

## WE CAN'T TALK ABOUT RACE UNLESS WE ALSO TALK ABOUT ART

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It doesn't have  
a tip to spin on,  
it isn't even  
shapely—  
just a thick clutch  
of muscle,  
lopsided,  
mute. Still,  
I feel it inside  
its cage sounding  
a dull tattoo:  
*I want, I want—*  
—Rita Dove, “Heart to Heart” (2017)<sup>1</sup>

In the summer of 2020, in the wake of George Floyd's murder by the police, thirteen major art museums around the globe committed to streaming a video online for forty-eight hours.<sup>2</sup> The video is a montage of sorts. It lasts about seven and a half minutes. Its initial compilation took only about two hours, although its creator then edited it and set it to music over several weeks afterwards. Some of the video is grainy. Some of the images in it bear Getty Images watermarks.

But don't be fooled by the quotidian trappings of Arthur Jafa's *Love is the Message, the Message is Death*. *The Washington Post* called the video work “perhaps the most powerful work of contemporary art

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1. Rita Dove, *Heart to Heart*, POETS.ORG, <https://poets.org/poem/heart-heart> [<https://perma.cc/62B9-4ZH2>].

2. *Streaming Event: Arthur Jafa's Love is the Message, The Message is Death*, SMITHSONIAN AM. ART MUSEUM [hereinafter *Streaming Event*], <https://americanart.si.edu/events/arthur-jafa-love-death> [<https://perma.cc/D9QP-5393>].

of the past decade.”<sup>3</sup> *The New Yorker* praised it in alternate terms as “[t]he most spellbinding art work of the past decade,”<sup>4</sup> while *The New York Times* deemed it “a kind of digital-age ‘Guernica.’”<sup>5</sup>

Set to Kanye West’s groundbreaking 2016 gospel-hip-hop anthem “Ultralight Beam,” the visuals in *Love is the Message* often dance to the song’s rhythms and cadences. At other times, they move against the music’s grain. The hundreds of videos that comprise the work are essentially all found footage. They portray the experiences of Black Americans persisting against white supremacy’s recursive violence, from the Jim Crow era up through the Black Lives Matter protests after Ferguson. Jafa juxtaposes horrific imagery of police brutality with clips of sheer joy and Black achievement. Obama sings “Amazing Grace” after a white supremacist killed nine worshippers in a Charleston church in 2015; a teenaged Black girl wearing a bikini is thrown down on a lawn by a police officer. The images press up against each other, often just short of overlapping; they crest and dip with the force of ocean waves. Jafa eschews the imposition of legibility. He refuses to give in to easy narrative.

I saw *Love is the Message* in its most traditional form, on a large screen in a darkened gallery, when it showed at the Met Breuer several years ago. But *saw* isn’t really the right word. Neither is *watched*. Even *experiencing* the work might be too lukewarm.

And so, I was overjoyed when I saw the news of the museums’ event. I was thrilled that they were making *Love is the Message* democratically available, at least temporarily, in response to George Floyd’s horrific murder and the protests and reckoning that it galvanized across the world.<sup>6</sup> But I also initially lamented over what I felt online viewers would lose when they watched the work anywhere but in a physical gallery—even though *Love is the Message* is, of all things, *just* a video. Then, I checked myself. I remembered how, in college, classmates and I used to seriously discuss the merits of gallery

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3. Sebastian Smee, *One of the Most Powerful Works of Video Art Will Be Available for Free Online This Weekend. Here’s Why You Must Watch*, WASH. POST (June 26, 2020), [https://www.washingtonpost.com/entertainment/museums/one-of-the-most-powerful-works-of-video-art-will-be-available-free-online-this-weekend-heres-why-you-must-watch/2020/06/25/941d5d36-b71c-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/entertainment/museums/one-of-the-most-powerful-works-of-video-art-will-be-available-free-online-this-weekend-heres-why-you-must-watch/2020/06/25/941d5d36-b71c-11ea-a510-55bf26485c93_story.html) [https://perma.cc/4ME3-BXHD].

4. Calvin Tomkins, *Arthur Jafa’s Radical Alienation*, NEW YORKER (Dec. 14, 2020), <https://www.newyorker.com/magazine/2020/12/21/arthur-jafas-radical-alienation> [https://perma.cc/R9QN-GP7Y].

