The 9 Select Central States

Regional Ethics Bowl Cases

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Case 1: Euthanasia for Alcoholism

On July 14, 2016, a Dutch general practitioner euthanized Mark Langedijk by giving him a lethal injection. Langedijk's death had been approved by a physician from Support and Consultation on Euthanasia (SCEN), the Netherlands' medical body that examines requests from persons wishing to avail themselves of state-assisted dying. "Enough is enough," stated the 41-year-old alcoholic, who had unsuccessfully undergone twenty-one attempts at rehabilitation for his addiction. His marriage destroyed, Langedijk said he "could not continue to live as an alcoholic."[1]

Physician-performed-euthanasia ("mercy killing") has been permissible in the Netherlands since 2002; although still officially illegal, it is not prosecuted when 1) the patient's request is voluntary and well-considered, 2) the patient's suffering is unbearable, and 3) there is no prospect of improvement. A SCEN physician must agree that these criteria are met. Contrary to popular belief and usual practice, the act does not state that euthanasia may only be performed in the 'terminal stage' of a condition.[2] Initially, 90+% of requests came from terminally ill cancer patients. However, over the last decade requests have come from persons with a greater variety of diagnoses. More than one person has requested and been granted euthanasia for "social isolation and loneliness,"[3] and pediatricians have recommended that euthanasia be available to patients as young as 10-years-old. The number of euthanasia deaths has nearly tripled since 2002.[4]

As with any controversial action, worries arise. First, procedural questions arise about the clarity and quantifiability of the criteria generally, and about the distinction (if any) between physical and psychological pain particularly. Second, debates are ongoing about who is the appropriate judge of "enough"; proponents of broader criteria

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[1] Bradford Richardson, "Mark Langedijk, Dutch Man, Euthanized over Alcoholism," *The Washington Times*, June 13, 2017, http://www.washingtontimes.com/news/2016/nov/30/mark-langedijk-dutch-man-euthanized-over-alcoholis/.

[2] Regional Euthanasia Review Committee, "Code of Practice," *RTE*, June 13, 2017, https://www.euthanasiecommissie.nl/uitspraken/brochures/brochures/code-of-practice/1/code-of-practice.

[3] Richardson.

[4] Gordon Darrocht, "Rise in Euthanasia Requests Sparks Concern as Criteria for Help Widen," *Dutch News*, June 13, 2017, http://www.dutchnews.nl/features/2015/07/rise-in-euthanasia-requests-sparks-concern-as-criteria-for-help-widen/.

appeal to patient autonomy, while opponents worry about potential abuse. Finally, the moral obligations of physicians to patients with refractory suffering is unclear.

Case 2: Why Suicide?

In March 2017 Netflix released an episodic web series based on a novel by Jay Asher called *Thirteen Reasons Why*. The series follows the lives of high school students living in the wake of a classmate's suicide. The narrative concept is that before Hannah Baker's suicide, she recorded a series of thirteen audiotapes outlining the reasons why she kills herself. Hannah leaves these tapes in the custody of a friend, Tony, who delivers them to a cast of characters—each of whom Hannah believes contributed to her ending her own life. Soon after the show was released, critics began to publicly complain.

One criticism common to many parents, mental health professionals, and teachers is that the show glamorizes suicide. The National Association of School Psychologists cautions that the show's "powerful storytelling may lead impressionable viewers to romanticize the choices made by the characters and/or develop revenge fantasies."[5] This concern has been echoed by some parents who claim that the suicides of their teenage children were triggered by the show.[6]

The series now begins each episode with a trigger warning, but originally the show contained trigger warnings for only three episodes—the 9th, which graphically depicts Hannah's rape, and the 12th and 13th, which feature suicide scenes. Hannah Baker's suicide at the end of the first season is graphic and violent. Nic Sheff, a writer on the series, describes the portrayal as "an instant reminder that suicide is never peaceful and painless, but instead an excruciating, violent end to all hopes and dreams and possibilities for the future."[7]

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[5] "13 Reasons Why Netflix Series: Considerations for Educators," *National Association of School Psychologists*, August 9, 2017, https://www.nasponline.org/resources-and-publications/resources/school-safety-and-crisis/preventing-youth-suicide/13-reasons-why-netflix-series-considerations-for-educators.

[6] Katie Kindelan and Sabina Ghebremedhin, "2 California Families Claim '13 Reasons Why' Triggered Teens' Suicides" *ABCNews*, June 28, 2017, http://abcnews.go.com/US/california-families-claim-13-reasons-triggered-teens-suicides/story?id=48323640.

[7] Nic Sheff, "*13 Reasons Why* Writer: Why We Didn't Shy Away from Hannah's Suicide," *Vanity Fair*, April 19, 2017, https://www.vanityfair.com/hollywood/2017/04/13-reasons-why-suicide-controversy-nic-sheff-writer.

