Between Love of Revolution and Hatred of Injustice, or, The Erotic Jurisprudence of Ernesto ‘Che’ Guevara

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Ernesto ‘Che’ Guevara famously claimed that ‘the true revolutionary is guided by great feelings of love’. This article contends that the emotional constituents of Guevara’s political and legal thought have played an essential role in the cultural configuration of his political myth. In the wake of the global financial crisis, they also seem to be quite relevant for our current understanding of society and law. As law and myth are synonymous with the symbolic order, Guevara’s myth constitutes an outstanding case to dissect the passionate ingredients that the perception of injustice introduces in the symbolic order. The emotions that saturate Guevara’s writings and revolutionary actions – love for justice, hatred of injustice – relentlessly challenge and undermine the intersections between law and inequality in Latin America. Guevara’s wrath, however, could hardly be contained within this region today. In a world in which the gap between poor and rich people is continuously deepening, it seems convenient to be at least aware of the canvas behind Guevara’s legal and political thought, which constitutes one of the most powerful social imaginaries that have been erected around law’s contribution to the unequal distribution of income, capital and political standing.

I INTRODUCTION: THE MYTH OF THE WRATHFUL REDEEMER OF LATIN AMERICA

‘[El Che estaba] encabronado y doliente’

Alberto Korda¹

1 ‘[Che was] angry and sorrowful.’ All translations are mine unless noted otherwise. The term *Latin America* can be traced back to the works of Michel Chevalier, who claimed that Europe had a double origin: Latin (Roman) and Teutonic (German). According to Chevalier, the southern part of America was inhabited by descendants of ‘Latin’ Europeans. See *Lettres sur l’Amérique du Nord* (Wouters et Co, 4th ed, first published 1836, 1844 ed) vol 1, 12-13. The term *Latin America* eventually became accepted in the whole world, except in Spain where the terms *Spanish America* or *Ibero-America* are preferred. Ernesto Guevara loosely understood *Latin America* as those territories in the Americas where the Spanish or Portuguese languages prevail. See, for example, ‘América desde el Balcón Afroasiático’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 1; and *Diarios de Motocicleta: Notas de Viaje por América Latina* (Centro de Estudios Che Guevara and Ocean Sur, first published 1993, 2004 ed) 133-134.

October 9, 1967. Mario Terán – a minor officer in the Bolivian Rangers – fired a six-round volley from a M2 rifle into the withered body of Ernesto ‘Che’ Guevara de la Serna.² That day, ‘*El Che*’ joined the ranks of fallen Latin American revolutionary martyrs such as José Martí, Emiliano Zapata, Augusto Sandino, Farabundo Martí or Camilo Torres.³ According to the legend, the shots rang out after the famous guerrilla leader, who was laying captive, wounded and exhausted on the dirt floor of a schoolhouse in the remote village of La Higuera, Bolivia, faced his irresolute executioner and uttered his last words: ‘I know that you’ve come to kill me. Shoot, coward, you are only going to kill a man’.⁴ If we trust the legend, then Che actually ordered his own execution. Terán first hit Che in his arms and legs. Che fell to the ground, convulsed, and began bleeding profusely. Terán then fired a second burst, hitting him in the heart. This time, the fatal bullet entered Che’s thorax, filling his lungs with blood.

Che died around 1.10 pm. His corpse was then placed on a stretcher, tied to the landing skids of a helicopter, and flown to the city of Vallegrande.⁵ On October 11, the body was buried in a clandestine grave. The Bolivian government, however, claimed that it had been cremated.⁶ Che’s body disappeared – its whereabouts remained unknown for the next thirty years – but the romantic passion he invested in his beliefs outlived him. A political myth of immense power arose from the compelling events of Che’s revolutionary life and the story of its violent end. Che, after all, was the man who Jean Paul Sartre declared to be ‘the most complete human being of our age’⁷, and whom Fidel Castro described as the sole repository of ‘the decency of the world’.⁸

I understand the term *myth* here in its broadest sense, that is, as a narrative that provides human beings with patterns of meaning that command and prefigure the structure of social relations, thus enabling us to understand the chaotic world in which we live.⁹ The functional elements of myth are basically emotional – they work, as Desmond Manderson points

2 See Jorge Castañeda, *La Vida en Rojo: Una Biografía del Che Guevara* (Punto de Lectura, first published 1997, 2002 ed) 653.

3 See Peter McLaren, *Che Guevara, Paulo Freire and the Pedagogy of Revolution* (Rowman & Littlefield, 2000) 3. I use the Argentinian colloquialism ‘Che’ –which can be roughly translated to English as ‘mate’ or ‘bro’– to name *Comandante* (Commander) Guevara throughout this essay because his correspondence proves that he willingly adopted this friendly moniker when he referred to himself.

4 Jon Lee Anderson, *Che Guevara: A Revolutionary Life* (Grove Press, first published 1997, 2010 ed) 709-710; David Kunzle, *Che Guevara: Icon, Myth, Message* (UCLA Fowler Museum of Cultural History and Center for the Study of Political Graphics, 1997) 110; Paco Ignacio Taibo II, *Ernesto Guevara, También Conocido Como El Che* (Planeta, first published 1996, 1998 ed) 819.

5 Taibo II, above n 4, 820.

6 Castañeda, above n 2, 653ff; Taibo II, above n 4, 826ff.

7 Jean Paul Sartre, ‘El “Che” fue el hombre más completo de su tiempo’ (22 December 1967) 70(52) *Bohemia* 45.

8 Fidel Castro, *Imagen del Hombre Nuevo* (Editora Política, 1987) 32.

9 See Roland Barthes, *Mythologies* (Seuil, first published 1957, 1970 ed) 209ff; and Claude Lévi-Strauss, *La Pensée Sauvage* (Plon, first published 1962, 2010) 29-49.

out, as ‘a psychological cummerbund’ that dramatises and embellishes the foundations and legitimacy of current social structures.¹⁰ In other words, myths spell out the foundational structures of society in a way that presents them either as ordained by gods, or simply as natural and necessary.¹¹ This is the distinctive feature of myths. While all narratives provide facts with a meaning by inscribing them within a plot, mythic narratives are unique in *making significance* (*Bedeutsamkeit*) of them.¹²

Significance is the special province of myth, whose narrative *brings closer* to our daily life a world whose set-up and working seem indifferent to us.¹³ Both modern political discourses and law are pervaded by myths¹⁴ because they are synonymous with the symbolic order as Jacques Lacan conceived it: a structure of language that mandates and prefigures social relations.¹⁵ Modern state-of-nature theories – from Thomas Hobbes to Jean-Jacques Rousseau, from Immanuel Kant to John Rawls – for example, cannot evaporate mythical elements of their accounts, such as the role played by the image of the ‘savage’ in justifying the structure of current political and juridical orders.¹⁶ We can thus affirm, paraphrasing Clifford Geertz, that the extraordinary has not gone out of modern politics and law, however much of the banal may have entered it.¹⁷

Mythical narratives are not essentially *fictional* as they can be rooted in historical events, structures or personages that are pinpointed as landmarks in the foundation of a political or legal order.¹⁸ It is in this sense that Che can be categorised as incarnating the myth of an enraged Latin America¹⁹ that unceasingly resists a colonial destiny of menial subjugation, pillage and injustice.²⁰ Both Che’s admirers and – even more importantly – detractors have contributed to render his mythical avatar larger than life. Álvaro Vargas Llosa, for example, regards Che as the quintessence of ‘the tyrant’, that is, ‘the negation’ for what he ‘most seemed to long for in this complicated world – freedom and peace’.²¹

10 Desmond Manderson, ‘From Hunger to Love: Myths of the Source, Interpretation and Constitution of Law in Children’s Literature’ (2003) 15(1) *Law & Literature* 87, 89.

11 See Mircea Eliade, *Aspects du Mythe* (Gallimard, first published 1963, 2010) 11–34.

12 Chiara Bottici, *A Philosophy of Political Myth* (Cambridge University Press, 2007) 123.

13 Ibid, 124.

14 See Peter Fitzpatrick, *The Mythology of Modern Law* (Routledge, 1992).

15 See Jacques Lacan, ‘Le Symbolique, l’Imaginaire et le Réel’ (1982) 1 *Bulletin de l’Association Freudienne* 4.

16 Bottici, above n 12, 134ff.

17 Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic Books, 1983) 143.

18 Manuel García-Pelayo, *Los Mitos Políticos* (Alianza, 1981) 31.

19 See Enrique Krauze, ‘Che Guevara: El Santo Enfurecido’ in Enrique Krauze, *Redentores: Ideas y Poder en América Latina* (Debolsillo, 2013) 317.

