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Author(s): Phillip Brian Harper

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# “THE SUBVERSIVE EDGE”: *PARIS IS BURNING*, SOCIAL CRITIQUE, AND THE LIMITS OF SUBJECTIVE AGENCY

PHILLIP BRIAN HARPER

## *Drag Presentation and Public Effect*

To judge from popular-press reviews that greeted its release, Jennie Livingston’s film *Paris Is Burning* has left a significant number of its viewers pleasantly surprised. What surprises them is not only what was widely registered as Livingston’s intrepidity in venturing among the black and latino habitués of Harlem’s drag-ball scene, which the film portrays,<sup>1</sup> but also—and more significantly—the activities of the film’s subjects themselves, particularly their precise replication (in the context of the balls’ regimented competitions) of the styles and behaviors of a range of social types recognizable from daily life, from mass-media projections, or from both. John Howell, commenting in 1989 on rough-cut footage from what was then Livingston’s work-in-progress, gives a fairly typical account of contestants’ achievement of such Realness, as it is called in the ball context:

*In costume and poise, these artificial Yalies and businessmen would be utterly indistinguishable from the “real thing” on the campus or in the office. Similarly, any general would salute troops who paraded with the spit-and-polish panache of the vogueurs who impersonate marines. Every detail is duplicated to the minutest degree, from body language to personality, from clothing to accessories (briefcases, American Express cards, airplane tickets, and Wall Street Journals for the businessmen, letter sweaters and textbooks for the students).*  
[11]

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1. Stewart Klawans, for example, predicts that we will be “impressed” by Livingston’s clearly having won the confidence of her subjects who, because they inhabit “a part of the world that doesn’t see many white women, . . . had every reason to mistrust her” [536]. This assertion is curious, to say the least, in that it implicitly presumes our identification with Livingston, whose impressiveness must be primarily a function of the degree to which we ourselves would feel alien in the drag-ball setting. More than this, though, Klawans seems to miss a crucial point of the film regarding the significance of white women to ball participants. One of the movie’s most startling scenes, after all, features the “petite” latina/o preoperative transsexual Venus Xtravaganza, confiding to the camera her desire to be a “spoiled, rich white girl” and thereby indicating that any feelings she has about white women derive not from the fact that she “doesn’t see many” of them but rather from her bombardment with countless highly stylized images of them from almost every quarter of the contemporary culture industry.

If the “perfection” with which ball contestants assume the aspects “of our society’s most normative roles” occasions wonder among critical observers [Howell 11], these observers’ pleasure in being thus surprised derives from the significance with which they invest those precise replications, which is of a particular kind. Writing in *Mother Jones*, reviewer Jim Farber remarked that “[f]ootage of [the] contests takes up a good part of the movie, along with scenes of the voguers at home, constructing their identities. The personality overhauls give the balls a subversive edge, stressing the sly mutability of identity.”<sup>2</sup> Key here is the *subversiveness* that Farber discerns in the stylizations of the “voguers”—notable instances of which, it must be emphasized, entail “male-to-female” drag performance—for it seems clear that this subversiveness constitutes not only the “angle that first attracted Livingston” to ball culture [Farber] but also the ostensible primary object of interest offered by that culture to Farber himself and thus, by extension, to the social liberals comprised by his readership. If, as I am suggesting, this subversiveness pleases them, it is because it seems to characterize as politically acceptable a phenomenon whose progressiveness must be questionable at first glance, because of both the distinctly *cultural*—not to say *frivolous*—mode of its intervention (as opposed to, say, a properly *economic* one), which renders it unorthodox as a political undertaking in any event, and the particularly conflicted significance of such cultural intervention in the contemporary, postmodern context.

It is easy enough to identify the constituent factors in the reputed subversiveness of ball culture. Jim Farber’s own formulation makes it quite clear that it is the demonstration of the “mutability of identity”—effected in particular through ball contestants’ achievement of Realness—that provides the requisite “edge” to the culture’s sociopolitical significance. According to John Howell, that demonstration inevitably raises the questions: “[W]hat is authentic in social roles? Who does our culture reward and who does it exclude, and how different are they? What is male, what is female? Can our chromosomal hard-wiring be reprogrammed?” [11]. Howell’s identification of these as “bottom-line questions” implies that the mere posing of them is a radical political act; and since, according to Howell, it is “voguing” itself that thus “leads us to deep issues,” ball practice emerges, in his rendering, as the clear agent of subversive critique.

