That having been said, the virtual world can be very different from the real world even in its most fundamental assumptions. For one to have a complete experience of virtual reality, information that is as rich as possible must be provided to all of the senses. The term "virtual reality" refers to a three-dimensional reality in which people can move about while interacting with objects and other people. When we are inside virtual reality, our senses are solely

engaged with the virtual world, to the exclusion of the real world (Friedman, 2006). In contrast to concepts like virtual environment, virtual reality refers to an experience in which the participant experiences the environment using special equipment. In virtual reality, in addition to a wide field of vision, one can reproduce real-world space and depth perception. Discussions of virtual reality in a sense bring us back to Plato's cave, in which those in the cave, upon seeing shadows, mistakenly take them to constitute actual reality (Plato, 1999, Vol. 2, 7). However, in contrast to Plato's cave, the experience of virtual reality is one that people undergo consciously, thus it may indeed be closer to hallucinatory time.

Hallucinatory time does not obey the rules of realism that govern normal reality. Hallucinations are defined as sensations or sensory perceptions that exist in the absence of an external reality (Sacks, 2013). Importantly, they are not defective sensory perceptions. Rather, hallucinations are "conjured" out of nothing. Hallucinations are very different from dreams, constituting a distinct and unique category of consciousness and mental life. During a hallucination, a person experiences an objective and real reality. Jung testifies to as much recollecting his own experience of hallucination: "I felt that I was floating in space [...] the sights and experiences were completely real. There was nothing subjective about them. Each one had a completely objective quality [...] nothing cannot be measured in temporal concepts [...] and yet everything existed together" (Jung, 1993, 274-276).

The dimension of time is at the heart of consciousness, which defines and shapes experiences. The mind and consciousness do not agree with scientific worldviews, and thus subjective feelings are often at odds with objective reality (Rijswijk & Roy, 2011). According to Shoshani (1999), time and consciousness are interrelated and both are disconnected from the material world, and relate to the subjective feeling of the individual. Cognitively, the dimension of time is not stable so that at different times of consciousness it becomes flexible and stable (Glicksohn, 2001). Therefore, some have argued

that it is human consciousness that creates the sequence and flow of time (Greene, 2005).

The Wachowski brothers' hit film *The Matrix* (1999) imagines the extreme of virtual reality. The material reality that everyone experiences is, in fact, a virtual reality, produced and coordinated by a supercomputer to which everyone is connected. When the hero wakes up in "actual reality," he is met with a desolate landscape and the smoke of ruins (Zizek, 2002).

Today we are living at the seam of two different technologies, one mechanical and the other virtual and digital. This situation compels us to reexamine many aspects of our social and cultural reality, and not only our perception of time. Our question as to what the future holds in terms of changes in our perception of time, vis-à-vis virtual reality, is in its infancy. This article does not intend to make predictions about the future of time, heeding Virilio's warnings about the "great accident." In his book *The Critical Space*, Virilio claims that Western culture's deployment of scientific rationalism, technology, and science to control the world of phenomena will bring about an accident that changes the human perception of technology—and that may even lead to the end of the modern project itself.

For this reason, we should be wary of *The Matrix's* prophecies—of a day when virtual reality will overpower actual reality. It is incumbent upon us to contemplate the consequences of the digital revolution and to ask deep questions, principally about time. For example: Is it possible that we are passing through a stage in the evolutionary process in which there will eventually be no distinction between the mechanical and the biological, or between physical reality and virtual reality, as Kurzweil claims (Kurzweil, 2006).

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I. INTRODUCTION

"The poetry of the earth is never dead." –John Keats

The natural world is as ubiquitous as humanity, spread far and wide on this Earth and inside every living being. Nature takes on many forms twisting, and turning, morphing into its different realities. Its manifestations are seen through art, speeches and poetry. Two poets of the 19th Century, William Wordsworth and John Keats, devoted their writing to the natural world exploring their different perspectives about Nature. This research paper aims to delve into their poetry to develop the hypothesis that Nature is real.

II. METHODOLOGY

Analyzing some selected works of Wordsworth and Keats, the research for this paper involves both Primary and Secondary reference. Journals and books on nature, Romanticism, and Poetry were reviewed and considered to support our primary research. This also helped in a better and more comprehensive understanding of the deeper meanings in the literary works which were examined. The primary research of this paper was focussed only on the literature written by William Wordsworth and John Keats. They were critically analyzed through their themes, symbols, metaphors and poetic devices leading to the main findings of this paper. The concepts in e our study are our understanding of their poetry after the research.

Content

2.1 Romanticism and the Vague Idea of Nature

Romanticism began around 1798 with political and social upsurge influenced by the French Revolution. It was characterised by the principles of the worship of nature, individualism and spirituality, a celebration of isolation and solitude, an interest in the common man, an idealization of women, and personification and pathetic fallacy.

2.2 Romanticism in Literature

'Romanticism in literature has as many definitions as it has poets however, none have provided clarity. This era by some was known as the era of ego, others the discovery of nature and it was further realized that others were shifting towards it as the return to medievalism. Such portrayals, broad in their complexity and generalization about their manifestation nevertheless are the truth. England in the

Romantic era was focused on developing and worshipping Nature while France with its French Revolution explored the uncharted territories of individualism and Germany into Medievalism.¹ This period spanned with them various literary luminaries like Byron, Coleridge, Keats, and Wordsworth.

2.3 Wordsworth as a Romantic Poet

William Wordsworth defined poetry as "the spontaneous overflow of powerful feelings."² He believed that poetry was meant to be identified as "emotions recollected in tranquillity"² with the immediate act of composing a poem being unforced and away from societal conventions. Romantic poets placed passionate emphasis on poetic impulses. For Wordsworth, his wording and his literature was a device to represent Nature in all of its beauty. The feminine characteristics of a woman were also often placed as that of Nature in Wordsworth's words. He idealised women and felt he existed to describe nature and this can be seen in his works where he subordinates himself to nature as a mere worshipper of the spiritual entity. Wordsworth's works however lack the stylistic excess of unnecessary vocabulary and depict genuine rustic language untainted by "gaudiness"². His perspective of what he wanted to do was to show man communicating to man. Poets of the Neo-Classical and the Classical period can be seen having a viewpoint that they considered being above everyone else's which was shown by their characteristic need to show off their intelligence prowess through their flowery vocabulary. Wordsworth wanted to not only go away from this direction but also to portray himself as a poet who reigned nature at its throne. Wordsworth was considered to be the origin of the Romantic period in England.

2.4 Keats as a Romantic Poet

John Keats wrote that "if poetry comes not as naturally as the leaves to a tree, it had better not

come at all."³ Being a successor of Wordsworth at the start of the Romantic era, Keats's poetry was said to be greatly influenced by him.⁴ He believed that nature was a source of life, the core of the world and as proof of this, he used to write long summaries of natural existences. He however failed to realise the spiritual essence of nature in his poetry and through him romantic poetry evolved into something akin to letters one would send to a lover. Keats demonstrated nature as natural and honest, never betraying and never being able to lie. For him nature was a scenery he could escape to and even though he loved the environment he failed to incorporate that sense of worship on the same level as Wordsworth if he felt it. This is shown with the understanding of imagination, memory, reality and nature in their poems. Keats's poetry had a common characteristic pervading each of his works which was his style. It lay in the sensorial path where one can feel what he's experiencing. The writers and poets of the Romantic period were known for their general exaltation of emotion over reason and of sense over intellect. Keats was a true romantic poet.

III. COMPARATIVE ANALYSIS OF SELECTED WORKS OF WORDSWORTH AND KEATS

Through the PREFACE of the *Lyrical Ballads*, Wordsworth's perspective on his poetry comes to light and through this work, one can understand his described poetic principles.

The Proto-Romantic poets that came before him, Cowper, Gray, Blake and Burns angered at merely copying classical subjects, slowly broke away from the traditional methods of writing about simple natural subjects in the common vernacular. Poetic language according to Wordsworth was devitalised and so was the thematic province of poetry, as neither evoked feelings any longer. The Romantics sought new ways of expressing themselves, further distancing themselves from

¹ References made to concept of Romanticism in "Romanticism" by Edwin Berry Burgum (1941)

² From William Wordsworth's Preface to his poetry collection "Literary Ballads" (1802)

³ From a letter John Keats wrote to John Taylor 'To John Taylor' (1818)

⁴ Understood in a Journal Article published by Clarence D. Thorpe 'Wordsworth and Keats-A Study in Personal and Critical Impression' (1927)

the absurd and the nonsensically abstract language. The Romantic era was entirely built upon the primordial relations between Nature and humanity. The writers and poets of this time were known for their prioritisation of emotion over reason and of sense over intellect.

Wordsworth considered Poetry to be “a selection of the real language of men in a state of vivid sensation, that sort of pleasure and that quantity of pleasure may be imparted, which a Poet may rationally endeavour to impart”² He believed that language which developed through repeated sayings and rustic would be a more permanent alternative than, the extravagant vocabulary “substituted it by Poets”² who think that they are conferring honor upon themselves and their art, in proportion as they separate themselves from the sympathies of men “and indulge in arbitrary and capricious habits of expression, in order to furnish food for fickle tastes, and fickle appetites, of their own creation.”² Through this, we understand Wordsworth’s poetry as stated by him is said to have taken out the unnecessary and the extravagant from older poetic vocabulary substituting it with the language of the common person. “the language” of his poetry lines “does in no respect differ from that of prose”.²

The poem "Solitary Reaper" portrays a woman who is reaping the fields in solitude and singing a melancholic song. Although the poet doesn't understand the meaning of the song because he cannot communicate with her in the same language, it evokes deep emotional responses from him as a witness of such beauty.

Nature for Wordsworth would take on feminine qualities of maidens and dames which guided the poem ‘The Solitary Reaper’. The young woman in the literary work is symbolic of representing Nature and its emotional resonance. The poet cannot communicate with it in the same language but he understands the beauty and the spiritual, and emotional landscape it provides.

He emphasises nature's unrestrained impact on him in the first lines.

"Behold Her Single in the Field"⁵ shows nature as a solitary figure of worship separated in its form of true purity, "reaping and singing by herself"⁵. The resonance of nature's music and beauty for him "is overflowing with the sound"⁵ which is its quality to resonate with the poet.

Wordsworth further solidifies nature's isolation with the next lines. He states that "No nightingale did ever chaunt, More welcome notes to weary bands Of travellers in some shady haunt"⁵, emphasizing the natural world's refreshing qualities.

He states that a “Voice so thrilling ne'er was heard In springtime from the Cuckoo bird, Breaking the silence of the seas Among the farthest Hebrides”⁵.

The poet describes his inability to communicate with Nature as he tries to understand "what she sings"⁵ or what nature tries to tell him with its sounds and own language. By the end of the poem Wordsworth treats himself as a mere listener of "her song"² which "could have no ending"⁵. As he mounted up the hill The music in his heart he bore Long after it was heard no more.

Therefore it can be said that through this poem Wordsworth ascertains his belief that nature is a real entity for him. William Wordsworth's poetry is marked by his exploration into the themes of nature, imagination, memory and the human experience in his poetry.

In ‘Nutting’, Wordsworth beautifully illustrates the power of imagination, as he explores the natural world and allows himself to be swept away by its beauty. The speaker's journey through the woods is interwoven with the metaphor of gathering nuts, which represents how our relationships with others and our imagination shape our understanding of the world.

Memory is a major theme in this poem, as the speaker reflects on his childhood experience in the woods. Through the act of remembering, the speaker can gain a deeper understanding of his relationship with nature and how it has influenced his perception of the world. Wordsworth believed

⁵ From William Wordsworth’s poem “The Solitary Reaper” (1807)

that memories have a profound and lasting impact on our individual experiences and understanding of the world around us.

The famous poem "I Wandered Lonely as a Cloud" by Wordsworth highlights the incredible ability of imagination to overcome moments of isolation and transform them into sources of inspiration. The poet reflects on a field of daffodils he once came across, which continues to provide solace and happiness during his solitary moments of loneliness. By showcasing the lasting impact of positive memories on our emotional well-being, the poem emphasizes the enduring power of joyful experiences bringing in Nature's ability to heal the remorse and solitude of human life.

Wordsworth's literary revolution fundamentally challenged the traditional aestheticism of the past, replacing it with a poetic voice that was characterized by a sense of passionate urgency and deep emotional engagement. Through his work, he established new and profound connections between humanity and the natural world, thus creating a new paradigm that would come to define the Romantic era.

Wordsworth's attitude towards Nature was not fixed, it was ever-changing and slowly developed to a point of plain worship.

In episodes of his childhood, Wordsworth derived animalistic pleasure from the natural landscapes. As shown in the poem 'Nutting' the poet recounts an episode of him as a young boy going to explore and in a way 'conquer' the natural world around him. It describes the transitioning of his perspective toward the spiritual sense of nature. He employs an important allegory to describe nature as being raped through his unconsented exploration. He uses phrases such as "frugal Dame"⁶, "a virgin scene"⁶, "voluptuous"⁶, and "eyed a banquet"⁶ to depict nature's femininity calling out to him and as a man is attracted to a woman, "the heart luxuriates with indifferent things wasting its kindness on stocks and stones and vacant air"⁶ he feels attracted to nature. Thus the destruction he said to have come by his inherent humanity began. "Then up I rose, And

dragged to earth both branch and bough, with crash and merciless ravage"⁶ displays his primal need to destroy nature because of its beauty. He felt later regret and a sense of pain seeing nature as a "spirit in the woods"⁶ which held "gentleness of heart"⁶ and thus his views of the natural world transformed into a need to worship.

While Wordsworth grew older he was drawn more towards the grander aspects of Nature.

"I too exclusively esteemed that love,
And sought that beauty, which, as Milton sings,
Hath terror in it. Thou didst soften down
This over-sternness; but for thee, dear Friend!
My soul, too reckless of mild grace, had stood
In her original self too confident,
Retained too long a countenance severe;
A rock with torrents roaring, with the clouds
Familiar, and a favourite of the stars:
But thou didst plant its crevices with flowers,
Hang it with shrubs that twinkle in the breeze,
And teach the little birds to build their nests
And warble in its chambers."

He slowly softened towards nature with the influence of his sister Dorothy.

Dear Sister! was a kind of gentler spring
That went before my steps. Thereafter came
One whom with thee friendship had early paired;
She came, no more a phantom to adorn
A moment, but an inmate of the heart,
And yet a spirit, there for me enshrined
To penetrate the lofty and the low;"⁷

Wordsworth not only saw the natural world as a vital formative influence on man, he believed that the world was a living symbol living in its own right.

With age and time, he further softened his outlook towards nature and Wordsworth formed a spiritual bond with it.

Even with this evolution of how he treated nature, Wordsworth kept an identity of nature constant as a living entity. This is the most prominent in his

⁶ From Wordsworth's poem "The Nutting" (1800)

⁷ From Wordsworth's Prelude: Book Fourteenth (1850)

work "I travelled among unknown men"⁸ where he describes, Lucy the figure of his love as the nature surrounding pointing towards a conclusion that humanity exists as a form of nature and nature exists everywhere. "Among thy mountains did I feel, The joy of my desire; And she I cherished turned her wheel, Besides an English fire Thy mornings showed, thy nights concealed, The bowers where Lucy played, And thine too is the last green field That Lucy's eyes surveyed."⁸ Therefore for Wordsworth nature was a living entity.

John Keats was a poet who followed the principle of "Art for art's sake"⁹. His works appeal to the reader's love for aesthetics and beauty, as they evoke the senses with imagery, personification, metaphors, and alliteration. If Keats were an orchestra conductor, his writing would be like music that guides the imagination. He believed that truth and beauty coexist, and his imagination was his guiding force.

Keats believed that beauty was direct which is shown through the aestheticism of his works.

"On the sea" is a reflection of the eternal and powerful nature of the sea. Keats describes its constant presence and its timeless quality through the rich descriptions characteristic of his poetry.

The poem begins by emphasizing the endless and never-ending nature of the sea's whisperings: "It keeps eternal whisperings around Desolate shores"¹⁰. The Sea is further depicted as an overwhelming presence with "its mighty swell"¹⁰ and "gluts twice ten thousand caverns"¹⁰ adding on to its immortal activity. Keats appreciated the sea's "gentle temper"¹⁰ which "scarcely"¹⁰ moves the "smallest shell from whence it sometimes fell"¹⁰. Keats further praises the "wideness of the sea"¹⁰ where one's whose "ears are dinned with the uproar"¹⁰ of daily life or one who has overindulged in "cloying melodies"¹⁰ can lose themselves in thoughts until consciousness returns to them as if they heard the song of "sea nymphs"¹⁰.

⁸ From Wordsworth's poem "I travelled among unknown men" published in 'Poems' (1807)

⁹ a slogan of the literary movement Aestheticism developed in the Decadent period

¹⁰ From Keat's poetry "On The Sea" (1817)

This delves into the reality of Keat's nature which he escapes to through his idealisation of nature as a beautiful truth where he can lose himself.

The themes and ideas evident in Keats's great odes are typical of the Romanticism after Wordsworth. Following the poet, Keat's works followed the principles of the beauty of nature, the relationship between creativity and passion, the response to beauty and suffering, and the transience of human life.

Nature for him had human-like qualities but it was distinctly described as a place rather than a physical entity. The beauty in nature according to Keats was scenic, where he could escape to and lacked the love and worship which Wordsworth gave it. Keats presented Nature as natural and honest in a way that it never lied and through his works he never went beyond the aesthetics.

Imagination was a major theme in Keat's writing. According to him "The Imagination may be compared to Adam's dream – he awoke and found its truth"¹¹. Keats believes the imagination, which fuels creative expression, to be the most direct access to truth.

Ode To A Nightingale is a poem that describes the poet's appreciation for a nightingale's song. It depicts the song becoming his escape from the harsh realities of life. It explores the poet's deepest desires to join into the bird's timeless world, free from mortality. Keats is shown as grappling finding joy in art and this conflict is displayed through his artistic expression.

The nightingale in this poem is a symbol of imagination and art and the song symbolizes his escape from realities. It explores the idea of momentarily hiding from the troubles of the real world.

The nightingale's song while beautiful is still fleeting like the pleasures of life.

Keats skillfully correlates the poet's experience of his imagination and the reality of ephemeral beauty which is not always apparent.

¹¹ From a letter John Keats wrote to Benjamin Bailey called "The Authenticity of The Imagination" (1817)

La Belle Dame Sans Merci is a ballad which narrates a knight's experience encountering a mysterious enchanting woman. The Knight captivated by her beauty falls under her spell which leads to him experiencing a moment of fairy-like passion with her. It follows the knight's realisation of the deceptive allure of romantic fantasies which would lead to tragic consequences.

This poem symbolises the romantic fascination with mystery and the supernatural, and it is said that it follows Keats's unsettling love life and childhood due to which he felt as if imagination was his only solace after reality gave up on him.

IV. CONCLUSION

Nature takes on various forms in the minds and hearts of different individuals. In exploring the works of Wordsworth, one can gather insight into his perspective, which portrays nature as both a physical and spiritual entity that he held in reverence.

Wordsworth experienced Nature to be real through the mortal mundane life and discovered the beauty and immortality of Nature. He realised through his 'spontaneous overflow of emotions' how when connected with Nature, Nature has the ability to provide solace to all mortal problems. It is a medium to transfer the mortals to a world of Beauty and give the experience of the immortal. Meanwhile, Keats, a successor of Wordsworth, viewed Nature as a means of escape rather than a tangible presence. By showcasing the diverse facets of the natural world's reality, both poets affirm that Nature is indeed real.

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ABSTRACT

With the focus on the differences in English and Chinese cohesive and coherent means, this paper studies the E-C translation strategies regarding in transferring the coherence in Chinese version of the selected chapters of the historical book *The Revolution of 1848*. With Wang Dongfeng's four types of coherence and Halliday and Hasan's theory of text cohesion as theoretical framework, some typical translation cases from the excerpts are analyzed. It is found out: firstly, the major differences in grammatical cohesion between English and Chinese make it necessary that different translation methods should be taken to achieve the grammatical coherence. Secondly, for some means of reiteration, their semantic coherence should be reproduced in the target text; the translation strategies of complicated co-occurrence relation need to be adopted on the basis of specific context. Thirdly, in addition to the fidelity rule, the word selection should be in line with different stylistic features on the translation of various writing types, thereby forming the stylistic coherence.

