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Essay

On Dorfman's *Death and the Maiden*

David Luban*

I

Gerardo Escobar, the human rights lawyer, is late returning from his meeting with the President, and his wife Paulina is edgy as she keeps dinner warm in their isolated coastal home. Sudden thunder, sheets of rain, and the electricity goes out, cutting off the radio news in midsentence. The summer storm is violent, but Paulina has a different kind of violence on her mind. "The time is the present," Ariel Dorfman tells us in the stage directions to *Death and the Maiden*, "and the place, a country that is probably Chile but could be any country that has given itself a democratic government just after a long period of dictatorship."¹

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1. ARIEL DORFMAN, *DEATH AND THE MAIDEN* (1991) ("Cast of Characters"). To avoid

Paulina knows that even in countries that are no longer dictatorships, fascists sometimes visit the isolated homes of human rights lawyers on stormy nights. As a pair of headlights winds up the road, Paulina quickly blows out the candles and picks up a pistol. Car doors slam and voices are heard, but it is only Gerardo saying goodbye to someone who turns his car and drives away.

Gerardo had a flat tire; luckily, a good Samaritan gave him a lift home, going miles out of his way. Meanwhile, Gerardo has news. The President has appointed him to the Commission investigating human rights violations under the previous regime. Admittedly, the Commission's mandate is limited: It will investigate only cases that ended in death or the presumption of death. And admittedly, the names of the perpetrators won't be published, and anyway there is the amnesty. Admittedly, therefore, the Commission won't investigate Paulina's case, because Paulina managed to live through it. But maybe her turn will come later. These things take time, and anyway Gerardo hasn't said yes to the President, not without talking to Paulina first.

As he explains these things, Gerardo is nervous because Paulina is fierce, and he knows that she is unstable after what they did to her fifteen years ago. He also knows that he is lying to her about what he said to the President. What he does not realize is that Paulina knows it too. She heard the truth on the interrupted radio broadcast:

Paulina: You already said yes to the president, didn't you? The truth, Gerardo. Or are you going to start your work on the Commission with a lie?

Gerardo: I didn't want to hurt you (p. 11).

As always, Gerardo placates her; in Roman Polanski's film version, they make love and fall asleep.

The middle of the night, and there is pounding at the door. Gerardo tries not to show how scared he is as he answers the door. But it's only his good Samaritan, Dr. Roberto Miranda, who has heard the news about Gerardo on the radio and come back to offer his felicitations. Gerardo invites him in for a drink. He looks in on Paulina, who pretends to be asleep, then returns to the doctor. They talk about Gerardo's work; Gerardo speaks enthusiastically about moral sanctions against the old regime, but the doctor would like to see the whole bunch of them killed. Gerardo, who opposes the death penalty, cannot agree.

unnecessary multiplication of footnotes, all subsequent references to *Death and the Maiden* appear parenthetically in the text. In this Essay I move somewhat promiscuously between the stage and film versions; the storm and rain are in the film, *DEATH AND THE MAIDEN* (Fine Line Features 1994), not the play.

As they talk into the night, Paulina surreptitiously makes her preparations. Gerardo goes to bed, and the doctor goes to sleep on the sofa. A few minutes later, he is Paulina's prisoner. She has slugged him, tied him to a chair, and gagged him. As he comes to, she puts a cassette in the portable player—a cassette of Schubert's *Death and the Maiden* string quartet² that she has taken from the doctor's car.

The music wakes Gerardo, who stumbles sleepily from the bedroom and, Dorfman's stage directions tell us, "watches the scene with total astonishment" (p. 22). Paulina cuts off his outrage with a thundering pistol shot that narrowly misses the doctor. This was the doctor, she explains, who attended her torture fifteen years ago—the doctor who played the *Death and the Maiden* quartet to soothe her between sessions, while he treated her injuries. The civilized doctor who spoke with her about Schubert and science and Nietzsche, and reminded her that beyond the world of torturers civilization went on—the doctor who then raped her, again and again and again, always with *Death and the Maiden* playing in the background.

Paulina recognizes the doctor only from his voice, for she was blindfolded throughout her ordeal. Gerardo is incredulous. How can she beat up and kidnap a man she has never even seen? How can she be so certain? As a human rights lawyer, Gerardo understands the enormity of what she is doing: "A vague memory of someone's voice is not proof of anything, Paulina, it is not incontrovertible" (p. 23). To which Paulina replies, "It may be a teensy-weensy thing, but it's enough for me. During all these years not an hour has passed that I haven't heard it . . ." (p. 23). Then what does Paulina intend to do? Her answer chills Gerardo:

Paulina: We're going to put him on trial, Gerardo, this doctor. Right here. Today. You and me. Or is your famous Investigating Commission going to do it? (p. 26).