20 Eduardo Galeano, *Las Venas Abiertas de América Latina* (Siglo XXI, first published 1971, 2013 ed) 15ff.

21 Álvaro Vargas Llosa, *The Che Guevara Myth and the Future of Liberty* (The Independent Institute, 2006) 2.

Vargas Llosa has forced in this way the *historical* Ernesto Guevara – a flesh and blood man with real political motivations – to recede before his preferred conception of the *mythical* Che, whom he has portrayed as a mere ‘disguise for tyranny’ that ‘many credulous souls’ have ‘adorned with the theme of social justice’.²²

Che’s biography and writings hence constitute a series of mythical *ideologemes* – that is, ‘the smallest intelligible unit[s] of the essentially antagonistic collective discourses of social classes’.²³ Ideologemes are, according to Fredric Jameson, conceptual or semic complexes that are susceptible to project themselves either as ‘value systems’ and ‘philosophical concepts’, or ‘in the form of a protonarrative, a private or collective narrative fantasy’.²⁴ Narratives on Che compose this type of social and cultural symbolic complexes as they conceptually antagonise with current justifications of the status quo. In the last paragraph of his devotedly sympathetic biography of Che, for example, Paco Ignacio Taibo II defines him as a ‘secular saint’ whose simple reminiscence undermines ‘neoliberal megalomania’.²⁵ Olivier Besancenot and Michael Löwy similarly claim that Che is still ‘a star in the sky of popular hope, an ardent ember under the ashes of disenchantment’.²⁶ Che’s memory goes beyond the mere history of an Argentinian *guerrillero* and communist ideologue:²⁷ he is the furious redeemer of Latin America, a protector of *campesinos* and oppressed peoples, a Christlike figure brought to deliver them to salvation.²⁸

The history of Latin America certainly seemed to foreshadow Che’s revolutionary biography a century before he was born in Rosario, Argentina, in 1928. Che cannot be understood without reference to the deep resentment that Latin American nations hold against American imperialism. After most of Latin American nations became independent from their European masters, the United States swiftly adopted the role of an overwhelming and arrogant imperial power over the region. Even the name of the whole continent – ‘America’ – was appropriated by the United States, subsuming ‘Latin’ American plural realities into an imperial imagined totality.²⁹ The *Manifest Destiny* doctrine – according to which

22 Ibid, 3.

23 Fredric Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (Methuen, first published 1981, 1986 ed) 76.

24 Ibid, 115.

25 Taibo II, above n 4, 849.

26 Olivier Besancenot and Michael Löwy, *Che Guevara: Une Braise que Brûle Encore* (Mille et Une Nuits, 2007) 144. See also Jean Ortiz, ‘Crise de la Politique: Le Che, Plus Actuel que Jamais’ in Jean Ortiz (ed), *Che, Plus que Jamais: L’Éthique dans la Pensée et la Pratique de Ernesto Che Guevara* (Atlantica, 2007) 135.

27 See Eric Hobsbawm, *Revolutionaries* (Abacus, first published 1973, 2013 ed) 226-227.

28 See Kunzle above n 4, 78-87 and Trisha Ziff, *Che Guevara: Revolutionary & Icon* (Abrams Image, 2006) 88-95.

29 See above n 1. On the appropriation of the term ‘America’ by the United States as an example of imperial knowledge formation through colonial logic, see Walter Mignolo, *The Idea of Latin America* (Blackwell, 2005) 149ff.

the United States has a providential vocation to continental expansion³⁰ –, the *Big Stick* diplomacy – that is, the use of military muscle as a regular instrument of foreign policy – and the ruthless enlargement of American economic interests in Latin America – from Chilean and Bolivian mines to Venezuelan oil fields; from banana plantations in Central America to Mexican railroads – fostered a deep anti-American sentiment in every country between Río Bravo and Tierra del Fuego.³¹

In 1899, for example, the Cuban poet and revolutionary philosopher José Martí called for a ‘second independence’ of Latin America from the ‘barbarian right’ (*derecho bárbaro*) upon which the United States had justified its dominion over the whole continent.³² In 1900, as a response to the Spanish-American war, the Uruguayan essayist José Enrique Rodó published a celebrated essay inspired in William Shakespeare’s *The Tempest* in which Ariel represents the gracious spirituality of Latin America and Caliban embodies the brutish materialism of the United States.³³ A few years later, in 1905, the Nicaraguan poet Rubén Darío accused the United States of plotting the ‘future’ invasion of ‘ingenuous America that has indigenous blood ... and still speaks Spanish’, while warning Theodore Roosevelt against the wrath of a ‘thousand unfastened cubs of the Spanish lion’.³⁴ The passage of time has not appeased the grudge that many Latin Americans hold against the United States. Gloria Anzaldúa hauntingly described the persistence of this age-old rancour in a powerful *Chicano* blend of Spanish and English: ‘The U.S.-Mexican border *es una herida abierta* [is an open wound] where the Third World grates against the first and bleeds’.³⁵

These – and many other – examples from the work of leading intellectuals demonstrate that Latin American youth was ripe to listen and follow Che when he predicted that ‘the violent struggle’ and the historical ‘contradictions’ between Latin America and the United States³⁶ would move thousands of Latin Americans who were ‘tired of waiting, [and] tired of being fooled’ to ‘set out on the road that Cuba took once: that of ...

30 See the classic study by Albert Weinberg, *Manifest Destiny: A Study of Nationalist Expansionism in American History* (AMS Press, first published 1935, 1979 ed).

31 See, for example, Galeano, above n 20, 175ff; and Alan McPherson, *Yankee No! Anti-Americanism in US-Latin American Relations* (Harvard University Press, 2003).

32 José Martí, ‘Congreso Internacional de Washington: Su Historia, sus Elementos y sus Tendencias’ in José Martí, *Obras Completas* (2nd ed, Editorial de Ciencias Sociales, 1975), vol 6, 157, 157ff.

33 José Enrique Rodó, *Ariel* (Prometeo, 1900) 98ff. *Ariel* was a prescribed reading in Mexican schools until the 1960s. See Enrique Krauze, ‘El Che, Vida y Milagros’ (February 2007) 65 *Letras Libres* 18, 19.

34 Rubén Darío, ‘A Roosevelt’ in Rubén Darío, *Azul. El Salmo de la Pluma. Cantos de Vida y Esperanza. Otros Poemas* (Porrúa, 16th ed, 1992) 123, 124.

35 Gloria Anzaldúa, *Borderlands/La Frontera* (Aunt Lute Books, 1987) 3.

36 Ernesto Guevara, ‘Discurso en la Quinta Sesión Plenaria del Consejo Interamericano Económico y Social, en Punta del Este, Uruguay, 8 de Agosto de 1961’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 41.

destroying to its very foundations a whole social order designed to exploit the people'.³⁷ These words proved to be incredibly powerful. Young men and women, following Che's example, have poured for several decades into Latin American streets, fields and jungles to wipe out, in the same terms as Che did, the blemish of injustice they perceive in their own societies.

As late as 1996, Subcomandante Marcos – former spokesman of the *Ejército Zapatista de Liberación Nacional* (EZLN, Zapatista Army of National Liberation)³⁸ – proclaimed during a meeting of anti-capitalist movements and organisations in Chiapas, Mexico, that Che's 'rebel dream' about 'a transformed, new, better reality' was living a second life among the Zapatistas 'in the mountains of Southeast Mexico'³⁹ because it was worth of being continued and recommenced by 'honest and truthful [Latin] Americans'.⁴⁰ Marcos implicitly acknowledged that Che emerged as a myth from his defeat in the Yuro ravine. Che's revolutionary feats, Marcos declared, are a perpetual reminder that 'in the struggle against injustice humanity finds an elevating platform' that both 'improves and humanises' each and every human being.⁴¹

Perhaps the most evident – and disconcerting – expression of Che as a political myth is embodied in the famous photograph taken during the early years of the Cuban revolution by Alberto Korda⁴², which has constituted Che's countenance – framed by an askew beret, flowing hair and curly beard – into a symbol of resistance in the developing world, an anti-globalisation banner, and a favoured sales vehicle for t-shirts, hoodies, baseball caps, key chains, wallets and practically any sort of imaginable gadgets or knick-knacks.⁴³ Korda's ubiquitous photograph has transformed Che into a pop superstar of huge iconic power.⁴⁴ Che placed himself on the communist side of the Cold War's ideological spectrum and actively sought to surmount the capitalist system, but his image has become a keen participant in the very system he fought to destroy.