Keywords: text; cohesion; coherence; translation strategies.

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*With the focus on the differences in English and Chinese cohesive and coherent means, this paper studies the E-C translation strategies regarding in transferring the coherence in Chinese version of the selected chapters of the historical book *The Revolution of 1848*. With Wang Dongfeng's four types of coherence and Halliday and Hasan's theory of text cohesion as theoretical framework, some typical translation cases from the excerpts are analyzed. It is found out: firstly, the major differences in grammatical cohesion between English and Chinese make it necessary that different translation methods should be taken to achieve the grammatical coherence. Secondly, for some means of reiteration, their semantic coherence should be reproduced in the target text; the translation strategies of complicated co-occurrence relation need to be adopted on the basis of specific context. Thirdly, in addition to the fidelity rule, the word selection should be in line with different stylistic features on the translation of various writing types, thereby forming the stylistic coherence. Fourthly, the cultural information hidden in the source text (by default) could be restored with annotations added then to produce the pragmatic coherence, in connection with the preciseness of historical book and cultural differences between East and West.*

Keywords: text; cohesion; coherence; translation strategies.

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I. INTRODUCTION TO THE REVOLUTION OF 1848

The Revolution of 1848, with 38 chapters totaling 81,430 English words, is themed on the French Revolution of 1848. This historic event, also known as the French February Revolution, was jointly initiated by the French proletariat and the bourgeoisie, which overthrew the July Dynasty representing the interests of the financial oligarchs and established the Second Republic of France¹. Besides its base on the Revolution, the content of the book covers a wide range of aspects, including politics, economy, culture and military, to name but a few. It mainly narrates France's social landscape in 1848 and a host of events triggered by the Revolution, with reference to other series of revolutionary events and national conditions in other European countries. As the research object of this report, the first eleven chapters with a total of 19,970 words, mainly describe the stories concerning the turbulent royal family, the Chamber of Peers and the House of Commons accompanied by frequent debates, the cabinet on the verge of reorganization, and the incompatible politicians before the Revolution.

II. DIFFICULTIES IN TRANSLATION

First of all, the first eleven chapters includes a multitude of long and difficult sentences, which skillfully use cohesive devices with abundant pronouns and deixis. Consequently, how to accurately translate the meanings indicated by these words and to present them in idiomatic Chinese expressions, remains the greatest challenge.

Secondly, the source text is rich and ingenious in vocabulary application, such as the repetition of words for emphasis and the recurrence of terms with synonymous relation for avoidance of monotonous wording; particularly polysemous words therein are highly demanded for the interpretation of their semantic features in a specific context.

Furthermore, this book covers a variety of styles when describing historical events, including speeches from the throne, house debates, religious hymns, to name but a few. Accordingly, it is a tough job to maintain the original styles, achieve the stylistic coherence and make the translation readable.

The final one lies in the political, military and cultural information in France and other European countries. To be specific, when it comes to some terms related to the background, the information which the source text readers acquiesce in or share are omitted in some contexts. Because of the differences between Chinese and Western cultures, it is not effortless to interpret and restore the missing cultural elements.

III. TEXTUAL COHESIVENESS AND COHERENCE

In their book *An Introduction to Text Linguistics*, the famous textologists Beaugrande and Dressler put forward seven criteria of textuality: cohesion, coherence, intentionality, acceptability, informativity, situationality and intertextuality³. Among them, cohesion and coherence are the prime. Neubert, a foreign translation theorist, believes that translation is a textual process combining linguistic form with process, and text must be regarded as the first object of translation research^{4:48}. Thus it can be seen that the sheer weight of textual cohesion and coherence in translation is axiomatic.

3.1 Textual Cohesion of English and Chinese Languages

Cohesion theory was formally marked by Halliday and Hasan in their *Cohesion in English* in the 1970s. Five types of cohesive devices are

presented in the book, namely, reference, substitution, ellipsis, conjunction and lexical cohesion, and the first four belong to grammatical cohesion^{5:4}. Reference is divided into personal reference, demonstrative reference and comparative reference; substitution is classified into nominal substitution, verbal substitution and clause substitution; ellipsis also includes nominal, verbal and clause types; conjunctions fall into additive, adversative, causal and temporal; lexical cohesion embraces reiteration and co-occurrence, and the relation of reiteration refers to the recurrence of original word, synonym, superordinate, subordinate and general word⁵. Hu Zhuanglin points out that Halliday and Hasan's cohesion theory is based on English corpus, but the cohesion phenomenon also exists in Chinese counterpart^{6:iv}. Cohesive devices of Chinese text can also be subsumed into these five classified by them, while there are still a plethora of differences in this aspect between the two languages.

- Grammatical cohesion. (1) Reference: English uses personal pronouns much more frequently than Chinese, and this usage is restricted by grammar, while Chinese is influenced by habit and thereby tends to use zero reference and lexical cohesion to express reference^{8:108}. English demonstrative pronouns and Chinese counterparts fail to have the same cohesive effect, such as “that” and “那”, while in Chinese, the nouns they indicate are more likely to be restored^{8:108-109}. (2) Substitution: In Chinese, the use of non-referential substitutes is not as developed and frequent as that in English, and the repetition of original noun is favoured^{8:111}. (3) Ellipsis: Chinese is parataxis, where the omission of subject is most common and that of the predicate infrequent, mainly conveying the meaning by the repetition of original word or other lexical means, while English is hypotaxis and notional verb is mostly omitted by morphological markers^{9:73}. (4) Conjunction: The above four types of devices exist in both texts, but English uses connectives more frequently than Chinese because it relies heavily on explicit forms, as witnessed by its logical and temporal relations shown in

explicit grammatical form, while they are normally converted into implicit word order in the other language^{8:116}.

- Lexical cohesion. (1) Reiteration: Synonymous cohesion is another form of reiteration relation; synonymous relation (in broad concept) here includes the aspects in terms of synonymy, near-synonymy, hyponymy and meronymy^{8:179}. It is a common phenomenon in the two languages to use synonymous words to realize the cohesion of meaning^{9:147}. (2) Co-occurrence: English and Chinese collocation habits are affected by their respective linguistic features and cultural factors^{9:209}. English is a language dominated by polysemy, so E-C translation is a process of disambiguation^{8:187}.

3.2 Textual Coherence in Translation

From the perspective of Halliday, sentence is the product of integrating conceptual meaning, interpersonal meaning and textual meaning, and the last one serves as textual coherence^{10:38-39}. Cohesion connects article idea and structure through lexical or grammatical means, establishing a tangible network; coherence means that semantic coherence is achieved by reasoning based on the situation that both sides of a dialogue mutually understand, thereby forming an invisible network of a text¹¹. In the book *Coherence and Translation* published by Wang Dongfeng, there are four categories concerning coherence: stylistic, grammatical, semantic and pragmatic types; grammatical cohesion is included in grammatical coherence, and lexical cohesion in semantic coherence⁸.

The difficulties in the translation project *The Revolution of 1848* mainly lie in four aspects, that is to say the analysis of grammatical cohesion, the interpretation of semantic relations, the mastery of stylistic styles and the restoration of cultural deficiency. In the process of translation, the theory of textual cohesion and coherence offers tremendous guidance, as the former provides an analytical way for the deconstruction of cohesive devices in the source text, and the latter is another guiding principle besides faithfulness.

3.3 Grammatical Coherence

Wang Dongfeng claims that grammatical coherence is the relational network of grammatical dimensions in a text, and cohesion acts as the adhesive, especially the grammatical cohesion as an explicit link, which remains a cardinal means to construct textual coherence^{8:97-101}. The grammatical cohesive devices proposed by Halliday and Hasan, namely, reference, substitution, ellipsis and conjunction, are also subsumed under the category of grammatical coherence for research by him^{8:98}.

3.3.1 Reference

In a text, if a reader fails to get the understanding of a word from itself, he or she must seek the answer from the object indicated by it, which contributes to the reference relation^{5:31}. Halliday and Hasan mainly divide this into three categories: personal reference, demonstrative reference and comparative reference^{5:30-31}. Personal pronouns and demonstrative pronouns are widely used in the source text, such as the use of “it” and “that”, which becomes one of the major challenges in the translation process. The differences between English and Chinese texts in these two aspects must be considered in the corresponding translation.

First and foremost, one of the axioms in the international linguistic circle is that in contrast to Chinese a topic-prominent language, English is a subject-prominent one, where subject plays an essential role since it even determines the arrangement of sentence components according to their relations with it¹². In English, a subject dominates multiple actions, and pronouns are often used to refer to it, while in Chinese, parataxis is emphasized to highlight theme, thus resulting in the usual use of zero anaphora¹³. This term, also known as zero reference, refers to the omission of reference words that should have appeared in a text, which is a common phenomenon in Chinese^{6:64}. Accordingly, the frequency of personal pronouns used in English is considerably higher than that in Chinese, and their usage is restricted by grammar, while Chinese is influenced by habit and tends to use zero reference and lexical cohesion to express

reference^{8:108}. Therefore, as regards the comparison of personal reference between the two languages, most common pronouns in English discourse are more likely to be omitted (zero reference) in Chinese translation to highlight the topic, or to be converted into nouns (lexical cohesion) for the purpose of presenting their meanings completely and avoiding unclear indication.

Secondly, in terms of demonstrative reference, English demonstrative pronouns and Chinese counterparts fail to have the equivalent cohesive effect, such as “that” and “那”, and Chinese often restores the nouns they indicate^{8:108}. Chinese text rarely uses “这” (this) or “那” (that) corresponding to English deixis, and its demonstrative reference often remains a hidden state, so in E-C translation, the cohesion achieved by this reference needs to be transformed from explicitness to implicitness^{14:150}.

In short, in the process of translation, the personal reference and the demonstrative one of the source text should be first identified, with reference characteristics of Chinese combined then, thus to achieve the grammatical coherence of the target one.

Example 1. Personal Reference and Demonstrative Reference

(ST) The hour of ‘Take that ① off that I may put it ① on’ – the one end sincerely aimed at by our revolutions, however one may seek to disguise it ②—was about to sound. ^{15:2}

(TT)‘你方唱罢我好登场’, 这一历史刻即将到来, 这才是革命的真实意图, 尽管有人可能试图掩盖这一意图。

Analysis: In this example, the ST uses two means of reference, namely, one demonstrative reference “that ①” and two personal references “it ① ②”.

In the first half of the ST, the demonstrative reference “that ①” and the personal reference “it ①” are used. Demonstrative reference in English is based on the egocentric principle, which means the speaker chooses demonstrative words centred on himself or herself^{5:60}. For this reason, it can be judged that “that ①” indicates something far away

from the speaker. From the perspective of grammatical structure, the part “... Take that ① off that I may put it ① on ...” excludes the subject. According to the following distal deixis “that ①” and the personal pronoun “I”, the omitted object should be the corresponding side of “I”, that is to say “You”. With the context combined, it can be determined that the historical moment described by this part refers to the change of government power in France. The words “that ①” and “it ①” indicate things that are not material object. “Take that① off” and “I may put it① on” means the phenomenon of regime change on the historical stage like “(you) take a curtain call” and “I come on stage”. Therefore, in translation, the literary quotation of “你方唱罢我登场” (“you take a curtain call and I come on stage”) from a Chinese classical novel *A Dream of Red Mansions* is used for reference, which not only vividly depicts the regime change, but also conforms to the writing features of Chinese historical works.

The reference pronoun “it②” in the second half refers to “the one end” mentioned above. According to the habit of lexical cohesion or repetition in Chinese, this word is reinstated in “意图” (intention), thereby expressing complete meaning and avoiding unclear indication.

3.3.2 Substitution

Substitution appertains to a language form used to replace some words in the previous article, which can be further divided into nominal substitution, verbal substitution and clause substitution^{5:93-94}. In this translation practice, the first two are relatively typical. Moreover, in the substitution phenomenon of English and Chinese discourses, these two aspects demonstrate the most distinguishing contrast.

First, as for the comparison of nominal substitution, the most common word with this function in English is “one”, which can replace countable noun phrase^{6:70}. In Chinese, the use of non-referential substitutes is not as frequent as that in English, and for the pronoun “one”, it can be translated by the corresponding word-to-word method; however, since Chinese features “preferring concreteness to abstraction”, the

lexical cohesion technique is more likely to be adopted, and “ones”, as a plural form with no equivalent characters in Chinese, should be translated in the same way^{8:111}.

Second, in English discourse, verbal substitution is the use of pro-verbs to achieve coherence between or among clauses, the most familiar one of which is “do” and its various inflectional forms^{8:112}. Some Chinese characters, in turn, possess the equal function, such as “这么着”, “来”, “干”, “做” and “办”^{6:73-74}. But these fail to be constantly equivalent to the word “do” and its variants. Moreover, featuring parataxis, Chinese emphasizes the completeness of signification. Especially in its historical texts, the use of such pro-verbs tends to cause problems including unclear signification and imprecision. In E-C translation, besides the above means, lexical cohesion with the equal cohesive function also serves as an alternative^{8:112}. Accordingly, by using this method, the coherence of translation can be constructed on the basis of complete signification.

Example 2. Nominal Substitution

(ST) Its duty was to lay aside all questions of self, all competitions for portfolios, and to put the general interests of France above all private ones.^{15:38}

(TT) 下议院职责应是抛开己方的问题, 放弃政权的角逐, 将法国的全局利益置于个人私利之上。

Analysis: As a noun substitute in plural form, the word “ones” in the ST replaces the “interests”. For this, the author adopts lexical cohesion to restore the substituted nouns in the TT. To be specific, the expression “private ones” is translated into “个人私利” (personal interest), a typical four-character pattern, achieving the coherent effect of integral signification and also echoing the “general interests” mentioned above.

Example 3. Verbal Substitution

(ST) See here, my dear M. de Falloux, excuse me for telling you, with a frankness that cannot wound you, the Restoration died of nothing but stupidity, and I warrant you that we shall not die as it did.^{15:87}

(TT) 请听我说, 我亲爱的法卢先生。请恕我直言, 坦率地说并不会伤害你。王朝复辟的灭亡只是因为愚蠢, 而我向你保证, 我们绝不会重蹈覆辙。

Analysis: In the ST, the inflectional form of “do”, namely “did”, is used instead of “died of nothing but stupidity”. There are also corresponding Chinese characters with the same usage as “do”, including “干” and “来”, and some in the styles of dialects such as “整”, “搞” and “闹”¹⁶. However, these colloquial characters are not suitable for historical text with strict writing style, and it would be too wordy to translate the original meaning word for word. With the previous text combined, it can be judged that this substituted act is a historical event, so a set phrase “重蹈覆辙” (falling into the same old trap) with historical style is chosen. Consequently, with the complete signification to form the coherence in the TT, this four-character idiom also embodies well-written style and language beauty of historical text.

3.3.3 Ellipsis

Ellipsis means that the word absent from a structure can be retrieved from other clauses or sentences in a text; the omitted content can be inferred from the situation or context... while it is more important to be based on the context only in terms of cohesion^{6:76}. According to the nature of this means, it can be divided into three categories: nominal ellipsis, verbal ellipsis and clause ellipsis^{5:145}. Some cases combining the former two in the source text are listed for analysis.

In this regard, as Chinese features parataxis, the ellipsis of subject is more common and that of predicate verb infrequent, and it mainly expresses meanings through the repetition of the original word or other lexical means^{9:70-73}. English is hypotaxis-based, with notional verb mostly omitted by means of morphological marker; by this, sometimes predicate verb can be left out completely, or verb and noun together, while Chinese generally prefers not^{9:67-73}. Thus it can be seen that because of the hypotaxis pattern in English, when the grammatical structures of the former and the latter sentence are consistent, most of the repeated verbs will be excluded with the help of grammatical form, and nominal

ellipsis is also common. However, Chinese focuses more on the completeness of meaning expression, and seldom omits nouns (except subject ellipsis), not to mention rarer verbal ellipsis.

Example 4. Nominal Ellipsis and Verbal Ellipsis

(ST) February 15 an article appeared in the *Journal des Débats*, which said: “It is not enough for the opposition to have had sixty banquets during the legislative interval; it means to have them in every quarter of Paris, with a tribune which shall respond in the evening to the legislative tribune. And then the students will have theirs ! the *Montagnards*, the Communists, theirs ! For if the right is absolute, it is so for everybody.”^{15:81}

(TT) 1848年2月15日,《辩论日报》刊登了一篇文章:“立法期间,反对派举行六十次宴会尚不足够;也就是说,到了夜晚,巴黎的每一个街区都应举办宴会和论坛,对立法论坛作出响应。学生们要有自己的宴会!山岳派人、共产党人也要有自己的宴会!因为如果权利是绝对的,人人都应享有。”

Analysis: In Example 4, the ST uses two cohesive devices of ellipsis, namely nominal ellipsis and verbal one. First of all, the parallel sentence “And then the students will have theirs ! the *Montagnards*, the Communists, theirs !” includes two nominal possessive pronouns “theirs” to replace the structure of “their+ noun” and to omit the indicated noun components. According to the context, it can be noted that the omitted component refers to the “banquets” mentioned before. Secondly, the second half sentence excludes the same part “will have” as the previous one. In the light of the hypotaxis feature, repeated verbs can be omitted through the consistency of grammar and sentence patterns. Correspondingly, the same verb structure here, including modal verb and notional verb, is left out through this kind of consistency. To translate the predicate verb structure omitted by grammatical means, the repetition of the original word or other lexical means will be largely used to express the meaning in Chinese^{9:73}. Therefore, the omitted components are retrieved and translated into “.....要有自己的宴会!.....也要有自己的宴会!” (... should have their own banquets! ... also should have their own

banquets!), to make the TT complete and coherent in structure and semantics.

3.3.4 Conjunction

Conjunction refers to the establishment of a systematic logical relationship between the preceding part and the following one in a text^{5:227}. Halliday and Hasan mainly divide this concept into four types: additive, adversative, causal, temporal^{5:236}.

These four all exist in English and Chinese texts, which are common to both. Therefore, in E-C translation, the coherence of source text can be reflected by adopting the method of formal correspondence^{8:116}. Although cohesive devices in the two texts are the same, they are used in different frequencies: English relies on explicit forms, and its frequency of using conjunction is considerably higher than that in Chinese, particularly the logical and temporal relations in English, which are often reflected by explicit grammatical forms, while Chinese often uses implicit word order, so occasionally zero-form conjunction can be adopted in conversion^{8:116-117}. Hence the translation of explicit conjunctive elements in English texts, especially the cohesive devices of temporal conjunction, should be more based on the implicit characteristics of Chinese, but some necessary ones need to be preserved.

Example 5. Additive and Temporal

(ST) The *Débats* of February 15 thus pointed out the danger: “When① peers of France, when② deputies go to erecting another tribune external to the legislative precinct, they are signing their own abdication; they are making ready their own oppression, theirs and ours, that of the minority as well as that of the majority! What! when③ the pages of history are not yet turned, when④ the future is written in the past, — almost in the present, — in lessons so bloody, how can those who are not enemies be, — let the word be spoken without gall or bitterness, — how can they be so blind?”^{15:81}

(TT) 1848年2月15日,《辩论日报》指出了这一危险:“法国贵族们、议员们在立法选区外设立另一个论坛,就相当于签署弃权书;他们正在为镇压做好准备。他们是他们,我们是他们,正如少数党与

多数党！什么！在历史的篇章还未翻开，未来之事写成历史的时刻，——几乎就在此刻，——在这血淋淋的历史教训中，那些非敌之人怎可如此——无怨无悔地说出这番话——他们怎么如此不明是非？”

Analysis: In Example 5, six means of conjunction are used, including two additive ones “and”, “as well as” and four temporal ones “when”, which exactly reflects the explicit connection of English.