But, of course, however critically efficacious it may be, Realness styling itself appears as the effect of a motivated regimen undertaken by specific identifiable agents, namely, the “voguers” who, in Farber’s terms, achieve “personality overhauls” by actively “construct[ing] their identities.” These formulations manifest a curious conflation. By way of indicating the intentionality of their efforts to make themselves over as recognizable types—to “overhaul” their attitudes and appearances, as they indisputably do—Farber concomitantly suggests that the ball contestants enact an equally voluntaristic transformation in their very *selves*, figured here as their “personalities” and “identities.” The positing of such an accomplishment is potentially appealing for at least two closely related reasons: (1) it imputes to denizens of the ball milieu an expanded agency whereby they seem able to alter apparently fundamental elements of social experience; and (2) it thus recuperates those same personages as active producers not only of political critique but of significant social-structural change.

Thus the attractiveness of this scenario is easy to understand. After all, a (if not *the*) primary challenge of contemporary culture is the achievement of some degree of resistant political agency that isn’t immediately undercut by any of the various infrastructural

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2. *The consistency with which reviewers subsume the various categories in which ball contestants compete under the rubric of “voguing” indicates the degree to which they have seized on the activity as synecdochically representative of ball culture. Ironically, in thus rendering generic this one aspect of the balls, these commentators succeed in decontextualizing the stylized dance form in much the same way as did its prime popularizer, Madonna, whom many of them harshly criticize for “poaching” the “subculture” in her 1990 song and video “Vogue” [Farber].*

mechanisms through which it is registered and disseminated; and for such agency to be achieved by persons who are profoundly socially and politically marginalized as poor, gay blacks and latino/as would be particularly heartening. Whatever the desirability of that achievement, though, it is by no means clear that it actually occurs in the drag-ball context—that, in other words, the effective subjectivity exercised by the ball queens in the overhauling of their appearances constitutes such sociopolitical agency as would be entailed in the “constructing of their identities.” For this latter agency implies a capacity not only to style one’s aspect but to exercise some control over the conditions of its general reception. However much they might enjoy such a capacity in the ballroom, the subjects of *Paris Is Burning* were definitively shown to lack it beyond the ball context when they attempted to redefine the terms of the film’s success.

As Jesse Green reported in an update on the ball scene published in the *New York Times* two years after the release of *Paris Is Burning*, all but two of the queens featured in the film filed legal claims against Jennie Livingston once the movie started to turn a profit:

*The largest claim came from Paris DuPree, who sought \$40 million for unauthorized and fraudulent use of services. Though Paris is never named on camera and appears for less than three of the movie’s 76 minutes, Paris’s 1986 ball provided the title for the film and is extensively featured in it. But like all of the others, Paris had signed a release, and the matter was dropped. [11]*

On its surface, and in Green’s flatly declarative rendering, the dismissal of DuPree’s complaint seems a thoroughly straightforward legal-procedural affair—DuPree had signed a release; the matter was dropped. The powerful subjective agency that DuPree purportedly enjoys in the ballroom is thus checked, in the juridical realm, by precisely such technical factors as seem to distinguish the juridical as a fundamentally different sphere from that constituted by the balls. I would argue, however, that the very recognition of such factors is necessitated by the degree to which the juridical context and the drag-ball milieu represent different aspects of the *same* realm, in either of which the queens featured in *Paris Is Burning* might thus achieve an agency that is socially significant and politically potent.

For all the evident differences between courtroom and ballroom—not the least of which is that the former constitutes an element of state administration while the latter most emphatically does not—both of them nonetheless partake in what is so fundamental an attribute of the *public* as to inform all the disparate formulations of that sphere.<sup>3</sup> In short, both sites are characterized by such activities of social *self-presentation* as are central not merely to the perpetuation of state authority and to the constitution of subjective identity but also to the exercise of community citizenship, the symbolism of market exchange, and the workings of mass media, all of which have been theorized as constituting the public sphere [see Robbins xiii-xx]. The conceptualization of both the juridical arena and the drag-ball site as instantiations of the public suggests that the subjects of Livingston’s film might substantively intervene in the one just as easily as in the other. If they fail in this undertaking, as they evidently do, there are compelling reasons *why*—reasons whose significance is actually thematized in the process whereby *Paris Is Burning* effects its own sociocultural intervention.

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3. See Robbins for a useful account of the ongoing problematization and reconfiguration of the public sphere.