The show's production team anticipated a controversial discussion about the show, given the prevalence of suicide, suicide attempts, and suicide ideation among teens. As producer Selena Gomez puts it, "this is happening every day...Whether or not you wanted to see it, that's what's happening. The content is complicated." According to the CDC "17.0% of students (grades 9-12) seriously considered attempting suicide in the previous 12 months (22.4% of females and 11.6% of males)."[8] Though this data precedes the release of the show, the correlative evidence in a recent study has shown that "*13 Reasons Why*, in its present form, has both increased suicide awareness while unintentionally increasing suicidal ideation."[9]

[8] "Suicide Facts at a Glance 2015," *Centers for Disease Control and Prevention*, August 9, 2017, https://www.cdc.gov/violenceprevention/pdf/suicide-datasheet-a.pdf.

[9] John W. Ayers, "Internet Searches for Suicide Following the Release of *13 Reasons Why*," *Journal of the American Medical Academy*, July 31, 2017, http://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2646773?utm_source=Silverchair_Information_Systems&utm_campaign=FTM_07272017&utm_content=news_releases&cmp=1&utm_medium=email.

Case 7: Professor Blackface

In October 2016, University of Oregon law professor Nancy Shurtz decided to throw a Halloween costume party at her house, inviting friends, colleagues, and students. Upon arriving, the guests immediately noticed their host's costume: Shurtz, a white woman, was wearing a white lab coat, a stethoscope, an afro wig, and black make-up on her face and hands. In short, Shurtz had donned blackface, a style of make-up associated with minstrelsy. (Minstrel shows were an early 19th-century form of entertainment that featured mostly white actors wearing black face paint for the purpose of portraying African Americans in a derisive fashion.[65])

According to one of the students who attended the party, "the costume was so ludicrous and offensive that it was apparent that many of the guests were avoiding interaction with Shurtz."[66] Notwithstanding their discomfort, guests did not confront Shurtz about her costume. Students explained that, despite wanting to leave the party, they felt obligated to stay, "because Shurtz had papers of theirs still waiting to be graded."[67]

As the news of the party spread through the campus like wildfire, students of color found themselves "put in the awkward position of having to explain why blackface is inappropriate."[68] After complaints from faculty and students reached the university authorities, the law school suspended Shurtz, launched an investigation, and subsequently published a report. According to the investigation, Shurtz was deemed to have committed "discriminatory harassment," citing the negative impact of her costume on her students and the university at large.[69] The investigators concluded that "[t]he lack of understanding by some students, coupled with an existing lack of

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[65] Christina Coleman, "GlobalGrind History Lesson: The Real Reason It's Just Not OK To Wear Blackface," *GlobalGrind*, June 11, 2017, https://globalgrind.cassiuslife.com/3882305/reason-why-its-not-ok-to-wear-blackface-list-photos/.

[66] Andrew Theen, "Report: UO Law Professor Who Wore Blackface Violated School's Discrimination Policy," *The Oregonian; Oregon Live*, June 11, 2017, http://www.oregonlive.com/education/index.ssf/2016/12/report_uo_law_professor_who_wo.html.

[67] Scott Jaschick, "Oregon: Professor in Blackface Violated Anti-Harassment Policy," *Inside Higher Ed*, June 11, 2017, https://www.insidehighered.com/news/2017/01/03/university-oregon-finds-professor-who-wore-blackface-party-violated-anti-harassment.

[68] Theen.

[69] Ibid.

diversity in the law school student body, has led to minority students feeling further disenfranchised from their classmates and the school."[70]

In response to the fallout from her Halloween party, Shurtz issued a written apology in which she explained that her costume was inspired by Dr. Damon Tweedy's memoir *Black Man in a White Coat*, which focuses on Tweedy's experience of racism in medical school. She added that her intention was "to provoke a thoughtful discussion on racism in our society, in our educational institutions and in our professions."[71]

Despite Shurtz's public apology, several faculty members have called on Shurtz to resign. Others, while not necessarily calling for her dismissal, have expressed confusion and dismay over the incident, noting the irony that a professor who has served in the law school's diversity committee could be ignorant of the association between blackface and the "really tragic history of lynching...slavery...[and] Jim Crow."[72]

In contrast, Shurtz's supporters have characterized the backlash against the professor as extreme, noting that suspending a tenured faculty member over the offensive nature of a Halloween costume undermines the university's fundamental commitment to freedom of speech. "Universities are supposed to be a place for debate and controversy,"[73] explained Eugene Volokh, a UCLA law professor. According to the Foundation for Individual Rights in Education,

> students and professors are in trouble if they are at risk for punishment any time their expression motivates rigorous debate on campus...The outcome in Shurtz's case means that if someone expresses their opinion on any race- or sex-related controversy in a way that others deem offensive, that person will be held responsible for all subsequent

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[70] Ibid.