To start with, the first additive “and” connects “theirs’ and “ours”, the complete meaning of which should be “their /our own abdication and oppression”. The direct conversion into “他们的和我们的” (theirs and ours) would cause incomplete signification, but the repetition of the referred things would contribute to wordy translation. So it is finally divided into two clauses “他们是他们，我们是我们” (we are two separate sides) to emphasize the confrontation between the two camps. The words “minority” and “majority” linked by the second one “as well as” refer to “theirs” and “ours” mentioned before, which are translated by formal correspondence to avoid repeating the previous emphasis.

Besides, in terms of four temporal conjunctions “when”, different translation strategies are chosen according to their functions and hidden meanings in the ST. In the coherent chain of Chinese text, the temporal relation is usually embodied in implicit word order^{8:116}. Therefore, when it comes to “When①” and “when②”, the zero-form conjunction method is adopted to avoid the explicit blunt translation of “当.....的时候” (when), and “就相当于” (which represents) is added in the second half of the TT to show the implied meaning of “when... are...”. Moreover, “when③” and “when④” are presented as “在.....的时刻”(at the moment of ...) on the basis of formal correspondence, in order to coordinate the following “— almost in the present”.

3.4 Semantic Coherence

Lexical cohesion, that is, the use of words to achieve cohesion in a text, can further falls into reiteration and co-occurrence^{5:274-278}. It also remains a kind of “lexical semantic relation”¹⁷, as

an independent category of coherence for research, namely semantic coherence^{8:170}.

3.4.1 Reiteration

Reiteration refers to the recurrence of a word in the form of original word, synonym, hypernym, hyponym, general word or others in a text^{5:278}. Its relation can be summarized into two types, namely, repetitive relation and synonymous relation; the best translation method for repetitive cohesion in the source text is formal correspondence^{8:173-178}. Due to the less difficulty in translation of this cohesive device in the project, there is no further explanation.

As for synonymous cohesion, the construction of synonymous relations (in the generalized concept) concerning synonymy, near-synonymy, hyponymy and meronymy, enables semantic coherence to be actualized^{8:179}. In the process of E-C translation, it is of great practical significance to identify the lexical chain formed by synonymous links in English text and use it to determine the choice of target words^{14:133}.

Example 6. Synonymous Cohesion

(ST) “It is the will of God,” said the Duke de Broglie in the Chamber of Peers, January 13, 1848, “that, after sixty years, we should once more behold conquest with its pitiless demands, military occupation with its greedy exactions, the profanation of holy places, the devastation of holy things, general conscriptions, wholesale confiscations made by revolutionary governments, improvised at the point of the bayonet, and in their turn improvising, in the name of law, inquisition and persecution to the plaudits of the populace.”^{15:14}

(TT) 1848年1月13日，贵族院布罗伊公爵如是评价道：“这是上帝的旨意。六十年后，我们会再度目睹革命政府军冷酷无情地征服当地百姓，贪婪无餍地侵占他人财物，亵渎圣殿，破坏圣物，横征暴敛。他们挥舞着刺刀，以律法之名，轮番上演审讯与迫害的戏码，以期获得民众的喝彩。”

Analysis: For fear of monotony and inflexibility in language, the ST of Example 6 uses multiple synonymous cohesion means to form four groups of coherence patterns “conquest—military occupation”, “pitiless demands—greedy

exactions”, “general conscriptions—wholesale confiscations”, “profanation—devastation”. More specifically, the semantic coherence of these words with the same, similar and related meanings more vividly depicts the atrocities of the Swiss revolutionary government forces. In response to this, for the purpose of faithfulness to the ST and reflection of variability in the TT, diversified expressions are selected after the classification of original meanings, forming a new coherence model “征服—侵占”, “冷酷—无情”, “贪婪—无饜”, “褻渎—破坏”, “横征—暴敛” (conquer—occupy, callous—heartless, greedy—unscrupulous, profane—destructive, and arbitrary—exploitative). By this way, the beauty and richness of Chinese and the balance of structure are both presented.

3.4.2 Co-Occurrence

Co-occurrence, also known as collocation, refers to the specific connection between or among certain words^{5:284}. Some words hold no regular links under normal circumstances, but are limited by register or language use^{6:114}. For this relation, recognition and reconstruction play an important role in translation. Since English tends to be dominated by polysemous words, the process of E-C translation is to constantly eliminate ambiguity, and the primary reference is context; only by choosing translation strategies according to it can the semantic coherence of the original text be preserved to the maximum extent^{8:187}. Additionally, the collocation habits of English and Chinese are also influenced by their respective language characteristics and cultural factors^{9:209}. The interpretation to co-occurrence relation of English text, as a result, lies in ambiguity elimination, and reference to context and source cultures, with Chinese language habits attached then, so as to restore the original semantic coherence and construct the counterpart of the target text.

Example 7. Co-occurrence

(ST) As was said by the *National*, a republican journal: “Nobody had ever so moved the desks, the wooden knives, and the lungs of the peerage. This was not agitation, but transport; not spasms, but a sort of high fever. Shouts, bravos, stampings, served as an accompaniment to the

effusions of his eloquence. Impassioned himself, almost to frenzy, he spurted over all the benches currents of electricity which made them jump.”^{15:17}

(TT) 正如共和党报纸《民族报》所报道的, “从未有人能这样煽动全体贵族拍打着桌子, 挥舞着木刀, 并且触动他们的心肺。这不是煽动, 这是传道; 这不是痉挛, 而是发热。呐喊、喝彩、跺脚, 仿佛成了他滔滔雄辩的伴奏。慷慨激昂、几近疯狂, 一时间火花四溅, 令在座诸人几欲跳脚。”

Analysis: In the ST of Example 7, there are three groups of words in co-occurrence relation. First of all, the three items “desks—wooden knives—lungs” in the first group seemingly have no regular links, but combined with the specific context, they can be identified as the property of “peerage”. Moreover, by adding the verb “moved”, the complete relation chain is clearly shown as “moved the desks—moved the wooden knives—moved the lungs of the peerage”. When it comes to “move”, a polysemous word, its verbal definitions in the *English-Chinese Dictionary* include “移动” (to change position), “改变” (to change something), and “感动” (cause strong feeling)^{18:1266}. Then the choice of these meanings should be related to the ST, which is the commentary of the *National Newspaper* on the speaker Count Montalembert, with emphasis on the incitement of the speech to the audience. Accordingly, it can be recognized from the context that “move” here also has the implication of “煽动” (incite). As a result, “moved the desks, the wooden knives” is translated into “煽动……拍打着桌子, 挥舞着木刀” (incite ... beat the table and wave wooden knives), and “moved ... lungs” into “触动……心肺” (make ...feel sympathetic) due to the meaning “感动”. Otherwise, without the correct interpretation and reconstruction of the co-occurrence relation, the simple presentation as “移动全体贵族的桌子、木刀、肺” (change all the nobles’ tables, wooden knives and lungs) will be cause semantic incoherence.

Secondly, regarding the group “agitation—transport”, there also seems to be no regular connection. As the explanations of “agitation” in the Dictionary embrace “激动” (excitement) and “煽动”(incitement) ^{18:36}, the latter comparatively conforms to the context here. Besides, while

“transport” usually means “运输” or “传送” (the activity of carrying goods from one place to another by using lorries or trucks, trains and so on)^{18:2160}, it also can take the form of “传道” (publicity of moral principles) accordingly. This is coordinated with “煽动” to form semantic coherence and expresses the praise of newspaper comments for the speaker, thereby beautifying the incitement of his speech.

Thirdly, “spasms-a sort of high fever” has some relations, which means both of them belong to diseases. The former refers to “肌肉痉挛” and the latter to “发高热”, so the semantic coherence can be formed by adopting the literal translation.

3.5 Stylistic Coherence

As an essential component of textual coherence, stylistic coherence means literal styles should be consistent, allowing diction to be determined in line with different styles; stylistically, coherence of translation text is constantly achieved through the choice and organization of language forms¹¹.

The source text serves as a historical work with a distinct style. To illustrate, its literary forms are protean, ranging from hymns describing religious and political great men, to political speeches setting off intense atmosphere of parliamentary debates, and to newspaper reports highlighting social comments. These all enrich the narrative of the French Revolution history in 1848 from political, cultural, religious and social perspectives.

Example 8. Religious Hymn

(ST) “This man①,” said he, “who holds in his hands the keys to the thoughts of so many men, might have sealed up the intelligence of men, and he① has opened it. He ②has set the idea of emancipation and liberty on the highest summit where man②can place a light. The eternal principles, which nothing can sully and nothing can destroy, which caused our Revolution and survived it, those principles of right, equality, and reciprocal duty which fifty years ago made their appearance in the world for a moment, always grand doubtless, but ferocious, formidable, and terrible under the *bonnet rouge*, have been

transfigured by Pius IX., who has just displayed them to the universe glowing with mildness, sweet and venerable under the tiara. It is, in truth, because their veritable crown is there! Pius IX. is showing the good and secure path to kings and peoples, to statesmen and philosophers, to all mankind. Thanks be to him! ...^{15:23}

(TT) 诗中写道：“至圣圣父，执掌众生思想之钥；众生之慧尘封已久，圣父启之；解放与自由之思，置于人世之巅，启世人蒙昧。永恒法则—圣洁无暇、无坚不摧，赐予吾等革命无限生机；权利、平等、责任之法则，半百年前昙花一现；宏伟神圣之芒，掩于红帽子之下，可恶可畏可怖。庇护九世冕下，予以重生，护于三重冠之下。今于世间，重现温柔、亲切、庄严之芒。权利、平等、责任之真正王冠就在于此！冕下赐予国王与人民、政治家与哲学家乃至世人一条康庄大道。感恩我主！.....”

Analysis: Since the ST of Example 8 is defined as “almost a hymn of praise” to the Pope, it should be translated in the style of poetry. If only the fidelity principle is stressed without the consideration for melody, the translation of poetry will be more free¹⁹. Nevertheless, in the translation of this hymn, both the author’s “poetic consciousness”^{8:63} and the nature of stylistic coherence are valued.

In the first place, the prose style is adopted as stylistic form, combining vernacular and classical Chinese, thus to be faithful to the ST and achieve the stylistic coherence.

Furthermore, in terms of word selection, since the object of praise is the Pope, the address of him in the TT is a major focus of translation. When this figure is mentioned, many versions are used, such as “man”, “he” and “Pius IX”. At the beginning, the “man①” is presented as “至圣圣父” (Holy Father) to highlight the praise and respect for the Pope. Then, in accordance with the principle of contextual coherence, the word “he①” takes the form of “圣父” (abbreviation for Holy Father). In order to avoid extra repetition, “man②” and “He②” are treated with zero reference. At the end of the TT, the Pope’s title “Pius IX” is transformed into “庇护九世冕下” (Your Holiness Pius IX). The honorific title “冕下” (Your Holiness) is added here to show respect for the great man.

Additionally, the following personal pronoun “he” is invariably termed as “冕下”, for the purpose of coherence in addressing. It is worth noting that as for the sentence “Thanks be to him”, the Chinese classic term “感恩我主” (Gratitude to my Holiness) in religious hymns is used to correspond to the original meaning and to show more stylistic characteristics of hymns.

4.6 Pragmatic Coherence

Pragmatics studies the meaning of discourse in language environment that generally refers to linguistic context and cultural context in which narrative text and text factors are located; only by establishing a reasonable relationship with context can any discourse component be interpreted reasonably, thus to realize pragmatic coherence^{8:194}. However, “cultural default” in a context is a notable obstacle to coherence reconstruction; it means the background knowledge that is shared by all the parties involved in communication and thus omitted tacitly or automatically, so decoding this default really matters in coherence reconstruction, and two corresponding translation strategies, namely covert reservation and overt expression, are provided^{8:223-226}.

In the source text, the background information concerning French politics and cultures is left out in many places, that is to say the so-called “cultural default” case. In translation, explicit treatment is mostly adopted and comments are added to restore the omission for the purpose of coherence.

Example 9. Cultural Default

(ST) THE discussion of the Address began in the Chamber of Peers on the 10th of January. It furnished to Count de Montalembert the occasion for one of the finest oratorical triumphs of Louis Philippe’s reign...his father, an *émigré* who had served in Conde’s army, was a member of the Chamber of Peers, and Minister of France at Stockholm under the reign of Charles X. He was himself a member of the Upper Chamber...^{15:12}

(TT) 1848年1月10日, 贵族院^注关于王座演说展开辩论, 蒙塔朗贝尔伯爵大展辩才, 此场辩论成为国

王路易·菲利普统治时期最雄辩演说之一.....父亲是流亡贵族, 查理十世统治时期, 曾在康德军队中服过兵役, 担任过法国贵族院议员、法国驻斯德哥尔摩公使。他本人也是上议院的议员.....(注: 贵族院, 即1814年到1848年期间法国议会的上议院²⁵。)

(Note: The Chamber of Peers referred to the Upper Chamber of the French Parliament from 1814 to 1848²⁵.)

Analysis: Two cases are shown in the ST. Firstly, the default component of “the Address” is the political and cultural information which the original writer acquiesce in, that is, this speech as the throne speech which readers of the original French text are familiar with. However, no restoration to this in the translation text will cause unclear reference, and its readers may fail to get the exact speech referred. Therefore, overt expression is applicable. Secondly, a logical and “cultural vacancy”^{8:223} exists between “the Chamber of Peers” and “the Upper Chamber”. This vacancy also involves the background unknown to readers of the TT, specifically the fact that the French Chamber of Peers served as an alternative name of the Upper Chamber from 1814 to 1848. Without any restoration, it will easily contribute to these readers’ misunderstanding and confusion of the relationship between the two. So the explicit method and the comment are used to show the logic and to build coherence for them.

IV. CONCLUSION

With the four kinds of translation coherence proposed by Wang Dongfeng⁸ and the cohesion theory of Halliday and Hasan as structural framework, this paper studies English source text and the Chinese target texts of *The Revolution of 1848*. In order to achieve the four kinds of coherence in the Chinese target text, the following different translation strategies are utilized.

- To achieve grammatical coherence: In view of distinctions in grammatical cohesion between English and Chinese, the cohesive devices used in the source text must be analyzed before translation, then with the expression

habits of Chinese considered, in order to generate coherence effects of the target text. First of all, regarding the reference relation, especially personal demonstrative aspects, zero reference and lexical cohesion are frequently used, and occasionally the strategy of formal correspondence. Secondly, when it comes to substitution and ellipsis, differences in the two grammar systems enable the tendency of repetition in Chinese to be a focus, so the omitted or substituted parts are restored in most cases. Finally, to cope with conjunction techniques, zero-form conjunction and form correspondence are chosen, by combining the variety of logical relations between the two languages.

- To achieve semantic coherence: In response to synonymous cohesion, meanings of the source text are followed and classified, to form a new semantic coherence model in the translation. As for the most complicated co-occurrence, especially for some words with no regular link, translation strategies are selected according to the context, in order to eliminate ambiguity and preserve the original semantic coherence as much as possible. In addition, it is worth noting that as regards lexical cohesion in the historical text, words featuring historical styles are also ideal choice for translation.
- To achieve stylistic coherence, In the matter of various writing styles of the source text, besides the faithfulness, it is also necessary to decide the way of choosing words accordingly to form stylistic coherence in translation.
- To achieve pragmatic coherence: In the source text, the cultural information known or acquiesced by the readers in French culture context is automatically omitted. However, to clarify the French historical classic nature of the source text, a completion and annotation of some cultural terms are needed to help the target readers to have explicit background of the omitted parts.

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From Apologetics to Jewish Theological Affirmations

Paul Mendes-Flohr

INTRODUCCIÓN

Upon completing my doctoral qualifying exams in the late 1960s, I went to Berlin to commence research on my dissertation. My thesis adviser arranged for me to meet Jakob Taubes (1923-1983), then teaching at the Freie Universität zu Berlin. At our very first meeting, almost immediately after I had crossed the threshold of his home tucked in a bucolic corner of the city, Taubes asked me what I thought of Shabbatai Tzvi, the antinomian pseudo-Messiah. Taken aback by the question, I mumbled some inane academic reply, assuming it was the beginning of a second round of my doctoral orals. My reply was met with silence. Although the conversation soon resumed with a cordial discussion of my research project, I soon realized that with his startling introductory query, Taubes did not intend to probe my scholarly credentials. Rather he sought to alert me to the existential and religious questions that preoccupied him as a Jew in self-imposed exile in Berlin.

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From Apologetics to Jewish Theological Affirmations

Paul Mendes-Flohr

I. INTRODUCCIÓN

Upon completing my doctoral qualifying exams in the late 1960s, I went to Berlin to commence research on my dissertation. My thesis adviser arranged for me to meet Jakob Taubes (1923-1983), then teaching at the Freie Universität zu Berlin. At our very first meeting, almost immediately after I had crossed the threshold of his home tucked in a bucolic corner of the city, Taubes asked me what I thought of Shabbatai Tzvi, the antinomian pseudo-Messiah. Taken aback by the question, I mumbled some inane academic reply, assuming it was the beginning of a second round of my doctoral orals. My reply was met with silence. Although the conversation soon resumed with a cordial discussion of my research project, I soon realized that with his startling introductory query, Taubes did not intend to probe my scholarly credentials. Rather he sought to alert me to the existential and religious questions that preoccupied him as a Jew in self-imposed exile in Berlin.

The son of the chief rabbi of Switzerland, Taubes was raised as a strictly observant halakhic Jew. At the ultra-orthodox rabbinic academy (*yeshivah*) at which he studied, he was considered an *iluyi* – a Talmudic *wunderkind* – and earned rabbinic ordination in his teens. As a direct descendent of the Israel Ba'al Shem Tov, the founder of Hasidism, as well as revered halakhic authorities, he was duly proud of his pedigree. Yet while still at the *yeshivah*, he found himself in a spiritual no-man's land, marked by a deep ambivalence about Orthodox Jewish religious practice. Seeking theological clarification, the young *yeshivah* student attended seminars – it seems initially *sub rosa* – at the University of Zurich on Christian theology. He was captivated by the eschatological spirituality of Christianity, which he understood

to have emerged from within Judaism. He would eventually leave the *yeshivah* and register as a bona fide university student, earning a doctorate at the age of twenty-four with a dissertation on *Abendländische Eschatologie* (Occidental Eschatology).¹ From the perspective of what he called “apocalyptic temporality,” a liminal space between history and the *eschaton*, the end of time, he traces the crystallization of this conception of human destiny from the Hebrew Bible through the Western Church to nineteenth-century Marxism. At the very outset, he frames his study of this trajectory as intrinsically an antinomian, heretical process. “The essence of history is freedom. [...] Only mankind’s answer to the word of God, which is essentially a negative one, is evidence of human freedom. Therefore, the freedom of negation is the foundation of history.”² A crucial juncture in the eschatological journey is St. Paul’s apocalyptic break with rabbinic Law, which through Augustine’s theological sublation constituted foundational Christian eschatological experience as the prolepsis of a radical negation of the world and the anguish of the flesh.³ For Taubes Occidental eschatology, which attained its most pristine expression paradoxically with Marx and Kierkegaard, flowed with dialectical necessity from rabbinic Judaism. Hence, he insisted on the essential Jewishness of Paul. The Italian philosopher Giorgio Agamben relates that in an exchange with a Swiss New Testament scholar, Taubes is reported to have said that St. Paul thought in Yiddish, that is to say, his theologoumena are not to be explained with reference to Hellenistic Greek thought but rather is to be

¹ Jacob Taubes, *Occidental Eschatology*, trans. With preface by David Ratmoko (Stanford: Stanford University Press, 2009).

² *Ibid.*, 5.

³ *Ibid.*, 77.

understood as profoundly Jewish.⁴ As a pious rabbinic Jew, so Taubes argued, Paul's theology was driven by an apocalyptic and hence antinomian tension between the divinely revealed Law and the promise of Redemption.