Before we can successfully theorize the constraint on their subjectivity that the ball queens suffer, we must first determine the specific character of the agency that they enjoy in the ball context. I have already indicated that that agency cannot be understood as the queens' ability to "construct their personalities" in the active and voluntaristic manner that Jim Farber suggests. Indeed, Farber's postulation resembles nothing so much as the misapprehensions of "gender performativity" that have largely characterized theoretical discussion since the publication of Judith Butler's highly influential *Gender Trouble* in 1990. Butler herself has recognized the degree to which her theory has been misunderstood, identifying as the primary misapprehension the idea "that gender is a choice, or that gender is a role, or that gender is a construction that one puts on, as one puts on clothes in the morning, that there is a 'one' who is prior to this gender, a one who goes to the wardrobe of gender and decides with deliberation which gender it will be today" ["Critically Queer" 21]. This misapprehension is based largely, as Butler makes clear, on the limited understanding of "performativity" as denoting specifically and merely a mode of *theatrical* production. Much more centrally at work in Butler's theory is the concept of performativity as a mode of *discursive* production. While the structural relation between these two types of performativity might certainly be interrogated to valuable theoretical effect, as in Eve Kosofsky Sedgwick's recent work on the significance of shame to "queer performativity" [see especially 1–6],<sup>4</sup> there is little to be gained from the far more common elision of performativity's discursive significance and the concomitant critical emphasis of its theatrical import, a mistake that Butler insightfully traces to "the political needs of a growing queer movement in which the publicization of theatrical agency has become quite central" ["Critically Queer" 21].

Indeed, what is so important about Butler's work is that it profoundly problematizes the very notion of subjective agency, getting at that critique through an interrogation of gender as an instance of specifically *discursive* rather than *theatrical* performativity. Butler—and, practically in tandem with her, Sedgwick—usefully traces the genealogy of the theory of discursive performativity to its effective proto-concept: performativity (all too easily apprehended as specifically *linguistic*) in the sense first elaborated by J. L. Austin in *How to Do Things with Words* [Butler, "Critically Queer" 17–18; Sedgwick 2–3]. Invoking (and thereby establishing as paradigmatic) the example of the heterosexual wedding vow—"I do [sc. take this woman to be my lawful wedded wife]" [5 and *passim*—Austin characterized as "performative" those utterances the issuing of which "is the performing of an action" [6].

As Butler is at pains to make clear, however, the force of the performative derives not from the subject who utters it but rather from a regulatory matrix constituted by the legacy of discursive acts into which it emerges and which it effectively "cites" ["Critically Queer" 17–18]. It is the derivation of its force from within this legacy that renders the performative properly *discursive* and that, further, unsettles the notion of individual agential subjectivity on which depend both the conventional understanding of gender identity as an essential attribute and mistaken notions of its *theatrically* performative quality. In contradistinction to these, Butler sees gender as neither constituting nor indicating the existence of a subjective "core" or "self," but rather as performatively established within a discursive matrix the elements of which are not—or at least not *primarily*—linguistic but, rather, gestural or behavioral:

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4. Sedgwick, too, sounds a warning regarding the misconstrual of Butler's theory, skeptically citing "some of the uses scholars are trying to make of performativity as they think they are understanding it from Judith Butler's and other related recent work" [15].

[A]cts, gestures, and desire produce the effect of an internal core or substance. . . . [They] are performative in the sense that the essence or identity that they otherwise purport to express are fabrications manufactured and sustained through corporeal signs and other discursive means. . . . [A]cts and gestures, articulated and enacted desires create the illusion of an interior and organizing gender core. [Gender Trouble 136]

This illusion, Butler further asserts, serves a disciplinary function; it

*is discursively maintained for the purposes of the regulation of sexuality within the obligatory frame of reproductive heterosexuality. If the “cause” of desire, gesture, and act can be localized within the “self” of the actor, then the political regulations and disciplinary practices which produce that ostensibly coherent gender are effectively displaced from view. The displacement of a political and discursive origin of gender identity onto a psychological “core” precludes an analysis of the political constitution of the gendered subject and its fabricated notions about the ineffable interiority of its sex or of its true identity.* [Gender Trouble 136]

Thus Butler’s deconstruction of gender (which is coextensive, according to her analysis, with identity as such)—her exposition of it as discursively performative—renders untenable any conception of an agential subject that would *theatrically* perform, or voluntaristically “construct,” an identity through the manipulation of various effects taken to signify gender (for instance) in conventional contexts. With the impossibility of effective “personality overhauls” thus demonstrated, the stylizations of the drag balls’ Realness queens lose the specific “subversive edge” that Jim Farber has imputed to them.

This is not to say, however, that Realness posing—or any instance of more “conventional” cross-gender drag, for that matter—serves no critical function at all. It is merely to say (again, following Butler) that that critical function *does not* consist in drag’s serving as “a sign of the essential plasticity of gender” [“Critically Queer” 25]. Rather, according to Butler’s explication, drag’s real “edge” lies in the fact that it “exposes or allegorizes the mundane psychic and performative practices by which heterosexualized genders form themselves through the renunciation of the *possibility* of homosexuality. . . . Drag thus allegorizes *heterosexual melancholy*” [“Critically Queer” 25], which Butler identifies, in the sections of *Gender Trouble* that engage psychoanalytic theory, as the initiatory force behind the performative construction of normative genders [57–72].