This article, however, will not delve into Che's afterlife as the logo of what Álvaro Vargas Llosa contemptuously calls 'revolutionary chic'.⁴⁵ I will adopt a very different point of departure for my analysis by considering Che as a political myth that has structured a cultural *locus* on the bitter conflict between two supplementary *affective* domains – love for

37 Ibid, 46.

38 Subcomandante Marcos is currently known as *Subcomandante Insurgente Galeano*.

39 Subcomandante Marcos, 'Inauguración de la Reunión Preparatoria Americana del Encuentro Intercontinental por la Humanidad y Contra el Neoliberalismo, 6 Abril 1996' in Antonio García de León and Carlos Monsiváis (eds), *EZLN: Documentos y Comunicados* (Era, 1997) vol 3, 204, 212.

40 Ibid, 213.

41 Ibid, 211.

42 *Guerrillero Heroico* (March 5, 1960). See Kunzle, above n 4, 56-60 and Ziff, above n 28, 32-41.

43 See Michael Casey, *Che's Afterlife: The Legacy of an Image* (Vintage, 2009) 5.

44 Ibid, 9. See also Hobsbawm, above n 27, 284.

45 Vargas Llosa, above n 21, 7.

justice and anger at perceived injustice – that have traditionally exerted vast influence over the orientation and purpose of human agency in the fields of both politics and law. As Jorge Castañeda briefly remarks, Che may have failed to change ‘the foundations of the economic and political structures’ of capitalist societies, but he inserted his legacy instead into the ‘deeper, wider and more significative’ sphere of cultural discourses.⁴⁶

From this cultural perspective, Che’s ideological commitment to Marxism is not as important as what I will call his *political hubris*, that is, his defiant *attitude* toward power and authority, his intense *love* for the common people, and his unremitting *anger* against injustice – which finally crystallised in pure *hate* toward those who he deemed oppressors of the people. Che’s political hubris is developed in his diaries, chronicles, articles and speeches⁴⁷ as descriptions of the emotions that he deemed necessary to cultivate in order to ensure the success of a revolutionary socialist process. This means that the emotions that Che describe are both the reflection of his own affective state at particular historical moments and the normative standard that he established for anyone involved in the process of constructing a new socialist social, legal and political order.

Che famously claimed that ‘the true revolutionary is guided by great feelings of love’.⁴⁸ I will assert this statement as the foundation of an erotic jurisprudence that violently interpellates a world of increasing inequality and violence. My contention that Che’s myth discloses the emotional nature of our most basic normative commitments will be developed along a critical reading of his problematic definition of revolutionaries as ‘effective, violent, selective, and cold killing machines’.⁴⁹ In doing this, I will intentionally avoid neurological and psychological analyses of emotions and focus instead in what Jon Elster calls ‘extrascientific’ sources for the study of this subject-matter – that is, the insights of political philosophy into the articulation of emotions and normative (either political or juridical) orders.⁵⁰ The reason to proceed in this way is threefold: first, I am interested in categorising cultural sets of emotional display within legal and political discourses rather than in psychoanalysing Che; second, a purely scientific explanation of emotions, no matter how advanced and accurate, cannot replace an account of their social and political role elaborated in

46 Castañeda, above n 2, 664.

47 See below n 89.

48 Ernesto Guevara, ‘El Socialismo y el Hombre en Cuba’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 8, 253, 269.

49 Ernesto Guevara, ‘Mensaje a los Pueblos del Mundo a través de la Tricontinental’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 355, 369.

50 Jon Elster, *Alchemies of the Mind: Rationality and Emotions* (Cambridge University Press, 1999) ix. James R Averill suggests that the analysis of human behaviour (including emotions) can be carried out in three levels: biological, psychological and sociocultural. See *Anger and Aggression: An Essay on Emotion* (Springer-Verlag, 1982) 5. This article is exclusively concerned with the socio-cultural facets of emotions, that is, their normative principles and consequences and their effects in the constitution of society.

terms of cultural concerns, beliefs, thoughts and perceptions; and third – in Elster’s own words – some classic authors – for example, Aristotle or Seneca – are ‘superb students of human nature’ with ‘wide-ranging personal experience’ and deep ‘powers of observation’ that go beyond the findings of contemporary neuroscience and psychology.⁵¹

The advancement of this argument will loosely take us step by step along Che’s revolutionary coming of age: his discovery of Latin America, his radical feats in Cuba and Africa, and his final fall in Bolivia. The first section of the article hence provides a brief heuristic frame that ties the language of emotions with the key jurisprudential problem of connecting normative deliberation with the domain of prudence –that is, the demands of legal and political action. The second section addresses Che’s specific approach to the interconnection between justice and emotions (or ‘passions’). The third section analyses Che’s political conception of the transformative power of love whenever it is deployed in the pursuit of justice, along with his reduction of love into the violent revolutionary assertion of universal equality. The exposition of the tragic tension between love of justice and hatred of injustice in Che’s myth will finally set the grounds to conclude the necessity of reconstructing the old notion of *philia* (φιλία) into a political category that really commits us to substantial equality and communal solidarity in order to avoid a vicious descent into the dark regions where justice runs alongside wrath and hatred.

II NORMATIVE DELIBERATION AND THE LANGUAGE OF EMOTIONS

Emotion pervades both our conceptions of justice and the legal discourses we develop on them, yet legal professionals are quite invested in separating the so-called realms of ‘emotion’ and ‘reason’.⁵² Law, as Rachel Moran observes, is ‘particularly artful at disguising its relationship to the capacity for love, hate, fear, sympathy, and all the other myriad feelings that make us human’.⁵³ Generally speaking, the current dominant strains of normative legal theory (moral-philosophical analysis, constitutional analysis and economic analysis) rely on methodologies that are not well suited to considering the role that emotions play in the cultural configuration of conceptions of justice, legal norms and institutions.⁵⁴

Any endeavour to provide an account of how law and the emotions that inflect it shape (and are shaped by) elements of the broader culture in which both subsist must address the immediate problem of *defining* the term ‘emotion’. Few other questions in the history of philosophy

51 Elster, *ibid.*, 50.

52 See Susan Bandes, ‘What’s Love Got to Do with It?’ (2001) 8(1) *William and Mary Journal of Women and the Law* 97, 98-99.

53 Rachel Moran, ‘Law and Emotion, Love and Hate’ (2001) 11(2) *Journal of Contemporary Legal Issues* 747, 747.

54 Richard Posner ‘Law and the Emotions’ (2001) 89(6) *Georgetown Law Journal* 1977, 1977-1978.

and psychology have proven as problematic as this one. William James famously commented that he would ‘as lief read verbal descriptions of the shapes of the rocks on a New Hampshire farm’ as toil again through the ‘classic works’ of ‘scientific psychology’ on emotions.⁵⁵ Nowhere, James protested, do such works provide ‘a central point of view, a deductive or generative principle’.⁵⁶ Jurisprudence, however, needs such a principle (or group of principles) to establish the role of emotion in the arrangement and practice of normative systems. In other words, an emotional jurisprudence would need an overview of a theory of emotions to serve as a guide to its own understanding of the emotional processes that determine justice and law.

The structuring of a comprehensive method for an emotional jurisprudence is thus a tremendously complex task that exceeds the scope of this article. I will limit my analysis of this issue to the provision of a heuristic framework aimed at inscribing Che’s reflections on emotions in the context of his particular (normative) conceptions of revolutionary struggle and justice. I will therefore indistinctively use the terms *emotion*, *feeling*, *passion* and *affect*.⁵⁷ Dictionary definitions of these terms are either *circular* (affect, for example, being defined as feeling, emotion or desire, and vice-versa) or *polysemic*, given that words may have more than one meaning (feeling, for example, is defined as emotion or physical sensation; whereas passion is both an intense emotion and the expression of strong sexual desire). As Paul Ricœur effectively has pointed out, this situation does not amount to a semantic flaw inherent to these concepts, but rather represents a characteristic of ordinary language – which preserves the

55 William James, *The Principles of Psychology* (Harvard University Press, first published 1890, 1983 ed) 1064.

56 Ibid.

57 I admit that this theoretical standpoint could be controversial. In his introductory notes to the English translation of Gilles Deleuze’s and Félix Guattari’s *Mille Plateaux*, Brian Massumi claims that it is important not to confuse *affect* with *feelings* and *emotions*. According to Massumi, feelings are basically personal, emotions are social, and affects are ‘prepersonal’ intensities ‘corresponding to the passage from one experiential state of the body to another and implying an augmentation or diminution in that body’s capacity to act’. In other words, affects are the expression of the particular grammar of the body – responses involving, for example, the facial muscles, the viscera, the respiratory system or autonomic blood flow changes – that cannot be fully expressed through language. See ‘Notes on Translation and Acknowledgements’ in Gilles Deleuze’s and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Brian Massumi trans, University of Minnesota Press, 1987) xvi, xvi (trans of *Mille Plateaux: Capitalism et Schizophrénie*, first published 1980). See also, by the same author, *Parables for the Virtual: Movement, Affect, Sensation* (Duke University Press, 2002) 24ff. Che, however, did not acknowledge any substantive difference between these three terms: he loosely uses the term *passion* as an encompassing concept for his account of individual emotions (such as love or wrath). The Deleuzian distinction would therefore unnecessarily add a level of complication to his erotics of revolution.