In his posthumously published ruminations on *The Political Theology of Paul*, Taubes thus described himself not surprisingly as a "Pauline non-Christian."⁵ He read Paul neither as a historian nor as a textual scholar, but rather through a phenomenological hermeneutic by asking: "How does [Paul's pronouncements] feel to a Jew?."⁶ He read Paul not *sensus litterali* but *sensus allegoricus*, in accord with a life-experience, his life-experience as an erstwhile halakhic Jew.⁷

Whereas Taubes came to Paul and Christianity *from within* Judaism, the early twentieth-century German-Jews referred to in the program of this conference came to Judaism *through* a Christian-inflected German culture. In a letter Franz Rosenzweig wrote to his mother who was scandalized to learn that her nephew – Franz's first cousin - Hans Ehrenberg had converted to Christianity, Rosenzweig – still four years from his affirmation of Judaism - justified his cousin's baptism:

I really see nothing shameful in the whole matter. It's an excellent thing, after all, to make contact with religion, ... when one has been robbed of it by early neglect. Because I am hungry, must I on principle go on being hungry. On principle? Does principle satisfy hunger? Can being non-religious on principle satisfy a religious need?⁸

And in a subsequent letter, he continued:

We are Christians in every respect. We live in a Christian state, attend Christian schools,

read Christian books, in short, our whole 'culture' rests entirely on a Christian foundation; consequently a man who has nothing holding him back needs but a slight push. .. to make him accept Christianity.⁹

Like many, if not most of his Jewish contemporaries, the music Rosenzweig enjoyed and played as a gifted violinist, the art he admired, the literature and philosophy he read, his intellectual and spiritual landscape, were suffused with Christian motifs and spiritual sensibilities. In contrast to the denizens of the ghetto, post-Enlightenment German Jewry did not regard Christian spirituality and theology as strange and threatening. On the contrary. The power and beauty of Christianity were compellingly appreciated, even by Jews. However, less deracinated than Rosenzweig and his family. And often, as the historian of Jewish philosophy Julius Guttman candidly acknowledged, it was through the mediation of Christianity that modern Jews rediscovered the "personalist piety" of the Hebrew Bible that had been obscured by medieval metaphysics and the rigors of *halakhic* discipline and religious affiliation determined more by filial loyalty than by genuine spiritual convictions.¹⁰ Those German-Jews who sought to affirm Judaism as a religious faith but free of what they regarded as the spiritual encumbrance of rabbinic law, in effect, found themselves closer to St. Paul than to Moses Mendelssohn or Shimshon Rafael Hirsch, the patriarchs of the German brand of Orthodox Judaism. They were like Taubes "Pauline non-Christians"; but unlike Taubes, who embraced the antinomian, indeed apocalyptic Paul as a fellow post-halakhic Jew and spiritual godfather, the German-Jewish *ba'alei thesumah* (they who reaffirmed to one degree or another traditional Jewish belief and practice) were obliged to distinguish their Jewish affirmations

⁴ Giorgio Agamben, *The Time that Remains. A Commentary on the Letters of Paul*, trans., Patricia Dailey (Stanford: Stanford University Press, 2005), 4.

⁵ *Occidental Eschatology*, 130.

⁶ *Ibid.*, 76.

⁷ Cf. Alain Gignsac, "Taubes, Badiou, Agamben. Reception of Paul by Non-Christian Philosophers Today."

⁸ Franz Rosenzweig to his parents, letter dated November 2, 1909. Cited in *ibid.*, p. 18f.

⁹ Franz Rosenzweig to his parents, letter dated November 6, 1909. Cited, *ibid.*, p. 19.

¹⁰ Julius Guttman, *Philosophies of Judaism. The History of Jewish Philosophy from Biblical Times to Franz Rosenzweig*, trans. David W. Silverman (New York: Holt, Rinehart and Winston, 1964), pp. 3-17, 327-329..

from Paul's Christianity. They perform became what Arthur A. Cohen called „theological Jews.“¹¹

The theological turn in German-Jewish thought marked a radical departure from nineteenth-century Jewry's apologetic responses to Christian critiques of Judaism as a heteronomous religion bereft of enlightened universal ethical sensibilities. It was no less than Immanuel Kant, the *spiritus rector* of the German *Aufklärung*, who set the polemical parameters in the theological debate imposed on Jews in the course of the protracted struggle for Emancipation and civil equality. Defining the ultimate purpose of religion as „the moral improvement of human beings,“ he called upon the Jews to „throw off the garb of the ancient cult, which now serves no purpose and even suppresses any true religious attitude....“ In jettisoning the spiritually jejune ritual laws, the Jews will not only facilitate the emergence of Judaism as „a pure moral religion“ but also „quickly call attention to themselves as an educated and civilized people who are ready for all the rights of citizenship.“¹²

To advance both their political emancipation and liberation from the shackles of the Law, Kant urged the Jews to adopt a new biblical hermeneutics. In interpreting the Scriptures, which he specifies as the „Torah and the Gospels,“ they should „distinguish the way in which Jesus spoke as a Jew to Jews, from the way he spoke as a moral teacher to human beings in general.“ Jesus of Nazareth, the teacher of a new, ethically elevated humanity was, indeed, a Jew. The acknowledgment by Jews and non-Jews alike that Jesus was a Jew would, Kant held, promote the integration of the Jews – that is, individuals of Jewish provenance -- in the creation of a universal ethical commonwealth.

Nineteenth-century Liberal Protestants heeded Kant's appeal to highlight the ethical vision of Christianity and thus distinguish between Jesus the moral teacher from Jesus Christ the Savior (who, of course, was the focus of St. Paul's teaching). Hence, on face of it, the votaries of Liberal Protestantism would seem to have been amenable to accepting Jews, at least „educated and civilized“ Jews as their partners in affirming the universal fatherhood of God as the ontological ground of the brotherhood of man and the establishment of the moral-ethical Kingdom of God on Earth. The Jewish neo-Kantian philosopher Hermann Cohen once told a German colleague, „What you call Protestantism, we call Judaism.“ His colleague was, alas, not impressed. For there was a hitch: Supersessionism. Even the most liberal of Christians held that God's election was transferred from the Children of Israel to the Church. Even the magnanimous Kant's appeal to Jewry to acknowledge that Jesus spoke to them as a fellow Jew was premised on what he called rather ominously the „euthanasia of Judaism and its ultimate, disappearance“ in a universal Church in which „there will only be one shepherd and one flock.“ Liberal Protestants would regard themselves as the vanguard anticipating the realization of that Church.

On the cusp of the twentieth century this view gained popular expression by Adolf von Harnack in his volume of 1900, *Das Wesen des Christentums*,¹³ which was issued in English under the title, *What is Christianity?* The translation, however, obfuscates a key-term of the German title, *Wesen* (essence), which signaled both the thesis and method of the then most esteemed Liberal Protestant scholar. The pristine essence of the Gospel of Jesus, Harnack argued, was obscured and misconstrued in the process of translating of Jesus's teachings into the conceptual universe of Hellenistic culture, a process initiated by the apostolic fathers, and which gained momentum with the theologians of the Roman Church. To uncover the original immutable essence of Christian faith, Harnack employed the critical historical method in order, as his colleague

¹¹ Arthur A. Cohen, *Natural and Supernatural Jew. An Historical and Theological Introduction*. 2nd, revised edition (New York: Pantheon Books, 1979).

¹² Kant, „The Euthanasia of Judaism“ (1798). Idem, „The Conflict of the Faculties,“ in idem, *Religion and Rational Theology*, trans. Allen W. Wood and George di Giovanni (Cambridge/New York: Cambridge University Press, 1996), p. 274f.

¹³ Harnack, *Das Wesen des Christentums* (Leipzig: Hinrichs, 1900).

Ernst Troeltsch put it, „to overcome history with history“ -- and thereby free one’s cultural and religious heritage from historical accretions recognized to be relative to a given time and place. Harnack deemed it his task to identify those accretions as alien to the essence of Jesus’s teaching. Winnowing the historical chaff, Harnack thus arrived at the essence, namely the Gospel of Jesus–„the founder [of the Christian faith]who himself was what he taught.“¹⁴ As opposed to the Hellenized religion *about* Jesus the Christ, encased in a skein of dogma spun with „metaphysicalhocus-pocus,“ Jesustaught „something simple and sublime; it means one thing and one thing only: eternal life in the midst of time, by the strength and under the eyes of God.”¹⁵ Accountable before God, we are to seek salvation – eternal life – not beyond the temporal flow of life but rather in the here and now with our hearts set upon the realizing within the mundane order the ethical kingdom of God. To underscore the originality of Jesus’ teaching, Harnack distinguished it from the religious views and practices of Jesus’s fellow Jews, beholden as they were to the Pharisees, who „imagined God as a despot who stands watch over the ceremonial tasks of His household... .They saw Him only in His law, which they made into a labyrinth of gullies, erroneous paths, and secrete texts.“¹⁶ The pristine ethical faith *of* Jesus marked a radical break with his ancestral religion.

This indictment of Judaism as antithetical to the essence of true religion, as embodied in Jesus’s teachings and person, and re-valORIZED by Liberal Christianity, deeply offended Jews. Liberal Jews in particular could not remain indifferent to the negative portrayal of Judaism in such an enormously popular book – sold in the tens of thousands of copies and said to have been translated in nigh-as-many languages as had the Bible. Fearing that many modern Jews who had embraced the liberal ethos were so estranged from the sources of Judaism would arrive at a Jewish self-understanding though Harnack’s critique, the

organized Jewish community endeavored through lectures, essays, and conferences to correct Harnack’s representation of Judaism. By 1907 at least a dozen monographs on the „essence of Judaism” d were written by Jewish scholars. One of most trenchant Jewish critiques of Harnack’s virulent assessment of Judaism was penned by a twenty-seven-year-old Liberal Rabbi Leo Baeck. At the time unknown, Baeck published in 1901 a review of Harnack’s book in the premier scholarly German journal of Jewish studies, which was soon issued as a widely distributed as a separate pamphlet. A greatly expanded version of the essay was published in 1905 as a book under the title *Das Wesen des Judentums*.¹⁷ The young Baeck unhesitatingly faulted the venerable Harnack on methodological and factual grounds. Baeck notes that in his eagerness to highlight the transhistorical perduring significance of Jesus, Harnack detaches him from the historical context that nurtured his thought and ethical sensibilities. Hence, Baeck reasoned, Harnack permits himself observations that reflect either abysmal ignorance or a tendentiousness unbecoming a scholar of his stature. One such error of judgment cited by Baeck is Harnack’s remark that „it is highly improbable that [Jesus] was educated in the schools of the Rabbis; nowhere does he speak like someone who had adopted their technical theology and artfulness of learned exegesis.“¹⁸ Regarding this statement, which is meant to underscore that Jesus had nothing in common with the „Pharisees,“ Baeck comments that Harnack either simply does not understand Judaism or is unaware that in addition to law (*Halakhah*), the rabbis developed a rich and spiritually nuanced homiletic tradition: „Mr. H. would be right in his assertion if it were true that there existed no religious thinkers and poets among the Rabbis. But whoever knows anything about them immediately recognizes that Jesus’s words are [in] the spirit of their spirit. Every one of his sayings, every one of his parables, every one of his words of consolation reveal him as a disciple of the Rabbis... Whoever judges the way Mr. H. does knows nothing about a large domain

¹⁴ Harnack, *What is Christianity*. (New York: Harper & Row, 1957), 7.

¹⁵ *Ibid.*,

¹⁶ *Ibid.*, 33.

¹⁷ Leo Baeck, *Das Wesen des Judentums* (Berlin: Nathansen und Lamm, 1905).

¹⁸ *Ibid.*, 20-21.

of Jewish spiritual life at the time – or is forcing himself not to see it.¹⁹ Willfully or not, Baeck concluded, Harnack ignored Jewish background of Jesus's life and thus failed to appreciate the Jewish inflections of his teachings.

Indeed, Baeck argued, Jesus can only be properly understood within his Jewish context. So understood, „Jesus is a Genuine Jewish personality; his strivings and actions, his sufferings and feelings, his speech, and his silence – all bear the stamp of Jewish idealism, the best that there was in Judaism ... at the time. He was a Jew among the Jews ... In no other people would he have found apostles, who believed in him. Harnack has chosen to ignore the mother soil of Jesus's personality.”²⁰ For Baeck Jesus was a fellow Jew not only by virtue of his evident skill in aggadic discourse of the rabbis but preeminently because of his moral passion – an ethical passion he shared with the Pharisaic sages. For Jesus as for the rabbis, Baeck explained, the ethical act was the fulcrum of religious life.

Baeck's *Essence of Judaism* is typical of the apologetics that characterized nineteenth-century German Jewish thought. In defending the integrity of Judaism as compatible with the prevailing Kantian ethical theology of Liberal Protestantism, the celebration of Jesus as son of Israel was pivotal. As Susannah Heschel notes in a seminal study on Jesus in German-Jewish thought: “A crucial image for modern Jewish thought is the figure of Jesus as a pious, loyal Jew... [T]he modern Jewish understanding of Christian origins is not merely a matter of Jews wishing to ‘set the record straight.’ Rather, it demonstrates the Jewish desire to enter the Christian myth and thereby claim the power inherent in it.” Understood in Foucauldian terms – and here I am elaborating upon Heschel's observation -- the power sought by embracing Jesus as a fellow Jew is not just mythic, that is, by the inclusion of Judaism in the myth or the meta-narrative of liberal Germany, was also if not primarily a political act, for it would provide

¹⁹ Baeck: "Harnack's Vorlesungen über das Wesen des Christentums." *Monatsschrift für Wissenschaft des Judentums*, 45 (1901):110.

²⁰ *Ibid.*, 118.

emotive leverage to advance the cause of Jewish emancipation.

Baeck differed from nineteenth-century Jewish apologetics in his insistence that Jesus's place within the landscape of Pharisaic Judaism cannot be adequately discerned merely by a delineation of rabbinic teachings as a system of ideas and principles divorced from the life-experience of the Jews that gave expression to those teachings. Rabbinic doctrines, Baeck argued, did not evolve purely as a rarified intellectual exercise of reasoned argumentation; rather they were grounded in the foundational experience of the Torah as the bonding of the Jew's life to God.

Baeck's methodological stipulations that ideas are to be examined in the light of the life-experience that they express reflects the influence of the philosopher Wilhelm Dilthey. It was under Dilthey's supervision that Baeck a doctoral dissertation, which he submitted to the University of Berlin in 1895,²¹ three years before Martin Buber came to Berlin to study with Dilthey. To the very end of his life, Buber would refer to Dilthey as „my teacher.“ Dilthey's *Lebensphilosophie* left its mark on all of Buber's work, even when he emended his teacher's concept of *Erlebnis* (life-experience) as the life of dialogue. Accordingly, in the debate with Scholem on the interpretation of Hasidism, Buber defended his approach by stating that the movement is not to be understood as a system of ideas but rather regarding the *life* of the Hasidim, expressed in the tales and anecdotes they told one another.²²

Buber had also evinced an affectionate affinity to Jesus, who he exuberantly hailed as „a great son of Israel.”²³ „From my youth on,” he candidly wrote, „I always experienced Jesus as my big brother. ... My own fraternity to him has grown ever stronger and clearer.”²⁴ He made this claim

²¹ Baeck, *Spinozas erste Einwirkungen auf Deutschland* (Berlin: Mayer und Müller, 1895).

²² P. Mendes-Flohr, “Martin Buber and Gershom Scholem on Hasidism: A Methodological Dispute.” *Sammelband: Mystik*, ed., Christoph Marksches (Leipzig: Evangelische Verlagsanstalt, 2020): 68-76.

²³ Buber, *Two Types of Faith*, trans., Norman P. Goldhawk (New York: Macmillan, 1951), 9.

²⁴ *Ibid.*, 12.

not as an apologist on behalf of organized Judaism, however. His writing on Jesus and Christianity are markedly autobiographical. In the wake of his parents' precipitous separation occasioned by his mother's affair with a Russian officer, he was raised since the age of three in the home of his paternal grandparents, traditional East European Jews who strictly observed the precepts of Orthodox Judaism. Upon leaving home at the age of eighteen to commence his university studies in Vienna, he deliberately distanced himself from Judaism. His break with Jewish tradition and practice was not an episodic expression of sophomore generational rebellion. Due to family circumstances, he found the Judaism of his grandparents already as a youth oppressive, an importunate imposition associated with the pain of being abandoned by his mother. In this respect, his rejection of traditional Jewish practice and later relation to Jesus and Paul differed fundamentally from that of Taubes. Whereas for Taubes, the engagement with Pauline Christianity was, as noted, from *within* Judaism and bespoke of an existential-theological tension inherent in the faith experience of halakhic spirituality, for Buber his identification with Jesus and profoundly ambivalent attitude toward Paul were, in the first instance, indicative of his re-appropriation of a Jewish spiritual identity consequent to the bitter estrangement from the Orthodoxy of his youth. Over the course of the years, his conception of Judaism and religious faith crystallized as a distinctive religious anarchism, which rejected any authority other than one's dialogical encounters within a given situation, encounters which are best understood as meta-nomian. Parenthetically, one may note that in his philosophical poem of 1923 which inaugurated his philosophy of dialogue, *I and Thou*, Buber only mentions three Jews: Jesus, Paul, and Peter!

Buber's friendship with Rosenzweig, which took shape in the early 1920s, served not only to clarify his conception of Judaism and religious faith, but also his relationship to Christianity. They would share a profound apprehension about the gnostic turn in Protestant theology attendant to the crisis of faith that took hold of Germany with its

ignominious defeat in World War One. Out of the vortex of a protracted and tragically senseless war, followed by political revolutions, and economic and social dislocations, emerged a bewildered Germany. For many the war put the lie to the liberal, humanistic presuppositions of the nineteenth century. Virtually every sphere of intellectual and imaginative life was affected by a sense of despair. The expatriate American poet Ezra Pound, then living in Great Britain, wrote an apocalyptic verse that evoked the miasmatic feeling of his generation that the Great War had marked the convulsive end of Western civilization:

Daring as never before,
wastage as never before,
Young blood and high blood,
fair cheeks and fine bones;
fortitude as never before
frankness as never before,
disillusions as never told
in the old days,
hysterias, trench confessions,
laughter out of dead bellies.
There died a myriad,
And of the best, among them,
For an old bitch gone in the teeth,
For a botched civilization.²⁵

In the realm of theological reflection, especially in German-Protestant circles, this despair was marked by a manifest shift from Kantian-inspired ethical theology – which placed emphasis on the Christian's moral responsibility for the social realm – to an affirmation of the soteriological vision of the New Testament and the promise of individual salvation through Christ. In contrast to its previous focus on the ethical teachings of Jesus, Christian theology was now recast with a distinctively Pauline resonance, highlighting humanity's fallen state and utter dependence on God's grace and deliverance. The emerging religious mood thus suggested that human initiative is of little avail; humanity's only hope is divine salvation.

²⁵ Ezra Pound, *Hugh Selwyn Mauberly* (1920), Part One.

The Protestant theologian Karl Barth was the first to give this disposition sustained articulation. In his monograph of 1919 on Paul's Epistle to the Romans, he voiced a devastating critique of liberal theology, which he charged had blurred our dependence on divine grace and thereby encouraged human hubris. Barth insisted that not only human will but also reason were vitiated by the Edenic Fall. As mortal, incorrigibly sinful beings we stand in need before a transcendent, otherworldly God.

This dramatic departure from the worldliness and optimism of Protestant ethical theology can also be discerned in the post-World War One writings of Adolf Harnack. In 1921 Harnack (the author of the Liberal Christian manifesto, *The Essence of Christianity*) published a magisterial study on Marcion, the second century Christian heretic. Regarding himself a disciple of Paul, Marcion elaborated the apostle's distinction between Law and Grace with a far-reaching gnostic twist: The God of the Old Testament – the God of Creation – is not the true God, who is alien to this fallen world and is revealed and present only in the person of Jesus the Christ. The God of the Old Testament – the God of Israel – Marcion contended is the God of law and the inherently illusory concept of earthly justice; the God of the New Testament is the God of love and salvation. Marcion urged the Church to dissociate itself from the Old Testament and its delusive concept of Divine Creation, and to cling to the one and true God, Jesus the Christ. Harnack did not hesitate to endorse the heretic's theology:

In the second century, the rejection of the Old Testament would have been a mistake and the Great Church rightly refused to make this mistake; its rejection in the sixteenth-century was due to the power of a fateful tradition from which the reformation was not yet able to withdraw, but its conservation as a canonical book in modern Protestantism is the result of a paralysis of religion and the church.