The crucial difference, then, between this conception of drag’s “subversiveness” and the one suggested in accounts such as Farber’s has to do with the place of subjective agency. The latter posits an individual subjective agency that it conceives as capable of voluntaristically fashioning its own “self”—a conception that is problematic insofar as any effective “self” has already been performatively constituted within a regulatory discursive matrix that both precedes and continually conditions it. In other words, the discursive performativity through which “selves” are brought into being by its very nature *precludes* the participation of such selves as productive subjects within that operation.

On the other hand, the expositional-allegorical function in which Butler locates drag’s critical force depends on individual agency not to “construct” its own self—to intervene in and govern the process of discursive performativity—but rather to enact a *theatrical performance* whereby the mechanism through which gender is constituted is effectively exposed. It is precisely in the terms of this difference—which we might think of as the capacity for critical *deconstruction* versus the ability to effect substantive social *reconstruction*—that we can also characterize the distinction between ballroom and courtroom, the two aspects of the public realm that figure so centrally in the drama of *Paris*



*Is Burning* and that the drag queens presented in the film attempt to negotiate with radically disparate results.

### *The Imaginary Real*

We can achieve a sense of the crucial difference between the ballroom and courtroom sites by referring to Judith Butler's own examination of *Paris Is Burning*, which usefully refines the proposition that there is no place for subjective agency in the performative constitution of an individual "self." Focusing on various ball participants' (and especially Venus Xtravaganza's) expert citation of gestures comprised in the constitution of normative class, race, and gender identities, Butler suggests that this voluntaristic performance actually *does* result in the production of an identifiable subject—a suggestion that implies not the negation of prior claims as to the impossibility of such a production but rather the peculiar character of the subject that emerges in Realness posturing.

Butler asserts that, "[i]n the drag ball productions of realness, we witness and produce the phantasmatic constitution of a subject, a subject who repeats and mimes the legitimizing norms by which it itself has been degraded" ["Gender Is Burning" 131]. The subject that emerges through enactments of drag-ball Realness is *phantasmatically* constituted, but this in and of itself does not distinguish it from the normative subjects that it recalls. For they, too—and this is what Realness posturing exposes, according to Butler—are "phantasmatically instituted and sustained" ["Gender Is Burning" 130]. Rather, the critical difference between normative subjects and those produced in the enactment of Realness is that the former are discursively constituted as recognizable within the governing social structure and thus are legitimated in a way that the latter are not. In other words, normative subjectivities comprise "sanctioned fantasies, sanctioned imaginaries, [which] are insidiously elevated as the parameters of realness" ["Gender Is Burning" 130]. Thus, "Realness" is what is recognized in the ball context but not beyond it; "realness" characterizes subjectivities recognized in the larger social field and might usefully be understood in Lacanian terms as corresponding, not to the homonymous order of the Real but rather to the realm of the *symbolic*.<sup>5</sup>

The Lacanian conception is useful in that it can help us to understand the relation between the sanctioning of social norms and the specific public function of the juridical realm, as opposed to that of drag-ball practice. As a conditioning factor in the constitution of the subject, the Lacanian register of the *symbolic* derives its significance specifically in relation to the order of the *imaginary*. Figured in terms of discursive logic, the imaginary denotes the experiential mode in which a speaking subject conceives of itself as fully present in, represented by, and in control of the discourse that it produces. The symbolic, on the other hand, comprises the mode in which that subject recognizes the fundamental disjuncture between itself and its discursive representation—the fact that, as

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5. I am reminded here of the classic children's story in which a young boy's stuffed toy rabbit accedes to the status of the Real within the context of the nursery (analogous to the ball setting in *Paris Is Burning*) by virtue of the child's love for it. When the Rabbit—declared to be germ-infested after the child's bout with scarlet fever—is eventually discarded by the child's nurse and apparently forgotten by the boy himself, the Rabbit's despair is relieved by the appearance of the "nursery magic Fairy"(!), who promises to take him away and "turn [him] into Real." "Wasn't I Real before?" the Rabbit asks. The Fairy replies, "You were Real to the Boy . . . because he loved you. Now you shall be Real to every one." The Fairy's subsequent transformation of the Rabbit into a living animal that everyone will recognize as "Real" corresponds to the social sanctioning of certain "fantasies" such that they become generally recognized as the parameters of normative subjectivity [see Williams 38–40].



Antony Easthope neatly puts it, “the ‘I’ as represented in discourse . . . is always sliding away from the ‘I’ doing the speaking” [44]—and, relatedly, that the significance of the discourse that it produces is governed by relations beyond its control.

