Feminist Legal Studies
https://doi.org/10.1007/s10691-022-09500-x

Being *Right-With*: On Human Rights Law as Unfreedom

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Accepted: 12 August 2022
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Abstract
This paper develops the notion of being right-with, a conceptual lens that underscores what happens when individuals turn to human rights law and other legal processes and proceedings to address injustices by the state. It does this through a critical multi-directional reading of two Uganda High Court appeal cases that overturned the decision of a lower court which at first instance had convicted Dr Stella Nyanzi of the offences of cyber harassment and offensive communications. Being *right-with* is a regulative and coercive idea within human rights law that animates a violent irrepressible police drive. I use being *right-with* to assert that when individuals make rights claims under human rights law (however radical those assertions might be), they are still imbricated within a mode of liberal humanist subjecthood that is always conceptually unfree. In trying to move away from this conceptual and dialectical trap of being made *right-with* and unfree under liberal humanism, this paper tentatively considers Black feminist theorisations of care and freedom 'to-come', as well as Édouard Glissant's notion of opacity to explore the concept of *being with* elsewhere as a way of articulating practices of Black life that make freedom elsewhere possible.

Keywords Abolition · Care · Human rights · Police · Sovereignty · Unfreedom

"Law is force, law is absolute capitalisation, the hyperbolic appropriation of violence."—(Derrida 2017, 72).
"Poems will transport us to freedom."—(Nyanzi 2020a, 12).

Introduction: Case Facts and Background

In this paper, I discuss two Uganda High Court appeal cases that overturned the decision of the Buganda Road Magistrate Court, which at first instance had convicted Dr Stella Nyanzi of the offences of cyber harassment and offensive communications. In discussing these cases, I am not so much interested in engaging with a

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Published online: 16 November 2022

precise technical interrogation of the respective criminal law arguments. Rather, my focus is on the different possible human rights arguments, particularly those pertaining to the right to freedom of expression and the right to a fair trial that Nyanzi's legal team considered and their multiple articulations and ascriptions of law and politics to argue that human rights law is a paradigm of unfreedom. I have chosen to discuss the Nyanzi cases because they highlight being *right-with* through various human rights negotiations like the right to freedom of expression and the right to a fair trial. In so doing, they underscore how notions of legal liberal humanist subjecthood such as representation, witnessing, victory, and speech operate as police logics of unfreedom.

Dr Stella Nyanzi is a Ugandan human rights activist, poet, medical anthropologist, feminist, queer rights advocate, and scholar of sexuality and public health. In April 2017, Nyanzi was questioned by the police regarding a Facebook poem that criticised President Museveni's wife for failing to follow through on a promise to make sanitary pads accessible. The following is an excerpt of the poem in question:

> Yoweri, they say it was your birthday yesterday. How nauseatingly disgusting a day! I wish the acidic pus flooding Esiteri's cursed vaginal canal had burnt up your unborn foetus. Burnt you up as badly as you have corroded all morality and professionalism out of our public institutions in Uganda. Yoweri, they say it was your birthday yesterday. How horrifically cancerous a day! I wish the infectious dirty-brown discharge flooding Esiteri's loose pussy had drowned you to death. (African Exponent 2019)

Nyanzi was consequently detained and charged with two criminal counts.

For Count 1, Nyanzi was charged with the offence of cyber harassment contrary to Sect. 24(1), (2) (a) of the Computer Misuse Act, 2011, which provides:

> For purposes of this section cyber harassment is the use of a computer for any of the following purposes— (a) making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent.

For Count 2, Nyanzi was charged with the offence of offensive communications contrary to Sect. 25 of the Computer Misuse Act, Act 2 of 2011, which provides:

> Any person who wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanour and is liable on conviction to a fine not exceeding twenty-four currency points or imprisonment not exceeding one year or both.

Following these criminal charges, a hearing of witnesses commenced on 20 March 2019 before the Buganda Road Magistrate Court (American Bar Association 2020). The prosecution called three witnesses: two investigating police officers and a member of the pornographic control committee of the Uganda Law Society. No witnesses testified for Nyanzi. On 1 August 2019, the Buganda Road Magistrate Court convicted Nyanzi of cyber harassment but acquitted her of offensive communication (American Bar Association 2020). The following day, Nyanzi was sentenced to

18 months in prison. Her sentence was reduced by nine months due to time served in pretrial detention in Luzira prison.

The first case, *Stella Nyanzi v Uganda*[1] is a High Court appeal case concerned with a number of issues arising from the lower court, generally falling under the right to a fair trial. The arguments under the right to a fair trial that the appellant put forward are (i) that the learned trial magistrate erred in law and fact when she failed to accord the appellant the necessary facilities to compel the attendance of defence witnesses, and thereby infringed upon the appellant's right to a fair hearing; and (ii) that the learned trial magistrate erred in law and fact when she failed or refused to facilitate the compulsory attendance and examination of witnesses, thus infringing the appellant's right to a fair hearing. I discuss these issues in greater detail under the sections "Procedural fairness" and "Absented witness" in this paper.

The second case, *Uganda v Stella Nyanzi*[2] involves several legal issues carrying on from the first Nyanzi case, of which I will limit my discussion to one further area of interest, namely the right to freedom of expression. The main arguments that Nyanzi's legal team put forward in this case were that (i) the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record and thus arrived at a wrong decision in convicting the appellant of cyber harassment; and (ii) that the decision to prosecute Nyanzi was unlawful because it infringed on her political speech rights under the right to freedom of expression and should not be punished. It is important to note that the arguments made by Nyanzi's legal team were 'successful' in the sense that they determined that Nyanzi's conviction was unlawful. But despite their 'success', I will demonstrate that the outcome of their legal arguments was a form of rendering Nyanzi *right-with*.

I return to a discussion of these issues in greater detail later under my discussion of "freedom of expression". But by way of introduction, a brief interrogation of Stella Nyanzi's political speech which led to these charges and trials is necessary. Nyanzi practises radical rudeness (see Summers 2006; Makoni 2021), a mode of speech developed during the colonial era that satirises, ridicules and holds the powerful to account through public insult and shaming. Nyanzi's own iteration of radical rudeness typically deploys sexual metaphors and imagery and is "aimed at provoking thought, discussion, debate, and action" (Nyanzi 2020b, 553). For its practitioners, radical rudeness is often theorised as a speech form akin to "protest", "civil disobedience", and "resistance" (Makoni 2021). But for its critics, radical rudeness, particularly in the context of the Nyanzi trials, is understood as 'obscene speech', 'offensive speech', 'pornographic speech', and as 'cyber harassment'. As such, radical rudeness is made legible to us via its criminalised and dialectical/oppositional relation to liberal-humanist law and order in the polis.

In this paper, I want to situate radical rudeness differently, i.e. more capaciously. That is to say, I want to think of radical rudeness as a holler, scream, and sometimes quiet non-linguistic excess of Black speech that is irreducible to law. Radical rudeness in my usage refuses to be apprehended, accounted for, and subsumed by the disciplinary and order-making apparatus of law, and at the same time radical

[1] [2020] UGHCCRD 1.
[2] [2020] UGHCCRD 2.

rudeness also exceeds law and its pre-calculated legal-juridical limits. Thus, when I mention radical rudeness in relation to Nyanzi here, I am theorising a speech form that not only critiques, condemns, invalidates, and satirises those who hold power, but crucially, I am also theorising an uncontainable speech form that carves out and articulates elsewhere modes of Black life, relationality, care, and freedom that are beyond, outside, and after law's grasp (despite being criminalised by laws such as 'offensive speech' and being delimited by the right to freedom of expression under human rights law).