5. Megan O’Grady, *Arthur Jafa in Bloom*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/t-magazine/arthur-jafa-in-bloom.html> [https://perma.cc/97DM-JYRN].

6. *Streaming Event*, *supra* note 2.

spaces. We questioned whether art could properly “do its work” inside such sterile environments—and, if not, where it could.

Our conversations are laughable now, if not for their abstractness then at least for their fruitlessness. But I look back on those conversations now to pry loose and further examine an underlying, prior assumption that we had all made—and that the museums likewise made in June 2020—that art *does something* at all. A little over halfway through *Love is the Message*, a clip of actress Amandla Stenberg plays. Stenberg asks a question that probes something that my peers and I took for granted in our seminar rooms without even realizing. She asks: “What would America be like if we loved Black people as much as we love Black culture?”<sup>7</sup>

### ***Pinning Down Culture***

I know what Stenberg means when she says Black “culture.” At least, I’m pretty sure I do. Contemporary lay usage of “culture” tends to blend or merge several distinct definitions. We might visit an art museum and then caption our Instagram posts along the lines of “getting cultured.” We might use LinkedIn, which allows users to add Arts & Culture as one of their *Interests* (along with other obviously discrete, enumerable interests like *Poverty Alleviation*.)

But we can still disambiguate at least three meanings from these imprecise common usages. One, culture is a body of artistic and intellectual work.<sup>8</sup> Two, culture is a process of individual cultivation leading to an ideal state of human perfection (think high society; high culture).<sup>9</sup> And three, culture is the whole way of life of a society.<sup>10</sup>

These meanings, divergent as they are, nonetheless ease into one another. Because when we say we visit art museums to “get cultured,” we refer both to experiencing a body of artwork as well as cultivating ourselves toward some Enlightenment-era conception of self-realization. When LinkedIn chooses to say not just “Arts,” it

7. ARTHUR Jafa, *LOVE IS THE MESSAGE, THE MESSAGE IS DEATH* (2017). For the original clip by Amandla Stenberg, see Hype Hair Magazine, *Amandla Stenberg: Don't Cash Crop on My Cornrows*, YOUTUBE (Apr. 15, 2015), [https://www.youtube.com/watch?v=O1KJRRSB\\_XA](https://www.youtube.com/watch?v=O1KJRRSB_XA) [<https://perma.cc/ATD9-MAZU>].

8. See DAVID B. PANKRATZ, *MULTICULTURALISM AND PUBLIC ARTS POLICY* 133 (1993) (“A common such assumption . . . is that art in some way ‘reflects’ a culture.”).

9. *Culture*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/culture> [<https://perma.cc/SC94-TTPT>] (defining culture as “an enlightenment and excellence of taste acquired by intellectual and aesthetic training”).

10. PANKRATZ, *supra* note 8, at 132 (“[A]nthropologists . . . tend to view culture as the whole way of life of a society.”).

recognizes that “Arts” alone might not do the job for some employers. Maybe the idea is that “Culture” denotes some connection with social causes—as opposed to someone mired in the fine arts and disconnected from current events. (Note that I have imputed *a lot* more critical thought on LinkedIn’s part than I actually believe exists.) And when “Black culture” rolls so easily off Stenberg’s tongue, we know that she isn’t *just* talking about Black art. She refers also to ways of life that produce and sustain that art; that cultural *production*.

So, our modern uses of the word “culture” demonstrate a linguistic merger of at least two definitions of culture—culture as the arts and culture as way of life. But I think these two definitions share a *conceptual* alignment as well—one that provides us with a starting point for the critical inquiry of how the state should involve itself in matters of racial equity. What I’m saying is: we can’t talk about race unless we also talk about art.

Traditionally, scholars of liberal democracy have believed, at least theoretically, that the state should be wary both in publicly sponsoring art and in recognizing minority groups.<sup>11</sup> This attitude appears to be the natural result of several value sets. Liberal democracies value state neutrality.<sup>12</sup> They seek to avoid paternalistic policies, essentialism, and cultural elitism.<sup>13</sup> Legal philosopher Joseph Raz, for example, views individual autonomy as being crucial for political freedom.<sup>14</sup> And key to this autonomy is that a person truly have an adequate range of valuable options from which to choose.<sup>15</sup> Put differently: In a society that truly believes in freedom and equality, shouldn’t the government—through the law—have no business telling you that one way of life is better than another; that some culture is worthier than

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11. See RONALD DWORKIN, A MATTER OF PRINCIPLE 221–33 (1985) (describing the tensions between a liberal state and state support of the arts, and proposing a reconciliatory view). See generally WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 84–93 (1996) (discussing why individuals should have access to particular cultures within a society; asking “Why not let minority cultures disintegrate, so long as we ensure their members have access to the majority culture . . . ?”).