The primary import of the subject’s interpellation in the symbolic order is that the subject can never fully (re)present itself in its own enunciations, can never completely “speak (for) itself.” This truth does not preclude the subject’s becoming adequately functional, but it does indicate the limits to discursive self-effectivity that the subject must negotiate in order to achieve its functionality. In the Lacanian conception, that negotiation consists in the subject’s constant oscillation between the equally necessary states of the symbolic and the imaginary. As we have noted, however, the discursive field that constitutes the symbolic order is not subject to voluntaristic manipulation by the individual subjects implicated within it. Consequently, successful “oscillation” into the symbolic always entails, as well, the subject’s *accommodation* to it. In other words, when Realness queens exit the ball milieu, which constitutes a type of imaginary realm, they must—to all appearances, at least—conform to the norms of the larger social context that effectively constitutes the symbolic order. To be perceived as failing or refusing thus to conform can result in tragic consequences for any given individual. Butler cites a specific, relatively contingent instance of such tragedy that is referenced in *Paris Is Burning*—the eventual murder of Venus Xtravaganza, apparently by a trick who has discovered that she is not a “real” woman at all, in normative terms [“Gender Is Burning” 131]. Of greater import for my consideration here, though, is the fact that such disciplinary practice as Venus’s murder so brutally instantiated characteristically assumes a rather more systemic manifestation, in which the juridical realm is centrally implicated; for it is this implication that confers upon the juridical apparatus its distinctive public significance.

Precisely to the extent that it represents state administration, as well as other recognized forms of social authority, the courtroom constitutes an aspect of the social-symbolic realm in a way that the drag ballroom—which, for all its similarly public character, embodies no such authority—cannot. Indeed, not only do the instances of social self-presentation manifested in the juridical context constitute such socially sanctioned “fantasies” as are comprised in the symbolic realm, but, further, their very manifestation in the arena of official “judgment” dramatically constitutes both that sanctioning and the condemnation of those self-presentations that are not thus legitimated. In other words, juridical activity not only *conforms to* but actually helps to *establish* the terms of legitimacy that condition society as a whole. This is a powerful effect that cannot be said to characterize the drag-ball context, and its absence from that setting founds the inability of the subjects that emerge therein to bring about substantive social-structural change.

This said, it is crucial to emphasize that state apparatuses do not have a monopoly on the establishment and promulgation of normative social modes. Indeed, the importance of cultural productions to these processes has grown apace with the increasing implication of the mass media in contemporary social life. If the cultural practices that characterize the drag-ball context do not partake in the social regulatory function that the juridical apparatus enacts, this is only because they do not represent the same investment of capital—both economic and social-symbolic—as do other types of cultural production, of which Jennie Livingston’s film is a primary instance.

### *Cultural Authorship/Cultural Authority*

Given the constraints on their subjectivity that Realness queens clearly suffer, *Paris Is Burning* must be understood not as neutrally “(re)presenting” their effective (and subversive) exercise of sociopolitical agency—their substantive intervention in the very

constitution of the symbolic realm—but rather as potentially underwriting the possibility of such exercise. The film’s ability to do this is founded in the specific quality of its own public status, which derives largely from its mass-media character, and thus comprises a potentially even farther-ranging social-constitutive function than that enacted in the juridical realm. In its capacity as a highly privileged symbolic apparatus, the film can disseminate the “message” of drag-ball practice to a wide audience beyond the ball context, thus enabling the queens’ social intervention, as both Butler and bell hooks have pointed out [“Gender Is Burning” 133–36; hooks 150–54]. At the same time, however—and as Butler and hooks both indicate, as well—the very privilege that Livingston’s work enjoys not only potentially augments the effective agency of the drag-ball queens but also works to thwart its realization. This is because the film’s *dissemination* of the critique implicit in the queens’ activity must always also be a *rearticulation*, insofar as its objective is to render intelligible in the larger social sphere discursive practices that do not partake of its terms in normative modes. It is specifically in this rearticulation that the film’s underwriting of the ball queens’ subjective agency becomes dubious, since the very mechanism of the film genre—not merely technically, but in its contemporary social function—serves the promotion of the *auteur’s* subjectivity, rather than, and at the expense of, that of the individual(s) understood to be the “subject(s)” of documentary cinema.

In the sections of their works cited above, Butler and hooks provide (not altogether identical) analyses of this phenomenon as it takes place in the cinematic context proper and, in the case of hooks, in journalistic interviews with Livingston meant to provide both background on the film’s production and an account of Livingston’s development as a filmmaker. It is worth noting, though, that the journalistic suppression of the queens’ subjectivities in favor of Livingston’s is a function not only of the potent *auteurism* that conceives the filmmaker, per se, as cultural *author* but also of a governing discourse that conceives the *documentary* filmmaker as cultural *authority*. This discourse is one in which the review articles by Jim Farber and John Howell extensively participate, thus emblemizing the general process whereby Jennie Livingston’s social subjectivity is recognized and legitimated while that of the queens presented in her film is effectively constrained.