Approach

This paper examines human rights law as a stream and process of law. In doing so, it suggests that human rights law belongs to a disciplinary mode—*and at the same time, a supplementary or more than disciplinary mode*—that orders society, what we might following Rancière (1999) call a police order or the police. Rancière (1999) has used the concepts 'police', 'policing', and 'police order' to name any order of hierarchy. He invokes this broader concept of 'policing' to indicate that both policy-making and the police undergird the nature of his concept of the police. To crudely modify Rancière, who has stated that "the police is essentially the law"[3](1999, 29), I think of police as a transcendental polysemic structure that determines, manages, and administers public, private, and personal social orders through what we might call the police force (Johnson 2014). All these three modes of policing, i.e. determination, management, and administration, are transcendentally dispersed and configured by written and unwritten social-contractual laws, norms, and conventions that also shape disciplinary modes and orders of relation. They form the basis of a police-d social structure of governmentality[4] (by bureaucracies, parliaments, and courts) that renders all citizens of the *polis* aright with the sovereign.

Police order is thus the result of law insofar as there cannot be police without law, for law is the very condition and ontology of police (Kalulé and Trafford 2020). Law is contracted, instituted, and enforced by police both presently (physically) and non-presently[5] or mystically as Derrida (2002) might say. For the purposes of this paper, law is a metonym of police, arising from the sovereign. Whilst some might argue following Schmitt and Kelsen (2015) that sovereignty is divisible from law, in the sense that the sovereign can relieve itself of the condition of law, I want to stress

[3] Arguably, the need to make clear philosophical distinctions between police and law/human rights law gives pause, for it has the tendency to obscure law/human right's law's role in constructing, transmitting, and preserving the police and liberal unfreedom. Rather than make distinctions between law/human rights law and police, I am more interested in thinking through how police and law as well as human rights law leak into each other to play a combined role of keeping us *right-with*, therefore sustaining violence and unfreedom.

[4] On governmentality as an art of government controlling the actions of others, consider Foucault (2007, 115), and on governmentality as a technology of governing through rights, see Sokhi-Bulley (2011).

[5] Police or policing is dispersed and supersedes the institution of the police and its ostensive patrolling of streets. It is as a *form sans form.*

that law—or rather the monopoly/"force of law" (Derrida 2002)—is what authenticates sovereignty in the very first place, giving the sovereign an absolute sense of 'enforceability', presence or force, what we might call police. Law multi-directionally reproduces and transmits the culture of police or policing. And so, to paraphrase Benjamin, "law-making is police-making". Which is to say, "Law-making is power-making, assumption of power, and to that extent an immediate manifestation of violence" (Benjamin 1996, 248).

In my discussion here, I develop a critical concept of human rights law that I call being *right-with*. I propose that being *right-with* is a spectral legal moral-contractual obligation, injunction, or imperative that is also a police imperative coextensive with "the dasein of the polis" Derrida (2002, 278) that coralls that corrals, coerces, and sanctions reciprocal self-regulation amongst individuals in the polis on assignment from the sovereign.

The concept of being *right-with* draws my attention to the fact that both law and police are inseparable, in the sense that they guarantee each other's unlimited survival/immortality and enforceability. Police orders (and in fact the police itself) cannot exist without law, and neither can the law exist without the police. The police as enforcers or guardians of law are subject to the force of law and are in a very "onto-theologico-political" (Derrida 2017, 21) mode obliged (on pain of punishment) to follow the very spectral form of law that they enforce. The police are policed and arrested by law itself. Even when they act outside the law they are still within the law because their functions of ordering fulfil those of law, i.e. to conserve law, found, enact, and produce more law. In this sense, law is still imbricated within precalculated infinite contours of legal-juridical limits and unilateral coercions of violence.

Although human rights are often thought of in terms of what provides freedom, I want to emphasise the disciplinary drive within human rights law that enforces and polices 'rights' as liberal universal homo-hegemonic ideals of freedom. If we consider the right to freedom of expression, for example, permissible speech can only exist if it does not threaten the public order, safety, and security of the polis. In this sense, freedom of expression as a human right pre-determines, disciplines, polices, and normalises how to speak 'rightly'. Ratna Kapur (2018, 101) further shows how rights prop up police-d hegemonic discourses of security, militarism, and war. I emphasise the police drive inherent within human rights law and law generally for a reason. As I show through the Nyanzi cases, when we seek freedoms and rights in human rights law, we desire unfreedom from a liberal-utilitarian police order. And so, to hold onto human rights law or to make assertions of autonomy and liberty under human rights law is to imbricate oneself within a mode of subjecthood that is always conceptually embedded in unfreedom (Brown 2002) of unfreedom. In using

the word unfreedom, I stress that the freedom provided by human rights is not a freedom worthy of its name but rather a mode of unfreedom sanctioned by the violence, power and authority of law (Benjamin 1996, 247–248) that intends to make individuals *right-with*. For this reason, in the coda at the end of the paper, I suggest a departure from forms of freedom founded in human rights law (and indeed all law) toward ways of *being-with* elsewhere after law and beyond law. Before I commence my discussion of the Nyanzi cases, it is necessary for me to articulate theoretically what being *right-with* entails and how it relates to human rights law, police, law, and unfreedom. I do so in the following section.

Being *right-with*

Because rights are the interests that secure the sovereign and the liberal order of the polis, I want to think of rights as a social-contractual mode of liberal being (or subjectivisation/constitution/conjoinment) that makes one *right-with* sovereign power. With the phrase being *right-with,* I am expressing what happens when individuals use rights as a licence to belong to the polis and to participate in politics, to own property (real estate, personal chattels) and have legal personhood. If indeed rights permit humanity, they also permit autonomy, which permits liberty, which permits the possibility for being heard within a public. Citizenship is merely a state as well as process of being *right-with*, of having the right papers and being positioned in a relation of charge, protection, command, and custody by the sovereign. To be *right-with* is akin to being elevated ontologically but also spectrally into the faith of western liberal humanism. It is finally to become valued, dignified, and to arrive as fully human—i.e. away from subhuman/nonhuman impurity.

Thus defined, a sovereign (human or state) is one that self-presences universally as sovereign, in the tradition of what Derrida (1973, 51) calls the metaphysics of presence. Under the polis, there is no self but a theologico-political illusion of self that is made of sovereign selves. That is to say, a self in the sense of political subjecthood and personhood does not exist insofar as it is always conjoined to the absolute sovereign. To become constituted as sovereign is also to stand in for other sovereigns and bear the trace of absolute sovereignty. And yet, there can never be a singular sovereign, because absolute sovereignty is by definition universalisable. It is constituted by and gains its authority from multiple coexisting/overlapping/'polycentric' (Casey 2010) sources and extensions of power. Each of these bears its own trace of sovereignty and ensures that every other sovereign is *right-with*. As Hobbes (2016) reminds us, this need for collective self-preservation defines the sovereign, and is the lifeblood of the Commonwealth.

Sovereignty does not remain only with the absolute sovereign, i.e. the state or monarch or representative of the executive. All sovereign bodies are auto-mated metonymies or isomorphs of the absolute sovereign. Sovereignty filters down to each citizen under a system of politics where everyone in the polis becomes sovereign by co-signing the contractual command of the absolute sovereign. This, as Kant (1991, 254–256) prescribes in the *Metaphysics of Morals*, is a moral commitment of reciprocal relatedness to a self-regulating "general united will" (Flikschuh

2012, 22). It presents all individuals with a pre-originary/co-originary moral injunction or contract of duties, responsibilities, and virtues that elevate them as culpably *right-with*, duties, obligations, and requirements that they must ascribe to on pain of punishment, banishment, or death. Being *right-with* hence implies a sacrifice to the absolute sovereign. This is always a compromise, a sacrifice, a conditional trade-off. This trade-off, which could be read as a Kantian universal law, codifies relation under liberal modernity and is essential to gaining respect and conformity from others—as sovereign co-humans (with rights) that are *right-with*. It is this sovereign humanity that deputises for the absolute sovereign and in so doing thusly provides humans (as well as the absolute sovereign) with incidental guarantees of utility, power, and security. Under liberal humanist frames, being *right-with* becomes culminated as virtue, as responsibility, and as a duty of humanity that is universally self-legislating, one that is a moral law not necessarily founded as law. This law, which is based on contractual sacrifice and on principles of harmony, peace, and social security (for example in the police-d language of what—or, that which—best one reasonably/foreseeably ought to do), later finds itself "codified" as statute, charters, peace treaties, international conventions, or declarations such as the Universal Declaration of Human Rights. It incorporates and justifies legal-juridical limits and unilateral coercions to "law" and its subcurrent of human rights law. I want to suggest that the moral-legal contract or imperative of being *right-with* is a regulative idea within human rights law (and in fact all law) that animates a police drive.