12. See Harry Brighouse, *Neutrality, Publicity, and State Funding of the Arts*, 24 PHIL. & PUB. AFFS. 35, 36 (1995) (emphasizing that “[liberals] generally believe that the government should have a limited role in determining the formation of citizens’ conceptions of the good life”).

13. See DWORKIN, *supra* note 11, at 187 (observing that “[liberals] support racial equality and approve government intervention to secure it . . . . But they oppose other forms of collective regulation of individual decision”); KWAME ANTHONY APPIAH, COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS 141 (2006) (“[M]any Enlightenment liberals drew the conclusion that insisting on one vision of universal truth could only lead the world back to the bloodbaths.”).

14. JOSEPH RAZ, THE MORALITY OF FREEDOM 369–99 (1986).

15. *Id.* at 373 (“[T]o be autonomous a person must not only be given a choice but he must be given an adequate range of choices.”).

another? Who's to force me to believe that Michelangelo Antonioni's films are inherently better than *Mad Max: Fury Road*?

In the United States, we might contend that this autonomy is at least partially codified in the Bill of Rights, particularly in the First Amendment. The First Amendment protects the freedom of expression, including artistic and cultural expression.<sup>16</sup> But the First Amendment acts merely as a post hoc shield. It doesn't affirmatively justify a role for the law in protecting and promoting minority groups and their *cultures*—their ways of life—or, for that matter, their art. Instead, we should consider culture through a wider-angle lens, and conceive of it a *socialization process*.<sup>17</sup> That is, through this idea called *culture*, people are shaped by and themselves shape the options that are available to them as ways of life. Then, we can properly view these two notions—art as cultural production and culture as way of life—as being intimately intertwined. Together, they provide us with a way to defend them both under the law.

### ***From State Support of the Arts to State Support of Minority Cultures***

Ask anyone whether they consider the arts to be socially and politically valuable. With the exception of a few agitators, most people will probably say yes. When you press folks for reasons, however, their answers can start feeling scattershot.

For one, the social value of the arts is often presented in relation to the cultural backgrounds of those who create, or participate in, the given works of art. Some scholars have posited that cultural backgrounds (here referring to ethnic or racial backgrounds) are ultimately irrelevant in the development and creation of artwork, because of the incredible potential for these cultural identities to shift and change.<sup>18</sup> What constitutes “Black culture” or “Asian culture” one day can be different from our common perceptions a day later. This view finds support, also, in the internal heterogeneity of the demographics that this notion of culture attempts to capture. *Whose*

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16. *Artistic Expression*, ACLU, <https://www.aclu.org/issues/free-speech/artistic-expression> [<https://perma.cc/KR88-892X>] (reminding that “[t]he U.S. Supreme Court has interpreted the First Amendment’s protection of speech to extend . . . to . . . virtually anything that the human creative impulse can produce”).

17. See Alan Patten, *Rethinking Culture: The Social Lineage Account*, 105 AM. POL. SCI. REV. 735, 735 (2011) (redefining culture as “what people share when they have shared subjection to a common formative context” and as “the precipitate of a common social lineage”).

18. PANKRATZ, *supra* note 8, at 136.

culture are we talking about exactly when we use these sweeping terms?

But other scholars, however, hold that all art is, fundamentally, bound to cultural context.<sup>19</sup> Abstractly and literally, artmaking takes place within traditions and locations that are bound to the socialization processes that we understand to be “culture.”<sup>20</sup> This view is more in line with how we actually promote, in practice, specific works of art by people of color or other minorities.<sup>21</sup>

We might also try to justify art’s societal value—and any corresponding state support of it—through art’s practical benefits.<sup>22</sup> We might list cognitive benefits, community-level social benefits, or economic benefits.<sup>23</sup> We might even fall back on that last line of defense: the inherent importance of “aesthetic experiences.”<sup>24</sup> For example, Thomas Campbell, the former executive director of the Metropolitan Museum of Art, called the Trump administration’s threats to abolish the National Endowment of the Arts pure “folly.”<sup>25</sup> To Campbell, the NEA’s work of funding artistic projects across the country fills the “vacuum” left by a federal government that has no official ministry of culture.<sup>26</sup> And this is crucial, he argues, because “[a]rts and cultural programming enhances [the] lives” of citizens.<sup>27</sup>

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19. See *id.* (quoting Edmund Gaither for his statement that “[c]ultures generate *aesthetic ideals* according to their own history and beliefs” (emphasis added)).