II

Of course the Investigating Commission isn't going to do it, because political realities make that impossible. The fledgling democracy dangles from a chain of compromises and constraints. Democracy in return for amnesty. A truth commission in return for confidential findings. The army in its barracks, but still armed and watchful and menacing. An investigation, but only for victims who are dead, because living victims may still be dangerous to their tormentors, and

2. FRANZ SCHUBERT, STRING QUARTET IN D MINOR (D. 810, 1826) (commonly referred to as the *Death and the Maiden* quartet).

their tormentors are still dangerous to the democracy. Paulina knows these realities but rejects them; Gerardo accepts them. Perhaps he even approves of them. As he tells Paulina, “A member of the president’s Commission . . . should be showing exemplary signs of moderation and equanimity . . .” (p. 36).

In his image of his mission, Gerardo ironically is not very far from Roberto Miranda, who lectures him when Paulina is out of the room: “She isn’t the voice of civilization, you are. She isn’t a member of the president’s Commission, you are” (p. 49). Later, the doctor insists that “the country is reaching reconciliation and peace” (p. 60).

Gerardo, it seems, has an optimistic view of his mission and of the nation’s future. During the dictatorship, he took deadly risks as an activist, but he was lucky: Paulina never revealed his identity under torture. If she had, she tells the doctor, someone would be investigating Gerardo’s murder rather than the other way around. Because he was lucky, Gerardo never had a personal reason to abandon his belief in happy endings. If the truth be known, he has avoided unpleasant knowledge that might shake his optimism.

For example, after Paulina’s release, Gerardo never asked her *exactly* what they did to her. He told himself that it would be better for her that way, just as he told himself a few hours ago that lying to Paulina about whether he had accepted the President’s invitation would be better for her. Both times, actually, Gerardo did what was better for him. To Paulina, “human rights violations” means rape and having her face shoved into a bucket of her own shit and electric current burning her genitals so that she can never have a baby. To Gerardo, much as he loves her, “human rights violations” remains a deeply emotional, but essentially abstract, legal category. He has vowed to devote his career to justice, but to do that he needs to believe in happy endings. He needs to believe that the living can put the past behind them. He is a lawyer, and law itself, implicitly promising to lift us out of the state of nature, rests on those beliefs. Otherwise, law can never end the chain of violence. As Doctor Miranda tells Paulina, “someone did terrible things to you and now you’re doing something terrible to me and tomorrow somebody else is going to—on and on and on” (p. 65).

When Gerardo explains to Paulina which cases his Commission is entitled to investigate, he can’t bring himself to use the ugly and impolitic word “murder.” Instinctively, he finds a euphemism: He speaks of “cases that are beyond—let’s say, repair” (p. 9). Only murder, he seems to think, is beyond repair; only death is irreversible. Paulina bitterly echoes, “Beyond repair. Irreparable, huh?” And he replies, “I don’t like to talk about this, Paulina” (p. 9).

Of course he doesn't. How can he harbor any hopes for their marriage if the damage his wife sustained, which was less than murder, turns out to be irreparable? And how can he harbor any hopes for a democratic society if the damage to all the dictatorship's other living victims is irreparable? Gerardo cannot cope with Jean Améry's observation, based on his own experiences at the hands of the Gestapo: "Anyone who has suffered torture never again will be able to be at ease in the world . . . Faith in humanity, already cracked by the first slap in the face, then demolished by torture, is never acquired again."³ Jacobo Timerman, tortured for thirty months by the Argentine police during the Dirty War, confesses: "I cannot prevent the memories of the tortures from spreading themselves over my daily life—like a jigsaw puzzle that a neat and careful child spreads piece by piece over the floor of his room."⁴ To go on, Gerardo needs to hold the concrete physical reality of torture and humiliation, the jigsaw puzzle, at arm's length.

Perhaps that is why Gerardo is so shocked at the sight of Roberto Miranda, bleeding from a head wound, helplessly bound to a chair in Gerardo's own living room, gagging on Paulina's underpants stuffed in his mouth. When Gerardo has collected himself, he says: "Paulina, I want you to know that what you are doing is going to have serious consequences." To which she replies ironically: "Serious, huh? Irreparable, huh?" (p. 24).

What is irreparable and what is not? Can a society be repaired unless its killers, rapists, and torturers are named and exposed? Can it be repaired *if* its killers, rapists, and torturers are named and exposed? That is the overarching question of transitional justice; it may even be the overarching question of life in human society. Just as no relationship can survive in the complete absence of truth, no relationship can survive in the complete absence of lies, nor in the complete absence of forgiveness.

Consider romantic relationships. When they released Paulina after two months of rape and torture, she went straight to Gerardo, only to find him in bed with another woman. She forgave him, more than once over the years, but the issue has never really gone away from their marriage. Now, when the incredulous Gerardo demands for the first time ever that Paulina tell him exactly what the torture doctor—who may or may not be Doctor Miranda—did to her, she answers his question with a question of her own, an oddly irrelevant

3. PRIMO LEVI, *THE DROWNED AND THE SAVED* 25 (Raymond Rosenthal trans., Vintage 1988) (1986) (quoting Jean Améry).

4. JACOBO TIMERMAN, *PRISONER WITHOUT A NAME, CELL WITHOUT A NUMBER* 132 (Toby Talbot trans., Alfred A. Knopf 1981) (1980).