Saidiya Hartman (1997) and Rinaldo Walcott (2018) draw light to the fact that within a liberal framework, individuals can never be free owing to the fact that they might fit within the state's vision of law as citizens aright with the sovereign, but they can also still at once remain outside the law's reach of protection insofar as they are not counted as fully human. For Hartman (1997) and Walcott (2021), Black people (and for our purposes indeed all minoritised and racialised people) are inescapably conjoined to the liberal freedoms/unfreedoms of law. They are inside the law, yet at the same time also outside it, as managed, racialised, and disciplined subjects, "no-bodies" (Ferreira da Silva 2009) or deviant "monstrous excess[es]" (Puar 2007, 99). Their liberal 'human' freedoms are determined by law and at the same time inhibited and truncated by law. Thus, even where law under the auspices of liberalism claims to have an emancipatory and egalitarian effect, such law is still imbricated within precalculated legal-juridical limits and unilateral coercions that engender quotidian instances of violence that preclude them from partaking "of the resplendent, plenipotent, indivisible, and steely singularity [i.e., abstract universality] that liberalism proffers" (Hartman 1997, 12). Hartman's and Walcott's critical readings of law and rights within liberal modernity are significant here because they expose the auto-violence/force of law that marks all liberal legal-juridical signatures—including human rights law. Hartman's and Walcott's shared analyses of

the inescapable unfreedom of law also causes us to question the desirability i.e. our police-d drive or impulse to claim the rights and freedoms that human rights law proffers.[6] It suggests that the horizon of rights and freedom under liberal humanist frameworks is deceptive, illusory, violent, and contradictory because it is founded originally by and certified legitimately by unfreedom (Walcott 2021). Relatedly, this liberal humanist structure of being *right-with* as unfreedom is also underscored by Ratna Kapur (2018, 75) who frames rights as liberal humanist regulatory and disciplinary tools that are oppressive to subjects through their implication into specific processes in which their freedoms are delimited incalculably by the state.

Moreover, the very structure of human rights is coded with unfreedom through suspension and subtraction. Following classical human rights jurisprudence, the rights that come from human rights are always weighed against various rights claims and balanced against social, political, and economic security. They are drawn and structurally formulated in a system of calculus and delimitation. Rights are never absolute. Fundamental human rights are also never absolute, especially in situations where they threaten the order of the polis (the police) and thus and the power of the absolute sovereign (Mavronicola 2012). Hence, when rights are at issue, national courts have to weigh them on an incommensurable "scale without scale" (Derrida 2017, 119) against what they conceive or perceive to be a universal aggregate of a social communal experience and morality.

Consequently, rights are read against, determined, and justified by contextually contingent police-d juridical principles such as the margin of appreciation, proportionality, and subsidiarity. The aim of these principles is to seek to disambiguate harm and to prevent threats, disruptions, or injury to the polis' normative public order. But human rights in this Kantian liberal humanist schema reinscribe a police drive of being *right-with*. This occurs through an operationalisation of public/private trade-offs, that involves the limitation of rights/freedoms so as to preserve the interests of freedom and security of sovereignty, i.e. of the public majority, of deputised sovereigns, and of the absolute sovereign. Whilst human rights laws might protect the rights of some, they also always already conceptually suspend, restrict, or subtract the rights of others.[7] This paradoxical (yet also necessarily) suspension of rights is both pre-emptive and permissible, and it functions under a structure of legal reason/calculation that mirrors what Derrida (2010) has called the reason/calculation of the strongest. Suspension is how all law including human rights law endows itself this authority.

This forfeiting of freedoms to secure scraps and bits of other freedoms, especially the freedoms of the majority, is where human rights begin to follow a structure of unfreedom (through a subtraction of freedom), akin to what Katherine McKittrick (2014, 18) calls "the mathematics of unlivingness". Human rights therefore become a precalculated self-defending, self-regulating regime of unfreedom on "a

[6] I am not interested in making the argument, as Rancière (2004) and many others have argued, that rights can still be a rallying point around which important ethical claims for the 'rightless' can be made and/or contested. I insist that in making these dissensual claims, individuals are subjecting themselves to a coercively consensual police-d order that is always already violent and will (sooner or later) delimit such claims under a calculus of liberal unfreedom.

[7] Simmons (2011) draws our attention to the fact that human rights have always carried with them a pattern of cauterisation that always excluded indigenous people, Africans, and colonised people.

scale without scale" (Derrida 2017, 119) that disciplines, neutralises, assimilates, or frustrates by "excessive force" (Goldberg 2019) any and all who refuse or resist the imperative to become *right-with*.

Making Nyanzi *right-with*

In April 2017, Stella Nyanzi had been frustrated by the government's failure to fulfil a 2016 pledge to provide sustainable menstrual hygiene education and sanitary pads to Ugandan schoolgirls (Nyanzi 2020b). In addition to launching and popularising a mutual aid crowdfunded campaign—*#Pads4girlsUg*—that sought to distribute pads and provide menstrual education to schoolgirls, Nyanzi also took it upon herself to critique and bring to light the failures of the government as well as the president and his wife by highlighting their unfulfilled promises through a series of 'radically rude'/condemnatory posts and poems on her Facebook page (Nyanzi 2020b).

The Uganda government and public authorities decided that she had overstepped the Kantian universal law of reasonable virtue and moral responsibility not only with this poem (and its "offensive" references to the president's death like: "burnt and drowned to death" and his mother's "cursed vaginal canal") (See, African Exponent 2019) but also with Nyanzi's determination to publicly disseminate education methods and processes concerning menstruation that transgressed cultural, social, and gendered norms. *How dare she?* Nyanzi thus needed to be made *right-with* by and to law.

Consequently, Nyanzi was arrested, subjected to several legal-juridical disciplinary processes, and later convicted of cyber harassment. Following my theoretical discussion earlier, I want to suggest here that the legal processes (proceedings and convictions) Nyanzi was subjected to could be thought of as what happens when one is coerced or police-d into being *right-with*,[8] in the sense that Nyanzi is compelled to recognise the very authority of the sovereign that she renounces through law. Law becomes police. It makes Nyanzi *right-with* through legal disciplinary processes that subtract and suspend her personal freedoms, and freedom dreams (Kelley 2002) which here are perceived as threats and disruptions to the Ugandan government and Ugandan public morality.