20. *Id.* at 136–37.

21. One format in which we often see this in play—for very laudable ends and through very helpful means—is the listicle. See, e.g., R. O. Kwon, *62 Books by Women of Color To Read in 2022*, ELEC. LITERATURE (Jan. 7, 2022), <https://electricliterature.com/62-books-by-women-of-color-to-read-in-2022> [<https://perma.cc/JQ56-5HA9>] (stating that the author “started compiling a list of books [she] was anticipating by women writers of color because . . . [she] was having trouble finding such titles”). However, this promotional mode comes with risks and burdens, too. See Jenny Zhang, *They Pretend To Be Us While Pretending We Don’t Exist*, BUZZFEED (Sep. 11, 2015), <https://www.buzzfeed.com/jennybagel/they-pretend-to-be-us-while-pretending-we-dont-exist> [<https://perma.cc/NG7L-EYX8>] (suggesting that writers of color are “denied any opportunity to ever write something without the millstone of *but is this authentic/representative/good for black/Asian/Latino/native people?* hanging from their necks” (emphasis in original)).

22. KEVIN F. MCCARTHY, ELIZABETH H. ONDAATJE, LAURA ZAKARAS & ARTHUR BROOKS, *GIFTS OF THE MUSE: REFRAMING THE DEBATE ABOUT THE BENEFITS OF THE ARTS* 16–17 (2004).

23. *Id.* at 28–35.

24. *Id.* at 37.

25. Thomas P. Campbell, *The Folly of Abolishing the NEA*, N.Y. TIMES (Feb. 22, 2017), <https://www.nytimes.com/2017/02/22/opinion/why-art-matters-to-america.html> [<https://perma.cc/ZF48-Q5DP>].

26. *Id.*

27. *Id.*

Still others argue that the arts increases empathy, and that this is a compelling reason for the government to enact laws supporting or protecting art.<sup>28</sup>

These claims are all pleasant. But they fall short of a complete and sound theoretical justification for the law's imposition of "culture" on the people. They fail because many of these arguments assume that the arts have a place in a democracy at all and work backwards to justify this notion. Furthermore, these borderline-kitchen sink arguments could be used to justify government sponsorship of any social practice. (You could, for instance, justify state support of athletics in a similar fashion.) As such, these arguments don't provide us with an understanding of why *art*, specifically, should have a place in a democratic society.

The legal philosopher Ronald Dworkin once asked this same question, too. In his essay "Can a Liberal State Support Art?," Dworkin argues that it can, and that it should. In a democracy such as our own, the government should support the arts because they form part of the "structure of [] culture" from which individuals have the freedom to choose how to live their lives.<sup>29</sup> And liberal states are committed to protecting that freedom.<sup>30</sup> Rather than considering art a pure public good, Dworkin suggests that *culture* "provides . . . the structural frame that makes aesthetic values . . . possible, that makes them values for us."<sup>31</sup> The arts then play the unique role of presenting—and shaping—people's preferences.<sup>32</sup> The arts ask

28. See Eve L. Ewing, *Why Authoritarians Attack the Arts*, N.Y. TIMES (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/opinion/why-authoritarians-attack-the-arts.html> [<https://perma.cc/J65H-B5UU>] (arguing that "art teaches us that lives other than our own have value," that "[it] make[s] us full human beings" and creates solidarity against authoritarian governments).

29. See DWORKIN, *supra* note 11, at 227, 233 (arguing that "art qualifies for state support, not to set floors or ceilings to that support. But art qualifies only on a certain premise: that state support is designed to protect structure rather than to promote any particular content for that structure").

30. See *id.* (stating that "the structure of [] culture" has "consequence[s]" for those "immersed in it" and that state funding for art should "look to the diversity and innovative quality of the culture as a whole rather than to (what public officials take to be) excellence in particular occasions of that culture").