As is typical of their genre, both articles assess the overall “quality” of Livingston’s film, but they also provide some account of the “subculture” that the film purports to “document.” Howell, for instance, undertakes to explain to his readers the signal elements of drag-ball competition:

*Appropriately, one of the most important categories is called “Realness,” a highly codified and sophisticated classification in which the participant attempts to create a certain “normality.” As Livingston explains it, “In Realness, femme queens try to pass for ‘real’ women, while butch queens compete to duplicate the look of a ‘real’—or heterosexual—man.” [9]*

Farber, for his part, tends more toward critique:

*The voguers in Paris Is Burning often lust after the emptiest possible images of success. Their greatest goal is to become super-rich models—to act out an episode of Runaway with the Rich and Famous starring Iman. “I never felt comfortable being poor, or even middle class doesn’t suit me,” one voguer confides during the film.*

*Livingston says that voguing wasn’t always so materialistic. “In the sixties, there were drag balls, but there was lots of individualism and freedom*

*of expression. Then, as the outside world got more yuppie, voguers got into designer labels. It followed the evolution of greed in America."*

In each instance, a claim about some key aspect of drag-ball culture—one of its primary organizational principles in the former example, its historical development in the latter—is substantiated by recourse not to actual participants in the culture, whom we might expect to be able to explicate it best, but to Livingston, who has cinematically “documented” it. By thus giving Livingston the final “word” on the phenomena they address, these pieces clearly manifest and reinscribe what I have already referred to as documentary film’s *rearticulative* function, but they also indicate the degree to which that function itself grounds the analytical authority enjoyed by the documentary filmmaker within official culture. The extent of that authority is probably best suggested by its conceptualization in terms not of artistic creation but of scientific discipline: consider, for instance, Vincent Canby’s declaration that in *Paris Is Burning* Livingston “studies” her subjects “with the curiosity of a compassionate anthropologist.”

The degree to which the authority of the documentary filmmaker is thus expanded beyond the strictly cultural-artistic realm into the social-scientific suggests the degree to which the effective agency of her documentary “subjects” is, conversely, diminished in the larger social sphere. For while the impact of *Paris Is Burning* may depend on how successfully it renders ball culture generally recognizable, the intervention thus effected is registered specifically as that of the filmmaker, who is accordingly interpellated as a figure of some social standing, rather than that of the queens on the drag-ball circuit, who clearly are not. As Livingston herself noted some two years after her film’s release, “I am now a film maker. . . . And that’s something I wasn’t before”; at the same time, to quote from Jesse Green’s *New York Times* article, in which that self-characterization appears, those presented in *Paris Is Burning* “remain[ed], at best, exactly where they were when filmed” [Green 11].<sup>6</sup> That discrepancy is the effect not so much of any conscious action by Livingston herself (the faults of her film that Butler and, especially, hooks identify notwithstanding) as of structural constraints on the queens’ own subjective agency that attend the limits of the public significance of the drag-ball context—constraints that Livingston could not but exploit once she determined to undertake her documentary project.

### *Privacy, Property, and Documentary Subjects*

We know of the constraint faced by those featured in *Paris Is Burning* when they sought legal rights to profits generated by the film. We also know, from Jesse Green’s *New York Times* article, that the grounds for the dismissal of the queens’ complaints against Jennie Livingston consisted in their having signed a “release” prior to the film’s production. It is worth considering carefully, however, exactly what was “released” by the queens’ subscribing to the pertinent documents, and according to what recognized legal principle. Green’s account makes it clear that the paperwork covered the queens’ provision to the filmmaker of certain “services,” one of which would have to have been access to the balls themselves. But of what do the balls consist but the motivated activities of the various

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6. Green’s article itself emblemizes the process whereby the official organs of public culture underwrite their own continued hegemony. The piece’s headline proclaims that “Paris Has Burned,” while the text takes as evidence of drag-ball culture’s demise the fact that “the balls, which had moved downtown in their moment of fame, have mostly moved back to Harlem” [11]. Purporting merely to register the apparent death of drag-ball culture, by implicitly rendering Harlem as a sort of cultural graveyard in relation to the vitality of downtown Manhattan, the piece crucially participates in setting the terms according to which ball culture is adjudged to be defunct.

persons who participate in them, the exposure of which before the filmmaker's camera might also be seen as a service rendered?