Accordingly, the legal processes make Nyanzi *right-with* by conjoining her to the sovereign's moral-legal universalisable economy of sameness—which is also its policed form of communalised consensual order and authority. This forces Nyanzi to be counted as *aright-with Aright-with* and "aright" here are extensions of right and of being *right-with*. I use them in a Jobian biblical/theological sense, as a play on being 'set right' in a right form without error as well as being set right through liberal humanist legal-juridical correction. At any rate, Nyanzi's disorderliness becomes aright, rightly and at *right-with*the state (i.e. *right-with* or

[8] It is worth emphasising that the Ugandan system of criminal law and human rights that Nyanzi is subjected to is colonial as well as neo-colonial and inherently a continuum of a colonial police order whose purpose was to police the populace (see Lwanga-Lunyiigo 1987).

a disciplined-and-disciplinable member of the polis) and in doing so conceptually limits or reduces her performances and imaginations of freedom to a liberal humanist register. *Aright-with* and *'aright'* here are extensions of right and of being *right-with*. I use them in a Jobian biblical/theological sense, as a play on being 'set right' in a right form without error as well as being set right through liberal humanist legal-juridical correction. At any rate, Nyanzi's disorderliness becomes aright, rightly and at *right-with* the state. Her disorderly acts of radical rudeness as refusal or waywardness are apprehended, accounted for, and subsumed inescapably into the disciplinary apparatus of law. In this sense, law and its internal discourse of human rights becomes a catalogue of coercive interruptive police tools that have the effect of suspending Nyanzi's freedom dreams such as her ability to envisage the end of Yoweri Museveni's presidential regime through her speech and Facebook poetry as well as participating in care-making practices, such as her *#Pads4girlsUg* campaign.

Freedom of expression

As discussed earlier in the introductory section, I want to look at both charges that Nyanzi was convicted of, but I want to look at them from the angle of offensive speech. I want to think of these 'offensive' words as 'disorderly'. I am not thinking here of the disorderly as a descriptor of that which disrupts or is deferred or in a dialectical relation to order. I want to suggest that the disorderly in Nyanzi's speech is not only a reactive affront to law but that it is also in excess of the dialectical, which is to say Nyanzi's offensive speech also erupts the very existence of law/police and their legal-juridical dialectic structure of right/wrong.

It is therefore inaccurate to think of Nyanzi's speech as being abstractable under law as being answerable to law. Nyanzi's disorderly speech is uncontainable. It cannot be limited to a mere denial of speaking. All law can do in such a situation when faced with uncontainable speech is censure. In her essay *Can the Subaltern Speak?*, Gayatri Spivak suggests that the disorderly who are subordinated by legal duties can never be heard by the imperial polis and its itineraries of silencing and repression (Spivak 1988, 296). Their speech performances can only be heard radically elsewhere outside western legal representations, in death, after/beyond law. Relatedly, I want to suggest that Nyanzi's poem is disorderly and that it operates in another elsewhere radical register of speech i.e. 'radical rudeness' (see Summers 2006; Makoni 2021) that is beyond law and will not be heard as *right-with* by the polis. And so the denial of witnesses is a way to censure, alongside (and within) this right to freedom of expression.

Radical rudeness involves the use of public insult to criticise those in power. It belongs to an older radical tradition of dissent via secret disruption, rumourmongering, and arson. Nyanzi stretches its anti-colonial heritage and adapts it to her African feminist and queer temporalities of *being with*. Thus, Nyanzi's poem not only curses the president, but also internally deconstructs the orderliness of police and its essentialist patriarchal cisheterosexist heteronormative configurations. Nyanzi knows that her scatological form disrupts and cuts through police-d orderliness and its desire to make her *right-with*. Nyanzi bursts open Museveni's

internal legal-hygienic sewer and exposes its orifices of hidden policed terror for all to see. Nyanzi wants to insist that the state's legal regulatory cavities should be opened, and when we open them, they are festering with violence and not as clear and clean as they claim to be.

Returning to the first case hearing of witnesses brought before the Buganda Road Magistrate Court, we are told that the first prosecution witness, investigating officer Bill Ndyamuhaki, testified: "the post is an abuse to the president Yoweri Kaguta Museveni … Yoweri Museveni is not the one that has corroded our morality and professionalism out of our public institutions … No, Yoweri Museveni is not the one that has aborted any semblance of democracy, good governance and rule of law" (American Bar Association 2020, 20).

Bill Ndyamuhaki further said that he had interviewed just "one member of the community" about the poem and had thereafter "c[o]me to the conclusion" that it was "disgusting to the community" (American Bar Association 2020, 21). Ndyamuhaki stated that he had not interviewed any women during his investigation and that his fundamentalist Christian religious beliefs influenced his testimony (American Bar Association 2020, 22).

Reading these comments, one cannot fail to recognise the sexual and gender language games at play in Nyanzi's speech. Nyanzi is well aware of the fact that radical rudeness is disorderly and that it will trouble law's gendered privileging of the masculine by making present her gender and indeed other genders not thought of in the legally sanctioned "patro/logo/theocentric" (Armour 1997, 204) hierarchical order of man. Nyanzi targets the very jugular of law, the name of the head, the power-father, and his mother "Esiteri's loose pussy" (American Bar Association 2020, 6) and all their deputised, (s)elected, and co-implicated sovereign witnesses like Ndyamuhaki, who uphold, represent, and mediate its police sensibilities, as well as the co-regulatory fictions of genderism, decorum, unisonance, universality, and rationality that establish political legitimacy and order.

Nyanzi's performance of radical rudeness presents an existential challenge to liberal humanist law and how far it can accommodate the unassimilable or disorderly. It shows how law's homo-hegemony is always already compromised, fissured, and made vulnerable, by the disorderly expression and speech of those it seeks to overcome, apprehend, define, identify, or pre-empt whether they be risqué queers or terrorists or animal rights activists or even protestors. But crucially, this legal vulnerability never endures once we start to consider law's abiding *gewalt*/mystical force/violence/power.

Gewalt provides law with an 'aggressive' and overcompensatory structure that prevents it from collapse when affronted by the disorderly. One way this happens is through law's own conceptual suspension. Suspension or restriction of rights, especially when faced with the disorderly, is central to the very functioning of human rights law. This is why public authorities have power to restrict rights if they can show that their actions are lawful, necessary, and proportionate in order to protect national security, territorial integrity (the borders of the state), or public safety. Through such legal-juridical suspension, the very human rights structure that promises to provide and protect freedom, equality, and expression becomes a police

schema more suited to postponing rights indefinitely and exceptionally (Derrida 1992, 206) for the purposes of securing its survivability and public order.

Consequently, law as police preserves not only public order but also its very authority through its ability to grant but also suspend rights and freedoms. These rights and freedoms are only granted to the orderly and to the befitting because to do otherwise would be to abolish law, police, and sovereignty. This is why in the Nyanzi case, law only gathers fitting witnesses—who are really assigned patriarchal (co)sovereigns—like Ndyamuhaki to speak in an orderly manner so as to regroup and consolidate public order. At any rate, there can be no disorderly witnesses to and for radical rudeness, there can be no witnesses to radical rudeness' curse of dissent.[9] This curse then was Nyanzi's, and hers alone. If witnesses were allowed, then there would have risked a contagion of the curse. The curse had to be contained. To provide witnesses to radical rudeness would give credence to the curse and thus undo law's police function of making Nyanzi *right-with*. For this reason, Nyanzi's speech remains absented and yet present as its own undeniable witness.

Absented witnesses

There were no defence witnesses for Nyanzi in the Magistrate Court case and in the High Court appeal cases. It is not so much that there were no witnesses or that the law made a rule that there be no witnesses, but rather no witnesses were called and so Nyanzi could not partake in testimony. Here again, law deploys the suspension of the appellant's witnesses as a univocal programme of truth regulation in a desperate attempt to maintain its own phallic ideas of truth against compromise and collapse.

Because testimony belongs to a socio-political topography of 'truth telling' that posits itself only through the exclusion and delimitation of that which does not constitute rational/phallic/upright/*right-with* notions of 'truth', it raises questions about the status of (bearing) witness. Women, Berlant (1997, 174) writes, are "citizens in masquerade" whose gender makes them disorderly and as such less abstractable within liberal political schema. This is why Nyanzi, a woman, who is essentially being tried for attacking the biologic organs of the president/and his mother and their univocal memory and dissemination of truth, cannot be given access, will not be given access, for to do so would expose the fiction of truth and embroil the law into an unpoliceable crisis of speculation, into a kind of disordered gender trouble.