question under the circumstances: “How many times did you fuck her? . . . I tell you, you tell me” (p. 54). To which Gerardo, presidential appointee to the Investigating Commission, protests, “People can die from an excessive dose of truth, you know” (p. 55). When Paulina scornfully asks, “Forgive and forget, eh?” he begs her, “[f]orgive yes, forget no. But forgive so we can start again. There’s so much to live for . . .” (p. 54). These three principles—one: forgive yes, forget no; two: forgive so we can start again; three: there’s so much to live for—may be Gerardo’s deepest political convictions. They are the principles behind all truth commissions, which aim to transform society by forging a collective memory—but only for the sake of the future, not that of a past haunted by unquiet ghosts.⁵

But Paulina is implacable—“I tell you, you tell me”—and finally, dejectedly, Gerardo answers her question: “Three times.” “She was that good?” Paulina asks, pressing relentlessly onward. “You liked her that much? And she liked it too. She must have really enjoyed it if she came back . . .” (p. 55). The desperate Gerardo interrupts: “Do you understand what you’re doing to me?” (p. 55) But Paulina, ironic, says for the last time, “Beyond repair, huh? Irreparable” (p. 55).

Paulina has repeated this phrase three times. The first time, Paulina mocks Gerardo’s wishful thinking that only murder is irreparable. The second time, she mocks his horror at the sight of the imprisoned Dr. Miranda, Gerardo’s first face-to-face experience of violence with irreversible consequences. Finally, she hurls in his face his belief that dwelling on the truth, in every sordid detail, can ruin a human relationship beyond repair. The same Gerardo who began by suggesting that nothing except death is irreparable has now admitted that in the world of politics that he has come to accept, truth might be as irreparable as murder. Paulina forces him to understand the real nature of the invitation the President has extended: Yes, the Investigating Commission offers hope for an end to the chain of violence—but only if Paulina and those like her are willing to forgive. And then there is no hope for Paulina.

For her part, Paulina has played along with Gerardo’s life-sustaining lies for too long. Later in the play she tells Dr. Miranda that she and Gerardo “lied to each other out of love. He deceived me for my own good. I deceived him for his own good” (p. 64). Now, by

5. For three sophisticated accounts of the role of truth commissions and trials of past human rights violators, see generally CARLOS SANTIAGO NINO, *RADICAL EVIL ON TRIAL* (1996); MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* (1997); and Pablo De Greiff, *Trial and Punishment; Pardon and Oblivion: On Two Inadequate Policies for the Treatment of Former Human Rights Abusers*, 22 *PHIL. & SOC. CRITICISM* 93 (1996). For a general treatment of legal issues in transition to democracy, see Ruti Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 *YALE L.J.* 2009 (1997).

forcing Gerardo to tell her the truth, she forces him to begin the work of a real Investigating Commission, which seeks the truth regardless of anyone's own good. Paulina would readily understand Mark Osiel's observation: "Those seeking to construct a liberal mythology for their society necessarily labor under a special burden: *their* myth must be truthful, not merely pleasant."⁶ "You tell me, I tell you," she repeats (p. 55). After he has told her, Gerardo is finally ready to listen to her story—her whole story. Ignoring the doctor tied up in the next room, he assumes an official manner, turns on the cassette recorder to take her testimony, and says to Paulina, "Begin with your name" (p. 57).

III

Gerardo wants to heal his nation by doing justice. What did Paulina want when she took Doctor Miranda captive? At first, she tells Gerardo, she wanted to torture him in every way that they tortured her. Then she wanted to rape him, perhaps with a broom handle. But finally, she says:

I began to realize that wasn't what I really wanted—something that physical. And you know what conclusion I came to, the only thing I really want? I want him to confess. I want him to sit in front of that cassette recorder and tell me what he did—not just to me, everything, to everybody—and then have him write it out in his own handwriting and sign it and I would keep a copy forever—with all the information, the names and data, all the details. That's what I want (p. 41).

Now, at last, we know what the trial is about. Paulina wants to do the legal justice work of the Investigating Commission—the work that politics prevents it from doing.

Well, Paulina is hardly the first vigilante with that idea. As Felix Frankfurter once warned, "There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."⁷ Taking justice into your own hands is dangerous; even Paulina admits at one point that she "still had a doubt" that Miranda is the right man (p. 63). Gerardo, a lawyer to the core, entirely agrees with Frankfurter:

Gerardo: You know that I have spent a good part of my life defending the law. If there was one thing that revolted me in the past regime . . . it was that they accused so many men and

6. OSIEL, *supra* note 5, at 178.

7. *United States v. United Mine Workers*, 330 U.S. 258, 312 (1947) (Frankfurter, J., concurring).

women . . . and did not give the accused any chance of defending themselves, so even if this man committed genocide on a daily basis, he has the right to defend himself (pp. 30-31).

Paulina does not bother to point out that Gerardo is admitting that the previous regime's denial of due process revolted him more than what they did to his wife. Instead, she drops a bombshell:

Paulina: But I have no intention of denying him that right, Gerardo. I'll give you all the time you need to speak to your client, in private (p. 31).