Such publicization of personal activities as is comprised in *Paris Is Burning* is governed by an extensive body of privacy law that it will be useful to consider here. The point of this consideration is not to reassess the legality of the arrangements that Livingston made with her subjects—an undertaking that would be futile as well as presumptuous; rather, it is to make clear the relation between the conventions of documentary film and juridical regulation whereby the former necessitate particular instances of the latter. This demonstration will further indicate not just the limits of the documentary subjects' agency but the only potential means by which those limits might be overcome in the contemporary sociocultural context.

There are actually three realms of privacy that have been recognized by US courts: Fourth Amendment privacy, comprising limitations on unreasonable search and seizure; constitutional privacy, generally construed as governing marriage relations and reproductive rights; and, what concerns us here, torts privacy, characterized most simply as the "right of the individual to be let alone" [Warren and Brandeis 205].<sup>7</sup> Or, perhaps I should say, most *simplistically*, for the phrase above, taken from the 1890 *Harvard Law Review* article that effectively founded torts law privacy, scarcely hints at the range of objects that would eventually be protected under its aegis, the breadth of which must partly fuel the continuing controversy among legal theorists and historians over the very validity of the torts privacy category.

The debate centers on whether the authors of the 1890 article, Samuel Warren and Louis Brandeis, discover legal and factual grounding sufficient to conceive a privacy right distinct from that specified in the Fourth Amendment.<sup>8</sup> Indeed, it is worth noting that some of Warren and Brandeis's language seems to verge on Fourth Amendment considerations insofar as it manifests a specific concern with the bounded sanctity of habitable realms—in its invocation, for instance, of "the sacred precincts of private and domestic life" [195].

As Jane Gaines has pointed out, however, even this founding article manifests the metonymic shift (which Gaines argues becomes increasingly pronounced throughout the twentieth century [180]) from concern for "sacred precincts," *per se*, to concern for the *personal quality* of the effects and activities potentially located in and associated with them. For example, in their explicit worry that "what is whispered in the closet shall be proclaimed from the house-tops" [195], Warren and Brandeis betray a concern not for the boundaries of the "closet" themselves but rather over the publication of the intimacies that take place therein. Similarly, their interest in the "sacred precincts" that they invoke has to do specifically with guarding them against "invasion" by agents of publicity, namely "[i]nstantaneous photographs and newspaper enterprise"; and they emphasize "that the law must afford some remedy for the unauthorized circulation of portraits of private persons" [195].

This brief examination of Warren and Brandeis's text thus makes clear the means by which the mechanically reproduced image—whether still-photographic or cinematic—is conceptualized as an object of privacy and, further, when it constitutes a cultural commodity, as an object of *intellectual property*. Such an image—which it will be useful to specify as a *visual image*—is only one component, however, in the more complex entity generated through the production, distribution, and exhibition of cinematic film. That entity might be designated as the *personal* image associated with any individual who

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7. Samar's first chapter, "The Objects of Legal Privacy," gives a full review of the different legal areas in which privacy is generally recognized.

8. For an account of the controversy and a defense of Warren and Brandeis, see "The Right to Privacy in Nineteenth Century America."

appears in a given film. Not only would this personal image comprise the activities enacted before Jennie Livingston's camera by the queens featured in her film, it also—like a person's *visual image*—constitutes an object of intellectual property. Since it is in the personal image that we can best discern the interrelation of documentary convention and juridical regulation that conditions the status of the documentary subject, it is worth considering its specific character in some detail.

Jane Gaines offers a viable model for such a consideration in her treatment of the cinematic film “star.” Drawing upon the work of a number of different theorists, Gaines posits that the star function comprises “at least three entities: roughly, ‘private’ person, character role(s), and public image” [33]. Allowing for some slight modification necessitated by the documentary genre, each of these entities obtains for the persons presented in *Paris Is Burning*, even though the latter do not function as “stars,” strictly speaking.<sup>9</sup> Our sense of the queens as “*private*” persons is achieved through the film's presentation of them, not only in the context of the drag balls, but beyond it—at home, on the street, out shopping, and so forth. The “private” status of the figures thus presented to us is, of course, fictive, in that the presentation itself violates the very terms of such privacy, with the result that the “real” persons thus referenced serve only as what Gaines calls an “authenticating presence” for the “star” entity as a whole [33]. At the same time, while they do not function as *character roles*, per se, such stylizations as the queens undertake in the drag balls that Livingston showcases do constitute what we might call “performed personae,” which become associated with the individuals who present them much as character roles are associated with certain film “stars.” Finally, that the queens enjoy *public images* cannot be in doubt, inasmuch as the film itself produces them, either as coextensive with the “performed personae” mentioned above (for those whom the film presents only in the enactment of their stylizations) or as comprising both those personae and the sense of the “private” persons that is (fictively) constituted in the film's “real-life” sequences.