highest descriptive power of human experience through metaphor and indirect reference.⁵⁸

The interchangeable use of these terms that I have proposed, however, does not preclude the need of establishing a common definition for all of them. Since the 17th century emotions have been conceived as simple, non-cognitive phenomena, among the bodily perturbations that are considered unsound as a basis for passing moral judgments.⁵⁹ From this traditional perspective, emotions are blind forces that cloud discernment. René Descartes, for example, claims that the mind not only *acts* (that is, thinks and chooses), but it is also *acted upon*. In the broadest sense, he regards *passions* as impressions imposed on the mind through its interaction with the body.⁶⁰ The rational control of passions is therefore necessary in order to protect the independence of reasoning processes and guarantee an individual's truthful understanding of reality.⁶¹

Immanuel Kant radicalises this thesis and goes to the extreme of claiming that whoever yields to affect (*affekt*) and passion (*leidenschaft*), succumbs at the same time to an 'illness of the soul' (*Krankheit des Gemüts*) that needs to be expeditiously cured because it excludes 'the dominion of reason'.⁶² This tradition of thought – which we can broadly label as *political and legal rationalism* – reaches its peak in Max Weber's assumption of an ever-increasing rationality ruling the modern fields of economic enterprise and bureaucratic administration,⁶³ and Hans Kelsen's attempt at separating the validity of law from any trace of its moral and political justifications.⁶⁴

Yet emotional behaviour thrives both in politics⁶⁵ and law.⁶⁶ Political and legal rationalism neglects the cognitive content of emotions or, to put it in other words, the role they play as elements in normative deliberation.⁶⁷ Emotions are linked to social and cultural paradigms that provide us foundations for knowing when they are properly felt and properly

58 See Paul Ricœur, *La Métaphore Vive* (Seuil, 1975).

59 Moran, above n 53, 748-749.

60 René Descartes, *Les Passions de l'Âme*, in René Descartes, *Discours de la Méthode; Les Passions de l'Âme* (Bookking International, first published 1649, 1995 ed) Articles 27 and 34-36.

61 Ibid, Articles 211-212.

62 Immanuel Kant, *Anthropologie in pragmatischer Hinsicht* (Reclam, first published 1798, 2008 ed) 192-193.

63 See Max Weber, *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie* (Mohr/Siebeck, first published 1922, 1980 ed).

64 See Hans Kelsen, *Reine Rechtslehre: Mit einem Anhang, Das Problem der Gerechtigkeit* (Franz Deutike, 2nd ed, 1960).

65 See, for example, Martha Nussbaum, *Political Emotions: Why Love Matters for Justice* (The Belknap Press of Harvard University Press, 2013).

66 See, for example, Susan Bandes, 'Introduction' in Susan Bandes, *The Passions of Law* (New York University Press, 1999) 1, and András Sajó, *Constitutional Sentiments* (Yale University Press, 2011).

67 Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press, 2001) 24-33.

displayed. This way, emotions give our world its peculiarly *animated* quality: they make it a source of fear, joy, outrage, disgust, and delight. They also *de-animate* the world by making it a cause for boredom and despair.⁶⁸ Without emotions we cannot be fully engaged in the world, and without an understanding of emotions we do not know what it means to be so engaged.⁶⁹ Perhaps we can turn to Classical Antiquity to gain some insight on these issues. Aristotle, for example, envisioned that emotionally charged beliefs play a vital role in the practice of politics and law, notably because of the emotional force that enters into both public and private decisions.

Aristotle's most extensive treatment of emotions is to be found in his treatise on rhetoric (*Rhetorica*) rather than in his book on psychology (*De Anima*). This circumstance in itself tells us something about the relevance that Aristotle dispensed to emotions in the public negotiation of social, political and legal roles.⁷⁰ According to Aristotle, from a psychological perspective the moving principles of animals arise from two sources, *intellect* and *desire* (or *appetite*), which are rendered in *De Anima* as *nous* (νοῦς) and *orexis* (ὀρεξις) respectively.⁷¹ How these moving principles are to be understood depends on the sort of account one seeks. One might settle either for a discursive account or one that is scientific. An action prompted by anger, for example, would be explained differently by a scientist and by a dialectician. The latter would define anger as 'the desire [*orexis*] for revenge or something like that', while the former would define it 'as a boiling of the blood and hot stuff about the heart'.⁷²

Aristotle consciously chose the discursive account that regards emotions as elements in complex sets of interpersonal exchanges, in which individuals are aware of the motives and expectations of others and ready to respond in kind. In his *Rhetorica*, he distinguishes among three kinds of speech, and three means of persuasion. There is *political speech*, that is, deliberation in the assembly about 'ways and means, war and peace, national defence, imports and exports, and legislation'.⁷³ There is *forensic speech*, that is, speeches before the court by plaintiffs and defendants in a suit.⁷⁴ Finally, there is *epideictic speech*, or speech in praise or censure of somebody.⁷⁵ As for the means of persuasion, there are three kinds: *ethos* (ἦθος), *pathos* (πάθος), and *logos* (λόγος). '[T]he first kind depends on the personal character of the speaker; the second on putting the audience in

68 William Ian Miller, *The Anatomy of Disgust* (Harvard University Press, 1997) 8.

69 Nussbaum, above n 67, 19ff.

70 David Konstan, *The Emotions of the Ancient Greeks: Studies in Aristotle and Classical Literature* (University of Toronto Press, 2007) 27-28.

71 Aristotle, *De Anima (On the Soul)* (Hugh-Lawson-Tancred trans, Penguin, 1986) 432a-433b (trans of: Περὶ Ψυχῆς, written circa 335-323 BCE).

72 Ibid, 403a-403b.

73 Aristotle, *Rhetorica* (W Rhys Roberts trans, Clarendon Press, 1971) 1359b (trans of Ρητορικὴ (written circa 4th Century BC)).

74 Ibid, 1358b.

75 Ibid.

a certain [emotional] frame of mind; the third on the proof, or apparent proof, provided by the words of the speech itself.⁷⁶

Aristotle defines emotions as ‘all those feelings that so change men as to affect their judgements, and that are also attended by pain or pleasure’ – for example, ‘anger, pity, fear and the like, with their opposites’.⁷⁷ What is remarkable in this definition is its emphasis on the effect that emotions have on judgement (κρίσις). This condition is particularly pertinent to Aristotle’s main concern in the *Rhetorica*, the object of which is to influence the decisions of legislators and jurors, for ‘[o]ur judgements when we are pleased and friendly are not the same as when we are pained and hostile’.⁷⁸ It seems hence that, for Aristotle, the manipulation of emotions in forensic and deliberative contexts represents in a concentrated form the function that emotions generally play in social life.⁷⁹

In Aristotle’s view, emotions must satisfy some cognitive preconditions. ‘Take, for instance’, he writes, ‘the emotion of anger: here we must discover what the state of mind of angry people is, who the people are with whom they usually get angry, and on what grounds they get angry with them’.⁸⁰ This example illustrates how the rhetorical techniques for inducing emotions require an understanding of the behaviours that arouse them in order to effectively influence public beliefs (that is, the grounding of public ‘states of mind’) – for example, those concerning a defendant’s innocence or guilt, or the motives behind the actions of a politician. The role of evaluation in emotion is essentially dynamic: beliefs enter into the formation of an emotion that, in turn, contributes to modifying some other belief or intensifying the original one.⁸¹ Emotions are therefore an essential ingredient in normative deliberation: if they do not act like charms or enchantments but depend on beliefs, they are amenable to argument designed to change those beliefs.⁸²

Aristotle achieved a cognitive revolution in the study of emotions that was – until recent years – consistently ignored in empiricist-derived philosophy and psychology.⁸³ His account renders emotions as more than purely physiological states of arousal. Drawing from Aristotle’s cognitive perspective, it can be established that emotions entail the interpretation and organisation of social and cultural situations upon which acts of management of some fragments of our private and public life depend. In this sense, emotions can be best viewed as *social constructions* that are

76 Ibid, 1356a.

77 Ibid, 1378a. See also *Nichomachean Ethics* (H Rackham trans, Harvard University Press, 1968) 1105b (trans of: Ἠθικὰ Νικομάχεια, written circa 350 BCE).