If we wanted to treat Dorfman's characters allegorically, Paulina would be named "Memory" and Gerardo "Due Process." Gerardo must be the doctor's defense lawyer, because only due process stands between the doctor and the accusing, possibly inaccurate, power of memory.

But Dorfman's characters are not mere allegories, and Gerardo, a man of compassion as well as a lawyer, worries that due process alone may yield the wrong outcome.

Gerardo: There's a problem, of course, you may not have thought of, Paulina. What if he has nothing to confess?

Paulina: Tell him if he doesn't confess, I'll kill him

Gerardo: Paulina, you're not listening to me. What can he confess if he's innocent?

Paulina: If he's innocent? Then he's really screwed (p. 42).

Paulina may sound heartless, but she is merely stating a straightforward fact about every system of criminal justice in the world. Due process is entirely consistent with wrong verdicts, in which case, if you're innocent, you're really screwed. As Robert Cover has reminded us, the rule of law is not merely due process, impartially administered rights, or textual interpretation. The rule of law is channeled violence, and even when it works punctiliously, innocent people are occasionally screwed.⁸ Paulina may understand the meaning of due process better than Gerardo. Due process will not stop her from blowing a hole in Roberto Miranda's head if he refuses to confess to crimes he may never have committed. To Gerardo's credit, he wants something more than due process.

To achieve that something more, he makes unauthorized use of the testimony he has just elicited from Paulina. The truth commissioner metamorphoses into the defense lawyer, and Gerardo supplies Miranda with details from Paulina's tape to include in his confession.

8. See generally ROBERT COVER, *Violence and the Word*, in NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER 203 (Martha Minow et al. eds., 1993).

After all, the doctor pleads, "I need to know what it is I did, you've got to understand that I don't know what I have to confess . . . I'll need your help, you'd have to tell me . . ." (p. 48). Truth can always be coopted to ulterior purposes; as every lawyer knows, ulterior uses of truth are the only uses adjudicatory systems recognize. Adjudication's aim is closure. Factfinding is only an instrument of closure; and to the extent that institutional truth-seeking obstructs closure, all legal systems avoid it.

IV

Actually, Paulina doesn't want truth and justice purely for their own sakes either. Three times during the play she explains what else she wants: She wants Schubert back—her favorite composer, unbearable to her for the past fifteen years (pp. 21, 56, 63). What does Schubert represent to Paulina?

"There is no way of describing what it means to hear that wonderful music in the darkness," she tells Gerardo, "when you haven't eaten for the last three days, when your body is falling apart . . ." (p. 58). Schubert, with what she calls his "sad, noble sense of life" (p. 21), represents the civilization outside the torturers' basement—the entire world of art and science and philosophy, of beauty and meaning, of humanity. When the doctor first played the music, and talked to her about music, science, and philosophy, she wildly supposed that he was different from the others, that the two of them shared civilization and were in that way different from the vile and foulmouthed soldiers who tortured and mocked her.

But then he betrayed her. In Polanski's film version, she describes her horror the first time she heard the doctor, her healer, slowly taking his pants off to rape her. The civilized doctor, it turns out, was just another savage, and when he raped her and talked filth to her, he took civilization away. Now she means to get it back.

V

Should she want it back? Let us look at the civilization Dorfman evokes in the title of his play. Schubert's D minor string quartet⁹ is called *Death and the Maiden* because its slow movement—which we hear during Act III of the play (p. 58)—consists of variations on Schubert's song by that title.¹⁰

The song sets to music words by Matthias Claudius (1740-1815), a minor German Romantic who published under the pen name

9. SCHUBERT, *supra* note 2.

10. FRANZ SCHUBERT, DER TOD UND DAS MÄDCHEN (D. 531, 1817).

“Asmus.”¹¹ His poem consists of two stanzas. In the first, a maiden pleads with Death, whom she calls “dearest,” to leave her alone because she is too young.¹² In the second stanza, Death replies as follows: “Give me your hand, you lovely, tender creature. / I am your friend, and come not to chastise. / Be of good courage; I am not cruel; / You shall sleep softly in my arms.”¹³

Dorfman’s irony is hard to miss: *This* is the melody that represents civilization to Paulina; but instead of accompanying Asmus’s words, it accompanied torture and rape. Civilization is, quite simply, lying to her.

The Death and the Maiden motif is a familiar one in North European art. The image of Death coming to take a beautiful young woman, who in many representations is finely dressed or gazing into a looking glass, was originally a *memento mori*: a reminder of our ultimate destiny and a warning against vanity and preoccupation with merely superficial beauty. Originally, the motif might have had an entirely innocent meaning.¹⁴ But when it first became prominent in German art in the early sixteenth century, it was far from innocent.¹⁵ To be sure, even here the image is sometimes nothing more than a *memento mori*. In Hans Holbein’s 1526 *Dance of Death* cycle, for instance, Death seizes people from all walks of life, men and women alike.¹⁶

In the classic renditions of Death and the Maiden, however, the imagery is considerably more sinister. The Maiden is a variant of Mother Eve, the original temptress who in the same moment introduced shame and death into man’s world. In Albrecht Dürer’s *Promenade* (1500) and *Coat of Arms of Death* (1503), Death stalks amorous couples.¹⁷ Later German artists further sexualized the Maiden and fashioned ever more perverse images out of her meeting with Death. The overlay of displaced shame and religiously inspired