31. See *id.* at 224, 226–27 (suggesting that "[p]erhaps art should be regarded as at least a mixed public good, like vaccination" and reasoning that the "assumption needed for a public-good argument for art—that the community wants a popular or general culture of a certain character—is not only problematical; it may well be incoherent").

32. See *id.* at 231 ("The very possibility of finding aesthetic value in continuity depends on our continuing to achieve success and interest in continuity; and this in turn may well require a rich stock of illustrative and comparative collections that can only or best be maintained in museums and explored in universities and other academies.").

Americans to critically reflect and navigate through the different life choices available to them in a democratic society. And the government should help its people, who have “inherited a cultural structure[,]” to “leave that structure at least as rich as [they] found it.”<sup>33</sup>

If we accept Dworkin’s view, even with its limitations,<sup>34</sup> then we face our next question. If a liberal state can support the arts on the premise that they constitute a crucial part of the structure of culture, then what about multiple cultures within a jurisdiction? That is, what about *multiple* structures of culture? Dworkin writes as though only a single culture exists in the United States—which is obviously untrue.

Now, hopefully, you see where I’m going. Liberal justice demands that the state protect, generally through its laws, the freedom and autonomy of its citizens. A government cannot ensure that autonomy without presenting its citizens with a range of meaningful options from which to choose how to live. Culture, far from being a preference impressed on citizens by the state, instead presents that array of options. And when we impose this framework on a culturally diverse society like our own, we organically extend the state’s support and protection to each minority culture in our society.

As one scholar puts it: “We decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living.”<sup>35</sup> I would hazard that, often, it isn’t even individuals who do their own situating within cultural narratives. Sometimes, what cultural products we have do the situating *for* us or *to* us. As journalist Jay Caspian Kang writes: “The immigrant mind processes all the country’s nation-building myths in a similar way. We hold up a story . . . even *The Joy Luck Club*, and try to match the edges to the contours of our lives.”<sup>36</sup>

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33. *Id.* at 233.

34. See, e.g., Brighthouse, *supra* note 12, at 35–36 (arguing that “philosophical liberals have generally had difficulty showing that arts funding is a legitimate function of government . . . [because] they are uneasy about [] the government decid[ing] which works and kinds of works of art merit support . . .”); Will Kymlicka, *Dworkin on Freedom and Culture*, in *DWORKIN AND HIS CRITICS: WITH REPLIES BY DWORKIN* 113, 119 (Justine Burley ed., 2004) (arguing that “Dworkin’s idea of cultural structures . . . has implications for liberal theory and practice that Dworkin has not addressed . . .” including “how do we individuate cultural structures . . .?”).

35. Kymlicka, *supra* note 34, at 117.

36. JAY CASPIAN KANG, *THE LONELIEST AMERICANS* 65–66 (2021).

***The Other Way Around:  
From a Defense of Cultural Diversity to a Defense of the Arts***

I suppose I could have started from the opposite direction, too. I could have first tried working from the state's role in promoting and protecting cultural diversity and racial equity *toward* the state's responsibility to the arts. But I think it makes sense to first work our way from a defense for the arts *toward* a defense for ourselves. As Stenberg likewise understands, in the United States, the artistic productions of people of color are often valued over the lives of their creators.

So, can we? Go the other way, I mean? Could we start with the inquiry of whether or not the government *should* normatively grant special protections to racial minorities—a responsibility that underlies what the Equal Protection Clause merely codifies—and then move on to whether the law should protect the arts? I think we can. The argument this way around takes on a slightly different shape, as it focuses on equality of opportunity before adequacy of options. That is: a liberal state is committed to the freedom and autonomy of its citizens, sure. But this apparently elementary principle itself assumes that citizens have equality of opportunity to live their lives with freedom and autonomy in the first place.

The law can protect minority rights in several different ways. It might recognize a certain group through providing it with the right to self-government, or through recognition of the group's cultural norms and customs, or through some form of special representation in government.<sup>37</sup> Different racial or ethnic minorities will need these protections in different ways, depending on their specific histories—whether they are the descendants of indigenous peoples, of formerly enslaved peoples, or of immigrants.