78 Aristotle, above n 73, 1356a.

79 Konstan, above n 70, 34.

80 Aristotle, above n 73, 1378a.

81 Konstan, above n 70, 37.

82 Elster, above n 50, 55-58.

83 See Nussbaum, above n 67, 25-26.

meaningful in terms of cultural expectations and rules of conduct.⁸⁴ Robert Solomon coined a definition of emotions that, *mutatis mutandis*, mirrors (and expands) this line of reasoning. For Solomon, emotions are 'basic judgement[s] about our Selves and our place in the world, the projection of the values and ideals, structures and ideologies, according to which we experience our lives'.⁸⁵

This notion of emotions as judgments is rooted in an ancient and respected tradition that can be traced back not only to Aristotle and his followers, but also to the Roman Stoics. Seneca's assessment of emotions, for example, is in important respects opposed to the views of Aristotle. Seneca regards emotions as diseases of mind which a wise man, in order to form right opinions and thoughts, should strive to be rid of. As Aristotle, however, Seneca claims that reason and passion are not essentially different, but are 'only the transformation of the mind for the better or worse',⁸⁶ for while passion 'is the foe of reason, it is nevertheless born only where reason dwells'.⁸⁷

In summary, from the Classical standpoint that I have described above, whereas *judgment* – that is, cognition and appraisal – looks to the beginning of emotional processes, their physical expressions – for example, laughter in the case of joy, or tears in the case of sadness – are relevant only to their outcome. This simple point of departure is quite similar to the one adopted by Che in the development of his erotics of revolution and justice. Just as Aristotle and Seneca, Che considers that a person cannot be angry without being angry *at* something; fearful without being fearful *of* something; in love without being in love *with* somebody, and so forth. Che's language of emotions is thus deeply committed to normative deliberation as it necessarily involves an awareness of other subjectivities – as inscribed in specific (Latin American) social settings – that presupposes an appraisal of particular (unjust) situations.

I will therefore elucidate in the following sections the way in which Che reawakened – albeit without explicit references to it – the Classical cognitive approach to emotions through his analyses of oppression and injustice throughout Latin American grim actualities and contexts. In Che's writings – which are, as I have previously expounded, constitutive elements of his political myth – *amor quaerit ira* (love seeks wrath) or, in other words, the violence buried in the relationships of capitalist production in Latin America reveals a world of reasons to rebel that draw on loving compassion toward the dispossessed as much as they do on indignation and rage against the alienation and exploitation of the poor majorities by the capital-owning classes.

84 See Averill, above n 50, 7-9.

85 Robert C Solomon, *The Passions* (Anchor Press/Doubleday, 1977) 186-187.

86 Seneca, *On Anger*, in Seneca, *Moral Essays* (John W Basore trans, Harvard University Press, 1970) I.8, 2-3 (trans of: *De Ira*, written circa 41 AD).

87 *Ibid.*, I.3, 4-5.

III THE DISCOVERY OF LATIN AMERICA: (COM)PASSION AND JUSTICE

Che did not conceive himself merely as an Argentinian. '[T]he American continent', he wrote in a letter addressed to his mother on April 1954, 'will be the theatre of my adventures [...] I really think that I have grown to understand it and I feel American as distinct from any other people in the world'.⁸⁸ Che developed a deep knowledge of Latin America after extensively travelling through this region during his youth. In January 1952, he left his bourgeois home in Buenos Aires, Argentina, on the back of a sputtering motorcycle ironically dubbed *La Poderosa* ('The Mighty One') to explore with his friend Alberto Granado the Latin American realities that he only knew from books. The journey took Che through Argentina, Chile, Perú, Ecuador, Colombia, Venezuela, Panamá and the United States (Miami), before returning home to Buenos Aires. This genuine *odyssey* deeply transformed Che as he witnessed the social injustices endured by exploited mine workers, persecuted communists, discriminated indigenes and ostracised lepers, among many other disenfranchised Latin American classes. He later gathered his reflections on the experiences he lived during the journey in his traveller's notes, which were published posthumously in 1993 as *Diarios de Motocicleta* (*The Motorcycle Diaries*).

In these *Diarios* – which are not really diaries, but chronicles of his journey⁸⁹ – Che recalls, for example, that as he and Granado entered Valparaíso, Chile, their 'distended nostrils' inhaled 'poverty with sadistic fervour'.⁹⁰ While staying in this city, Che visited as a medic an 'old woman with asthma' and 'a heart condition' who was 'in a pitiful state, breathing the acrid smell of concentrated sweat and dirty feet that filled her room'.⁹¹ After realising that he could not do anything to alleviate the woman's misery, Che noted down the following reflection in his travel chronicles:

It is at times like this, when a doctor is conscious of his complete helplessness against the environment he is working in, that he longs for change to prevent the injustice of a system in which only a month ago this poor

88 Ernesto Guevara, 'Carta a la Madre: Abril de 1954' in Ernesto Guevara, *Otra Vez: Diario Inédito del Segundo Viaje por Latinoamérica* (Ediciones B, 2001) 154, 155.

89 The use of the term *diary* to define the works that Che wrote after the most significant experiences of his life – his two journeys through Latin America, the guerrilla struggle in the Sierra Maestra, or the revolutionary war in Congo – is quite misleading. Che developed a *method* to theorise on the events that he experienced: he kept *diaries* in order to preserve meticulous memories of such events, which he used later as a basis for *chronicles* that developed his reflections on his own memories. Compare, for example, *Diario de un Combatiente: Sierra Maestra-Santa Clara 1956-1958* (Centro de Estudios Che Guevara and Ocean Sur, 2011) – the *diary* of the guerrilla war in the Sierra Maestra – against *Pasajes de la Guerra Revolucionaria* (Editorial Arte y Literatura, 1975) – the *chronicle* that Che wrote on the same period. On Che's historiographical and philosophical method, see Fidel Castro 'Una Introducción Necesaria' in Ernesto Guevara, *El Diario del Che en Bolivia* (Siglo XXI, first published 1968, 1988 ed) 9ff.

90 Guevara, *Diarios de Motocicleta*, above n 1, 63.

91 Ibid, 64.

woman was still earning her living as a waitress ... It is there, in these final moments of people whose furthest horizon has always been tomorrow, that one comprehends the profound tragedy circumscribing the life of the proletariat all over the world: there is a submissive appeal for forgiveness in those dying eyes and also, frequently, a desperate plea for consolation that is lost in the void ...⁹²

A few days later, Che and Granado left Valparaíso and headed toward Chuquicamata, the biggest open-pit copper mine in the world, which is located in the northern part of Chile. In their way to the mine, they befriended a couple of Chilean workers – husband and wife – who were communists. That night, the man told the two travellers stories about his ‘three months in prison’ and the fate of his communist ‘*compañeros*’, who ‘mysteriously disappeared’ and were said ‘to be somewhere at the bottom of the sea’.⁹³ Che considered after hearing these stories that it was ‘a great pity’ that poor workers whose wretched life had pushed them to become so-called ‘communist vermin’ were repressed in Latin America. He recognised the communism ‘that had hatched’ at the entrails of the Chilean miner as nothing more than ‘a natural longing for something better’ and ‘a protest against perennial hunger’.⁹⁴ The mine represented an evil contradiction: it placed side by side ‘cold efficiency and impotent rancour’, binding them together through a hideous ‘common necessity to live, on the one hand, and to speculate, on the other’.⁹⁵ Che thus concluded that, under these conditions, the essence of communism for miners could be reduced to a simple promise that was easy to understand and filled them with hope: ‘bread for the poor’.⁹⁶

Che and Granado entered Perú on foot shortly afterwards. The indigenous Peruvians they found along the way left a deep impression on both of them. Che reports that while the town of Tarata, for example, ‘evokes the time before Spanish colonization’, the Aymaras that live in it seemed to be ‘a defeated race’ whose stares were ‘tame, almost fearful and completely indifferent to the outside world’.⁹⁷ Aymara people, according to Che, had been deprived of the joy of life – they seemed to ‘go on living only because it is a habit that they cannot shake’⁹⁸ – by a system that, ‘on the rare occasion’ it offers education for indigenes, operates ‘according only to white man’s criteria’ that ‘simply fill them with shame and resentment’.⁹⁹

Che would recall later that wandering around ‘our “America with capital A”’ radically transformed him. ‘I am not the person I was’, he

92 Ibid.

93 Ibid, 71-72. Under the *Ley No 8987, de Defensa Permanente de la Democracia* (Law 8987, for the Permanent Defence of Democracy), the Partido Comunista de Chile (PCCh, Communist Party of Chile) was outlawed from 1948 to 1958.