In a letter he wrote to a colleague discussing his book on Marcion, Harnack restated this thesis more explicit and decisive terms:

Is it not so that the Ancient Church was not aware of the fact that truth too develops? ... I did not find it difficult to cause my children to accept the teaching that the Old Testament is now antiquated and only in certain parts still appealing and valuable. It is the law and history of the Jews; our book is the New Testament.²⁶

Rosenzweig was quick to detect Harnack's fascination with Marcion as an ominous development. He read Harnack's monograph not simply as a scholarly treatise, but as indicative of an acute crisis in Christianity and an incipient gnostic attitude encouraging not only a rejection of the Old Testament and the God of Creation but also contempt of the people to whom this God first revealed Himself. In a letter of July 1925 to Martin Buber with whom he was then working on their translation of the Hebrew Scriptures into German, Rosenzweig wrote:

It should be quite clear to you that the situation for which the neo-Marcionites [e.g. Harnack] have striven to achieve on the theoretical plane in actuality has already been obtained [in practice]. ... When the Christian speaks of the Bible, he means only the New Testament, perhaps together with the Psalms, which then he mostly believes already belongs to the New Testament. Thus in our new translation of the Hebrew Bible we are becoming missionaries.²⁷

The Buber-Rosenzweig translation of the Hebrew Bible – which Christian supersessionists call the Old Testament – was not simply another translation, but rather an attempt to capture in German its primordial voice as refracted through the cadences, semantic inflections, and the phonological texture of the Hebrew and thus quicken anew for both Jew and Gentile the power of the Word spoken by God to Israel. Accordingly, through this what Buber called a „colometric“

²⁶ Harnack to Karl Holl, cited in William Pauck, *Harnack and Troeltsch. Two Historical Theologians* (New York, 1968), 38-39.

²⁷ Rosenzweig to Buber, July 25, 1925. *Briefe und Tagebücher*, ed. Rachel Rosenzweig-Scheidmann (The Hague: Martinus Nijhoff, 1979), 2: 1055-56.

translation, the perduring, trans-temporal Voice of God – and His ever renewed relation with the world of His creation – is addressed to all humankind. For Buber and Rosenzweig, the God of the Hebrew Bible is not merely the God of Israel – as Marcion and the likes of Harnack contended. He is indeed the God of Creation, and thus marks the shared destiny of *all* the world. In retaining the „Old Testament” despite Marcion’s gnostic exhortations, Rosenzweig and Buber observed, Christianity in effect acknowledged that salvation as a universal promise must be grounded in Creation. In an epistolary exchange with Eugen Rosenstock-Huussy, a Jewish convert to Christianity, Rosenzweig noted that the Church following a period of „gnostic naivete, “came under the sapient tutelage of Augustine who realized that without the concept of divine creation the universality of the promise of salvation and thus of the Church and its power over history are deprived of their ontological basis and compelling authority.

The Old Testament and thus also the Jews remain integral to the Church’s self-understanding. To be sure, as Rosenzweig ironically put it, the Jews have remained part of Christian consciousness in a most ambivalent manner: Christianity’s appreciative indebtedness to the Jews as custodians of the *Old Testament* – emphasis on the adjective *Old* -- has been catechized as the dogma of „Israel’s stubbornness.“ But this „dogmatic“ ambivalence, as Rosenzweig beseeched his epistolary partner to acknowledge, was no mere theological dictum, for it cannot but engender contempt of the Jews. „In actual practice...the theological idea of the stubbornness of the Jews works itself out [as] hatred of the Jews.”

Rosenzweig regarded this ambivalence as intrinsic to the Church’s historical and theological relation to Judaism. Christian supersessionism cannot but engender an ambivalence; nonetheless actual contempt can be contained if the church would acknowledge that it needs the „synagogue” in reconciling human history and divine creation. Hence, the title of Rosenzweig’s philosophical *cri de coeur*, *The Star of Redemption*.

Buber accepted Rosenzweig’s vision of their Bible translation as a „mission to Christianity. „Although I am a radical opponent of missionary work,” he confessed, „I Allowed myself to accept The the mission, for it [ultimately] appertains neither to Judaism per se nor to Christianity per se, but rather the shared primal truth [*Urwahrheit*], on whose rehabilitation the future of both depends.“ The neo-Marcion attempt to discredit the Old Testament and the God of Creation, Buber averred, strikes at the very heart of Western civilization and its humanistic foundations, namely, the fundamental belief that the triumph of the Good is the realization of terrestrial justice through human agency. The nullification of this belief breaks open the floodgates of cynicism and nihilism that gain expression in the gnostic and Marcion disdain for the mundane order. Indeed, Buber maintained that Western humanism is rooted not in Greek *sophia* but in the biblical concept of creation. Hence, the struggle against neo-Marcionism is eminently more than a question of securing the dignity of Judaism and the honor of the Hebrew Bible; it is rather a struggle on behalf of Western civilization, on behalf of giving shape to a more just and compassionate human order. Humanism as rooted in the Hebrew Bible thus holds that „the world is not something which must be overcome. It is a [divinely] created reality.” It is a reality, however, that warrants the affirmation of Genesis 1:31 – „behold it was very good“ – and mandates human partnership in God’s work. It is a reality that is „created to be hallowed. Everything created has a need to be hallowed... Hallowing enables the [world] to fulfill the meaning for which it was created. The meaning with which Creation informed man, informed the world, is fulfilled through hallowing.” In contrast to Pauline Christianity – which Buber viewed as a dialectical anticipation of Marcionism and its gnostic de-sanctification of the world – Judaism seeks neither to re-constitute the world into something „wholly spiritual” nor to „overcome” it by spirit. „The spirit does not embrace the holy world, rejoice in its holiness, nor does it float above an unholy world, clutching all holiness to itself.” Rather, the spirit „produces holiness, and the world is made holy.”

Although the church did not follow Marcion, Buber noted, his teaching remained for Christians a compelling alternative, albeit formally denied and repressed. Hidden within the breast of the Christian, however, Marcionism persisted as an abiding tension that in post-World War One Germany burst the bounds of Christian conscience and led to the renewed interest in Marcion and his gnostic doctrine, even among such reputable theologians as Adolf von Harnack, who, Buber emphasized, was not in the least an anti-semitic. But every Christian should know, Buber cautioned with prophetic intonation, that „the extrusion of Judaism from Christianity means an extrusion of the the divine demand and concrete [this worldly] messianism: its separation from the divine calling for fulfillment [in this world].”

Why twentieth-century Christianity was particularly vulnerable to gnostic- Marcion temptations, Buber did not explain. It was only after having fled Nazi Germany and settled in Jerusalem in 1938, did he begin to address the question and adumbrate explanation. Published just after World War Two under the title *Two Types of Faith*, his analysis reached back to the ambiguous beginnings of the modern world, accompanied from the very start by incipient sense of alienation and cultural bewilderment. This mood continuously deepened and became especially manifest with the debacle of World War One, which had brutally exposed the spiritual faultlines of the modern project. Increasingly Christians gave expression to the „dark feelings“ of civilizational collapse by turning to St. Paul, who was – Buber acknowledged -- acutely aware of the horror and torment of our unredeemed world. Thus, „the strength of the Pauline tendencies in present day Christian theology is to be explained by the characteristic stamp of the times... in which the contradictions of human life, especially of man’s social life so mount up that they increasingly assume in man’s consciousness of existence the character of doom (*Verhängnis*).“ To be sure, Pauline Christians maintain a commitment to the struggle for a more just world, but cowering before "the threatening clouds“ of the time, they place their faith and

hope in Jesus the Savior. Soteriological hope replaces the concrete, quotidian messianism of the rabbis – and Jesus. Paul himself bravely resisted the allure of „the ever-approaching Marcionite danger.” Notwithstanding his quest for otherworldly salvation, Paul realized that a victory for Marcion – and the sundering of the Savior from the Creator God of the Hebrew Bible – would spell the destruction of Christianity. Yet, in Buber's judgment, „Marcion is not to be overcome by Paul.”

Numbed by the „impenetrable darkness” of existence, Paul no longer trusted the world and the eschatological promise of history. His high-single focus of the salvation of the soul, Buber held, placed a severe, perhaps insufferable strain on the Christian’s dedication to a concrete – that is, social and historical – messianic vision. In contrast to the Christian, Buber insisted, the Jew tenaciously retains trust in the Creator God and *ergo* the prophetic promise of a this-world redemption. This existential affirmation of the ontological ground of life as good is not to suggest that the Jew does not know the all-too frequent horror of existence. For, indeed, the Jews seem destined to suffer „every misery.”²⁸

Buber held that, indeed, it is not fortuitous that the Pauline mood of the present era was most poignantly expressed by a Jew, Franz Kafka. For Buber, the author of *The Trial* and especially *The Castle* was the archetypal Jew of his time, an unprecedented tormented time in which Kafka (the Jew) was „its most exposed son.“ Kafka finds himself in a world governed by capricious, cruel forces; in the „thick vapors of a mist of absurdity“ that envelop this world of these troubled times God Himself is „removed into impenetrable darkness,“ but for Kafka there is no Savior. Yet Kafka is not bereft of hope, or trust, in the world. „For the Jew, insofar as he is not detached from the origin of the world (that is, divine Creation), even the most exposed Jew like Kafka, is safe. All things happen to him, but they cannot affect him.”²⁹

²⁸ *Two Types of Faith*, 169.

²⁹ *Ibid.*, 168, 166, 168.

„In spite of all” of his woe, Kafka – the Jew – resolutely refuses the Pauline promise of personal salvation. He refuses not because of spiritual obduracy. His abiding trust in the God of Creation, as hidden as He may presently be, does not allow Kafka to relinquish the conviction in the ultimate victory of justice as a blessing for *all* of the inhabitants of a world created by a Just and Loving God. Buber cites Kafka as testifying „we were created to live in Paradise, Paradise was appointed to serve us. Our destiny has been changed; that this also happened with the appointment of Paradise is *not* said.” But, as Buber comments, Kafka gently and shyly affirms that the inequities and absurdity of our existence *need not be*. „Without disowning reality, Kafka – the Jew – preserves his trust in the God of Israel – the God of Creation and Justice. Accordingly, Kafka describes, from innermost awareness, the actual course of the world; he describes most exactly the rule of devilry which fills the foreground: and on the edge of the description, he scratches the sentence:”Test Yourself on humanity. It makes the doubter doubt, the person of belief believes.”³⁰

³⁰ Ibid., 168.



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The Decision Making of Pre-Adolescents about their Own Bodies: Dilemmas of the Informed Consent in Argentina in the Light of the Norms of the Civil and Commercial Code of the Nation and the Law of the Patients' Rights

Dr. Claudia Elizabeth Zalazar

ABSTRACT

The changes introduced in the Civil and Commercial Code of the Nation regarding informed consent, autonomy and capacity of patients have brought along a number of new questions when dealing with minors deciding on their own bodies.

The objective of this work is to present a systematic interpretation of the Argentine normative, especially the Civil and Commercial Code, the international and national provisions of children's rights and the lawful guarantees of patients in order to define the capacity of a minor regarding his/her own health, putting an emphasis to the informed consent and autonomy to take decisions about his/her own body.

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The Decision Making of Pre-Adolescents about their Own Bodies: Dilemmas of the Informed Consent in Argentina in the Light of the Norms of the Civil and Commercial Code of the Nation and the Law of the Patients' Rights

La Toma de Decisión de los Niños Adolescentes Sobre su Propio Cuerpo: Dilemas del Consentimiento Informado en Argentina a la luz de las Normas del Código Civil y Comercial de la Nación, y la ley de Derecho de los Pacientes

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RESUMEN

Los cambios desarrollados en el Código Civil y Comercial de la Nación en materia de consentimiento informado, autonomía de los pacientes y capacidad, han dado lugar a una serie de nuevos interrogantes cuando se trata de las decisiones de los menores sobre su propio cuerpo.

El objeto del trabajo es abordar una interpretación sistémica de la normativa argentina, en especial el Código Civil y Comercial, las normativas internacionales y nacionales de los derechos del niño y la ley de derechos del paciente, a los fines de definir la capacidad del menor en materia de salud, con especial referencia al consentimiento informado y la autonomía para poder tomar las decisiones sobre su propio cuerpo.

Palabras Clave: autonomía personal. niños y adolescentes. pacientes. consentimiento informado.

I. INTRODUCCIÓN

El Código Civil y Comercial de la Nación Argentina (a partir de ahora CCCN, ley 26.994) cuya vigencia comenzó en agosto de 2015, ha modificado ciertas cuestiones que se refieren al ejercicio de los derechos, sobre todo en cuanto a las prestaciones sanitarias, al haber fijado lo que se ha denominado “núcleo duro de salud”.

Por este motivo, digno es detenerse y tratar de dilucidar el impacto que estos cambios han tenido no sólo en el ámbito jurídico, sino también en relación a los problemas bioéticos y sanitarios que se han derivado de la nueva legislación.

Para lograr tal cometido, preciso es detenerse en tratar de dar una respuesta a una concepción general de la autonomía del paciente para tomar decisiones sobre su propio cuerpo y, a partir de ello, abordar el consentimiento informado de los menores adolescentes.

Con la entrada en vigencia del Código Civil y Comercial la República Argentina ha visto movilizados los cimientos del derecho privado, a través de lo que se ha llamado la “constitucionalización del derecho privado” (CARRANZA, 2017), tratando de ensamblar lo público con lo privado.

Dentro de las modificaciones, cabe señalar que se diferencian los derechos patrimoniales de los extrapatrimoniales, siendo estos últimos comprensivos del cuerpo y la salud de la persona humana. En este orden, se produjeron importantes cambios, sobre todo en cuestiones que hacen a la manifestación de la voluntad personal, que ha sido dado en llamar “principio de autonomía personal en las tomas de decisiones”; adoptando nuevas manifestaciones que ya se venía gestando en la relación médico-paciente.

Estos nuevos horizontes que marca la legislación deben, por un lado, ser interpretados conforme lo prescribe el art. 2º del CCCN, pero teniendo presente que debe ajustarse a la manda constitucional expresada a través de todo el bloque¹, por lo que no sólo implica un análisis en cuanto a la validez o adecuación constitucional de la normativa, sino también de su encuadre convencional, teniendo como principal norte la protección de los derechos humanos.

En estos nuevos tiempos, la discusión ya no radica en la tipología del contrato médico, sino en el cambio de modelo del binomio “médico-paciente” y su traslación del modelo tradicional llamado “paternalismo médico” al nuevo modelo del “paciente autónomo”. Ello significa pasar de un modelo tradicional en el cual las decisiones

¹ En Argentina, el término “bloque de constitucionalidad” es comprensivo del conjunto normativo derivado de la comprensión total de la Constitución y los diversos Tratados Internacionales de Derechos Humanos con jerarquía constitucional, incorporados mediante el art. 75 inc. 22, en la reforma de 1994.

médicas recaían en el equipo sanitario, el que aduciendo el beneficio del paciente reemplazaba su voluntad; al nuevo modelo en el que adquieren especial relevancia los derechos personalísimos del paciente y su autodeterminación.

El paradigma de la autonomía de la voluntad, esto es, de la libre disposición del propio cuerpo, ha llegado hoy a ser consagrado gracias al deber del paciente de expresar libremente su consentimiento a ciertas prácticas médicas o investigativas, siempre en el marco de la obligación de estar informado sobre aquello que ocurrirá con su cuerpo tras la intervención, salvo en aquellos casos en los que la propia ley permite subsanar la personalización de dicho acto.

Tomar una decisión sobre el propio cuerpo, requiere previamente una información detallada que permita comprender cabalmente los extremos fácticos de la intervención, las posibles complicaciones que esta cuestión conlleve y, junto a ello, las posibles incidencias posteriores; para recién después brindar voluntariamente el consentimiento.

Es en este orden que debemos estudiar cómo opera el consentimiento informado del paciente y de manera particular si se trata de un paciente menor de edad o menor adolescente para el cual se ha sido regulado de distinta manera su consentimiento para los actos médicos.

Dicha regulación ha generado diversos cuestionamientos o dudas de nivel médico, jurídico y bioético, las cuales muchas siguen en la actualidad sin solución.

II. EL CONSENTIMIENTO DEL PACIENTE

La doctrina sostiene de manera general que el consentimiento informado tiene su fundamento en el respeto de la libertad del paciente, quien tiene derecho a decidir sobre su propio cuerpo y ello implica que, para tomar esa decisión con discernimiento, intención y libertad el paciente debe estar -cuanto menos- adecuada y suficientemente informado sobre la naturaleza, los alcances, la necesidad, la utilidad o beneficio y los riesgos del tratamiento o práctica médica a realizar, como asimismo sobre la existencia de

medios alternativos al propuesto (ARGENTINA, 2004).

Así se puso de manifiesto al indicar que:

[...] el Consentimiento informado consiste en la explicación, a un paciente atento y mentalmente competente, de la naturaleza de su enfermedad, así como del balance de los efectos de la misma y los riesgos y beneficios de los procedimientos terapéuticos recomendados, para a continuación solicitarle su aprobación para ser sometido a esos procedimientos. La presentación de la información al paciente debe ser comprensible y no sesgada; la colaboración del paciente debe ser conseguida sin coerción, el médico no debe sacar ventaja de su potencial dominancia psicológica sobre el paciente (ARGENTINA, 2004).

Es por ello que el médico tiene el deber-obligación de informarle al paciente, previamente, sobre las ventajas de la actuación médica, los medios de que dispone, la oportunidad, calidad, extensión, consecuencias, riesgos, etc.; adaptando dicha información a las limitaciones del receptor, que en la mayoría de los casos es un profano en la materia.

Sobre el punto ya había dicho la jurisprudencia con anterioridad a la sanción de la ley 26529 (ARGENTINA, 2006):

El médico queda obligado a guardar el secreto profesional y a informar a su paciente, poniéndolo en conocimiento de su estado actual de salud, estudios que se le deben practicar, dolencia de la que padece, pronóstico de su evolución y los riesgos que pueden existir. A su vez, el paciente se obliga a comunicar al médico sobre los antecedentes que conoce de su afección, y luego de informado por el profesional y prestado su conocimiento, a someterse a la práctica que se considere necesaria siguiendo las indicaciones del médico y cumplir con toda la diligencia los tratamientos que se le prescriban [...](ARGENTINA, 2006, p. 3).

En el ordenamiento jurídico argentino, los derechos personalísimos en general ya habían

sido receptados por la Constitución Nacional (ARGENTINA, 1994), la que en los arts. 19, 42, 43 y siguientes y concordantes, establece la necesidad de respetar la intimidad de las personas.

Por su parte, el deber de información ha sido receptado en varias leyes, como por ejemplo la ley del Síndrome de Inmunodeficiencia Adquirida -SIDA- (art. 8 de la ley 23798) (ARGENTINA, 1990); la ley de trasplantes (art. 13 de la ley 24193) (ARGENTINA, 1993); o la misma ley que regula el ejercicio de la medicina (art. 19 inc. 3 de la ley 17132) (ARGENTINA, 1967), y en algunas leyes de salud reproductiva.

A nivel internacional, la Convención Internacional de los Derechos Humanos y Biomedicina (CONSEJO DE EUROPA, 1967) establece como regla general en su art. 5, que una intervención médica puede realizarse luego que el sujeto haya dado su consentimiento libre e informado, y que previamente el sujeto debe recibir información adecuada, sobre la naturaleza y finalidad de la intervención, así como sus consecuencias y riesgos.

Este deber de información ha sido definido como la obligación jurídica en cabeza de un experto – deudor de la prestación y emisor de la información-, de poner en conocimiento de su co-contratante -el acreedor del servicio-, aspectos relevantes del contrato -objeto de información-, que habilitan para tomar decisiones compartidas y pertinentes en beneficio del acreedor.

La información brindada debe ser veraz, sin alentar falsas expectativas, y será mayor cuanto mayores sean los riesgos que el tratamiento implique (MEDINA; FAMÁ; REVSIN, 2003); y agravada si el paciente a su vez deba ser considerado “consumidor de los servicios de salud”.