[71] Diane Dietz, "UO Professor Issues Apology," *The Register Guard*, June 11, 2017, http://projects.registerguard.com/rg/news/local/34955760-75/uo-professor-apologizes-for-wearing-blackface-on-halloween.html.csp.

[72] Ibid.

[73] Eugene Volokh, "At the University of Oregon, No More Free Speech for Professors on Subjects such as Race, Religion, Sexual Orientation," *The Washington Post*, June 11, 2017, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/26/at-the-university-of-oregon-no-more-free-speech-for-professors-on-subjects-such-as-race-religion-sexual-orientation/?utm_term=.9d7c0f489c7b.

discomfort and disruption—even if that discomfort is a natural consequence of constitutionally protected speech, and even if the disruption is plainly someone else's responsibility.[74]

[74] Jaschick.

Case 8: Goldwater Taking on Water

Earlier this year, a small group of psychiatrists held a town-hall meeting at Yale Medical School to discuss President Donald Trump's mental health. Dr. Bandy X. Lee, a psychiatry professor at Yale University, organized the meeting. She believes that psychiatrists have a "Duty to Warn" that Trump is not only unfit to serve as president, but also dangerous to the health and security of the citizens of this country.[75] And though Dr. Lee's position is controversial, she is far from the only one who subscribes to it. Dr. John Gartner, a psychiatrist and former John Hopkins Medical School professor, has stated that "from a psychiatric point of view [Trump is] the absolute worst-case scenario," as if someone had tried "to create a Frankenstein's monster of the most dangerous and destructive leader and had freedom to create any combination of diagnosis and symptoms" found in the Diagnostic and Statistical Manual of Mental Disorders (DSM).[76] Dr. Gartner has created the following petition on Change.org:

> We, the undersigned mental health professionals (please state your degree), believe in our professional judgment that Donald Trump manifests a serious mental illness that renders him psychologically incapable of competently discharging the duties of President of the United States. And we respectfully request he be removed from office, according to [A]rticle 4 of the 25th [A]mendment to the Constitution, which states that the president will be replaced if he is "unable to discharge the powers and duties of his office."

The petition is public and asks only for mental health professionals to sign. The category "mental health professional" is not limited to psychiatrists, but rather includes nurses, psychologists, and other community service providers. Indeed, because the petition is public, at least some of its 59,261 signatures may be from people without a mental-health background.[77]

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[75] Gail Sheehy, "At Yale, Psychiatrists Cite Their 'Duty to Warn' about an Unfit President," *New York Mag*, April 23, 2017, http://nymag.com/daily/intelligencer/2017/04/yale-psychiatrists-cite-duty-to-warn-about-unfit-president.html.

[76] Emily Willingham, "The Trump Psych Debate: Is it Wrong to Say He's Mentally Ill?" *Forbes*, February 19, 2017, https://www.forbes.com/sites/emilywillingham/2017/02/19/psychologist-calls-on-colleagues-to-sign-petition-for-trumps-removal/#7b8f010b64f3.

[77] John Gartner, "Mental Health Professionals Declare Trump is Mentally Ill and Must be Removed," *Change.org*, https://www.change.org/p/trump-is-mentally-ill-and-must-be-removed.

Dr. Gartner's position is controversial because the American Psychiatric Association's code of professional conduct forbids psychiatrists from publically commenting on the mental health of living public figures without first personally examining them. This rule is informally known as "the Goldwater rule," after the man who led to its creation. In 1964, over 1000 psychiatrists signed a petition opining that the Republican presidential nominee, Barry Goldwater, was psychologically unfit for the office of president. The petition was published in *Fact* magazine, which Goldwater later sued for libel and won.[78] So it is no wonder that psychiatrists today are hesitant to publically declare President Trump mentally unfit, even if they might personally believe he is.

Indeed, as a group of mental health professionals express in a letter to the editor of the *New York Times,* the silence imposed by the Goldwater rule "has resulted in the failure [of the psychiatric profession] to lend our expertise to worried journalists and members of Congress at this critical time."[79] Dr. Jerrold Post, founder of the CIA's Center for the Analysis of Personality and Political Behavior, has similar concerns: "You have all kinds of amateurs out there giving diagnoses of what they think is wrong with President Trump's psychological makeup. But they don't really know what they're talking about. Meanwhile, the psychiatrists are not allowed to weigh in."[80]

Amid this controversy, it is important to remember that mental illness does not automatically render a person unfit to lead—in fact, certain types of mental illness may help a person be a good leader. According to Dr. Nassir Ghaemi, quite a few famously great leaders like Abraham Lincoln and Martin Luther King Jr. "had some form of mental illness."[81] And as to Trump, it is unclear whether the traits that have so many people so worried are the symptoms of mental illness or simply his personality. Dr. Frances Allen, the chairman of the task force that wrote the DSM-IV, believes that characterizing Trump's behavior as mental illness not only excuses his bad behavior,

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[78] Jane Mayer, "Should Psychiatrists Speak Out Against Trump?" *The New Yorker,* May 22, 2017, http://www.newyorker.com/magazine/2017/05/22/should-psychiatrists-speak-out-against-trump.