94 Guevara, *Diarios de Motocicleta*, above n 1, 72.

95 Ibid, 73.

96 Ibid, 72.

97 Ibid, 88.

98 Ibid.

99 Ibid, 92.

recorded after the journey.¹⁰⁰ The injustice he perceived in every corner of Latin America made him intensely angry. Che actually closed his *Diarios* with an unsettling note titled '*Acotación al Margen*' ('Marginal Note'), in which a mysterious character presaged that he was meant to die as 'a genuine member of the society to be destroyed', transmuted into a perfect image of 'hatred and struggle' with his 'fist clenched' and his 'jaw tense'.¹⁰¹ Che fiercely embraced the prophecy. 'I knew', he wrote, 'that, at the moment when the great guiding spirit slices humanity into two antagonistic halves, I will be with the people; and I know that [...] howling as a possessed man, I will assault the barricades or the trenches, I will stain my weapon in blood and, consumed with fury, slaughter any enemy who falls into my hands'.¹⁰² He then pledged to brace his body 'ready for combat' and to prepare himself to be 'a sacred precinct within which the bestial howl of the victorious proletariat can resound with new vigour and new hope'.¹⁰³

Che's first *Diarios* hence display the outline of an original field of political thought structured upon emotional exuberance. This particular feature makes Che's thought resilient to traditional academic analysis. The conceptions of progress and reason driving out prejudice and superstition that we have inherited from Enlightenment – along with their concurrent traditions of political philosophy and jurisprudence which are based on the belief in *rational agents* – find great difficulty in accounting for an openly *emotional* approach to politics and justice as the one developed by Che.¹⁰⁴ His method of political judgment can be summarised in the following way: in his writings, he constantly tries to persuade the reader to admit the moral baselessness of unjust Latin American realities in order to arouse the outrage that, in turn, will trigger the emotions that are required to further revolutionary action. Che's chronicles can therefore be read as complex rhetorical exercises that address the beliefs that he thinks are cognitive preconditions both to realise a more just world and to address and improve the conditions that keep inhibiting such a world.

Che's emotional methodology proved to be crucial in his understanding of the appropriate strategies to achieve human emancipation when he finally met Fidel Castro in Mexico a few years later.¹⁰⁵ Following a long conversation with Castro on the night of their first meeting, Che signed up as a contributor to the plot to overthrow the dictatorship of Fulgencio Batista in Cuba. Unfortunately, both Castro and Che were arrested by Mexican law enforcement officials while preparing the revolution. During his detention, Che asserted the importance of emotions for the revolutionary cause in a letter addressed to his mother. Che chastised Celia de la Serna in this letter – dated on 15 July 1956 – for believing that 'moderate

100 Ibid, 26.

101 Ibid, 142.

102 Ibid, 142-143.

103 Ibid, 143.

104 See above, n 63 and n 64.

105 Anderson, above n 4, 167ff.

egoism' can become the source of 'major inventions or artful masterpieces'. According to Che, '[f]or all great tasks, passion is needed, and Revolution needs passion and boldness in large doses, things we have as a human group'.¹⁰⁶

The question that arises immediately after reading this statement is *what kind of passion is specifically required to cultivate a revolution*. As Montesquieu noted, distinctive public sentiments become foundational for specific political regimes as principles of government:¹⁰⁷ virtue for democracy,¹⁰⁸ moderation for aristocracy,¹⁰⁹ or honour in the monarchy.¹¹⁰ Martha Nussbaum similarly observes that '[a]ll political conceptions, from the monarchical and the fascist to the libertarian, have a place for emotions in the public culture, supporting the stability of their characteristic principles', but 'specific [emotional] strategies depend on specific goals'.¹¹¹ What is, then, the political emotional principle of revolution?

On 19 August 1960, Che addressed this problem in a speech delivered to Cuban medical students and workers. At that time, he had already become a central figure in Cuba's revolutionary government. Che acknowledged that because of the close contact he had during his travels through Latin America 'with poverty, with hunger, with disease, with the inability to cure a child because of lack of money' and 'with the stultification that hunger and continuous punishment cause', he realised that he wanted to dedicate his life 'to help those people'.¹¹² Revolution, Che claimed, required revolutionaries who did not suffer 'true hunger' in their childhood to learn that 'the pride of helping our neighbours is even more important than good wages', and that 'the people's gratitude stands forever when compared with any amount of gold that could be accumulated by a man'.¹¹³

Compassion, Aristotle argues, is a painful emotion directed at another person's undeserved misfortune or suffering 'which we might expect to befall ourselves or some friend of ours, and moreover to befall us soon'.¹¹⁴ In Che's view, the motor of revolution is precisely compassion or *agape* (ἀγάπη), that is, a kind of love that compels us to adopt the suffering that capitalism inflicts on other persons as if it were our own, thus granting

106 Ernesto Guevara, 'Carta a la Madre: México, 15 de Julio de 1954' in Ernesto Guevara, *Otra Vez: Diario Inédito del Segundo Viaje por Latinoamérica* (Ediciones B, 2001) 176, 177.

107 Montesquieu, *De l'Esprit de Lois* (Flammarion, first published 1748, 1979 ed) vol 1, Book III, ch I.

108 Ibid, Book III, ch III.

109 Ibid, Book III, ch IV.

110 Ibid, Book III, ch VII.

111 Nussbaum, above n 65, 22.

112 See Ernesto Guevara, 'Discurso en la Inauguración del Curso de Adoctrinamiento del Ministerio de Salud Pública' in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 4, 175, 176.

113 Ibid, 182.

114 Aristotle, above n 73, 1385b. Jean-Jacques Rousseau likewise argues – thus agreeing with Aristotle – that compassion (*pitié*) requires awareness that one's own weaknesses and vulnerabilities are similar to those of the sufferer. See *Émile ou de l'Éducation* (Flammarion, first published 1792, 2009 ed) 321ff.

individuals the imaginative and motivating engagement with others that makes sacrifice, social activism and revolution possible.¹¹⁵ In the next section, however, I will expose the disturbing features this emotion acquires in Che's erotic jurisprudence as it is inserted into the historical dynamic – brought to light by Walter Benjamin – between law-founding and law-preserving violence.

IV THE RAGING LOVE OF REVOLUTION

In 1959, once Fidel Castro and his *barbudos*¹¹⁶ seized power in Cuba, Che was named commander of *La Cabaña* – an old Spanish colonial fortress in the outskirts of Havana that was used as a headquarters and military prison by the triumphant revolutionaries – where he was charged with purging Batista's army and consolidating victory by exacting 'revolutionary justice' against those considered to be traitors, *chivatos* (informants) or war criminals.¹¹⁷ After serving five months as – in Jon Lee Anderson's words – the 'Supreme Prosecutor' of Cuba¹¹⁸, he was appointed as President of the National Bank and Minister of Industries. This means that Che was the most influential person in Cuban economy during four crucial years in the history of this country.¹¹⁹

In his role as a leading policy-maker, Che pursued to achieve structural changes through a radical transformation of social relations and values. He regarded social attitudes towards race, women, individualism, and manual labour in Cuba as the main obstacle against effectively implementing equality through an uncompromising redistribution of wealth. Che therefore urged all Cubans to view each other as equals who would become, through sheer exercise of their willpower, what he termed '*el Hombre Nuevo*' (the New Man). Cuba's *Hombre Nuevo*, Che argued, was called by the entire history of human suffering under capitalism to overcome the selfishness that he despised and (naïvely) assumed was uniquely characteristic of individuals in capitalist societies. The *Hombre Nuevo* was, to put it briefly, a *communist* individual: the dialectic negation of those men and women who capitalism had transformed into merciless predators that, living under the law of the jungle, could only conceive success through the defeat and marginalisation of others.¹²⁰

Che tried to lead the conversion of Cubans to the ideal of the *Hombre Nuevo* by example, working endlessly at the ministry, in construction, and

115 See Nussbaum, above n 65, 142ff; and Sajó, above n 66, 171ff.

116 *Barbudos* means 'bearded men'. The term was coined to describe the rebel forces of the Cuban Revolution, who did not shave while they were fighting in the Sierra Maestra. The beard was later perceived as the emblem of the revolutionaries. See Hugh Thomas, *Cuba: The Pursuit of Freedom* (Pan Books, first published 1971, 2001) 692.