Conforme a lo expresado, el médico no puede efectuar ningún tratamiento sin recabar el consentimiento del paciente; si ello no fuera posible, el médico sólo podrá actuar en la medida que lo justifique la situación particular generada por la gravedad extrema del caso, ya que el acto médico obrado sin consentimiento-salvo esta

última hipótesis, excepcional-, configura una ilicitud civil y penal.

Es irrelevante o inoficioso el consentimiento del paciente cuando el cometido médico es reprobado por la ley, como por ejemplo la realización de un aborto, o cuando la revisión médica se encuentra exigida por ley (certificado prenupcial, o revisión médica obligatoria para entrar a la administración pública).

No existe el consentimiento del enfermo en las llamadas internaciones psiquiátricas involuntarias, en las cuales la revisión médica se realiza justamente contra su voluntad; sin perjuicio de que, como lo establecen los Tratados Internacionales, se pretenda en el tratamiento conseguir dicho consentimiento y así revertir el tratamiento en intervención voluntaria, o en su caso ambulatorio.

En el sentido de lo expuesto, es necesario señalar lo previsto por el art. 16 de la ley nacional 26657 de salud mental (ARGENTINA, 2010) que, textualmente, dice:

[...] sólo se considera válido el consentimiento cuando se presta en estado de lucidez y con comprensión de la situación, y se considerará invalidado si durante el transcurso de la internación dicho estado se pierde, ya sea por el estado de salud de la persona o por efecto de los medicamentos o terapéuticas aplicadas. En tal caso deberá procederse como si se tratase de una internación involuntaria [...] (ARGENTINA, 2010, p. 1)

Es más, en su art. 19, se establece que el consentimiento obtenido o mantenido con dolo, debidamente comprobado por autoridad judicial, o el incumplimiento de la obligación de informar establecida en los capítulos VII y VIII de la ley, harán pasible al profesional responsable y al director de la institución de las acciones civiles y penales que correspondan.

Se ha discutido qué sucede cuando el paciente, en perfectas condiciones mentales, se niega terminantemente a recibir tratamiento médico, inclinándose la mayoría que debe respetarse su

voluntad y que la misma no puede ser suplida por la venia judicial.

Cabe agregar que, si bien el consentimiento es la aceptación por parte del paciente de una circunstancia que se traduce, en algunos casos en la aprobación de cirugías, en la elección de medios o de tratamiento, etc., éste consentimiento informado no libera al profesional de las consecuencias de una conducta negligente o imprudente, pero sí lo exime de responsabilidad por la ocurrencia de un riesgo informado al enfermo y que ocurre pese a la buena práctica del médico, ya que en este caso habría sido el paciente y no el profesional quien ha decidido afrontarlo (ARGENTINA, 2005).

2.1 El Consentimiento Informado en la Ley de Derechos del Paciente y su Decreto Reglamentario

Por decreto 1089/2012 publicado el 6 de julio de 2012 en el Boletín Oficial, se aprobó la reglamentación de la ley 26529 de derechos del paciente, historia clínica y consentimiento informado, modificada por ley 26742.

Esta reglamentación refuerza cuestiones que ya estaban protegidas legalmente como el “*derecho a la intimidad, la confidencialidad, la autonomía de la voluntad, la información sanitaria y la interconsulta médica*”, pero que se encontraban amparados en leyes circunscritas a un instituto (ley 17132 –arte de curar-; ley 25326 –habeas data-; ley 26061 –derechos de los niños, niñas y adolescentes de los Niños, Niñas y Adolescentes-; ley 26486 –antidiscriminación contra la mujer-; entre otras), o mediante construcciones jurídicas. Ejemplo de esto último era el caso de una persona adulta que, en plena capacidad de decidir, rechaza de un tratamiento aun cuando esa decisión implica su posible muerte (fallo “Bahamonde” de la Corte Suprema de Justicia de la Nación, que permitió que un testigo de Jehová pudiera negarse a recibir una transfusión sanguínea aunque su decisión hiciera peligrar su vida, y que los médicos no podían sin el consentimiento del paciente realizar ningún tipo de curación ni terapia fundado en el respeto a la privacidad, en el derecho a la intimidad y en la dignidad contenidos

en el artículo 19 de la Constitución Nacional y en los pactos de Derechos Humanos a los que el país ha adherido).

En dicha ley de derechos del paciente (vigente desde 2009) se amplía el alcance de la "autonomía de la voluntad", estableciendo -con ciertas condiciones- el derecho de los niños, niñas y adolescentes a decidir sobre terapias o procedimientos médicos o biológicos que involucren su vida o salud (art. 2 e) y el derecho a ser informado incluso a pacientes con incapacidad o posibilidades limitadas de comprensión (art. 2 f), que incluye el derecho del paciente a no ser informado.

2.2 El Consentimiento Informado en el Código Civil y Comercial de la Nación

Ahora bien, el Código Civil y Comercial de la Nación se ha ocupado de muchos temas relacionados a la salud, y en forma particular del consentimiento informado. Así, el art. 59 establece, con una redacción clara y precisa el llamado "consentimiento informado para actos médicos e investigaciones en salud".

Se ha dicho sobre este artículo que:

[...] determina y explicita en sus alcances y conformación uno de los elementos más relevante en el resguardo de la dignidad personal, cuando esa dignidad se enfrenta a uno de los supuestos en los cuales, probablemente, la perspectiva de afectación sea más sensible: la enfermedad. Y la corporización de esa mecánica de resguardo de la dignidad de la persona tiene nombre y apellido: el consentimiento informado (LORENZETTI, 2014, p. 308).

Se constituye en un derecho-deber, por cuanto implica, por un lado, la posibilidad que el paciente sepa todos los extremos que hacen a los alcances de la intervención a la que se someterá y, por otro, un deber para los prestatarios de servicios médicos, quienes deberán cumplir con el encargo legal e informar detalladamente al destinatario de la práctica, sobre lo que se está por realizar.

El meollo del asunto es la manifestación de la conformidad para determinada prestación, la que viene a ser emitida luego de haber recibido "información clara, precisa y adecuada" (ARGENTINA, 2014)². Que cumpla con estos requisitos implica la posibilidad que el paciente comprenda con palabras sencillas, asequibles, concretas y ajustadas al propósito de la intervención, lo que podrá ocurrir al momento de enfrentarse a la práctica que prestará el galeno.

Es importante destacar que esta información debe cumplir con los extremos que se establecen en la norma, esto es, lograr que la persona comprenda cuál es su estado de salud al momento de prestar el consentimiento; cómo será y cuáles serán los objetivos que persigue el procedimiento; cuáles son los beneficios que se espera del proceso; las adversidades previsibles de la intervención; los otros posibles procedimientos alternativos, sus riesgos, sus beneficios y perjuicios en relación al procedimiento elegido; las consecuencias de no optar por algún procedimiento para lograr la sanidad o tender a ella; ante una situación extrema, la posibilidad de rechazar procedimientos quirúrgicos, de hidratación, alimentación, reanimación artificial o retiro de medidas de soporte vital extraordinarias que produzcan un sufrimiento desmesurado o sólo busquen prolongar el estadio irreversible e incurable (ARGENTINA, 2014 y ARGENTINA, 2009)³; y el derecho a recibir cuidados paliativos integrales.

Obviamente, en este punto no se puede negar la información –muchas veces no científica- que el paciente adquiere a través de la navegación por internet, lo cual muchas veces en vez de ayudar y acrecentar su información, la desvirtúa.

Todos estos puntos, establecidos en la norma, implican generar una convicción personal en el sujeto que se somete a la intervención, práctica o investigación, teniendo presente las distintas

² Cfr. Art. 59, CCyCN.

³ Todo ello, de conformidad al art. 60 del CCyCN y a lo preceptuado por el Capítulo III (arts. 5 y ss.) de la Ley 26529 de Derechos del Paciente. Junto a ello, las diversas manifestaciones legislativas de apoyo o de regulación propia del derecho a la muerte digna en cada una de las Provincias y en la Ciudad Autónoma de Buenos Aires.

posibilidades que surgirán al momento de culminarlas, viendo así los diferentes horizontes a los que se enfrenta y sus respectivas consecuencias.

Ahora bien, implican, además, un conocimiento profundo y un estudio pormenorizado por parte del médico del caso, teniendo presente que quien tiene al frente no es un sujeto más, sino una persona humana, con dignidad, que debe ser respetada y valorada independientemente de cualquier condición que presente.

Además, frente a causas graves y urgentes, en las que la demora médica fuese una causal que ponga al paciente en riesgos graves de no poder continuar en este mundo, y no encontrando nadie que pueda expresar el consentimiento en su nombre, puede prescindir de este, ya que las miras de su actuación no deben dilatarse. En estos casos, el profesional deberá asentar dicha situación en la historia clínica del paciente y en caso de ser posible, contar con el testimonio de un tercero (personal de enfermería, etc.).

Esta manifestación de la voluntad es absolutamente personal, lo que implica que la persona debe tener capacidad para poder hacerlo a nombre propio. Por ejemplo, las personas con restricción a la capacidad o discapacitadas no pueden prestar este consentimiento, por lo que se le debe garantizar el apoyo suficiente (que lo acompaña o asiste) o el curador (que directamente sustituye su voluntad).

En el caso de impedimento absoluto de una persona para poder expresar su voluntad, y no habiéndola anticipado previamente, este consentimiento puede ser prestado por el representante legal, el apoyo, el cónyuge, el conviviente, el pariente o el allegado que acompañe al paciente, siempre que medie situación de emergencia que implique un riesgo certero e inmediato de un mal grave para la persona. El tema preocupante suele presentarse cuando la persona, sin contar con una declaración judicial de su capacidad o en su caso directivas anticipadas, se encuentra momentáneamente en estado de no poder brindar su consentimiento,

para lo cual se deberá arbitrar la forma de poder prestarlo.

III. EL CONSENTIMIENTO INFORMADO DE LOS MENORES ADOLESCENTES CONFORME A LAS NUEVAS REGLAS DEL CÓDIGO

En el Código Civil y Comercial a diferencia del anterior vigente desde la época de Vélez Sarsfield que hablaba de los menores púberes e impúberes, los menores de edad pueden ser simplemente menores (hasta los 13 años) o adolescentes (de los 13 a los 18 años).

El tratar de definir a la adolescencia implica entender al menor en su contexto vital, ya que:

[...] es una etapa entre la niñez y la edad adulta, que cronológicamente se inicia por los cambios puberales y que se caracteriza por profundas transformaciones biológicas, psicológicas y sociales, muchas de ellas generadoras de crisis, conflictos y contradicciones, pero esencialmente positivos. No es solamente un período de adaptación a los cambios corporales, sino una fase de grandes determinaciones hacia una mayor independencia psicológica y social (PINEDA; ALIÑO, 1999, p. 16).

El Código Civil y Comercial les reconoce a los menores de edad una serie de derechos a través del art. 26: En principio, la regla general es que ejercen sus derechos a través de sus representantes legales. Si tienen una edad y grado de madurez suficiente puede ejercer por sí los actos que le son permitidos por el ordenamiento jurídico. En caso de conflicto de intereses con sus representantes legales, puede intervenir con asistencia letrada. Tienen derecho a ser oída en todo proceso judicial que le concierne, así como participar en las decisiones sobre su persona.

De la lectura de la norma mencionada surge que en materia del derecho a la salud de los adolescentes, se realiza una nueva subdivisión: a) se presume que entre los trece y dieciséis años tiene aptitud para decidir por sí respecto de aquellos tratamientos que no resultan invasivos,

ni comprometen su estado de salud o provocan un riesgo grave en su vida o integridad física. b) En el caso de tratamientos invasivos entre los trece a dieciséis que sí comprometen su estado de salud o pueden provocar un riesgo en su vida o integridad física, éste debe prestar su consentimiento con la asistencia de sus progenitores y, si existiese conflicto entre ellos, se resolverá teniendo en cuenta el interés superior del niño, sobre la base de las opiniones médicas respecto a las consecuencias que puede tener sobre la vida del adolescente el que se realice o no la práctica. c) entre los dieciséis y los dieciocho años, el adolescente es considerado en todo lo que se refiere a las decisiones sobre “el cuidado” de su propio cuerpo como un adulto; para lo cual podría discutirse si se encuentra apto para tomar todas las decisiones o sólo aquellos que beneficien dicho cuidado.

Sobre los motivos que han llevado a que se determinen estos grados de adaptación de la madurez en el menor de edad, se ha dicho que:

La Convención sobre los Derechos del Niño no contiene una norma que expresamente se refiera al derecho de niños y adolescentes para decidir sobre el cuidado de su salud y su cuerpo y menos desde qué edad ello podría ocurrir. Sin embargo, ponderando los términos del art. 12 que garantiza el derecho de expresar su opinión libremente en todos los asuntos que lo afecten, la mentada autodeterminación debe considerarse comprendida (HIGHTON DE NOLASCO, 2015, p. 5).

Como vemos el Código Civil y Comercial recoge las principales directrices contenidas en las leyes especiales y toma muchos de sus principios rectores, principalmente el del interés superior, pero avanza en plantear una regulación más respetuosa de la autonomía progresiva de los niños y adolescentes a través por ejemplo de la presunción de la aptitud o madurez, de la figura del consentimiento «asistido» que viene a reemplazar al consentimiento por representación previsto en aquellas leyes.

Distingue dos categorías dentro de los menores adolescentes, los que se encuentran en la franja etaria de trece a dieciséis años y los comprendidos entre los dieciséis y los dieciocho años, confiriéndoles la posibilidad de decidir por sí mismos en materia de salud en función de su desarrollo por edad.

Si bien este sistema otorga precisión y seguridad jurídica en tanto simplifica la cuestión probatoria a través de la instalación de presunciones basadas en la edad y permite introducir el principio de la capacidad progresiva sin que se resienta la necesaria precisión de la norma, su texto plantea más dudas que certezas en cuanto a la interpretación de sus términos y al modo en que fueron redactadas las atribuciones correspondientes a cada categoría etaria.

Partiendo de un análisis exegético de la norma y recurriendo al aporte de la doctrina y la jurisprudencia, trataremos de precisar cuál es el verdadero alcance de los términos que incorpora el legislador y cuál es, en mi modo de ver, el sentido interpretativo que debe darse a los supuestos regulados por el artículo 26 del Código Civil y Comercial.

3.1 Determinación de la Edad y Grado de Madurez Suficiente

En primer lugar, el Código habla de la edad y grado de madurez suficiente como criterios correctores de la incapacidad de ejercicio, a lo que se debe agregar que la madurez se rige en relación a cada caso en concreto. Estos son conceptos jurídicos indeterminados, que requieren una necesaria valía profesional para poder adquirir una entidad tal que les permita proyectar sobre la realidad sus directos efectos.

No es fácil concretar cuándo un niño ha llegado a una madurez suficiente en una determinada edad. Es sabido que existen pequeños que tienen una capacidad de comprensión y adaptación social mayor que la de otros, pero en eso también hay que tener presente que hay circunstancias vitales que los llevan a tener que adaptarse a su entorno.

Como es posible apreciar, el Código señala que el menor que tiene edad y grado de madurez

suficiente puede ejercer por sí los actos que le son permitidos por el ordenamiento jurídico y, en el caso de conflicto de intereses con sus representantes legales, puede intervenir con asistencia letrada.

Frente a estas premisas, hay que tener en cuenta el rol que cumplen los padres, es decir, encontrar la concordancia con la norma del Código que regula tal cuestión. Así, el art. 638 del Código Civil y Comercial refiere a la responsabilidad parental como un conjunto de obligaciones y derechos que tienen sobre sus hijos, su persona y sus bienes, de manera tal que propenda a la protección, desarrollo y formación integral mientras sea menor de edad (como es en este caso) y no sea emancipado.

A su vez, el art. 639 del Código Civil y Comercial señala los principios que regirán esta responsabilidad, indicando en primer lugar el interés superior del niño, luego la autonomía progresiva y, por último, el derecho a ser oído y a que su opinión sea tenida en cuenta según su edad y grado de madurez.

En relación a la autonomía progresiva, se muestra el criterio de corrección inversa, por cuanto a medida que el niño discurre temporalmente y adopta ciertas características psicofísicas, adquiere ciertas aptitudes y se desarrolla, corresponde limitar la dependencia a la representación de los progenitores en relación al ejercicio de sus derechos. En consecuencia, si bien la regla sigue siendo que los padres son los representantes de sus hijos menores de edad, a mayor capacidad o madurez, es menor la representación que ejercen sobre los mismos.

Una vez más, los conceptos jurídicos indeterminados sientan al jurista frente a la necesidad de determinarlos, por cuanto en estos casos, donde se trata de darle más libertad al niño, pero, al mismo tiempo, se trata de defenderlo en sus grados de indefensión, entran en juego ni más ni menos que decisiones que atañen a la actuación civil del sujeto.

Una pregunta sencilla frente a estos supuestos es ¿cómo determinar que un niño, a una edad determinada, tiene un grado de madurez

suficiente para poder ejercer por sí ciertos actos jurídicos? Aquí entra en juego la prueba, es decir, la forma de demostrar que el menor de edad tiene realmente ese halo de independencia que le permite actuar por sí. ¿Y la segunda pregunta que se sucede es quién o quiénes hacen esa valoración? ¿El equipo interdisciplinario de que habla la salud mental o el multidisciplinario al que se refiere el CCCN en materia de familia (art. 706, CCCN)?

De más está decir que la actividad probatoria en este caso no debe quedar en manos del propio niño, sino que es necesario adquirir una cierta diligencia que otorgue un grado de objetividad, por lo que la pericia interdisciplinaria podría ser una respuesta que brinde, a través de la imagen de varios profesionales, una solución al interrogante sobre si el menor puede o no actuar por sí solo.

En el presente todavía son cuestiones que tienen diversas interpretaciones y no cuentan con una solución unánime y muchas veces no satisfactoria.

IV. LA CAPACIDAD DEL MENOR ADOLESCENTE PARA LAS PRESTACIONES SANITARIAS

Como ya se ha dicho, el Código, en miras a proteger el interés superior del niño y propiciar la capacidad progresiva del menor, limita la representación legal, por lo que ha transformado la regla en una cuasi regla, por cuanto no todos los actos que se realizan en la minoridad requieren el consentimiento, por ejemplo, de los padres.

En materia de salud, se identifica en el CCCN la posibilidad de que el adolescente haga uso de su capacidad de ejercicio para adoptar por sí ciertas decisiones que afectan a su propio cuerpo. Tiene que ver, esencialmente, con la capacidad de decidir, de optar, de elegir por una u otra cuestión que atañe al ente que le proporciona la vida y que le otorga la capacidad de obrar como ser humano.

Expresamente en su artículo 26 dispone: «Se presume que el adolescente entre trece y dieciséis años tiene aptitud para decidir por sí respecto de aquellos tratamientos que no resultan invasivos, ni comprometen su estado de salud o provocan un riesgo grave en su vida o integridad física. Si se

trata de tratamientos invasivos que comprometen su estado de salud o está en riesgo la integridad o la vida, el adolescente debe prestar su consentimiento con la asistencia de sus progenitores; el conflicto entre ambos se resuelve teniendo en cuenta su interés superior, sobre la base de la opinión médica respecto a las consecuencias de la realización o no del acto médico. A partir de los dieciséis años el adolescente es considerado como un adulto para las decisiones atinentes al cuidado de su propio cuerpo».

Como surge del texto citado, el sistema previsto en la norma se estructura a partir de presunciones legales y adopta el criterio de edades fijas a partir de las cuales se presume que el menor cuenta con capacidad natural suficiente para un determinado acto médico. Si bien es cierto que el art. 24 del CCCN enumera entre los incapaces a los que no cuentan con edad y grado de madurez suficiente, o sea que se estaría refiriendo a la “capacidad”, algunos autores señalan que, particularmente, el art. 26 del CCCN, refiriéndose a los temas de salud y determinación sobre su propio cuerpo, no habla de “capacidad” en el sentido de capacidad jurídica sino como “aptitud” o “competencia”, señalando a veces con mayor precisión a la “competencia bioética”.