[79] Lance Dodes, et al., "Mental Health Professionals Warn about Trump," *The New York Times,* February 13, 2017, https://www.nytimes.com/2017/02/13/opinion/mental-health-professionals-warn-about-trump.html?_r=0.

[80] Jane Mayer, interview by Audie Cornish, "Psychiatrists Divided Over the 'Goldwater Rule' in the Age of Trump, *NPR,* May 15, 2017, http://www.npr.org/2017/05/15/528502969/psychiatrists- divided-over-the-goldwater-rule-in- the-age-of-trump.

[81] "'Madness' and Leadership, Hand in Hand," *NPR,* August 20, 2011, http://www.npr.org/2011/08/20/139681339/madness-and-leadership-hand-in-hand.

but unfairly stigmatizes people who actually suffer from mental illness.[82] On the other hand, to his supporters, Trump's behavior is not "bad" at all. Rather, Trump's idiosyncrasies are signs of genius, and any purported concern about his mental health is nothing more than a political smear campaign.[83,84] As Dr. Keith Ablow, a psychiatrist and *Fox News* contributor, puts it: "Donald Trump is stone cold sane. Those who assert otherwise are political opportunists, or fools, or both."[85]

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[82] Allen Frances, "An Eminent Psychiatrist Demurs on Trump's Mental State," *The New York Times*, February 14, 2017, https://www.nytimes.com/2017/02/14/opinion/an-eminent-psychiatrist-demurs-on-trumps-mental-state.html?_r=0.

[83] Keith Ablow, "Donald Trump and the Incredible Power of Psychological Truth," *Fox News*, March 3, 2017, http://www.foxnews.com/opinion/2017/03/03/keith-ablow-donald-trump-and-incredible-power-psychological-truth.html.

[84] Keith Ablow, "Want to Improve Your Life? Be More Like President Trump (Not Kidding!)," *Fox News*, April 17, 2017, http://nation.foxnews.com/2017/04/17/dr-keith-ablow-want-improve-your-life-be-more-president-trump-not-kidding.

[85] Keith Ablow, "Relax, Trump Is Stone Cold Sane," *Fox News*, Feb. 15, 2017, http://www.foxnews.com/opinion/2017/02/15/relax-trump-is-stone-cold-sane.html.

Case 10: Running Away from the Competition

In 2014, Indian sprinter Dutee Chand gold medaled in the 200-meter sprint and the 4x400-meter relay at the Asian Junior Athletics Championships in Taipei, Taiwan. South African runner Caster Semenya, competing in the women's 800 meter run, won gold in the 2009 World Championships, and silver in the 2011 World Championships and 2012 Summer Olympics. Chand's and Semenya's medals, as well as the legitimacy of their even competing in the 2016 Summer Olympics, was contested as their testosterone levels are much higher than is found in most women.[100] Testosterone is associated with (and, some experts suggest, productive of) increased muscle and bone mass, lean body structure, and higher competitive drive.

Chand and Semenya are not the first athletes to encounter the question of endocrinological advantage. At least as early as 1936 questions were raised about alleged sex-based anatomical and physiological advantages of some women athletes.[101] Since that time, the IAAF (International Association of Athletic Federations) has instituted multiple different (often excruciatingly humiliating) tests to determine the sex of women who have at least some typically masculine characteristics or who perform astonishingly well in competition.[102] Various tests have demonstrated that most such women are intersexed: that is, their internal and external reproductive organs are mismatched. For example, an intersexed person may have an XY (male) chromosomal pattern and normal internal testes, but have external female genitalia. Conversely, an intersexed person may have an XX (female) chromosomal pattern and ovaries, but male external genitalia.[103] In the context of the Olympic Games, the concern has been that intersexed competitors who appear to be (and think of themselves as) female may have internal testes that produce testosterone. In such

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[100] Myron Genel, Joe Leigh Simpson and Albert de la Chapelle, "The Olympic Games and Athletic Sex Assignment," *JAMA* 316, no. 13 (2016): 1359-1360.

[101] Melissa Block, "The Sensitive Question Of Intersex Athletes," *NPR*, June 11, 2017, http://www.npr.org/sections/thetorch/2016/08/16/490236620/south-african-star-raises-sensitive-questions-about-intersex-athletes.

[102] Ruth Padawer, "The Humiliating Practice of Sex-Testing Female Athletes," *The New York Times Magazine*, June 11, 2017, https://www.nytimes.com/2016/07/03/magazine/the-humiliating-practice-of-sex-testing-female-athletes.html?_r=0.