117 Anderson, above n 4, 360.

118 Ibid, 359.

119 Castañeda, above n 2, 281ff.

120 See Michael Löwy, *La Pensée de Che Guevara* (Maspero, 1970) 27ff.

even cutting sugar cane on his day off.¹²¹ He envisioned the *Hombre Nuevo* as a human being of solid inner resources and great sense of responsibility who is bound to others by a relationship of substantive solidarity. ‘Socialism’, he declared at the Afro-Asian Conference celebrated in Algeria in 1965, ‘cannot exist without a change in consciousness resulting in a new fraternal attitude toward humanity, both at an individual level, within the societies where socialism is being built or has been built, and on a world scale, with regard to all peoples suffering from imperialist oppression’.¹²² In other words, the *Hombre Nuevo* demanded a concrete and universal brotherhood aimed at constituting what Karl Marx called in his tenth thesis on Feuerbach ‘socialised humanity’ (*vergesellschaftete Menschheit*)¹²³, that is, a human society that has transcended the division effected by bourgeois society between private and public, particular and general interests, or the individual and the community.¹²⁴ In Che’s own words: ‘For us, there is no valid definition of socialism other than the abolition of the exploitation of one human being by another’.¹²⁵

The *Hombre Nuevo* can therefore be interpreted as the central theme of Che’s *utopia of right* (*Rechtsutopie*), that is – drawing from the conceptual structure of Ernst Bloch’s Marxist theory of natural law – his jurisprudential vision of a lawful and just life as opposed to the wrongs (*Unrecht*) that capitalism imposes on human beings through alienation and exploitation.¹²⁶ This reading of Che’s *Hombre Nuevo* does not suggest that he considers communism as a ‘utopian system based on man’s goodness as a man’, but rather – in his own words – as a ‘historical’ possibility which could be objectively glimpsed through the material experience of the Cuban revolution.¹²⁷

The implementation of the values that configure the ideal of the *Hombre Nuevo*, however, involved a high degree of voluntarism that clashed not only with the existing capitalist legal and political institutions, but also with cultural practices deeply embedded in our current

121 Orlando Borrego, *Che, El Camino de Fuego* (Imagen Contemporánea, 2011) 112ff. Antonio del Conde – also known as ‘*El Cuate*’ – who worked with Che when he was the Cuban Minister of Industry, summarises Che’s attempt at reforming the economy through a simultaneous reform of the human soul in two key facets: ‘*disciplina y muchos huevos*’ (discipline and big balls). Interview with Antonio del Conde (Mexico City, 9 January 2015).

122 Ernesto Guevara, ‘Discurso en el Segundo Seminario Económico de Solidaridad Afroasiática’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 341, 343.

123 Karl Marx, ‘Thesen über Feuerbach’ in Friedrich Engels, *Ludwig Feuerbach und der Ausgang der klassischen deutschen Philosophie: Mit Anhang: Karl Marx über Feuerbach vom Jahre 1845* (JHW Dietz, 1888) 69, 72.

124 Löwy, above n 120, 29.

125 Guevara, above n 122, 344.

126 See Ernst Bloch, *Naturrecht und menschliche Würde* (Suhrkamp, 1961) 237.

127 Ernesto Guevara, ‘Discurso en la Asamblea General de Trabajadores de la Textilera Ariguanabo’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 7, 39, 47-48.

social structures. Jon Lee Anderson correctly points out Che's failure to understand the enormity of attempting 'to alter the fundamental nature of others and get them to become "selfless communists"'.¹²⁸ This fatal lack of understanding of the role that persuasion and negotiation play in the transformation of both culture and institutions, I believe, is essential to understand Che's exasperated emotional response towards the fragility of human will after the triumph of the Cuban revolution.

Che inevitably faced the problem of inserting the transformation of human nature through the practice of compassion – which he regarded as necessary for an effective implementation of socialism – within the cultural and social tensions between violence (*Gewalt*), law (*Recht*) and justice (*Gerechtigkeit*).¹²⁹ Violence, according to Walter Benjamin, is the means by which law is instituted and preserved. Benjamin distinguishes between lawmaking violence (*rechtsetzend Gewalt*) and law-preserving violence (*rechtserhaltende Gewalt*).¹³⁰ In the aftermath of the Cuban revolution, let us remember, Che was trying to institute a *new socialist normative order* that required the law-preserving violence of capitalism to be dismantled. In order to achieve this, Che fuelled the compassion that supposedly impulses the *Hombre Nuevo* with a different emotion: *wrath* or *rage* displayed to its deepest extremes.

Che travelled to New York City on December 1964 as head of the Cuban delegation to speak at the United Nations. During his impassioned address before the General Assembly, he extensively quoted Fidel Castro's *Segunda Declaración de la Habana* (Second Declaration of Havana), emphasising the role that anger was meant to play in the construction of socialism under the aegis of the *Hombre Nuevo*:

This epic before us is going to be written by the hungry indigenous masses, the peasants without land, the exploited workers [...] they can be seen armed with stones, sticks, *machetes*, in one direction and another, each day, occupying lands, sinking hooks into the land that belongs to them and defending it with their lives. They can be seen carrying signs, slogans, flags; letting them flap in the mountain or prairie winds. And the wave of trembling rancour, of demands for justice, of claims for rights trampled underfoot, which is beginning to sweep the lands of Latin America, will not stop. That wave will swell with every passing day ...¹³¹

According to Che, the *wave of trembling rancour* (*ola de estremecido rencor*) that raised from the centennial yearn for justice of Latin American peoples is partly caused because 'justice remains the tool of a few powerful interests' under the capitalist mode of production, so 'legal interpretations'

¹²⁸ Anderson, above n 4, 724.

¹²⁹ Walter Benjamin 'Zur Kritik der Gewalt' in Walter Benjamin, *Zur Kritik der Gewalt und andere Aufsätze: Mit einem Nachwort von Herbert Marcuse* (Suhrkamp, written circa 1920, 1965 ed) 29, 29.

¹³⁰ Ibid, 40ff.

¹³¹ Ernesto Guevara, 'Discurso en la Asamblea General de Naciones Unidas: 11 de diciembre de 1964' in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 285, 305.

are 'made to suit the interests of oppressive powers'.¹³² Anger, in this case, seems to be the appropriate answer to injustice. Aristotle claims that anger arises from perceived injustice – that is, from a judgment through which we establish, for example, that we have been insulted or slighted – and hence is a sound response to an unjust situation when moderated by an even temper.¹³³ Saint Thomas Aquinas likewise defines anger as 'a desire to punish another by way of just revenge'.¹³⁴ For revenge to be just, of course, rigorous judgment is required because, after a wrong has been committed, steps must be taken to set it right.¹³⁵

In other words, Aristotle and Aquinas regard anger as an emotion that is somehow ancillary to the virtuous practice of justice because it arises whenever we have received an injury, and we think that we have *unjustly* received it. Aquinas, however, also cautions us against immoderate anger, which leads a person to take a partial, distorted view of a particular situation.¹³⁶ Seneca takes such a warning further and regards anger as a 'hideous and frenzied' madness that raves with a 'lust for weapons, blood, and punishment, giving no thought to itself if only it can hurt another'.¹³⁷

Che seemingly experienced this blurring of judgment in the context of the breakdown of his missions in Congo¹³⁸ and Bolivia¹³⁹, as he tried to tighten the bond between love and anger in order to emotionally extend and intensify the scope and influence of socialist revolution. In 1965, he submitted a very famous article titled 'El Socialismo y El Hombre en Cuba' (Man and Socialism in Cuba) to the Uruguayan weekly magazine *Marcha*. Che thoroughly developed his theses on the revolutionary *agape* that guides the actions of the *Hombre Nuevo* in this article. In his own words:

[T]he true revolutionary is guided by great feelings of love. It is impossible to think of a genuine revolutionary lacking this quality. Perhaps it is one of the great dramas of the leader that he or she must combine a passionate spirit with a cold intelligence and make painful decisions without flinching. Our vanguard revolutionaries must idealize this love of the people, of the most sacred causes, and make it one and indivisible. They cannot descend,

132 Ernesto Guevara, 'Discurso en la Conferencia de Naciones Unidas sobre Comercio y Desarrollo: 25 de marzo de 1964' in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 285, 305.

133 Aristotle, above n 77, 1125b-1126b, 1135b and 1149a.

134 Thomas Aquinas, *Summa Theologiae* (trans T Gilby, Blackfriars, 1963) 1a2æ, quest. 47 (trans of: *Summa Theologiae*, written between 1225 and 1274).

135 Ibid, 1a2æ, quest. 46.

136 Ibid.

137 Seneca, above n 86, I.1, 1-2.

138 Che's opening remark in his African chronicles is: 'This is the story of a failure'. See *Pasajes de la Guerra Revolucionaria: Congo* (Mondadori, 1999) 31.