And yet, the cisheteronormative and reproductive order of gender/genre as testimony and their verdict of credibility is what must prevail (Agostinho and Thylstrup 2019). Heteronormativity and the patriarchy is *right-with*: it is police, it is law. It is what must be represented so as to preserve the potency of the sovereign, its familial bloodlines, and its paternalistic memory of truth. Law will always bring into question, undervalue, or disappear the witnesses of queers, women, and non-men

[9] Nyanzi's poem is coterminous with the curse. The poem as curse could be read as a renunciation or disbandment of the witness' testimonial oath and pledge to preserve public order and to act as a law-abiding citizen.

especially when they seek to expose the legal fictions that underpin normative cavities of politics/police.

Although Nyanzi's team successfully argued that the Magistrate Court's decision was wrong and inconsistent with the jurisprudence of the United Nations Human Rights Committee and African human rights system, particularly that concerning freedom of expression, for example, as in *Rafael Marques de Morais v. Angola*[10] where the Committee found that the arrest and imprisonment of a journalist for penning a series of articles that denounced the Angolan president was incompatible with the right to freedom of expression, I want to suggest that whether or not the Magistrate Court's decision (or indeed any court's decision including the appeal court's decision) is inconsistent or consistent is irrelevant, as it is still *right-with*/in the operation of law. Law is concomitantly wrong and correct, equally wrong, and correct. This either/or dialectical system of winning/victory and losing/loss continues to underwrite law's inconsistent structure of violent means to just ends. Law corrects and invalidates itself through its own processes of judgment. Inconsistency is still a circuitry police detour produced of the law and of law—in a mode and play of paradox and *différance*—that remains faithful (through a logic of winning vs victory) to the *gewalt*/violence of law. That is to say, inconsistency shows how law as an apparatus of 'pragmatics' is always already implicated within forms of in-consistent delimitation, exclusion, calculation, and determination.

Inconsistency does not render human rights law helpless or illegitimate. In fact, inconsistency is the very condition of law that provides it with a conceptual berth to curtail the "both rooted and out there, immanent and transcendent" (Moten 2003, 26) excess of the disorderly. It is therefore not surprising that there is always a degree of variance or inconsistency regarding human rights cases.

The very fact that international human rights law allows for a margin of appreciation infers that human rights law itself sanctions inconsistency. Inconsistency after all is a measure of interminability or 'undecidability' (Kalulé 2019) and is how the sovereign consolidates, creates, exercises, and structures power. Indeed, inconsistency could be thought of as coterminous with the discretionary or interpretive powers and rules that law and the police make, exercise, and deploy in order to regulate the indeterminability of future threats. Inconsistency is a mode of hermeneutic suspension that is indispensable to law, i.e. it is how police order circulates through the carceral reining in of the disorderly in-consistently, within law. Inconsistency is the 'scale without scales' that allows for the subtraction or in-completion of freedom (incising limits backed by the authority of law) so as to preserve unfreedom.

Additionally, another key principle within human rights law that operates to ensure inconsistent calculability within law is proportionality. Proportionality operates within a humanist liberal-utilitarian calculable logic that seeks to make separate distinctions between what is harmful and what is not harmful for the liberal utilitarian purposes of utility and deterrence as an ends-and-means-oriented justice. Being *right-with* is coterminous with "Justice". Proportionality comes as a legal supplement that offers states—on their own terms as they 'see fit'—a varyingly amenable,

[10] U.N. Doc. CCPR/C/83/D/1128/2002.

wide, and exceptional degree of discretion in certain matters, especially in "matters of public order, religious harmony and tolerance in a democratic society, particularly between opposing groups".[11] Proportionality therefore ensures that the sovereign's calculations of harm remain inconsistently intact so as to preserve constitutional order. Proportionality cannot be pinned down; it is the state of exception. As with Agamben's (2005) state of exception, proportionality creates a threshold where fact and law become undecidable and is always already inconsistent.

Inconsistent calculation is law's relentless consistency. For law to be consistent, it would no longer be law. As Kafka's parable "Before the law" (1971) reminds us, the only consistency of law is in its violence which is imbricated by infinite inconsistencies and deferrals. Law seeks no end, for its end would be the end of police order and the end of absolute sovereignty.

Procedural fairness

Perhaps the most important element related to the right to a fair trial in this case is the fact that the court imposed a truncated timeline on Nyanzi's defence and violated her right to call and examine witnesses. These arguments are read as possible, but do they stand? And if so, what are their limitations?

Forcing (and it is forcing because it is done through law's enforceability) one to go through the process of a fair trial is worth looking at. Needing to ask for a fair trial is in a sense needing to ask for permission to be fairly treated within the polis. And yet, as we know, fairness is an abstraction that assimilates us into the moral-legal scales of police. Fairness in a trial is never granted without a sweat, it is always conditional, it is always struggled for, always contested, always weighed against a liberal frame of value, and hence always easily flexibly suspended, easily abrogated, and easily disposed of. The sovereign remains absolute Lord and law giver perfectly subjecting all to inadmissibility before the law. Fairness as an entitlement under law would be undergirded by the social-contractual demands of the police/polis and contingent on morality and respect for the police/polis.

Inasmuch as Nyanzi won the case, or indeed won the right to be *right-with*, her 'winning' is worth probing. What is winning if only within a pre-limited structure of liberal emancipation? Is winning merely a game of "telling the truth about oneself" (Foucault 2014, 14), or is it penance/penalty/a penal code, that operates in adversarial non-resolution and that can be won by only law itself? What does 'winning'—or losing for that matter—account for with regard to understanding of concepts such as truth, lies, guilt, innocence, morality, and sin?

I want to suggest that winning a case in law or through law is what makes one finally *right-with* the state. Through law's mathematics of un-life, law always manages and coerces individuals to conform to the polis and to count themselves as a part of the polis. Law ensures that we forfeit elsewhere modes of relation in order to contract ourselves to a polis/police order, that we become *right-with*, on the right

[11] *Lautsi & others v. Italy* [2011] ECHR 2412 Para 60.

side of the police as citizens. This is a conceptual abstraction that already arrests performances and imaginations of freedom, one that always already assimilates the beyond of law and to this end neutralises its radical potentiality. I would go even further, following Nancy, to suggest that the ideological discourse of human rights law replicates a fascizoid vision to the extent that it calls upon the symbolic themes of national regeneration and discipline (Nancy 1990).

Law is always already unfair, always already predisposed to challenge a witness, to throw them off or to make them *right-with* its own interpretation of truth as right. This is perhaps why there were no witnesses. The disorderly and their interlocutors can have no witnesses before the law. The disorderly shall have no witnesses to/in the polis. There is no collective experience or memory of it, hence no sharing, and hence no 'witnessing for the witness'. Sovereign presence which is absent without ground must still prevail and guard itself without showing to have done so (Derrida 2005).

At this point, we should remember again that law is an operative arithmetical mechanism of order, a mathematics of unlivingness/unlife, that calculates an ends-and-means-oriented justice. Legal calculation involves tactical losses, delays, adjournments, subtractions, substitutions, deferrals, referrals, reviews, cross-examinations, retreats, recoils, appeals, diversions, disappearances, and displacements. Repetition compulsion. It is worth noting that such diversional retreats are merely legal-inquisitorial and interrogatory manoeuvres. At no rate does this mean that legal violence in the trial is relinquished. In fact, on reading Kafka, Derrida (1992) and Vismann (2008) highlight that the goal of these interdictions and interruptions (which are really repressions) is to bolster the sovereign's ideal of morality/decency/purity and prevent its contamination by the testimony of the disorderly so as to keep Nyanzi *right-with*. In other words, it would be tautological for law to disprove itself via witnessing or witnesses, as this would undermine its own *rightness-with* under a Kantian universal moral law and utilitarian compass. All this, as I have mentioned above, is suggestive of law's police drive, whose ultimate function is to fortify absolute sovereignty and its police order.