[103] Neil Kaneshiro, "Intersex," *MedlinePlus*, August 1, 2017, https://medlineplus.gov/ency/article/001669.htm.

cases, the female competitors will have elevated (for women) levels of testosterone in their blood.

However, at the 1996 Olympic Games, seven of eight women found to have a Y chromosome were androgen insensitive: though they had blood testosterone levels higher than normal for women with XX chromosomes, their bodies could not use the testosterone to any physiological advantage. Nonetheless, the IAAF decreed that women with high testosterone levels must reduce these levels or be ineligible to compete.

But endocrinologists and sports medicine experts disagree about the effects of this physiological disparity. The testosterone range among competitive athletes is great; males can have low levels and female levels can be high. In fact, a recent study found that "one in six elite male athletes have testosterone levels below the normal reference range...[and] in some cases below the average for female elite athletes."[104] Further, even in athletes with statistically normal chromosomal patterns (XX for women, XY for men) who have statistically normal appearances, scientists are uncertain how and to what extent testosterone affects performance.[105] For example, the commonly-held assumption about the link between testosterone-fueled males and their innate competitiveness has been debunked by cross-cultural studies, which have shown that girls and women in countries with matrilineal cultures or "lesser economic development...[are] as competitive as their male counterparts."[106] Add the uncertain effects of differences in nutrition, training, professional coaching, familial and cultural support, and other "nurture" variations; the result is to make determining what makes any particular athlete more or less competitive little more than a guess. Nonetheless, since 2011 female competitors have been tested specifically for testosterone levels. (Men's testosterone levels are not tested or regulated.)

In June 2014, Dutee Chand, a rising young star for the Athletics Federation of India (AFI), was summoned to Delhi for testing, after which she was told she would not be allowed to compete unless she lowered her testosterone level, and that she was banned from all competition for a year. Chand appealed to the AFI to reinstate her, arguing that she had done nothing wrong. She also appealed to the international Court

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[104] Cordelia Fine, *Testosterone Rex* (London: Icon Books, 2017), 138.

[105] Padawer

[106] Fine, 124.

of Arbitration for Sport (CAS)—the Supreme Court for sports disputes—which heard her appeal in 2015.

In July 2016 the CAS ruled that scientific evidence was insufficient to prove that women with high levels of testosterone have a significant competitive advantage, that the nature and degree of testosterone's effect on athletic ability is unknown, as is whether any advantage it confers is greater than such "...variables as nutrition, access to specialist training facilities and coaching, and other genetic and biological variations."[107] Thus, CAS judges ruled that requiring women to change their bodies to compete was unjustifiably discriminatory; they suspended the requirement until July 2017. If by then the IAAF was unable to demonstrate that naturally high testosterone levels in women was comparable to men's broader advantage over women, the regulation "shall be declared void."[108] The International Olympic Committee agreed to eliminate testing pending further evidence.

At the 2016 Summer Olympics Caster Semenya won the gold medal in the 800-meter event. Dutee Chand did not advance beyond the qualifying round.

[107] "Interim Arbitral Award in Dutee Chand v. AFI and IAAF," *Court of Arbitration for Sport*, June 11, 2017, http://www.tas-cas.org/fileadmin/user_upload/award_internet.pdf.

[108] Jeré Longman, "Understanding the Controversy over Caster Semenya," The *New York Times*, June 11, 2017, https://www.nytimes.com/2016/08/20/sports/caster-semenya-800-meters.html.

Case 11: Mind over Matter?

On April 29, 2017, the Ditchling Museum of ART + CRAFT opened a new exhibit: *Eric Gill: The Body*. Gill was one of the finest British artists of the 20th century; his sculptures stand in buildings across the world, including Westminster Cathedral (London) and the United Nations Building (NYC). His sculptures, engravings, and drawings permanently reside in prestigious museums. According to Ditchling's web page, "[w]ithin Gill's work, the human body is of central importance; this major exhibition asks whether knowledge of Gill's disturbing biography affects our enjoyment and appreciation of his depiction of the human figure."[109] The "disturbing biography" referred to is Gill's sexual abuse of his two oldest daughters during their teens.

Prior to mounting the exhibition, Ditchling's director, Nathaniel Hepburn, convened a workshop that included academics, museum professionals and curators, critics, and journalists to consider not whether, but how, the exhibition might usefully examine this sexual abuse. Journalist Rachel Cooke, a workshop participant, queries: "For me, though, the biggest question remains unanswered: why do this show at all? The darknesses in Gill's life have been public knowledge... [since] 1989. It is not as though this information is secret. Why force it on visitors?"[110]

Certainly some viewers will be distressed—perhaps mightily distressed—to see sculptures and engravings of the abused daughters, executed during the periods of their abuse. For example, abuse survivors may experience flashbacks of their abuse. Members of the more general public are likely to experience feelings of disgust and repugnance in learning how Gill came to acquire such intimate knowledge of his subjects' bodies. Abusers themselves may view their own behavior as validated upon learning that a great artist produced brilliant work as a result of his sexual abuse of minors. Indeed, one post on the museum's Facebook page notes: "Voyeurism is not art - your exhibition feeds the poisoned minds of child molesters - for the safety of all young bodies and souls at risk - I insist you remove these images."[111]

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[109] "Eric Gill: The Body," *Ditchling Museum of Art + Craft*, June 6, 2017, http://www.ditchlingmuseumartcraft.org.uk/event/eric-gill-body/.