Ya se ha adelantado que, con relación a las prestaciones sanitarias, el Código identifica tres escenarios posibles:

- Entre los trece y dieciséis años tiene aptitud para decidir por sí sobre los tratamientos no invasivos;
- En la misma edad, si los tratamientos son invasivos, se requiere el asentimiento de los progenitores (el niño decide y los padres acompañan o asisten, no sustituyen la voluntad del menor);
- A partir de los dieciséis años, tiene libre disposición para el cuidado de su cuerpo.

Como vemos, las prestaciones sanitarias serán un punto de inflexión en cuanto al reconocimiento que el derecho les otorga para actuar con mayor o menor grado de independencia. Si bien este sistema otorga precisión y seguridad jurídica en

tanto simplifica la cuestión probatoria a través de la instalación de presunciones basadas en la edad y permite introducir el principio de la capacidad progresiva sin que se resienta la necesaria precisión de la norma, su texto plantea más dudas que certezas en cuanto a la interpretación de sus términos y al modo en que fueron redactadas las atribuciones correspondientes a cada categoría etaria.

En definitiva, se plantea una nueva interacción entre los conceptos de capacidad civil, autonomía progresiva y representación y nos coloca ante la cuestión de tener que determinar cuál es el alcance de las facultades reconocidas al menor para decidir por sí mismo ante un acto médico y como se articula con la actuación de sus responsables parentales.

Siguiendo el esquema que hemos mencionado anteriormente es posible reconocer tres ámbitos de actuación del menor y sus responsables parentales:

- El de la representación: que corresponde a la primera infancia, caracterizado por una falta o escasa madurez en el niño que actúa a través de sus representantes legales.
- El de la asistencia: propio de la primera adolescencia (de 13 a 16 años), donde se reconoce madurez para llevar a cabo ciertos actos y tomar decisiones personales sobre tratamientos y terapias médicas. No se trata pues de representación ni de sustitución sino más bien de un consentimiento participado (29): es el adolescente el que presta el consentimiento asistido por sus responsables parentales. La validez del acto estará supeditada a la existencia del consentimiento del menor.
- El de la autonomía: comprensivo de los adolescentes de 16 a 18 años, que otorga un margen de actuación mayormente independiente, especialmente para las cuestiones atinentes al cuidado del propio cuerpo (con excepción de Ley N° 26.743/2012 de Identidad de Género, Ley N° 26.130/2006 de Intervenciones de contracepción quirúrgica, Ley N° 24.193/1993 de Trasplante de órganos y materiales anatómicos que,

exigen la mayoría de edad (18 años) para ejercitar los actos médicos que ellas regulan).

4.1 *Tratamientos Invasivos y No Invasivos: Determinación de Salud*

Salvados los anteriores escollos de interpretación, debemos precisar que el Código distingue entre los tratamientos invasivos y no invasivos para otorgar la capacidad de ejercicio al menor adolescente.

Las prácticas no invasivas no son agresivas, tienen resultados rápidos, no requieren internación y son de pronta recuperación. A diferencia de ellas, las invasivas pueden implicar una agresión al cuerpo (o no), sus resultados no pueden apreciarse de un día al otro, sino que se constituyen en un proceso, el que en la mayoría de los casos requiere internación y cuya recuperación puede ser lenta. La medicina estética, por ejemplo, puede constituir en muchos casos un tratamiento no invasivo (FLUM, 2015).

El gran problema que surge del Código es que no hay una definición de tratamiento invasivo y no invasivo, y -nuevamente- enfrenta al jurista a un concepto jurídico indeterminado. Esta indeterminación no responde sólo al ordenamiento jurídico, sino también a la ordenación sistémica argentina, por cuanto no hay ningún órgano que defina a ciencia cierta qué tipo de tratamiento resulta invasivo o no, sino que se deja a la práctica galena la definición (según el paciente y la afección concreta), de lo que se considera invasivo o no.

En el momento de que el menor adolescente quiera hacer uso de su capacidad de ejercicio para asumir las decisiones sobre el cuerpo, entonces, hay un arbitrio médico para determinar si hay invasión o no. Ante ello nos surge otro interrogante y es si el profesional de la salud es el más indicado para determinar en el caso concreto si existe una afección cuyo tratamiento es invasivo o no, o si debería existir un catálogo federal⁴ que

⁴ Sobre esto, tener presente los desafíos que conlleva, en el caso de Argentina, la determinación federal teniendo presente los problemas de la federalización del sistema sanitario. Para profundizar, se recomienda leer el texto de Zalazar y Carranza (2016).

otorgue certidumbre al momento de accionar y que, en el caso de estar en desacuerdo, permita una consulta a un comité especializado.

En una primera lectura, pareciera que la norma es clara y no ofrece duda sobre los supuestos contemplados: para llevar a cabo o someterse a tratamientos de salud que no resultan invasivos y no comprometan la salud o provocan un riesgo a la vida o integridad física, el menor con más de trece años, puede decidir sobre ellos; en caso que los tratamientos sí afecten su salud e integridad y puedan poner en grave riesgo su vida, deberá solicitar la asistencia de sus progenitores para llevarlos a cabo.

Pero esa claridad se desvanece a poco que se ahonde en el análisis de los términos incluidos en la disposición dado que plantean algunos interrogantes que pueden resumirse en los siguientes: ¿cuál es el alcance de la alocución «aptitud»?; ¿cuál es la clase de presunción que utiliza la norma, es *iuris tantum* o *iuris et de iure*?; ¿qué se entiende por tratamientos?; ¿se refiere a todos los tratamientos médicos sin limitación en cuanto a su naturaleza, quedando incluidos los preventivos, terapéuticos o curativos, los rehabilitantes y los estéticos?; ¿se incluyen los tratamientos médicos diagnósticos?; ¿cómo se interpreta el término «invasividad» de los tratamientos médicos?; ¿cuál es el alcance del concepto de «riesgo» de una práctica sanitaria?; ¿cómo se evalúa ese riesgo? (MALUF MARTINEZ, 2021)

En este punto se ha considerado que lo propicio es que el Estado o los efectores de salud reglamenten la aplicación de esta norma, realizando un nomenclador general que se considera invasivo o no, ya que esta inseguridad o vacío seguramente es uno de los temas que ha provocado la judicialización de estos temas, supliendo el juez – con la pericia respectiva- la laguna para su aplicación. Cabe traer al análisis la Resolución 65/2015 (18) de la Secretaría de Salud Comunitaria del Ministerio de Salud de la Nación donde se establece que el criterio de «invasividad» utilizado por el artículo 26 del CCCN debe leerse como tratamientos de gravedad que impliquen riesgo para la vida o riesgo grave

para la salud y agrega que «en los dos párrafos del art.26 que se menciona el término invasivo se lo asocia con el compromiso del estado de salud o el riesgo para la vida o la integridad física» .

Claramente, esta resolución poco o nada aporta a esclarecer el alcance del término «invasivo» utilizado en el artículo 26 del CCCN, por lo que sería deseable que un instrumento destinado a funcionar como marco interpretativo de una normativa tan importante como lo es el Código Civil contuviera definiciones y postulados que permitieran realmente comprender el contenido y alcance de los términos en el utilizados.

Pero la cuestión no queda aquí, pues el Código expresamente alude a los tratamientos no invasivos que no «comprometen su estado de salud (del adolescente) o provocan un riesgo grave en su vida o integridad física» (confr. párr. cuarto) y a los tratamientos invasivos que «comprometen su estado de salud o está en riesgo la integridad o la vida» (confr. párr. quinto).

Así planteado el panorama, resultará imprescindible que las pautas contenidas en el artículo 26 del CCCN sean tamizadas y corroboradas en cada caso concreto, individualizando las potencialidades del menor adolescente y su grado de desarrollo, la clase de tratamiento médico y los derechos comprometidos, considerando en mi opinión que lo importante será el riesgo a la vida e integridad física, tanto se trate de tratamientos invasivos o no invasivos.

4.2 Oposición de Los Progenitores

Otros de los problemas que debemos subrayar es cuando los padres no quieren brindar el asentimiento, a la decisión que ha sido tomada por el menor adolescente (entre 13 y 16 años). En ese caso, entra la resolución teniendo en cuenta el interés superior del niño, sobre la base de la opinión médica respecto de las consecuencias que se pueden tener frente a la realización o no del acto. Ahora bien ¿quién resolverá este conflicto? ¿se puede dejar al arbitrio del propio médico? ¿deben ingresar a jugar un papel crucial los comités de bioética de los centros sanitarios? ¿debe judicializarse el caso?

No hay duda, que ante un conflicto entre la voluntad del adolescente y la de sus progenitores la decisión que se adopte deberá considerar dos pautas, por una parte, el interés superior del niño y, por la otra, la opinión médica respecto a las consecuencias de la realización del acto. El problema, como hemos planteado, reside en determinar quién será la persona o la autoridad encargada de resolver ese conflicto.

El artículo 26 no menciona quien resuelve el conflicto, solamente señala que se hará teniendo en cuenta cual es el mejor interés del adolescente, y siempre en base a la opinión de los profesionales de la salud . Queda entonces abierta la posibilidad de que sea el propio facultativo, un comité de ética o bioética o una junta médica el que resuelva en definitiva el conflicto, sin perjuicio de poder someter la cuestión a decisión judicial. Sobre este aspecto habrá que tener en cuenta que la incumbencia sobre los derechos de los pacientes es un tema propio de los Comités Hospitalarios de Ética de conformidad con lo establecido en el artículo 3º, inciso l) de la Ley 24.742/1996.

Dentro de dicho marco, la reglamentación de la Ley 26.529/2009, señala que es el Comité de Ética el órgano que tiene a su cargo la evaluación del grado de madurez de la persona menor de edad y dispone que en los casos en que de la voluntad expresada por el menor se genere un conflicto con él o los representantes legales, o entre ellos, el profesional deberá elevar, cuando correspondiera, el caso al Comité de Ética Institucional respectivo quien en su caso decidirá si corresponde dar lugar a la intervención judicial, sólo en tanto resultaren dificultades para discernir la situación más favorable al paciente menor.

El tema de quien resuelve el conflicto no deja de generar ciertas dudas y cuestionamientos dado que las facultades autónomas del adolescente quedarán subordinadas a conceptos y fórmulas indeterminadas que deben ser puestas en práctica por los profesionales de la salud quienes ante el temor de ver afectada su responsabilidad profesional en una posterior contienda judicial, muchas veces optan directamente por judicializar los casos dejando en manos del juez la resolución definitiva, lo cual puede repercutir negativamente

en el interés del menor por las demoras propias que presenta todo sistema judicial.

En este punto sería interesante poder articular en el sistema sanitario la posibilidad de los medios alternativos de resolución de conflictos, lo que ayudaría a la tan ansiada “desjudicialización de la salud”.

V. CONCLUSIÓN

El Código Civil y Comercial de la Nación, desde su vigencia, ha apuntado una serie de nuevos interrogantes al mundo del derecho; no sólo a quienes tienen a su cargo la aplicación de sus reglas para la solución de las controversias que se les presenten a su estrado, sino también para quienes deben estudiar el derecho y, a través de la palabra, expresar su parecer y tratar de concientizar sobre los efectos que la norma despliega en la realidad.

Se ha visto claramente que las disposiciones del Código Civil y Comercial de la Nación abren un abanico de posibilidades de actuación por parte de los menores en cuanto a la toma de decisiones sobre su propio cuerpo, que da lugar a una serie de dilemas ético-normativos para los profesionales de la salud actuantes, para los comités de bioética de los institutos hospitalarios, para los padres de los menores, etc.

Si bien la norma ha querido tener presente al interés superior del niño y se ha marcado como norte este propósito, cierto es que el criterio de la autonomía progresiva ha sido demasiado precipitado y ha dado lugar a que la norma posibilite una serie de decisiones que son, en cierta forma, descabelladas o poco proclives a la defensa del propio menor.

Este nuevo piso establecido por el Código ha dado lugar a una mayor judicialización de casos, cuando el objetivo de la norma era lo absolutamente contrario. Nuevamente, se traslada el problema a los jueces y juezas, quienes deberán bregar en sus decisiones no sólo por dar una respuesta ajustada a derecho, sino también suplir la competencia o aptitud del menor que puede actuar impulsivamente y siempre bregando por el interés superior del niño.

Por lo expuesto, no hay dudas que la norma lo que pretende es que se respete realmente al menor y su capacidad progresiva para tomar decisiones sobre su propio cuerpo, pero su amplitud y falta de precisión no deja de generar todavía a ocho años de su sanción inconvenientes a la hora de su aplicación.

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The Role of the Private Security Industry Regulation Authority (PSIRA) in Addressing Non-Compliance of Private Securities in Drinking Establishments in KwaZulu Natal, South Africa

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ABSTRACT

Some of the challenges facing the security service providers in South Africa have been met with policy measures to try to address it. For example, the Private Security Industry Regulation Authority (PSIRA) introduced the Private Security Industry Regulatory Amendment Bill to amend the PSIR Act to address the issues stemming from the changes and growth of the industry. In addition, enforcement of the law and the prosecution of non-compliance within the industry has been in existence as a proactive measure to punish those security service providers who deliberately evade the statutory requirements. It still remains a concern for the researcher that with the effort put by PSIRA to enforce the statutory obligations across security service providers, minimal to none inspections are conducted in drinking establishments. Enforcement and inspection in the drinking establishments where security service providers are visible is important to ensure the behaviour and conduct is within the standards of the PSIR Act. This study investigates the effort put by PSIRA to enforce and ensure compliance of private securities in drinking establishments in KwaZulu Natal (KZN). By employing the qualitative research approach to the study, the study found that PSIRA is not efficient in monitoring and overseeing compliance of private securities in drinking establishments in KZN.

Keywords: private security; compliance; enforcement; drinking establishments.

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I. INTRODUCTION

The problem of illegitimate private security officers operating in drinking establishments is a global phenomenon (Faull, 2013). Non-compliance of bouncers (Please note that this research will use the words bouncers and private security officers/personnel interchangeably) in drinking establishments is less studied in South Africa (Mbhele, 2017). In South Africa, force that is lethally, deadly and excessively used is associated with South African Police Service (SAPS), however, private security officers are also guilty of exercising such activities (Scheider & Minnar 2015). Violence and aggression are most common in drinking establishments and can be due to a number of reasons. Multiple factors contribute to the aggression in drinking establishments, including competence of bouncers, the characteristics of the patron, the effect of alcohol and the characteristic of the environment in which the establishment is located (Graham, Bernards, Osgood & Wells, 2006). Since areas such as nightclubs, shebeens, taverns and bars primarily focus on selling alcohol, it is important to note Faull (2013) as he stated that World Health Organisation (WHO) reports show a link between alcohol consumption and violence.

The Deputy Minister of Police Ms.Makhotso Maggie Sotyú once stated that the Private Security Industry Regulation Authority (PSIRA) is not effective in monitoring the work of bouncers who are mostly armed, engage in violent and aggressive acts in most of the establishment of their posts (Sotyú, 2016). She further emphasised that the private security industry is not monitored and PSIRA needs to bite harder and fight against

non-compliance (Soty, 2016). For instance, Private Security Industry Regulation Act (PSIRA ACT) 51 of 2001 states that private security industry is not to employ security officers who are not qualified for the post (PSIRA, 2002). Schneider and Minnaar (2015) further states that the need to train private securities is of paramount importance. The training should include management of adrenal response to be able to perform rationally and effectively under extreme threat and attack situation.

Regulation in the private security industry is paramount. Compliance is dependent on the efforts put on enforcement and regulation. Less attention is paid to private security institutions regarding matters of legal requirements and regulations, even though they have obtained jurisdiction over large tracts of urban space (Shearing, 2006). In South Africa, the private security sectors are governed by PSIRA, a statutory agency. PSIRA is a body that issues license and regulates training.

The security industry has grown exponentially in South Africa (Theletsane, 2015). This is most likely due to a factor that South Africa is highly affected by crime in all areas of the country. Businesses and economy have been negatively affected by high levels of crime. In 2014, there were approximately 487 058 registered private security officers in South Africa (Theletsane, 2015). This indicates that South Africa is among countries with highest number of security service providers. This industry experiences a growth rate of 30% per annum since the 1970s with an estimate of 25 000 to 30 000 security officers that are newly trained and qualified entering the system annually (Theletsane, 2015). In the 2017/2018 financial year, a total number of registered and active security officers increased from 498 435 to 516 287 (Theletsane, 2015). It is without a doubt that with such high number of security service providers, efficient regulation of the industry is required and important. According to the PSIRA report of 2017/2018, it indicates that 40 692 compliance inspections were conducted in the 2017/2018 financial year across the country (Theletsane, 2015). Shearing (2006) stresses about the lack of proper and formal monitoring

oversight body. This statement supports that of the former deputy minister of police, Maggie Soty, whom stated in 2016 that PSIRA is not doing enough to ensure compliance from bouncers in drinking establishments (Soty, 2016).

II. LITERATURE REVIEW

PSIRA as the regulator of private securities (Enforcement and compliance departments)

PSIRA is a statutory body that regulates private security industries in South Africa. PSIRA is a licensing body and a training regulatory body. Private Security Industry Regulation Act (No.56 of 2001) states the main functions of PSIRA. The primary objective is to effectively regulate the private security industry (Schneider, 2013). PSIRA is responsible for exercising effective control over security service providers in the public and national interest. To achieve its purpose subject to the Act to promote a private security industry that is legitimate, by legitimate meaning there are a set of principles provided that compel industries to comply to. It is also regarded that private security service providers provide service that is in the best interest of the public and the nation as a whole. The question that this point adds is whether bouncers, act in the interest of their employers/nightclubs or in the interest of the patrons and the constitution? The answer to this question will or might affect how bouncers interact with patrons. Moreover, PSIRA seeks to promote a private security industry which is characterised by professionalism, transparency, accountability, equity and accessibility. This is the space that this research will seek to fully explore the views of patrons. PSIRA also ensures that the process of registration of security service providers is transparent, fair, and objective and conducted timeously; Promotes high standards in the training of security service providers and prospective security service providers According to PSIRA, bouncers are compelled to attend training as private securities. But it is a matter of question as to have bouncers actually ever attended training, which this research answers.

As Braithwaite (2002) has noted it is within the government's ability to regulate the standards of private security providers. It is important to be able to understand the lying factors behind the reasons bouncers resort to violence when a patron misbehaves in nightclubs. Understanding the root causes mean intervention strategies can be implemented to prevent or eradicate violent incidences in nightclubs. According to Kole (2009), all private security service providers should know about PSIRA and should be aware of the rules and regulations presented by the PSIRA Act, No. 56 of 2001 which is supposed to guide and monitor the activities of private security service providers.

2.1 Regulating the Private Security Industry

Schneider (2013) utilised a model of regulatory of classification in the private security industry to apply it to a specific sub-sectors of the private security industry. Each Industry can be considered regulated by basically identifying two key components an industry should possess using this approach. These two key components are training regulatory structure and a regulatory/licensing authority. A training regulatory structure sets standards and ensures that private securities receive proper, effective training, while regulatory/licensing authority makes sure that security firms and security officers comply with best practices and legal frameworks (Schneider, 2013).

According to Schneider (2013), regulatory options are divided into three categories, and each category has a criterion that defines it. First, a 'regulated' private security industry comprises of minimum competency standards that are accepted, supervision and regulation by an oversight body, the industry must re-register and also re-train their security staff to demonstrate competency with the regulatory body within a given period. For example, once every three years. Second, 'partially regulated' industries are those that are not enforced by the licensing or regulatory body. Most South African industries that provide service specifically in nightclubs fall under partially regulated due to lack of enforcement and monitoring as it is not effectively

applied by relevant parties (Schneider, 2013). Third, a 'non-regulated' private security industry meaning the industry has training and industry standards that are not observed by the industry players. The licensing or regulatory bodies are virtually absent. The South African nightclubs also fall under this categorization.