Certainly, law does not want to be caught out. It cannot be caught out; the fiction cannot fail. Because the law wants to make and mould and portray Nyanzi as *right-with*, it will not admit disorderly witnesses. The sovereign through law must appear to concede a loss this time to buttress the potency of law. This is a non-contradiction.

Crucially, this loss, which is in actuality non-loss or "a neuter that annuls oppositions" (Derrida 1992, 209), is also an enactment of the visor effect—wherein "we do not see who looks at us" (Derrida 1994, 43)—which is a marker of the sovereign's supreme sign of ungraspable and incomprehensible power. Benjamin and Derrida remind us that legal authority needs a visor effect, a faceless figure, a *gestalt/gestalotos*. This is precisely why the law hears Nyanzi, but Nyanzi cannot be heard by the very law that she is called upon or, rather, that she is coerced into calling upon.

The victory further obfuscates Nyanzi's positionality within the polis. Yes, she has arrived, as a citizen, but she also has not arrived. Law wants to make this clear through this moment of obfuscation. Legal obfuscation, like all police obfuscation,

is conducive to power, its con-fusing omni-topological administrative infrastructure (Kalulé and Trafford 2020), runs circles around us, holds us boundaried, in check, sitting, not yet standing and thus *right-with* the police. It mutes or procedurally silences us, causing us to hallucinate in a doubt of memory lodged within ourselves. Silence. Impenetrability. Exclusionary nags. Separation. Adversariality. One never knows whether they will win or if they do not win because they are excruciatingly pummelled with external procedural adjournments that also meld into internal psychologistic violences and obstacles. The possibility of a legal victory is laced with impenetrable hyper alertness, anxiety, and trauma. And so, when they win, they haven't truly won because their freedom has been curtailed time and time again to the point of aporetic irresolution.

This aporetic structure of wins and losses and repeals and amendments is produced by and still follows the escalatory and de-escalatory logic of the force of law and of liberal freedom, interminably. What then happens is a phantasm of justice that makes us *right-with* and robs us of the unattainable rights to liberal freedom. In the end, a legal victory is a divine sign of law's dominance (and redemption) as *right-with*. It places the victor in an emancipatory state of suspension wherein the victor has rights but only rights within limits. Moreover, following my discussion of inconsistency earlier, it becomes clear that in victory, one is never assured of one's rights, as these can be taken away in the future, again, before the law, at a time adjourned without end. Justice through victory arrives or happens through subjection—but in doing so, it does not happen, ad infinitum.

Put differently, human rights, justice, and liberal freedom as supplementary programmes of law cancel themselves out yet at the same time redouble compulsively in the trial by reproducing themselves through the requirement of needing one to be *right-with* by entering the violence of law and being suspended in a permanent trial of right(s) and wrong. The very need to stand right before the law pulls or inscribes Nyanzi within an inescapable structural dialectic or double bind of unfreedom. All this does in the end is to reinforce and establish the potency of human rights law as the universal sovereign's ur-signature/ur-text.

Justice as law's victory

A victory will be given but it is not really a victory because the sovereign knows that they have still restrained one's agentic freedom and subsumed it in the polis. Victory merely serves as a means of restructuring the socio-topography of the polis and not undoing it. The polis remains a police system run by law operating through law and through legal guardianship and custodianship. Legal victories do nothing to unsettle the sovereign. Their purpose is to secure and extend the survival of the sovereign.

A 'loss' is precisely of no effect to the sovereign, for it is not a loss. It is a co-option or arrest of the disorderly into a dialectical (win/lose) legal-juridical system of constraints. Which is to say, winning or losing is how the sovereign makes the disorderly *right-with* by reorienting, sacrificing, and repositioning their actions and performances into the dialectical fold and sphere of the polis politics/police.

At any rate, there is nothing much for us to celebrate with such a 'victory'. Victory remains a perpetual subjection to the *gewalt*, i.e. violence, dominance, and authority of law. There is not much one can do with such victories apart from paying costs like court fines and health bills and waiting for when the law will next pick them out, discipline them, and punish them. Indeed, after her legal victory, Nyanzi collapsed as she left court; at the same moment, "scuffles broke out between her supporters and prison wardens, who fired live rounds into the air to disperse the crowd" (Okiror, 2018). In this instance, we see the violence of law continuing to be dispersed even after the court admits that the right to a fair trial is violated. Winning therefore safeguards the promise of legal violence's own futural repetition. In the end, all legal 'resolution' lingers as nonresolution. Law always already curtails the rights and freedoms of those it makes *right-with*.

Coda: *Being with*, elsewhere

Whilst this paper might be read as an alternative approach to the study of human rights, I want to underscore that it is not. I do not want to think of human rights as a misbegotten, misrepresented, or misinterpreted concept that needs correction. Systems of violence should not be recouped, reproduced, or recuperated or made 'liveable', diverse, or emancipatory, for to do so would still make us *right-with* to the sovereign and would still be unfree, as it would subject us to a coercively consensual legal-police order that is always already violent. And so, in an abolitionary turn that "urges for the eradication of every and all violent holdovers" (Bey 2021, 6) that are foundational to the preservation and transmission of law and of human rights law, and indeed our subordination, subjection, and subjugation by human rights.

Similarly, because I am uninterested in the re-deployment and reduction of concepts and ideas into white western liberal legalism, I want to abandon the paleonymic pull of decolonising law/rights or of 'righting rights' institutionally or conceptually or legally and to turn to anti-ontological inflections elsewhere.

I am gesturing toward what is not legible by law or rather toward what does not even need to refuse to become credible before law or comparable within law and thus legible to law as a right or as rights. I want to draw from opacity (see Glissant 1997, 189–190) to resignify opacity to resignify being-with in a way that unsettles euro-centric liberal humanism and its desire to universalise, police, and make us *right-with*. Opacity is important here because it is not confined or imprisoned by the calculability of law and liberal humanism and their determinable ordered horizons of subjection and violence. Opacity allows for a "departure from the Western imperative of transparency, inherent to which is a reduction" (Bey 2021, 10) of the horizon and possibilities of freedom. Opacity thus invites us to abandon our desire for juridico and liberal humanist legal modes of being *right-with* and gestures us toward contriving a poetics of freedom through *being with* elsewhere, without legal subjectivity, viability, and visibility, without rights and perhaps a *being with* elsewhere even after universal man.

One might ask—how would this freedom through opacity function? Again, following Walcott (2021, 102) by way of Dionne Brand (2018, 166–68), I want to say that freedom is beyond explication, beyond calculation. It is otherwise or elsewhere.

'Otherwise' (Crawley 2020, 7; Olufemi 2021, 7; Walcott 2021, 102) or elsewhere thinking—as I prefer to call it—is improvisatory, it is what bridges us over and beyond the dialectics of law toward the elsewhere and its inlets of incalculable freedom.

Perhaps by all this I mean that this elsewhere—and its articulations of freedom—cannot and should not be politically thought, i.e. theoretically bulwarked, because to do so would be to egologically delimit it or reinscribe/reincorporate it into a legal-juridical order of police, calculability, and determinability. Freedom elsewhere is freedom of the opaque and disorderly before law and human rights. It is a freedom simply free beyond all liberal humanist political emancipation and determination. Such a freedom extends after and beyond legal-juridical conceptions of the human and the agentic. It irreducibly "gambles on the unknown" (Glissant 1997, 8), improvising 'outlawed' and 'disordered' relation—without law, sovereignty, and rights—in its indeterminable gambling.