11. See *Claudius, Matthias*, 5 ENCYCLOPEDIA BRITANNICA 781, 781 (14th ed. 1929).

12. SCHUBERT: THE COMPLETE SONG TEXTS 129 (Richard Wigmore trans., Schirmer Books 1988).

13. *Id.*

14. Many pictures represented Death in an earthly paradise captioned “Et in Arcadia Ego” (I am also in Arcadia). See Klaus Wolbert, *Et in Arcadia Ego: Ein Streifzug durch die Ikonographie des Todes*, in HESSISCHES LANDESMUSEUM, MEMENTO MORI: DER TOD ALS THEMA DER KUNST VOM MITTELALTER ZUR GEGENWART 23-36 (1984) [hereinafter MEMENTO MORI]. Some Death and the Maiden pictures seem to treat the maiden as a symbol of innocence, on a par with Arcadia. See *id.*

15. On the history of the image, see generally MEMENTO MORI, *supra* note 14; UNIVERSITY OF PITTSBURGH ART GALLERY, DEATH, LOVE, AND THE MAIDEN (1975).

16. See THE DANCE OF DEATH BY HANS HOLBEIN THE YOUNGER: A COMPLETE FACSIMILE OF THE ORIGINAL 1538 EDITION OF LES SIMULACHRES & HISTORIÉES FACES DE LA MORT (1971).

17. These pictures are reproduced in 7 F.W.H. HOLLSTEIN, GERMAN ENGRAVINGS ETCHINGS AND WOODCUTS CA. 1400-1700, at 78, 89 (1954).

rage makes these images even more malignant than a frankly prurient picture like Edvard Munch's *Death and the Maiden* (1894) (see Figure 1), or the expressionist imitations it spawned.

Thus, in a 1547 print, Hans Sebald Beham retains the *memento mori* idea by including the inscription *Omnem in homine venustatem mors abolet* ("Death abolishes all human loveliness")—but the picture, which shows Death embracing the nude Maiden from behind and whispering in her ear, has little to do with loveliness (see Figure 2). The Maiden's face is twisted in a sensual leer, and the artist gives her prominent breasts and smooth-shaven genitals swollen almost to the size of a man's.¹⁸ In a 1517 panel by Niklaus Manuel Deutsch, Death, wearing the ragged uniform of a mercenary soldier, receives a passionate kiss from a Maiden dressed in garters and a low cut gown. As they kiss, she guides Death's hand up her skirt (see Figure 3).

The most famous portrayals of Death and the Maiden were painted by Dürer's student Hans Baldung Grien. Baldung was obsessed with sexually voracious women; he is famous for obscene prints of witches' sabbaths and leering temptresses (Eves, Judiths, Phyllises, Omphales).¹⁹ His representations of Death and the Maiden reveal the misogyny latent in the image (see Figure 4).²⁰ In Baldung's art, the

18. See 3 *id.* at 91. Hans Beham and his brother Bartel made a number of pictures coupling half-pornographic images of female sexuality with death. Bartel's *Three Women in the Bath Room* depicts three naked women, one of them scrubbing the genitals of another while both grin broadly. 2 *id.* at 203. In a second image (a companion?), *Three Nude Women and Death*, Death has come for what appears to be the same trio; the largest of the three still has her hand in her companion's private parts. *Id.* at 199. Hans Beham's *Death and the Sleeping Woman* shows Death placing an hourglass on the shoulder of a voluptuous nude splayed out shamelessly amidst disheveled bedclothes. 3 *id.* at 87. That the posture of the nude is postcoital seems unmistakable, particularly when we compare it with another of Hans Beham's prints. *The Night* shows a sleeping nude amidst the same disheveled bedclothes; her legs are crossed, exposing her genitals, and a Latin motto on the bed reads, "Night, and Love, and wine are no counselors of self-restraint" (*Nox et Amor, vinumque, nihil moderabile suarent*, a quote from Ovid's *Amore*, I. vi, 59). *Id.* at 93. I suspect that these are companion prints: The women look alike, the settings are similar, and both prints were made in 1548. Moreover, *Death and the Sleeping Woman* is almost a copy of a similar print by Bartel Beham; Hans has merely mirror-reversed it so that the woman's body is twisted to the right, as is the woman's body in *Night*. Other prints on similar themes by the Beham brothers include Hans Beham's *Death and the Lascivious Couple*, 3 *id.* at 93 (Death seizes a naked man and woman, each of whom is fondling the other's genitals); Hans Beham's *The Hour of Death*, *id.* at 235 (Death comes for a woman in bed, naked except for a rich necklace; a dead man, with sword drawn, lies on the floor); and Bartel Beham's *Woman Surprised by Death*, 2 *id.* at 198 (Death removes the robe from a startled woman bathing a child).

19. Hans Sebald Beham likewise had a taste for wanton Eves; he also rendered at least two portrayals of *Potiphar's Wife*, another Biblical story attributing man's woes to woman's lasciviousness. See 3 *id.* at 12-13.