2.2 The Norm of Non-Compliance in Drinking Establishments

Demant (2013) defines a nightclub as a space for enjoyment and excitement where alcohol and music are the primary tools to achieve these feelings of joy and excitement. According to Talbot (2006), historically, nightlife has been perceived as a social problem. In South Africa, drinking establishments are a problem that is characterised by violence. South Africa over the past couple of years have faced numerous deaths of young and old patrons in drinking establishments. For example, at the Enyobeni Tavern, in the Eastern Cape, it was reported that 21 young died while the youngest being 13 years old. Another incident occurred in Sweetwaters, Pietermaritzburg where two men stormed into the tavern and opened fire which shot 12 patrons (News24, 2022). Governments rely on controlling licensing, policing and the management of supply. Most cities in South Africa have seen a steady rise in nightlife venues that open almost all hours of each day. Social fears concerning the rise of these nightlife venues have also increased. According to Hobbs, O'Brien and Westmarland (2007), the massive growth in the night-time economy should make a need for the state to provide with appropriate and adequate public policing, to gain commercial social control. Talbot (2006) further states that night-time economy in the cities is associated with problems such as noise, nuisance, drugs and violence, gun crime, and in addition to these problems, he also pointed out violent door culture, which is elucidated by bouncers and which is the focus of this research.

Hadfield (2008) notes that, the process of negotiations and re-negotiations of mandates, preferences, and desires that relate to private securities indicate that state-centred ideas of security governance are not influential. Measham

(2004); Binnie and Skeggs (2004) cited in (Hobbs et al. 2007) indicating that the growth of the night time economies has led to enormous changes that are based on consumption patterns. They further express that young women attend the nightclubs in numbers. Consequently, women aged between 16-24 years consume more than the required weekly limit. Hobbs et al. (2007) states that binge drinking among young British women has doubled when comparing the 18th century and the 20th century. Such uncontrollable increase in youth engagement in the nightlife economies has called for innovative ideas and strategies to control the nighttime environments. Hence the need for more female bouncers was perceived as a better solution (Hobbs et al. 2007).

Moreover, according to Hobbs, Hadfield, Lister & Winlow (2002), the anticipated growth of the night-time economy resulted in the increase of new range of services like youth pubs, dance bars and super-clubs providing entertainment during the long trading hours while selling alcohol and marketing as its objectives. Such activities continue even to date, with a new significance of illicit drugs also provided in some drinking venues due to the night-time economy is less regulated by the government. Hadfield, Lister & Traynor (2009) further state that the setting of the nightclubs and other drinking establishments are characterised by varying rules of social behaviours, with aggressive sexuality, alcohol intoxication, illicit drug use and loud and abusive behaviour are all forms of acts that are against the law. These acts and developments have placed massive pressure on public police resources, and forcefully raised the need for private security due to new criminal opportunities created (Hobbs et al. 2002).

2.3 The Role of Bouncers in Drinking Establishments

The use of “*bouncers*” in nightclubs has caused a number of concerns from the members of the public, especially patrons of nightclubs who are mostly exposed to the work of bouncers. Schneider and Minnaar (2015) write that in South Africa, force that is lethally, deadly and excessively used is associated with South African

Police Service (SAPS). However, private security officers are also guilty of exercising such force in the discharge of their duties. As Winlow (2001) has noted that bouncers are masculine men who are large boned. Winlow, Hobbs, Lister and Hadfield (2001) have stated that it is perceived by individuals that qualified characteristics of bouncers are to have a hyper-masculine persona: which is displayed by their body language and the way they dress. However, this is not the reason they have drawn attention. The reason is the nature in which they conduct their duties which incorporate the likelihood of violence. Bouncers are hired in terms of the capability to manage violence and physically intimidate with appearance (Winlow, 2001). Such occupational culture has seen the deaths and injuries of a number of individuals. Though, some go unreported due to a number of factors such as unwillingness of SAPS to provide assistance. The SAPS in most cases is uninformed about the legitimate codes of conduct of bouncers and simply because this issue does not lead to a lot of deaths.

According to Schneider and Minnaar (2015), unlike the overlooked incidents by media of private securities resorting to force, the public perception of SAPS being driven to the use of force has been largely shaped by media reporting such as the killing of Andries Tatane in 2011 and the Marikana shooting which ended lives of many miners in 2012. However, there are few cases which have been reported by the media about patrons being assaulted by bouncers. For example, ENCA (2015) reported a death of a young man, Shane Boruchowitz, who was stabbed by a bouncer at Ty’s nightclub in Pretoria, South Africa. Another incident was reported in the Mail & Guardian newspaper (2013) when a bouncer posted a video on YouTube of himself punching young boys who were in the toilet at the nightclub when they were caught by this alleged bouncer smoking drugs. Extreme and unnecessary use of force incidents within the private security sector have and do continue to exist.

Internationally in Nisour Square in Baghdad, Iraq, there was a highly publicized case of use of force by private security officer which occurred on

16 September 2007. An officer employed by Blackwater International Security Company killed 17 people. This controversial incident led to a ruling by Paul Bremmer, a then appointed American Proconsul in Iraq, that private security officers are enabled liable be charged for violence perpetrated in the act of carrying out their duties in Iraq (Schneider and Minnaar, 2015). This incident demonstrated the less anticipated consequences of use of force by private security officers, which is death of civilians. It also highlights that use of force in most cases is justifiable but also has complications. Such issues are worsened in societies where security legislation and guidelines are not in place or not enforced. Combining such shortfalls and high threat environment may lead to problematic issues around the use of force (Schneider & Minnaar, 2015).

Furthermore, according to The Mercury (2004) cited in (Tomkins, 2005), a high profile cricketer David Hookes died after sustaining head injuries when he was punched by a bouncer at the Beaconsfield Hotel in the Melbourne suburb of St Kilda. The bouncer involved was later reported to be charged with manslaughter. The same bouncer that was involved in an altercation with David Hookes was revealed to have other assault charges pending against him from other incidents. The highly publicized death of David Hookes brought public attention to a diverse range of problems associated with security work in licensed venues (The Australian, 2001 cited in Tomkins, 2005). This incident further raised questions about how security guards perceive their work and whether they receive adequate training to deal with circumstances of violence in the night-time economy (Tomkins, 2005).

Schneider and Minnaar (2015) highlighted that globally the extension of specialized training that focuses specifically on use of force principles and tactics for private security officers has been zero to minimal. An example of this can be made on the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. This UN settlement is an international document that defines the context of use of force by law enforcement officers. It defines situations in

which law enforcers are eligible to use force or to use firearms. Schneider and Minnaar (2015) further emphasize that the key aspect of implementing the UN convention and its standards is governments' responsibilities and commitments to ensuring that its policing agencies comply with these standards of use of force and firearms. According to the UN principles, law enforcement officials may only use firearms when other means of achieving peace are insufficient or ineffective. Firearms may be used after a verbal warning has been given to the perpetrator. It may also be used to prevent death or serious injuries (United Nation, 1990).

In utilizing force or firearms, private security or law enforcement officials must respect and preserve human life. But, also while in simultaneous situation preventing or minimizing damage and injury to the targeted victim including innocent bystanders. Moreover, Principal 4 of the UN document emphasizes that law enforcement officials should, as far as possible, apply non-violent tactics before resorting to the use of force or make use of firearms. Principal 7 emphasizes the point of having governments that shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law (UN, 1990). As the UN principles imply proper correct and adequate training to be provided relating to general policing activities and handling of weapons, Schneider and Minnaar (2015) raises a question of what level of practical firearms handling is adequate for police training programmes. The use of force activities by private security officers, Montreux Document (2008) is specifically an important international conventions and protocols supported by the International Code of Conduct for Private Security Service Providers (Schneider & Minnaar, 2015). The Montreux document was developed as a result of the Nisour Square incident over the use of force. It was initiated by the Swiss government in collaboration with the International Committee of the Red Cross (ICRC). Governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leon, South Africa, Sweden, Switzerland,

the United Kingdom of Great Britain and Northern Ireland, Ukraine and the United States of America participated.

As Braithwaite (2000) has noted that it is within the government's ability to regulate the standards of these private security providers. As Schneider and Minnaar (2015) noted that the private security industry has role players ranging from individual officers to regulators whose responsibility is to enforce legislative compliance. In this study, Private Security Industry Regulatory Authority (PSIRA) will be examined as a regulator to identify how it discharging its functions in regulating and monitoring the private security service providers in nightclubs. According to Kole (2009), every legitimate private security service provider should be aware of Private Security Industry Regulation Act and of the codes of conducts presented under this Act. There have been some perceived inadequacies with PSIRA in terms of monitoring and regulating the private security sector. Former Deputy Minister of Police, Ms Maggie Sotyru concurred when she stated that she will anticipate the PSIRA council to sort out non-compliance in the bouncing industry and further pay attention to the forgotten issue of bouncers who are mostly armed in their posts. In 2008, former President Thabo Mbeki stated in his State of the Nation Address that the private security service providers were necessary at that stage of South African history, because of the need to consolidate the mechanisms that were created to sustain a democratic equitable society (Berg, 2008). It is important to be able to understand the nature of the relationship between bouncers and patrons and investigate how it leads to violence and aggression. Understanding the root causes mean intervention strategies can be implemented to prevent such issues to occur in future.

III. METHODOLOGY

The researcher applied the qualitative research method to gain a deeper understanding of the roles and operations of PSIRA in terms of ensuring compliance and enforcement in drinking establishments. Non-probability, purposive sampling technique was used to recruit two

PSIRA staff members from the compliance and enforcement departments respectively. Semi-structured, face-to-face interviews were conducted with the two PSIRA staff members. To analyse data, the researcher engaged in thematic analysis. In complying with the principles of thematic analysis, the researchers engaged in the following steps; Familiarizing with the data, generating initial codes, searching themes, reviewing potential themes, defining and naming themes, and lastly, producing the report.

IV. FINDINGS

Section 23(1)(c) of the PSIR Act states that security officers must be trained for the positions that they hold. It is not clear where private security officers that works as bouncers, employed by smaller companies are adequately trained and whether they have proper and sufficient resources to perform their roles satisfactory (Theletsane, 2015). Relevant training and grade courses need to be completed by private securities depending on job descriptions. For instance, grade E and D should be completed by a private security officer that performs access control and search goods or vehicles. In addition, a special event course should be completed by security officers who serve at events (Mbhele, Mphatheni, Mlamla & Singh, 2020). It is highly likely for bouncers to engage in violence because of inadequate training and limited arrest powers, as they are fewer recourse options (Mbhele et al 2020).

PSIRA enforcement officer also confirmed that training and qualification accumulation is a major challenge in the bouncing industry. Below was the response from the enforcement officer:

“One, most of the bouncers are not trained. Secondly as they are not trained, they are not registered as security service providers, which automatically suggests that most of them are operating illegally; hence I have just highlighted that they are neither trained nor registered as security service providers in terms of the PSIR Act. Another challenge is that most of them are foreign nationals, the PSIR Act does not allow foreign nationals to be registered as security

service providers, some of them do not have legal citizenship.”

Private Security Industry Regulatory Authority (PSIRA) was established in terms of Chapter 2 of the PSIR Act. Section 3 of the PSIR Act states that “the primary objects of the Authority are to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and the interest of the private security industry itself.” This means that PSIRA needs to continuously monitor compliance of the private security industry to ensure that they act in terms of the principles contained in the constitution, PSIR Act and other applicable law. However, the study found that PSIRA fails to efficiently monitor the work of bouncers. The government is also aware of this shortcoming as the former Deputy Minister of Police, Ms. Makhotso Maggie Sotyru stated in 2016 that PSIRA is not effective enough as it should be and it must bite harder against non-compliance (BUDGET VOTE SPEECH, 2016).

PSIRA staff members, the enforcement officer and compliance officer were asked on some of the reasons PSIRA fails to efficiently oversee the conduct of bouncers. The enforcement officer responded by saying:

“It has been a while since we last visited bouncer to oversee their conduct and compliance, maybe five years ago. Because before inspectors would make means to work at night but working at night is a challenge because you must make sure that security is tight and we need full cooperation from SAPS or the metro police. So, it needs a lot of stakeholders and role-players for the operation directed for bouncers. Because another challenge we face is that they are aggressive in nature, so if you don’t have enough manpower it is not easy to deal with them. Most of them are well built so if you are slim, they can be very disrespectful. We need manpower to deal with them.” He further alluded that:

“We have had operations at night and last time it came to a point where this issue was raised in the meeting. This issue goes a long way it’s not only a

matter at PSIRA only. We need to work together with the police to make sure that this matter is sorted out. Another challenge that we have are with policing areas, we can negotiate with a station at Durban central, they will only cover their area, they will not go outside their jurisdiction like Berea.”

PSIRA compliance officer when asked about their role of overseeing that bouncers comply with the code and conduct set by PSIRA, he responded that:

“Look at the end of the day, all these bouncers they are registered to a bouncer’s association. They are registered to a bouncer’s association, then the bouncer’s association police the bouncers themselves. They make sure that the people that are being placed at the different venues are registered and trained and act in a professional manner. What we do, we haven’t done it in for a long time, we did at one stage, we were going around at night, like of instance on Florida road, we went to all the clubs at Florida Road. And we actually picked up quite a few of the bouncers that were not registered and we laid criminal charges against. And I had a meeting with the bouncer’s association and they fixed the problem. They basically made an undertaking to say they will ensure that the bouncers they utilise are registered and trained accordingly and act in a professional manner. So, the challenge we have is we do not work at night. We work from, basically from 7h30 to 16h00. We had to get consent from the head office, to work at night, to do this, to perform this specific function of checking on bouncers. Then we arrange to work with the SAPS. Because these bouncers are very aggressive, so if they are not registered or trained they fight against you, if they are registered and trained they work with you. So, we take the police with us. This is a backup, so when we interview the people, and there’s any conflict or violence the police step in and do their job and we do our job. And if people are not registered we arrest them we detain them at the police station and we lay criminal charges against them. But yeah, so this is basically what we have been doing with the bouncers. It is not an easy thing to police, because these bouncers they do not work at one specific club. If it’s a busy

night, they can put one bouncer at this pub, and one bouncer at that pub. But they are all in communication with each other. So, if there's a problem at one hotel, these other guys they move across to that hotel and they assist with that problem. So, they don't work at a specific place. So, tonight you can check the guys registered, but tomorrow night the other guys work there, and another night another guy is working there. So, you can't go back to do research to make sure that they continuously employ registered and trained people. So, it's not an easy thing to police."

The researcher noticed that staff at PSIRA only refer to oversight that occurred in Durban only. The researcher became interested in why such initiatives never occurred in other areas. The compliance officer responded by saying:

"We have this office here and we work the whole of KwaZulu Natal (KZN). It is challenging but you must understand it's very costly to have this office here. You can't just have an office in Pietermaritzburg, Ladysmith, Newcastle, it's too expensive. It's too expensive to maintain it. Even now we've been trying for three year to put a branch in Empangeni and it's only now that it's coming to finality where they going get that branch up and running. But it has taken a long time. And we have got to employ the staff and everything. But we just need the premises now, the lease agreement and whatever, and get the office sorted out in terms of operational conditions. We did an oversight operation once in did Margate and we found a lot of problems there. And another operation was here in Florida Road. Oversight of bouncer in KZN is inefficient."

V. RECOMMENDATIONS AND CONCLUSION

Recommendations for the Private Security Industry Regulatory Authority (PSIRA)

5.1 Expand to Other Regions in KwaZulu Natal and the Country

The private security industry in South Africa is one of the largest and fastest growing industries in the world. The private security industry in South

Africa is larger than the South African Police Service. It is difficult to understand why there are not enough branches established to support the increasing number of private security companies and officers. PSIRA should expand to other regions in KwaZulu Natal and also across the country. Expanding will ensure that the high demand of regulation, enforcement and compliance are met. Currently in KZN, it was reported that PSIRA only exist in Durban. This makes it really complicated for PSIRA to regulate the private security industry, especially in drinking establishments, where there is a high number of non-compliance.

5.2 Strengthening Compliance and Enforcement Oversight

It is key for PSIRA to hold oversight to enforce the law and ensure compliance. However, as stated above, this cannot be possible until PSIRA expand until they reach the capacity to carry these enforcement and compliance oversight. Oversight will ensure that the security industry is well regulated, especially in the drinking establishments where regulation is lacking. It is the responsibility of the compliance department to ensure that the security industry in the drinking establishments is aware of the rules and takes necessary steps to comply with the rules and regulations governing the occupation of the bouncers. The enforcement department deals with security service providers who evade compliance with the purpose to try and enforce them to complying with the law. This department is paramount because they inspect, if non-compliance is found, investigation occurs and a criminal charge will be applied. This action can enforce bouncers and drinking establishments to comply. These principles are not currently applied in the security industry in drinking establishments, however, strengthening compliance and enforcement with ensure that bouncers are well regulated and comply with the law.

Enforcing the regulatory and legislative frameworks can also create better opportunities for bouncers in terms of salaries and other employment benefits. In the study i conducted in

nightclubs in Durban, bouncers that were interviewed mentioned that they were paid way less than expected and further receive no benefits such as health insurance etc. This is largely due to no training certificate and not being registered as a private security personnel, and also for not being employed by registered private security companies. Enforcing the PSIR Act will encourage untrained and unregistered bouncers to attend training college so that they can register with PSIRA. This will in turn provide them with better opportunities in terms of salaries and employment benefits.

The bouncing industry is notorious for violence and other criminal activities. The Cape Town nightclub security wars that occurred in the recent years is a perfect example of this, where security companies were battling to gain control in numerous nightclubs in Cape Town in order to sell drugs and engage in other illegal activities. In 2012, a popular company that operated in a majority of nightclubs in Cape Town was reported by PSIRA to be operating illegally because it was not licensed. This seems to be a trend in this space. The industry lacks credibility and this can be attributed back to the lack of enforcement and oversight.

5.3 Conduct More Research on Bouncers

PSIRA has a research division that conducts empirical research to gather knowledge and understanding of the private security industry in South Africa. However, no research has been conducted to look at the bouncing industry in South Africa. To fully address the security issues that arise in drinking establishments, it is important for PSIRA to conduct research looking at these matters. Research will provide a better perspective on how the bouncing industry is looking like and how to solve problems that arrive from its shortcomings.

5.4 Encourage Equality in the Private Security in Drinking Establishments

The bouncing industry is widely known as a male dominated industry. Most drinking establishments and male bouncers do not believe

that a woman can be a bouncer. This is discriminatory towards women who wish to enter the industry but are not given the opportunity and it further contravene with the Gender Equality Act. Hence, I believe enforcing key legislative frameworks in drinking establishments will close this gap. This act will provide equal opportunities for everyone who wishes to enter the field, irrespective of gender and other discriminatory factors.

5.4 Additional Recommendations for PSIRA

Provide harsher punishment for non-compliance. This will sure be a motivator for those who do not comply, to comply with the law.

Develop a suitable working relationship and agreement with the SAPS to assist with oversight and monitoring of bouncers.

Educate drinking establishments and bouncers on the rules and regulations of PSIRA, so that they are aware of the processes and procedures that are legally recognized within their space of functioning.

VI. CONCLUSION

The study found that PSIRA does the bare minimum to enforce and regulate the bouncing industry. The PSIRA staff reported that they rarely conduct oversight to check compliance and enforce regulation. This is due to incapacity from PSIRA to conduct such initiatives. PSIRA rely on assistance from the police to conduct oversight. The police provide them with man power and protection. Another challenge reported by the PSIRA staff is that bouncers work at night, and to access them, they would need to ensure they have enough support to conduct the oversight at night, considering that PSIRA only works day shifts. The inability for PSIRA staff to work at night makes it quite impossible for them to conduct these oversights.

PSIRA only has one office in KwaZulu Natal, which is based in Durban. This office represents the entire province. This is another challenge that PSIRA is facing. In Pietermaritzburg, there are no PSIRA offices. It would be a huge challenge for

PSIRA to conduct oversight in Pietermaritzburg because they would firstly have to travel from Durban to Pietermaritzburg, and further liaise with SAPS in different jurisdictions to assist with oversight in drinking establishments in different areas in Pietermaritzburg. This is also the case in different cities around KwaZulu Natal. It is quite obvious that PSIRA is understaff and resourced to efficiently regulate the bouncing industry. Hence bouncers do not comply with the law, because there is no one that is going to regulate and enforce it.

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