I want to sit with the 'gambling' possibilities of freedom and care that Stella Nyanzi was improvising, inhabiting, imagining, and dreaming before she was coerced into being *right-with* by law to make the point that elsewhere freedom is not merely utopian, delimited by a horizon of "imagining a futurity" (Muñoz 2019, 21), but is also always already here, it is a "future present to-come"/*à-venir*,[12]performed, practised, and articulated right now, abiding alegally, beyond all law.

Before the trials coerced Nyanzi into being *right-with*, Nyanzi was gambling with freedom elsewhere outside and beyond the known calculability, conditionality, and responsibility of law. This elsewhere is evident in three instances, namely: (1) in her mutual aid crowdfunding campaigns to provide free sanitary pads to schoolgirls across the country, an action which reduced dependency on the exploitative genderist patriarchal logics of the state; (2) in extending the unconditional gift of friendship, celebration, kinship, hospitality, and care to Ugandan queers, whose lives are relentlessly brutalised through criminalisation and subjection[13] to endless police crackdowns (Nyanzi 2014); and (3) in her articulations of freedom elsewhere in poems and speeches of radical rudeness that operate in a disorderly anarchic excess of uncontainable speech that not only disrupts and cuts away at the "rightness" and subtraction of human rights law (and its impulse to homo-hegemonic juridico-legal apprehension), but also names, celebrates, and conjures dreams, possibilities, and imaginations of freedom temporised elsewhere.[14]

[12] Following Derrida (2005), Martinon (2007), and Walcott (2021), the 'to-come' *or à-venir* does not offer a grand theoretical and teleological destination. Rather, it should be thought of as that which ongoingly unhinges the movement of legal conditionality obligation and representation opening us out to *being with* elsewhere as an abolitionary intervallic dis-juncture that does away with the very possibility of human rights and all law in the present.

[13] Over the past few years, a number of queerphobic statutes and bills like the 2013 Anti-Homosexuality Bill, The Anti-Homosexuality Act 2014, and The Sexual Offenses Act have been introduced by the Ugandan government. These laws mark LGBTIQAP+ life and sexual practices as unnatural acts (Nyanzi and Karamagi 2015).

[14] Nyanzi's 'radically rude' speech and writings do not only condemn power in a mode of political resistance. They also immanently imagine freedom elsewhere. Her prison poems include care and survival poems as well as poems that praise and celebrate the freedom and beauty of Black sociality inside and outside prison—and this for her includes the celebration of trans and intersex life. She also offers conceptual and spatio-temporal shifts elsewhere in the 'to-come/'*á-venir* when she writes that "poems will transport us to freedom" (Nyanzi 2020a, 12).

Following Christina Sharpe, these three instances can be theorised as "ordinary notes of care" (2018, 173) that move irreducibly beyond the structure of law, order, and human rights law in the polis. These ordinary notes of care might articulate what *being with* elsewhere beyond law looks like and could indeed look like. I also want to suggest that Nyanzi's notes of care do not merely act as an "antidote to violence" (Hartman 2017; Sharpe 2018, 174) or corrective to police violence, but that they also instantaneously escape the oppositional/dialectical/police grammars of a pre-determined police-d being, and in so doing, they invoke an infinite freedom elsewhere—"a Black freedom to come" (Walcott 2021, 5)—where children, women, queers, trans, intersex, and non-binary people and prisoners (Nyanzi 2020a) do not need rights or have to be right-with but are cared for in alegal opacities and are always already free in their *being with* elsewhere.

In *being with* elsewhere, we should not forget that due to law's emphasis on representing the human in human rights as *Anthropos*, the catastrophic violence against the earth that is often enacted by the global north is often exempted from concern or only given an anthropocentric reading because the earth and its other non-human inhabitants are deliberately suspended from injury and cannot even be made *right-with* under law and human rights law.

Perhaps what remains important then for us is to insist again, always again on a freedom elsewhere that thinks of earth/earthliness in an anti-hegemonic and alegal bearing, which is to say a "poetics" (Glissant 1997, 32) of unconditionality and *being with*. Such thinking, which some might call abolitionary, will demand that we re-turn to indigenous freedom ethics (Alfred 2005) of caring for, being cared for, or "to tend to each other in how we tend to the earth?" as Macharia (2020) asks—and *being with*—sky, river, spirit, crow, wind, ghost, tree, and so forth (see, Álvarez and Kalulé 2021), just as much as it demands that we practise an everyday unconditional erotics of care with each other, beyond human rights law and indeed beyond all law.

Acknowledgements This paper would not have been possible without the thinking, care, and generosity of Carson Cole Arthur, Winona Meridian Marks, AM Kanngieser, Em Mirembe, Justin Joque, Keguro Macharia, James Trafford, Sohum Pal, Jon Tan, Shaimaa Abdelkarim, Buns Batangaza, and Xari Rivera Maya. I am grateful to the anonymous reviewers for their careful reading of this paper and their comments and suggestions.

Author's contribution I, PK, can confirm that I contributed to the study conception and design of this article. Material preparation, data collection and analysis was performed by PK. The first draft of the manuscript was written by PK. I have read and approved the final manuscript.

Declarations

Ethical approval Conceptualisation: Petero Kalulé; Methodology: Petero Kalulé; Formal analysis and investigation: Petero Kalulé; Writing—original draft preparation: Petero Kalulé; Writing—review and editing: Petero Kalulé; Funding acquisition: NA; Resources: Petero Kalulé; Supervision: N/A.

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References

African Exponent. 2019. "The Poem 'Insulting Yoweri Museveni's Late Mother' That Landed Dr Stella Nyanzi in Jail". Available at: https://www.africanexponent.com/post/10524-the-poem-that-landed-dr-stella-nyanzi-in-jail-for-insulting-president-yoweris-late-mother. Accessed 26 July 2022.

Agamben, Giorgio. 2005. *The State of Exception*. Durham, NC: Duke University Press.

Agostinho, Daniela, and Bonde T. Nanna. 2019. "If Truth was a Woman": Leaky Infrastructures and the Gender Politics of Truth-Telling. *Ephemera* 19 (4): 745–775.

Alfred, Taiaiake. 2005. *Wasase: Indigenous Pathways of Action and Freedom*. Toronto: University of Toronto Press.

Álvarez, Clarissa, and Petero Kalulé. 2021. *Marsh-River-Raft-Feather*. Cornwall: Guillemot Press.

American Bar Association. 2020. *Trial Observation Report: Uganda v Nyanzi*. Available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/fairnessreport-uganda-stella-nyanzi.pdf . Accessed 26 July 2022.

Armour Ellen T. 1997. *Crossing the Boundaries Between Deconstruction, Feminism and Religion in Feminist Interpretations Of Jacques Derrida* ed. Nancy J Holland, 193–214. Pennsylvania: Pennsylvania State University Press.

Benjamin, Walter. 1996. *Critique of Violence, Selected Writings; Volume 1; 1913–19*26 ed. Marcus Bullock and Michael W Jennings. Cambridge Massachusetts: The Belknap Press of Harvard University Press.

Berlant, Lauren. 1997. 4 Queer Nationality (written with Elizabeth Freeman). In *The Queen of America Goes to Washington City*,145–174. Durham, NC: Duke University Press.

Bey, Marquis. 2021. *Black Trans Feminism*. Durham, NC: Duke University Press.

Brand, Dionne. 2018. *The Blue Clerk: Ars Poetica in 59 Verses*. Toronto: McClelland and Stewart/Penguin Random House Canada Limited.

Brown, Wendy. 2002. "Suffering the Paradoxes of Rights" In *Left Legalism/Left Critique*, ed. Ford, Richard Thompson, Lauren Berlant, Mark Kelman, and Gillian Lester, 420–434. Durham, NC: Duke University Press.

Casey, Gerard. 2010. Reflections on Legal Polycentrism. *Journal of Libertarian Studies* 22: 22–34.