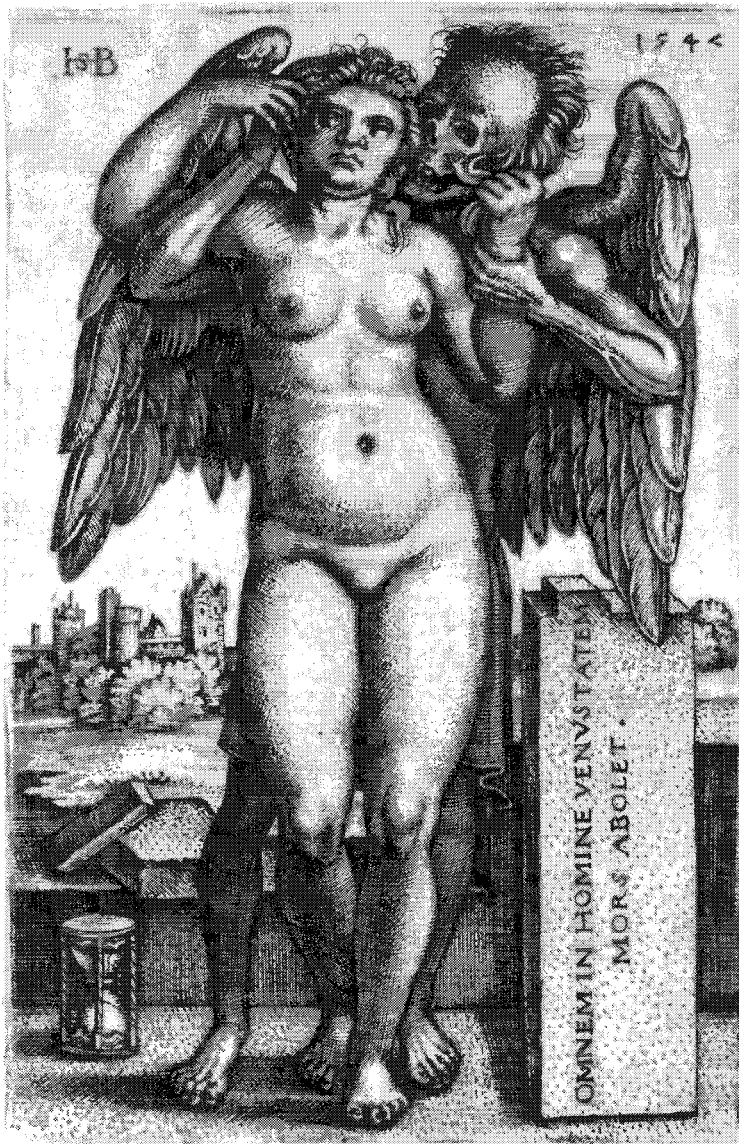
20. The best-known is a painting in the Öffentliche Kunstmuseum, Basel; the others include drawings in the Uffizi (Florence), the Prado (Madrid), the Kunsthistorisches Museum (Vienna), and the Staatliche Kunstmuseum (Berlin). See J. CARTER BROWN & ALAN SHESTACK, HANS BALDUNG GRIEN PRINTS AND DRAWINGS 10, 35 (1981). See generally MATTHIAS MENDE, HANS BALDUNG GRIEN: DAS GRAPHISCHE WERK (1978).

FIGURE 1



Edvard Munch, *Death and the Maiden* (1894). Intaglio print. Munch Museum, Oslo.
Photo: Munch Museum/Svein Andersen & Sidsel de Jong.

FIGURE 2



Hans Sebald Beham, *Death and the Standing Nude Woman* (1547). Engraving. Rosenwald Collection, © 1997 Board of Trustees, National Gallery of Art, Washington.

FIGURE 3



Niklaus Manuel Deutsch, *Death as a Mercenary Embracing a Young Woman* (1517).
Varnished tempera on fir wood. Öffentliche Kunstsammlung Basel, Kunstmuseum.
Photo: Öffentliche Kunstsammlung Basel, Martin Bühler.

FIGURE 4



Hans Baldung, *Der Tod und die Frau* (*Death and the Woman*) (1515). Kupferstichkabinett, Staatliche Museen zu Berlin-Preußischer Kulturbesitz, Berlin. Photo: Jörg P. Anders.

Maiden *deserves* death as punishment for tempting men with her body. More precisely, *she deserves to be raped and killed as punishment for the crime of tempting men to rape and kill her*. We recognize, of course, that this overwhelmingly evil moral idea is very close to the mentality of fascism.²¹ Ideologically, fascism glorifies violence and cruelty; psychologically, it does so by projecting onto its victims the fascist's own reservoir of repressed vileness. In that way, it morally justifies the unthinkable. The more brutal the desires, the more their objects deserve brutality. The victims must be the enemies of civilization—of God, Family, and Nation, the holy trinity exalted in familiar fascist slogans—and the proof is that they arouse uncivilized desires in civilized men.