Insofar as they (and the “personal image” that I am suggesting comprises them) partake of the *personal quality* of the individual with whom they are associated, all of the entities identified above as obtaining for the documentary subjects of *Paris Is Burning* constitute objects of torts law privacy, and are thereby legally protected against undue appropriation [see Gaines 180]. But, of course, Livingston committed no undue appropriation of her subjects' “personal images,” since her use of such in her film was authorized by those very subjects' signing of documents that “released” her from liability for such a charge. Consequently, those entities duly became elements in Livingston's own object of intellectual property—namely, the film *Paris Is Burning*—the publicization of which then fully established Livingston's own creative agency. By this I mean not only that Livingston was officially recognized as having generatively produced the documentary, but that that very recognition constituted her substantive intervention in the social-symbolic realm—her effective self-production as (filmmaking) subject. In other words, due to the specific public character of the mass-media context in which she operates, Livingston achieves precisely what the queens themselves fail to achieve—an agential role in her own subjective constitution: Livingston actively and intentionally produces her film, as a result of whose wide distribution and favorable reception she accedes to the subjective status of filmmaker, with all the social-symbolic significance that implies.

The queens' failure to enact a similar self-constitution must be accounted for in terms of all three of the aspects that they now manifest, as a consequence of their presentation in Livingston's film and their resultant approximation to the star entity as theorized by Gaines. Their signing over to Livingston the right to appropriate their personal images

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9. One reason for this is that whatever “public images” they enjoy do not extend beyond the realm represented in and constituted by the film itself.

for financial gain effectively exhausted the queens' *actual* private-personal subjectivity since, as we have noted, the minute such subjectivity is presented on film, its "private" status becomes a mere fiction. This fact aside, however, even the putative "*private*" persons presented in *Paris Is Burning* could not manifest such self-constitutive agency as we are trying to identify here. This is because those "private" persons are by definition the persons in which the queens function outside the drag-ball context and thus constitute recognizable entities in the governing discursive social field; in other words, the "private" person corresponds to subjectivity *as such*. As Butler has made clear, the performative quality of this latter actually precludes the subject's exercise of effective agency in its own constitution. Thus, any semblance of the queens' "private" persons that is registered in *Paris Is Burning* and its attendant publicity cannot appear as the effect of their own subjective agency, but only as the product of a discursive process over which they have no control.

The *public images* of the queens that *Paris Is Burning* disseminates certainly partake of their subjective agency, insofar as these images comprise, among other elements, the theatrical stylizations that the queens voluntaristically undertake. Those motivated stylizations do not themselves fully *constitute* the queens' public images, however, since they do not embody the means of effecting their own publicization. Rather, those means consist in the film itself, without which the queens clearly would enjoy no public image at all, in the sense operative here; and the film is produced not by those whom it presents as its "subjects" but rather through the *filmmaker's* own subjective agency, which thus supersedes that of the queens as a social-symbolic phenomenon.

Thus the only aspect of their personal entities that can be considered an effect of the queens' own subjective agency is the *performed personae* that they produce through their stylizations in the drag-ball context. Precisely because that context—for all its public character—does not enjoy the social-symbolic status that is accorded to the courtroom or the mass-distribution film, however, the activities that take place within it do not constitute substantive interventions in the governing social order. Indeed, for them even to be *visible* in that order, drag-ball stylizations must first be rendered in suitable symbolic terms—a rendering that is effected, in this case, not by the queens themselves but, as I have indicated above, by Livingston, through her film production. The reasons for this are not mysterious but rather are founded in conditions of access to capital that are themselves overdetermined, but not unintelligible. As Livingston herself says: "I am educated and I am white, so I have the ability to write those grants and push my little body through whatever door I need to get it through. . . . If [the queens] wanted to make a film about themselves, they would not be able" [Green 11].

What this means, of course, is that, given the conditions they faced, any desire on the queens' part to publicize widely their activities at the drag balls, and thus to achieve socially influential subjective agency, could be addressed only by their renouncing the very possibility of such agency in the first place—specifically, by signing legal "releases" that provided for their becoming the "subjects" of documentary film while simultaneously foreclosing the possibility of their becoming the productive subjects of significant social effects. The only way out of this catch-22, clearly, would be to alter the conditions that dictate it. This would entail nothing other than the queens' amassing sufficient capital to effect *their own* wide publicization of drag-ball practice. The resultant crossing from the localized public of the ballroom to the more extensive one implicated in mass-cultural media would be critical in at least two ways, constituting a decisive juncture in the queens' career as agential social subjects, and conferring on their cultural commentary the "edge" that, in our eagerness to see their practice as subversive, we too easily forget it does not yet possess.

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