139 Che could not write any chronicle on the revolutionary war he fought in Bolivia as he was captured and executed. For a detailed account of Che's campaign in Bolivia, see Régis Debray, *La Guérilla du Che* (Seuil, first published 1974, 1996 ed).

with small doses of daily affection, to the level where ordinary people put their love into practice.¹⁴⁰

Slavoj Žižek suggests that Che seems to posit in this statement the mutual exclusion between *eros* (ἔρως) or personal love, and *agape* or political love.¹⁴¹ The potential conflict between these two forms of love, however, should also be read – as Žižek actually proposes – along Che’s disquieting remarks on hatred as the ultimate emotion that infuses revolutionary agency.¹⁴² In April 1967, a few months before he was captured in the Yuro ravine, Che described the emotions that should move revolutionaries in the following terms:

Hatred as an element of the struggle; a relentless hatred of the enemy, impelling us over and beyond the natural limitations that man is heir to and transforming him into an effective, violent, selective and cold killing machine. Our soldiers must be thus; a people without hatred cannot vanquish a brutal enemy.¹⁴³

Žižek claims that Che articulated the tension between love for justice and hatred against injustice in terms that assert emancipatory violence as an unconditional egalitarian love for our neighbours that urges us ‘to realize an egalitarian social order of solidarity [... that] connects people directly, in their singularity, by-passing their particular hierarchical determinations’.¹⁴⁴ Žižek’s praise of Che’s revolutionary erotics, nonetheless, does not dare to delve into the truthful depths of the *trembling rancour* he promoted among and demanded from Latin American peoples. ‘[W]e must walk the path of liberation’, Che noted in an article that was posthumously published in 1968, ‘even if it costs millions of atomic victims, because this is a death struggle between two systems, so we cannot think of anything but the victory of socialism, or its retreat under the nuclear victory of the imperialist aggression’.¹⁴⁵

Should we really aspire to such an *unconditional egalitarian love* to overcome human suffering caused by injustice? Žižek frequently uses scandal and shock as thought-provoking devices, but he has definitely overlooked the terrifying extent of Che’s anger in this case. Che’s advocacy for socialism even at the cost of nuclear annihilation sinisterly resembles the famous proverb that illustrates the counter-utilitarian nature of Kantian conceptions of justice and law: *Fiat iustitia et pereat mundus* (let justice be done, though the world perish).¹⁴⁶ I bet, however, that Kant would

140 Guevara, above n 48, 269-270.

141 Slavoj Žižek, *Living in the End Times* (Verso, 2010) 108-109.

142 Ibid, 115. See also, from the same author, *Violence: Six Sideways Reflections* (Profile Books, 2009) 172-173.

143 Guevara, above n 49, 369.

144 Žižek, above n 141, 117.

145 Ernesto Guevara ‘Táctica y Estrategia de la Revolución Americana’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 225, 240.

146 Immanuel Kant, *Zum ewigen Frieden* (Fischer, first published 1795, 2008 ed) 194. Kant ironically paraphrased this proverb in the following terms: ‘Let justice rule on earth, even if all the rascals in the world should perish from it’ (*Es*

have dreaded Che, who was literally willing to establish the *perpetual peace* of socialist justice over the graveyard of humankind.¹⁴⁷ Perhaps the only possible answer to Che's passionate commitment to justice is the one that Anastas Mikoyan, a top Soviet diplomat assigned to Cuba in 1962, managed to articulate when Che rebuked the Soviet Union for not taking the Cuban Missile Crisis to its last (and fatal) consequences: 'We do not want a beautiful death. Socialism must live'.¹⁴⁸

V EPILOGUE: *SIN PERDER LA TERNURA JAMÁS*

The emotional constituents of Che's political and legal thought played an essential role in the cultural configuration of his political myth. In the wake of the global financial crisis, they also seem to be quite relevant for our current understanding of society and law. Che's myth constitutes an outstanding case to dissect the passionate ingredients that the perception of injustice introduces in the symbolic order. The emotions that saturate Che's writings and revolutionary actions – love of justice, hatred of injustice – relentlessly challenge and undermine the interaction between law and inequality in Latin America. I believe that Che's wrath, however, could hardly be contained within this region today. In a world in which the gap between poor and rich people is continuously deepening,¹⁴⁹ it seems convenient to be at least aware of the canvas behind one of the most powerful social imaginaries that have been erected around law's contribution to the unequal distribution of income, capital and political standing.

Che's erotics of revolution and justice could be summarised in the following motto: *Hay que endurecerse sin perder la ternura jamás* (one must toughen oneself without losing tenderness).¹⁵⁰ He took his anger against injustice too far, yet his diagnosis on the sufferings caused by capitalism is accurate. Immediately after the triumph of the revolution, he imagined a reunion between the colonised peoples of America, Asia and Africa. He envisioned the stares of the delegates attending the meeting glaring with amazement under the spell of Castro's stories on the Cuban revolution. '[I]t is not the astonishment of hearing something unprecedented', he wrote, 'but the result of hearing a new version, identical in its development and consequences, to the old version of colonial oppression that they have lived and endured during centuries of ignominy'.¹⁵¹ Men and women become substantially alike when they are placed under the yoke of injustice, and this is a valid reason to feel outraged regarding the state of the world – today as in 1959.

herrsche Gerechtigkeit, die Schelme in der Welt mögen auch insgesamt darüber zu Grunde gehen).

147 Ibid, 152.

148 Quoted in Castañeda, above n 2, 389.

149 See Thomas Piketty, *Le Capital au XXIe Siècle* (Seuil, 2013).

150 Ricardo Rojo, *Mi Amigo El Che* (Sudamericana, first published 1968, 1997) 11.

151 Guevara, 'América desde el Balcón Afroasiático', above n 1, 3.

Latin American liberals have frequently blamed Che (both in his *historical* and *mythical* avatars) for the loss of hundreds of lives of young individuals who have tried to emulate him only to end their days just as he did – that is, defeated by a repressive army.¹⁵² This is, I believe, a petty understanding of the revolutionaries that John Steinbeck compellingly confronted in *The Grapes of Wrath*: Che – just as Paine, Marx, Jefferson or Lenin¹⁵³ – is not the cause of revolutions – either successful or failed – but the result of ‘a hunger in a stomach, multiplied a million times; a hunger in a single soul, hunger for joy and some security, multiplied a million times’, and ‘muscles and mind aching to grow, to work, to create, multiplied a million times’.¹⁵⁴ Thus, even if we turn our eyes away from such a hunger, ‘[i]n the souls of the people the grapes of wrath are filling and growing heavy, growing heavy for the vintage’.¹⁵⁵

As long as we tolerate injustice – that is, the alienation, exploitation and marginalisation of vulnerable people – as a systemic condition of our modes of social organisation, Che’s myth will perpetually resuscitate, in all its compassionate generosity and raging madness, whenever someone decides to take as a personal issue the obscene poverty of the many upon which capitalism guarantees the prosperity of the few. *We are society*, so we are actually responsible for the emergence of idealist *guerrilleros* and *guerrilleras* who yearn for justice for everyone. We should therefore mourn the wasted life of young Che, who kindly wanted to heal the wounds of Latin America, just as we should mourn the lives of all those who have perished following his path because neither capitalism nor socialism have effectively conquered hunger and poverty and ignorance: as their deaths have been vain, their ghosts will continue haunting us.

If we want to prevent one, two, three thousand enraged *guerrilleros* and *guerrilleras* arising all over the world under the current circumstances of unfathomable inequality between the poor and the rich, we should probably try to follow the advice that Che gave his children in a letter that he wrote before departing to meet his final destiny in Bolivia: ‘[T]ry always to be able to feel deeply any injustice committed against any person in any part of the world [because] it is the most beautiful quality of a revolutionary’.¹⁵⁶ This is the sweet voice of *philia* (φιλία), or, fraternal love, that calls us to an authentic practice of altruism, friendship and brotherhood, and to commit ourselves to protect and defend dignity and freedom for each human being in every single corner of the world.

152 See, for example, Castañeda, above n 2, 661ff; Krauze, above n 19, 353ff; and Vargas Llosa, above n 21, 21–22.

153 John Steinbeck, *The Grapes of Wrath* (Penguin, first published 1939, 2011 ed) 177.

154 Ibid, 175.

155 Ibid, 411.

156 Ernesto Guevara ‘A Mis Hijos’ in Ernesto Guevara, *Escritos y Discursos* (Editorial de Ciencias Sociales, 1977) vol 9, 391, 392.