Crawley, Ashon T. 2020. *The Lonely Letters*. Durham, NC: Duke University Press.

Derrida, J. 1973. *Speech and phenomena, and other essays on Husserl's Theory of Signs*. Evanston: Northwestern University Press.

Derrida, Jacques. 1992. Before the Law. In *Acts of Literature*, ed. Derek Attridge, 181–220. London: Routledge.

Derrida, Jacques. 1994. *Specters of Marx: The State of the Debt, the Work of Mourning and the New International*. New York: Routledge.

Derrida, Jacques. 2002. Force of Law: 'the Mystical Foundation of Authority'. In *Acts of Religion*, ed. Gil Anidjar, 228–298. New York: Routledge.

Derrida, Jacques. 2005. *Rogues: Two Essays on Reason*. Stanford, California: Stanford University Press.

Derrida, Jacques. 2010. *The Beast and the Sovereign*, vol. I. Chicago: University of Chicago Press.

Derrida, Jacques. 2017. *The Death Penalty*, vol. II. Chicago: University of Chicago Press.

Ferreira da Silva, Denise. 2009. No-Bodies: Law, Raciality and Violence. *Griffith Law Review* 18 (2): 212–236.

Flikschuh, Katrin. 2012. Elusive Unity: The General will in Hobbes and Kant. *Hobbes Studies* 25 (1): 21–42.

Foucault, Michel. 2007. *Security, Territory, Population, Lectures at the Collège de France 1977–1978*. Basingstoke: Palgrave Macmillan.

Foucault, Michel. 2014. Inaugural Lecture. April 2, 1981. In *Wrong-Doing, Truth-Telling*, 11–26. Chicago: University of Chicago Press.

Glissant, Édouard. 1997. *Poetics of Relation*. Ann Arbor: University of Michigan Press.

Goldberg, Jesse A. 2019. James Baldwin and the Anti-Black Force of Law: On Excessive Violence and Exceeding Violence. *Public Culture* 31 (3): 521–538.
Hartman, Saidiya. 1997. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*. New York: Oxford University Press.
Hartman, Saidiya. 2017. "In the Wake: A Salon in Honor of Christina Sharpe," Barnard Center for Research on Women available at: https://www.youtube.com/watch?v=DGE9oiZr3VM&ab_channel=BarnardCenterforResearchonWomen. Accessed 26 July 2022.
Hobbes, Thomas, and Marshall Missner. 2016. *Thomas Hobbes: Leviathan*. London: Routledge.
Johnson, Andrew. 2014. Foucault: Critical Theory of the Police in a Neoliberal Age. *Theoria* 61 (141): 5–29.
Kafka Franz. 1971. *Franz Kafka: The Complete Stories*. New York: Schocken Books Inc.
Kalulé, Petero and James Trafford. 2020. "Unforming Police: The Impossibility of abolition." Critical Legal Thinking. Available at:https://criticallegalthinking.com/2020/12/01/unforming-police-the-impossibility-of-abolition/. Accessed 26 July 2022.
Kalulé, Peter. 2019. On the Undecidability of Legal and Technological Regulation. *Law and Critique* 30 (2): 137–158.
Kant, Immanuel 1991. *Immanuel Kant: The metaphysics of morals*. ed. Mary Gregor. Cambridge: Cambridge University Press.
Kapur, Ratna. 2018. *Gender, Alterity and Human Rights: Freedom in a Fishbowl*. Cheltenham: Edward Elgar Publishing.
Kelley, Robin DG.. 2002. *Freedom Dreams: The Black Radical Imagination*. Boston: Beacon Press.
Kelsen, Hans, and Carl Schmitt. 2015. *The Guardian of the Constitution*. Cambridge: Cambridge University Press.
Lwanga-Lunyiigo, Samwiri. 1987. The colonial roots of internal conflict in Uganda. Available at: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/1412/ISIC%2017-The%20colonial%20roots%20of%20internal%20conflict%20in%20Uganda%20-%20331408.pdf. Accessed 26 July 2022.
Macharia, Keguro. 2020. Afterword: Across Difference, Toward Freedom. *Postmodern Culture* 31: 1. Available at https://www.pomoculture.org/2021/09/23/afterword-acrossdifference-toward-freedom/. Accessed 14 Sept 2022.
Makoni, Busi. 2021. A Pair of Buttocks' that Everybody Hates: Radical Rudeness as a Resistance Strategy.". *Gender and Language* 15 (4): 549–558.
Martinon, Jean-Paul. 2007. *On Futurity: Malabou, Nancy and Derrida*. Eastbourne: Palgrave Macmillan.
Mavronicola, Natasa. 2012. What is an 'Absolute Right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights. *Human Rights Law Review* 12 (4): 723–758.
McKittrick, Katherine. 2014. Mathematics Black life. *The Black Scholar* 44 (2): 16–28.
Moten, Fred. 2003. *In the Break: The Aesthetics of the Black Radical Tradition*. Minneapolis: University of Minnesota Press.
Muñoz, José Esteban. 2019. *Cruising Utopia*. New York: New York University Press.
Nancy, Jean-Luc. 1990. Our History (Book Review). *diacritics*, 20(3): 96.
Okiror, Samuel. 2018. *Stella Nyanzi marks release from jail in Uganda with Yoweri Museveni warning*. The Guardian, February 21. Available at https://www.theguardian.com/globaldevelopment/2020/feb/21/stella-nyanzi-marks-release-from-jail-in-uganda-with-yowerimuseveni-warning. Accessed 14 Sept 2022.
Olufemi, Lola. 2021. *Experiments in Imagining Otherwise*. London: Hajar Press.
Stella, Nyanzi, and Andrew Karamagi. 2015. The Social-Political Dynamics of the Anti-Homosexuality Legislation in Uganda. *Agenda* 29 (1): 24–38.
Nyanzi, Stella. 2014. Queer Pride and Protest: A Reading of the Bodies at Uganda's First Gay Beach Pride. *Signs: Journal of Women in Culture and Society* 40 (1): 36–40.
Nyanzi, Stella. 2020. *No Roses from My Mouth*. Kampala: Ubuntu Reading Group.
Nyanzi, Stella. 2020b. Personal Narrative: Bloody Precarious Activism in Uganda. *The Palgrave Handbook of Critical Menstruation Studies*: 551–559.
Puar, Jasbir K. 2007. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham, NC: Duke University Press.
Rancière, Jacques. 1999. *Disagreement: Politics and Philosophy*. Minneapolis: University of Minnesota Press.

Rancière, Jacques. 2004. Who is the Subject of the Rights of Man? *South Atlantic Quarterly* 103 (2/3): 297–310.
Sharpe, Christina. 2018. And to Survive. *Small Axe: A Caribbean Journal of Criticism* 22 (3): 171–180.
Simmons, William Paul. 2011. *Human Rights Law and the Marginalized Other*. Cambridge: Cambridge University Press.
Sokhi-Bulley, Bal. 2011. Government (ality) by Experts: Human Rights as Governance. *Law and Critique* 22 (3): 251–271.
Spivak, Gayatri C. 1988. Can the Subaltern Speak? In *Marxism and Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg, 271–315. Urbana: University of Illinois Press.
Summers, Carol. 2006. Radical Rudeness: Ugandan Social Critiques in the 1940s. *Journal of Social History*: 741–770.
Vismann, Cornelia. 2008. *Files: Law and Media Technology*. Stanford, California: Stanford University Press.
Walcott, Rinaldo. 2018. Freedom Now Suite: Black Feminist Turns of Voice. *Small Axe: A Caribbean Journal of Criticism* 22 (3): 151–159.
Walcott, Rinaldo. 2021. *The Long Emancipation: Moving Toward Black Freedom*. Durham, NC: Duke University Press.

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