[110] Rachel Cooke, "Eric Gill: Can We Separate the Artist from the Abuser?," *The Guardian*, June 9, 2017, https://www.theguardian.com/artanddesign/2017/apr/09/eric-gill-the-body-ditchling-exhibition-rachel-cooke?CMP=Share_iOSApp_Other.

[111] Ditchling Museum of Art + Craft Facebook Page, June 9, 2017, https://www.facebook.com/pg/museumartcraft/reviews/.

Why, then, bring up the abuse at all? Why not just show Gill's work without mentioning this aspect of his personal history? The relationship of artists' personal lives to their works has long been a vexed question that remains unsettled. Director Hepburn responds: "Museums have a duty to talk about difficult issues. They are a place where society can think. There is some public benefit in organisations like ours not turning a blind eye to abuse."[112]

Moreover, the American Association of Museum Curators' Code of Ethics lists as curators' first value "[t]o serve the public good by contributing to and promoting learning, inquiry, and dialogue, and by making the depth and breadth of human knowledge available to the public."[113] The Code adds that curators' interpretive responsibilities include: "When possible and appropriate, [curators] accurately and respectfully represent the creator's perspective."[114] The Code does not address who is/might be the arbiter(s) of "the public good", or the exact nature of this good.

Finally, the issue of self-censorship arises: If museums themselves censor exhibitions' content by choosing to omit objects viewers might find offensive, the public will be deprived of art that, at least according to some art experts, has aesthetic value—Robert Mapplethorpe's photos come to mind here.

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[112] Cooke.

[113] American Association of Museums Curators Committee "A Code of Ethics for Curators," *American Alliance of Museums*, June 9, 2017, http://aam-us.org/docs/continuum/curcomethics.pdf?sfvrsn=0.

[114] Ibid.

Case 12: Gonzo Journalism

The Society of Professional Journalists was started in 1909 by DePauw University students who were interested in careers in journalism, and wanted to "uphold high standards in the profession."[115] The group spread to other college campuses and evolved into a professional organization. In 1926 the group adopted its first code of ethics, borrowed from the American Society of Newspaper Editors. This code of ethics was revised five times, with the most recent revision in 2014. In the 1973 version of the code of ethics, the guidelines require being objective, free from bias, and avoiding morbid curiosity or excessive coverage of vice and crime.[116] The 2014 code of ethics recommends avoiding pandering to lurid curiosity, and providing context but does not call for objectivity or avoidance of bias, except insofar as to require labeling of advocacy or commentary.[117] One wonders why these rules have evolved over the past forty years.

One famed journalist comes to mind: Hunter S. Thompson. He broke a lot of rules, including the general proposition in journalistic ethics that the reporter was not a part of the story, which is embodied in the prior code's calls for objectivity and bias-avoidance. Instead of attempting to be the fly on the wall, he became part of the stories he reported, which upended journalistic history and tradition, and led to the notion of Gonzo journalism.

Today's most famed journalists tend to be less flamboyant, but nonetheless involved in the story. Amy Goodman attended the protests in Standing Rock to cover them. She and members of Unicorn Riot, an indie news outlet, were arrested, and their arrests became part of the story, insofar as those arrests may have represented government oppression and/or intrusion on First Amendment rights.[118] Many lauded the judge in

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[115] Society of Professional Journalists, "Historic Moments: A Timeline of SPJ's Development," *Society of Professional Journalists*, June 15, 2017, https://www.spj.org/spjhistory.asp.

[116] Society of Professional Journalists, "Code of Ethics (1973)," *Illinois Institute of Technology*, August 8, 2017, http://ethics.iit.edu/ecodes/node/3702.

[117] Society of Professional Journalists, "Code of Ethics," *Society of Professional Journalists*, August 6, 2017, http://ethics.iit.edu/ecodes/node/3703.

[118] Lizzy Ratner, "Amy Goodman Is Facing Jail Time for Reporting on the Dakota Access Pipeline. That Should Scare Us All," *The Nation*, October 15, 2016, https://www.thenation.com/article/amy-goodman-is-facing-prison-for-reporting-on-the-dakota-access-pipeline-that-should-scare-us-all/.