But the extent or species of protections notwithstanding, any racial minority group should be able to receive legal recognition under that second category—recognition and protection of the group's cultural customs. The reasoning is simple enough: recognition and state support are a basic part of equality of status. Liberal justice is committed to promoting equality, but culture is necessarily “conditioned by inequitable social and economic relations.”<sup>38</sup> Those with economic and social power wield “cultural hegemony” over those

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37. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 6–7 (1996).

38. PANKRATZ, *supra* note 8, at 11.

who are disadvantaged.<sup>39</sup> To truly move toward equal rights, then—toward equality of access—disadvantaged groups must have claims to their own means of cultural production, dissemination, and consumption. The state, through its laws, can help ensure this.

But before concluding this so easily, we should address a difficulty contained within this analysis. It's a challenge that has tried to rear its head before, namely: *whose culture?* When the law protects a cultural group and recognizes its narratives—recognizes what it *is*—the law necessarily sets boundaries around what that culture, well, *isn't*. Scholars term this dilemma “essentialism,”<sup>40</sup> and essentialism is what leads philosopher Kwame Anthony Appiah to write that policies promoting cultural diversity “so often designate[] the disease [they] purport[] to cure.”<sup>41</sup> Cultures and societies can disappear—whether through assimilation or integration or forced removal. And cultures change all the time, even as they endure. Its members can develop or incorporate different beliefs and practices.

But essentialism only remains a problem if we cleave to the traditional, non-fluid conception of culture as determinate, bounded, and homogenous.<sup>42</sup> Instead, when we truly understand culture as a socialization process, we can view it as fluid, overlapping, internally contested and internally heterogeneous. A culture constantly expresses itself through those customs—like the arts—that it includes. A culture cannot merely *be* unique; it must also *express* that it has a unique identity at any fixed point in time. It perpetually expresses what it is and isn't.

Equality of status requires that the state recognize minority cultures. And recognition of minority cultures in turn warrants recognition of those expressions that makes them distinct. Beginning with the government's responsibility to secure equal rights for minority groups, then, naturally leads us back to state support of the arts.

Raz isn't wrong when he writes: “One's positive freedom is enhanced by whatever enhances one's ability to lead an autonomous

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39. *Id.*

40. Jesse Singal, *Can a Philosopher Help Calm the Identity-Politics Wars?*, N.Y. MAGAZINE (Aug. 29, 2018), <https://nymag.com/intelligencer/2018/08/interview-philosopher-kwame-anthony-appiah-identity-politics-wars.html>. [<https://perma.cc/Q6TR-X7ZD>].

41. APPIAH, *supra* note 13, at xiii.

42. Perhaps the most familiar traditional definition of culture is that of founding cultural anthropologist E.B. Tylor. Tylor defined culture as “that complex whole which includes knowledge, belief, arts, morals, laws, custom, and any other capabilities and habits acquired by man as a member of society.” EDWARD BURNETT TYLOR, *PRIMITIVE CULTURE* 1 (1924).

life.”<sup>43</sup> But without equality of status, individuals socialized into minority cultures cannot enhance their freedoms if they do not have, included in their toolkit, the ability to express themselves.

**“Where Do We Go From Here?”<sup>44</sup>**

Jafa’s career exploded—or maybe bloomed is the better word<sup>45</sup>—after *Love is the Message* debuted. It remains his best-known work to date.<sup>46</sup> But in the five years since the work went public, Jafa has wrestled with what the work has *done*.

“I’m not making any more *Love is the Messages*,” he told *The Guardian* in 2018.<sup>47</sup> “After so many ‘I cried, I cried’, well, is that the measure of having processed it in a constructive way? I’m not sure it is.”<sup>48</sup> Jafa, who is allergic to “microwave epiphanies,” wondered if he had served up just that: a reheatable, digestible version of Black oppression for white Americans to easily consume.<sup>49</sup>

Jafa’s current ambivalence towards *Love is the Message* might reflect an issue related to Appiah’s essentialism problem. Whereas Appiah frets about the demarcation of boundaries for groups that are necessarily fluid and ever-changing, Jafa worries about the reduction or distillation of those fluid experiences into a single instance of expression. That any discrete work of art can capture such a multitude of experiences—that Black achievement, joy, sorrow, and rage, among so much more—singlehandedly and effectively at all.