Roberto Miranda writes out a confession so that Paulina will not shoot him. Whether he faked it or not, the emotions and thoughts he expresses in it show that his imagination is no stranger to the moral world of Death and the Maiden. He speaks of the “swamp” (p. 59) in which he began to sink as his humanitarian impulses gradually gave way to “excitement” (p. 59):

Roberto: A kind of—brutalization took over my life, I began to really truly like what I was doing My curiosity was partly morbid, partly scientific Does her sex dry up when you put the current through her? Can she have an orgasm under those circumstances? She is entirely in your power, you can carry out all your fantasies, you can do what you want with her Everything they have forbidden you since ever, whatever your mother ever urgently whispered you were never to do Come on, Doctor, they would say to me, . . . all these bitches like it and if you put on that sweet little music of yours, they'll get even cozier (pp. 59-60).

Polanski's film version of *Death and the Maiden* ingeniously dramatizes the morbid connection between sexuality and violence by reversing roles: When Paulina takes Roberto prisoner, she bends very close to him, she straddles him, she presses her face to his ankles to bite off the electrical tape she is using to bind his legs. As he gapes at her, she lifts her skirt, removes her underpants, and crams them into his mouth to stifle his yells.

21. See generally 1 KLAUS THEWELEIT, *MALE FANTASIES: WOMEN, FLOODS, BODIES, HISTORY* 171-83 (Stephen Conway trans., University of Minn. Press 1987) (1977) (psychoanalyzing the sexual and political content of writing by soldiers and officers in the Freikorps, the right-wing militias who formed the base of the Nazi party). For example, Theweleit quotes one Freikorps author as follows: “With their screams and filthy giggling, vulgar women excite men's urges. Let our revulsion flow into a single river of destruction. A destruction which will be incomplete if it does not also trample their hearts and souls.” *Id.* at 180.

What I am suggesting is that Dorfman meant his title, *Death and the Maiden*, to serve double duty: first, as a metaphor for the torture doctor and Paulina; second, as an emblem of both the noble and the base sides of the civilization that Paulina wants to recover. The torture doctor, Dorfman seems to suggest, raped Paulina because of his civilization rather than in spite of it. It is, after all, a civilization that enshrines pornographic images of Death raping the Maiden in the world's great museums, in the Uffizi and the Prado. The implicit question, then, is whether Paulina should want civilization back.

I don't mean to suggest that the answer is obviously no, and I certainly don't mean to suggest that Schubert's quartet is tainted by connections between a title Schubert never gave it and pictures he never saw. To the degree that civilization includes works as unambiguously beautiful as Schubert's D minor quartet, Paulina is right to want it back. Nevertheless, the question is a legitimate one because of the *ambiguously* beautiful, morally problematic, images that emerge from masculine civilization's id—what Roberto calls “the swamp” (p. 59). Few artists transcribe that id as faithfully as Hans Baldung Grien, and few images represent the swamp as purely as the Death and the Maiden motif. Like Schubert, Paulina may have never seen pictorial versions of Death and the Maiden, just as she never laid eyes on her rapist. Significantly, music, the most immediate and least representational of the arts, becomes Paulina's emblem for civilization; she entertains no doubts about its worth and beauty, just as she entertains no doubts about the entirely aural evidence that Roberto Miranda is the man who raped her. Dorfman invites us to question her certitude on both counts—of Miranda's guilt and of civilization's innocence.

To some it will seem mistaken to focus on specifically sexual human rights abuses, and to infer connections between political rape and culture. Like Dorfman, I disagree. In their book on the Argentine dirty war, John Simpson and Jana Bennett report that junior officers placed bets on who could bring back the prettiest girls to torture and rape.²² This, I think, is not simply one random horror story out of many that might be told. The Serbian “rape motels” in Bosnia have focused attention on the systematic infliction of rape and forced impregnation as specifically political crimes. The Statute of the International Criminal Tribunal for former Yugoslavia added rape to the standard list of crimes against humanity,²³ and includes “causing

22. See JOHN SIMPSON & JANA BENNETT, *THE DISAPPEARED AND THE MOTHERS OF THE PLAZA: THE STORY OF THE 11,000 ARGENTINIANS WHO VANISHED* 109 (1985).

23. See *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, U.N. SCOR, Annex, Statute of the International Tribunal, art. 5(g), U.N.

serious bodily or mental harm to members of the group,” an offense that includes rape, in the definition of genocide.²⁴

Of course, soldiers raping civilians is nothing new, nor is the political use of rape to terrorize civilian populations. Shakespeare’s Henry V brings the French town of Harfleur to its knees by threatening to let his men rape at will if he has to take the town by force.²⁵ What seems genocidal in the Bosnian Serb strategy is the calculated effort to make the Muslim women outcasts in their own culture by despoiling them and impregnating them with unwanted babies.