Ms. Goodman's case for throwing out the riot charges against her,[119] but some note that the proliferation of digital and social media and the advent of the "citizen journalist" have made it much harder to distinguish between those involved in the story and those merely seeking to cover it (and even those who may hope to make a story out of the police interactions with large groups).[120]

Similarly, during the inauguration in Washington, D.C. in 2017, a number of journalists were rounded up with "antifa" (i.e., anti-fascist) protesters, and some such journalists were charged with crimes for allegedly participating in the chaos that they were reporting.[121] Some of these journalists claim that their footage would show that they were not participating in the riots, but merely covering the story.[122] Even worse, however, are the more recent claims that some of these journalists were subjected to rape as punishment while under arrest.[123]

Clearly there are some instances when the journalist's involvement in the story is beyond their control, such as in the claimed rape during arrest. In other instances, however, upon running with "antifa" protesters using Facebook Live, occasionally cursing and otherwise using an informal voice, the journalist may become harder to recognize as he or she goes gonzo. We charge the police with a difficult task of deciding what "counts" as journalism when deciding who should be charged during a protest. The question remains whether the journalist has a duty not to become a part

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[119] Sam Levin, "Judge Rejects Riot Charges for Journalist Amy Goodman after Oil Pipeline Protest," *The Guardian*, October 17, 2016, https://www.theguardian.com/us-news/2016/oct/17/amy-goodman-north-dakota-oil-access-pipeline-protest-arrest-riot.

[120] Alleen Brown, "Arrests of Journalists at Standing Rock Test the Boundaries of the First Amendment," *The Intercept*, November 27, 2016, https://theintercept.com/2016/11/27/arrests-of-journalists-at-standing-rock-test-the-boundaries-of-the-first-amendment/.

[121] Jon Swaine, "Riot Charges Dropped against Three more Journalists at Inauguration Protests," *The Guardian*, January 30, 2017, https://www.theguardian.com/us-news/2017/jan/30/riot-charges-dropped-three-journalists-inauguration-protests.

[122] Steven Nelson, "Independent Journalist Now Faces 70 Years in Prison after Inauguration Mass Arrest," *U.S. News & World Report*, May 1, 2017, https://www.usnews.com/news/articles/2017-05-01/independent-journalist-now-faces-70-years-in-prison-after-inauguration-mass-arrest.

[123] "D.C. Police Accused of Using 'Rape as Punishment' Targeting Some Arrested during Trump Inauguration," *Democracy Now*, June 28, 2017, https://www.democracynow.org/2017/6/28/dc_police_accused_of_using_rape.

of the story, and/or whether there are contexts when proximity to the story is inappropriate.

Case 13: The Ethics of Podcasting

The true crime podcast *Serial* is wildly popular, so much so that it has spawned many imitators since it came out a few years ago. In *Serial*, journalist Sarah Koenig investigates the 1999 killing of Hae Min Lee, for which her ex-boyfriend Adnan Syed was convicted and sentenced to life in prison.[124] Koenig presents the story with a catchy theme song, in weekly installments, with cliffhangers at the end of each episode. For the listeners, *Serial* is a riveting true crime story. But for Hae's family as well as Adnan and his family, this is—inescapably—real life. Indeed, one man claiming to be Hae's brother posted on Reddit requesting that fans stop asking him questions:

> TO ME ITS [sic] REAL LIFE. To you listeners, its another murder mystery, crime drama, another episode of CSI... You don't know what we went through. Especially to those who are demanding our family response and having a meetup... you guys are disgusting. Shame on you. I pray that you don't have to go through what we went through and have your story blasted to 5mil listeners. [125]

Some believe that it is unethical for journalists to present these stories as entertainment; others suggest that it is just the unfortunate reality that crime victims become unwitting public figures.[126]

The recent podcast *S-Town*, by the same team that produced *Serial*, has become another instant success.[127] It begins as another true crime podcast, with journalist Brian Reed traveling to a small Alabama town to investigate an alleged murder. But it quickly becomes clear that no such murder occurred. Reed abandons the premise, and the podcast becomes a character study of the man who contacted Reed to tell him about the crime, John B. McLemore. After learning that McLemore committed suicide, Reed investigates some of the most intimate and personal aspects of McLemore's life—e.g., his sexuality, his mental health, and his romantic and familial relationships—and shares them with his listeners. This makes for an extremely compelling and unquestionably

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[124] *Serial Podcast Season 1*, podcast audio, July 26, 2017, https://serialpodcast.org/season-one.

[125] Jessica Goldstein, "The Complicated Ethics of 'Serial,' The Most Popular Podcast of All Time," *ThinkProgress*, November 20, 2014, https://thinkprogress.org/the-complicated-ethics-of-serial-the-most-popular-podcast-of-all-time-6f84043de9a9.

[126] Ibid.