The simplest rebuttal to Jafa’s concerns is to say that *Love is the Message* and other watershed works like it provide apertures. Broad openings, like this work, allow majority groups to enter and progress toward deeper, tougher conversations. And while this response is probably fine, it’s also the easy way out. We should take Jafa’s concerns seriously. The danger then becomes whether we rely wholly and solely on artworks—and artists—to make us feel okay.

43. RAZ, *supra* note 14, at 409.

44. MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* (1967).

45. O’Grady, *supra* note 5.

46. *See id.* (“The tipping point for Jafa was a seven-and-a-half-minute film he made the same year, ‘Love Is the Message, the Message Is Death.’”).

47. Ruth Gebreyesus, *Why the Film-maker Behind Love Is the Message Is Turning His Lens to Whiteness*, *GUARDIAN* (Dec. 11, 2018, 2:37 PM), <https://www.theguardian.com/artanddesign/2018/dec/11/arthur-jafa-video-artist-love-is-the-message> [<https://perma.cc/ZJ96-T879>].

48. *Id.*

49. *Id.*

Which leads me to emphasize just how limited my particular focus is here, on the arts. When I write that equality of status *includes* access to self-expression, I seek to remind that there is still *everything else* out there. We need to reform policing, the carceral system, the immigration process, and so much more. We need to protect voting rights like our lives depend on it, because they do. To attempt to discuss any of that here would be negligent; even wrong. So, art isn't the answer — art isn't the message. Art is just the lie that reveals the truth. So that we may walk out of darkened galleries, back into the real, lighted world; so that we never close our eyes. So that we never just look or watch but, instead, act on what we see. That we may never stop inside a sterile gallery, thinking we've finished, forgetting about all the lives outside.

Leslie Thomas formerly directed the Community Arts Division of the City of Los Angeles Department of Cultural Affairs. Thomas once told me that “the arts are a part of creating a healthy, wholesome community. And from a social justice standpoint, these . . . [arts and cultural] centers are characterized as safe havens.”<sup>50</sup> He was certainly someone with the credentials to say that: Los Angeles is the second largest metropolitan center in the United States and is home to almost four million people<sup>51</sup> who speak over 100 different languages.<sup>52</sup> Diversity and equity are baked into the structure of his department's work, which manages and programs arts and cultural centers across the city.<sup>53</sup> Thomas is also a Black man, with memories of the Civil Rights movements of the 1950s and '60s, and, to him, social justice is intimately tied with cultural expression. “We've got to figure out a way about how we respond [to current violence],” he said. “We've got to do what we've always done: create.”<sup>54</sup>

The law is a poor proxy for justice. It is inelegant. We see this repeatedly in how legal interpretation affects the lives of real people. We see this, for example, through the gaping holes left by disparate impact. This inelegance, coupled with our undeniable need for the law, might invoke Rita Dove's clear-eyed description of the human heart:

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50. Interview with Leslie Thomas, Former Cnty. Arts Dir., City of L.A. Dept. of Cultural Affs., in L.A., Cal. (Aug. 24, 2017).

51. *Quick Facts: L.A. City, Cal; U.S.*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia,US> [https://perma.cc/W7F2-66XM].

52. Bianca Barragan, *More Than Half of Los Angeles Speaks a Language Other Than English at Home*, CURBED L.A. (Nov. 4, 2015, 9:41 AM), <https://la.curbed.com/2015/11/4/9904020/los-angeles-languages> [https://perma.cc/M93Q-6XVS].

53. *Community Arts Division*, CITY OF L.A. DEPT. OF CULTURAL AFFS., <https://culturela.org/contact/community-arts-division> [https://perma.cc/FZ2V-J775].

54. Interview with Leslie Thomas, *supra* note 50.

it's "just a thick clutch of muscle, / lopsided, / mute."<sup>55</sup> Like our physical hearts, law keeps us alive; it pumps blood through society even as the hearts we truly care about day-to-day are those that we say can be *warmed* or *broken*. But still, something more beats on inside, against the walls of that graceless muscle; a forward-looking yearning. Americans—from all different backgrounds, cultures, races, ethnicities—will never stop creating. We cannot divorce these acts from ourselves, and they merit our utmost legal protection and recognition. What would America look like if we loved Black people, period? As Dove writes: "Here, / it's all yours, now – / but you'll have / to take me, / too."<sup>56</sup>

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55. Dove, *supra* note 1.

56. *Id.*