Political rape exploits a constellation of traditional values and shadowy fantasies in patriarchal societies. First among these is the value placed on chastity and a woman’s yielding of her sexuality exclusively to her husband or proper mate; ineluctably, the rape victim has been shamed as well as tortured because her rapist has made her sexuality common. She is sullied goods. At every moment of her ordeal she expects death, but she also anticipates that if she survives she will never be entirely her own woman, nor even her husband’s. For that matter, nothing she says or does can completely dispel the menfolk’s lingering suspicion that she liked it at least a little bit. (Do the pictures not illustrate what men guess but seldom say—that maidens enjoy their trysts with Death?) Rape drives its victims to the margin of a patriarchal community, and in that way it weakens the community as a whole. In Bosnia, shunning has been the terrible fate of too many rape victims and their bastard children. Gerardo has never admitted to himself that Paulina was raped as well as tortured fifteen years ago. The reasons are as obvious to Paulina as they are to us.

When, like Paulina, the victim is a political activist, her rapists humiliate her further by demonstrating that she is only a body to be used at their pleasure, not a citizen with political rights and ideals and will. Of course, all political torture aims to teach its victims, men as well as women, that they are nothing but passive bodies in pain, not

Doc. S/25704 (1993).

24. See Letter from the Security Council to the President of the Security Council (Feb. 9, 1993), *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, Annex 1, ¶¶ 58-60, U.N. Doc. S/25274 (1993) (discussing systematic rape and enforced prostitution in the former Yugoslavia). Indeed, the issue may soon be tried in an American court: Bosnian rape victims are currently suing Bosnian Serb leaders under the Foreign Tort Claims Act for ordering systematic rape in Bosnia. After the Federal District Court initially dismissed the suit for lack of jurisdiction, the United States Court of Appeals for the Second Circuit reversed and remanded the case for trial. See *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995).

25. See WILLIAM SHAKESPEARE, *THE LIFE OF HENRY THE FIFTH* act 3, sc. 3, ll. 1-35 (Stephen Greenblatt ed., W.W. Norton & Co. 1997) (1623).

the active shapers of destiny they had fancied themselves. That is how torture works as an instrument of state. But when the victim is a woman and the torture is rape, her humiliation becomes triply political. Like a male victim, she is passive rather than active and subjugated rather than victorious. But, in addition, her rapists expel her from the recent and still-fragile world of women's political emancipation into a history-nightmare—a nightmare of traditionalist society in which, or so the rapists want to teach her, she was never anything more than cunt. Political rape humiliates her male comrades as well. The same cultural habits that make chastity valuable and rape shameful to its victims obligate men to protect their women's honor. The man who fails stands exposed and impotent. Again, Gerardo has never admitted to himself that Paulina was raped as well as tortured fifteen years ago. The reasons—all the reasons, not only her shame, but his as well—are as obvious to Paulina as they are to us. And that returns us to the question of whether Paulina should want civilization back, contaminated as it is with swampland fantasies of Death and the Maiden.

VI

Well, Paulina at least gets her Schubert back; in Polanski's film version she compromises her demand for justice and spares Doctor Miranda. In the final scene, Gerardo and Paulina attend a concert performance of the *Death and the Maiden* quartet, and Doctor Miranda is there, too. As they sit down, Paulina's eyes briefly meet the doctor's. "Then she turns her head and faces the stage . . ." (p. 68). Just as she accepts the bad in civilization along with the good, she accepts the compromises of transitional justice. Dorfman seems to suggest that in the end they may be one and the same compromise: an agreement to leave the fascists untouched in return for democratizing a civilization of which they too can approve. (The play is more ambiguous than the film, for there Dorfman ends the penultimate scene with Paulina still undecided about whether to spare the doctor. And in the final concert scene we don't know whether the doctor is present in the flesh or only in Paulina's fantasy.)

In the play, Dorfman's directions for the final scene require "a giant mirror which descends, forcing the members of the audience to look at themselves Selected slowly moving spots flicker over the audience, picking out two or three at a time, up and down rows" (p. 66). The mirror is an interesting and powerful device. For one thing, it reminds us, the audience, that we are akin to a jury: Judgment of Miranda, but also of Paulina and Gerardo, is a task Dorfman charges to us.

More importantly, however, the mirrors and spotlights force us to confront our own complicity. Dorfman presumably had in mind a Chilean performance in which the spotlights may well have picked out actual torturers in the audience—torturers in the best circles of society, torturers who by agreement of their peers will never be brought to justice.

It once seemed to me that this sensational idea would be merely melodramatic in a British or American theater. Although I haven't seen the stage version, I now think differently. A North Atlantic audience may not include rapists, torturers, murderers, or beneficiaries and accomplices of dirty war.²⁶ But a North Atlantic audience contains many—perhaps everyone, certainly me—who can't decide whether sparing the doctor would represent a happy ending or not. That seems embarrassing enough.

26. Though, as a matter of fact, the Pentagon has admitted that American military manuals used to train Latin American officers advocated murder and torture. See Dana Priest, *U.S. Instructed Latins on Executions, Torture*, WASH. POST, Sept. 21, 1996, at A1. And, of course, the CIA assisted Pinochet in overthrowing the elected government of Chile to establish the military dictatorship—just as the U.S. government supported torturers and murderers throughout Central and South America—in El Salvador and Guatemala, in Brazil and Argentina, and in Chile and Uruguay.