[127] *S-Town Podcast*, podcast audio, July 26, 2017, https://stownpodcast.org/.

entertaining story, but many see it as inappropriately invasive, especially considering that McLemore never consented to his story being shared so broadly. One journalist described the story as "morally indefensible."[128]

But *S-Town* has also been described as "brilliant, meaningful, ambitious podcasting with the potential to elevate the medium."[129] Because Reed approaches his subjects with respect and compassion, the intensely personal story humanizes McLemore instead of simply gawking at his private life.[130] Indeed, as Reed himself has explained, his team's approach "is always to treat the people in our stories as three-dimensional people. We don't do sound bites, we don't do stereotypes."[131] Reed has also clarified that the decisions to include delicate information in the podcast were not taken lightly:

> We think about every piece of sensitive information carefully . . . There are lots and lots that I learned in the reporting that I didn't put in the story because we felt that what it added to the story wasn't worth either the sensitive nature of it, or maybe it touched someone who was still alive, and we didn't include it for that reason.
>
> But also I don't believe that when a reporter is doing a story about someone who has died, that they can only include elements that the person consented to when they were alive. I don't believe that's an ethical problem.[132]

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[128] Gay Alcorn, "S-Town Never Justifies Its Voyeurism, and that Makes it Morally Indefensible," *The Guardian*, April 21, 2017, https://www.theguardian.com/commentisfree/2017/apr/22/s-town-never-justifies-its-voyeurism-and-that-makes-it-morally-indefensible.

[129] Aja Romano, "S-Town is a Stunning Podcast. It Probably Shouldn't Have Been Made," *Vox*, April 1, 2017, https://www.vox.com/culture/2017/3/30/15084224/s-town-review-controversial-podcast-privacy.

[130] Corey Atad, "How 'S-Town' Explores the Murky Ethics of Privacy," *Vice*, April 5, 2017, https://www.vice.com/en_us/article/how-s-town-explores-the-murky-ethics-of-privacy.

[131] Katie KilKenny, "Brian Reed on the Tough Reporting Decisions Behind 'S-Town,'" *Pacific Standard*, April 13, 2017, https://psmag.com/social-justice/brian-reed-on-the-tough-reporting-decisions-behind-s-town.

[132] Ibid.

Case 15: Rivers Are People Too

On March 15th, 2017, New Zealand passed a law declaring the Whanganui River a legal person. The Whanganui is the first river to gain legal personhood, but India quickly followed suit and granted personhood to both the Ganges and Yamuna rivers.[140] Court-appointed guardians are now responsible for being trustees of the rivers' rights. These rivers cannot vote or buy beer, but they now have legal standing in national courts. Maori spokesperson Gerrard Albert says of the legal recognition:

> We have fought to find an approximation in law so that all others can understand that from our perspective treating the river as a living entity is the correct way to approach it, as in [sic] indivisible whole, instead of the traditional model for the last 100 years of treating it from a perspective of ownership and management.[141]

In addition to reflecting an ancestral view of personhood, there are practical advantages to the new legal status of the Whanganui and Ganges. Each day, around two billion liters of waste are deposited in the Ganges alone. No longer will attempts to protect the river's health be required to show harm to people, because the rivers themselves will have rights. According to one source, "[t]he decision, which was welcomed by environmentalists, means that polluting or damaging the rivers will be legally equivalent to harming a person."[142]

However, these new protections have some people worried about the possible effects of protecting rivers on the local human populations. For instance, city sewage, farming pesticides, and industrial waste are all currently dumped into the Yamuna, and these waste products are, to some extent, an unavoidable aspect of urban development, farming practices, and industry. An immediate cessation of dumping this waste would adversely affect the people living in the area and benefiting from these industries.

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[140] Michael Safi, "Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings," *The Guardian*, March 21, 2017, https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings.

[141] Eleanor Ainge Roy, "New Zealand River Granted Same Legal Rights as Human Being" *The Guardian* March 16, 2017, https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being.

[142] Safi.

Others critics worry about ascribing rights to apparently non-moral "agents." Micaiah Bilger noted that "[u]nder the law, 'persons' quickly are becoming whatever society wants them to be – or not to be."[143] But, as Chris Finlayson, New Zealand Minister for Treaty of Waitangi Negotiations, suggested, "the initial inclination of some people will say it's pretty strange to give a natural resource a legal personality...but it's no stranger than family trusts, or companies or incorporated societies."[144]

[143] Micaiah Bilger, "Two Countries Grant Legal Personhood to Rivers, but Not Unborn Babies" *Life News*, April 10, 2017, http://www.lifenews.com/2017/04/10/two-countries-grant-legal-personhood-to-rivers-but-not-unborn-babies/.

[144] Colin Dwyer, "A New Zealand River Now Has the Legal Rights of a Human" *NPR*, March 16, 2017, http://www.npr.org/sections/thetwo-way/2017/03/16/520414763/a-new-zealand-river-now-has-the-legal-rights-of-a-human.