# Framework Core—Wave 1—FMPS

### Notes

The 1NC is modular; you can pick and choose which (if any) cards you want to read. Along those lines, if you would prefer different 1NC interpretations, by all means switch them out! I would recommend reading interpretations which say that the resolutional wording implies action by the federal government, but any interpretation that the aff in question doesn’t meet works—this is a topicality argument at its core.

## 1NC Modules

### 1NC Core

#### The text of the resolution calls for debate on hypothetical government action.

**Ericson 3** (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow should in the should-verb combination. For example, should adopt here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase free trade, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### Security cooperation refers exclusively to inter-military cooperation authorized explicitly by US Code.

Tankel ’20 [Stephen and Tommy; October 28; associate professor at American University, an adjunct senior fellow at the Center for a New American Security, has served on the House Foreign Affairs Committee and in the Office of the Under Secretary of Defense for Policy; non-resident senior associate at the Center for Strategic and International Studies, served as deputy assistant secretary of defense for security cooperation and was the senior defense and intelligence adviser to Senate Majority Leader Harry Reid; War on the Rocks, “Retooling U.S. Security Sector Assistance,” <https://warontherocks.com/2020/10/reforming-u-s-security-sector-assistance-for-great-power-competition>]

The United States provides security sector assistance to foreign civilian and military forces, agencies, and institutions ranging from local law enforcement and judicial systems to standing militaries. This assistance is intended to strengthen U.S. access to key territories and facilities, shape partners’ national security decision-making and governance, and build their capacity and capabilities for use against shared threats and adversaries. It also promotes the U.S. defense industry via arms transfers, supports the infrastructure and operations of multilateral organizations such as NATO, and increases military interoperability. The State Department implements assistance across the entire security sector, including organizations responsible for defense, law enforcement, and security of key assets like ports and borders. The Department of Defense has a narrower mandate, and provides assistance to partner militaries under the umbrella of security cooperation. The Pentagon also engages in a range of other activities — combined exercises, staff talks, port visits, and officer exchanges — that fall under security cooperation as well. We use the term security sector assistance for simplicity, and distinguish where these additional security cooperation activities are relevant. The U.S. government does not typically define Foreign Military Sales as assistance, but we believe it should, and that it ought to factor Direct Commercial Sales into its assistance planning as well. Both types of sales can lead to sustained U.S. engagement with a partner in the form of training, maintenance, and sustainment for the purchased items.

Over the last several years, the national security enterprise has, with a great many fits and starts, endeavored to shift its broader focus — from weapons systems to diplomacy — away from counter-terrorism and toward strategic competition with state actors. As part of this shift, policymakers have attempted to realign security assistance to contribute more directly to strategic competition, primarily by creating new resources for security assistance in Europe and the Asia-Pacific region. The European Deterrence Initiative, launched in 2014, has allocated around $6 billion annually to enhance America’s deterrent posture vis-à-vis Russia. It has been supplemented by the Ukraine Security Assistance Initiative, authorized by Congress in Fiscal Year 2016 to provide $250 million in security assistance to bolster Ukraine’s security. Congress also created the Southeast Asia Maritime Security Initiative in 2014, later re-designated as the Indo-Pacific Maritime Security Initiative, and funded it as a five-year, $425 million security assistance effort, which it has since extended through FY2025. This program is intended to improve the ability of Southeast and East Asian nations to address growing Chinese assertiveness in the South China Sea. In the FY2021 defense bill currently being finalized, Congress is set to authorize a Pacific Deterrence Initiative, modeled on the European Deterrence Initiative, with as much as $6 billion annually to improve U.S. posture in the Asia-Pacific region, reportedly with a significant security assistance component.

These efforts have been laudable, but far from sufficient. The European Deterrence Initiative has largely been used to shift enduring costs for U.S. military presence in Europe into the Overseas Contingency Operations portion of the defense budget. It has also dedicated the vast majority of funds to posture and equipment pre-positioning, with little attention to security assistance beyond combined exercises — a significant missed opportunity. The Ukraine Security Assistance Initiative has been managed insularly by the U.S. Europe Command, which has bypassed synchronization with other Defense Department and U.S. government stakeholders, leading to a focus on the provision of “training and equipment at the expense of developing a long-term strategic vision and implementation of meaningful defense reform.” In the Asia-Pacific, the Maritime Security Initiative has shown promise, but its relatively limited funding has failed to significantly contribute to a rebalance of assistance toward the region, and it has largely funded projects with little deterrent value. Incoming U.S. Indo-Pacific Commander Adm. Philip Davidson declared, “China is now capable of controlling the South China Sea in all scenarios short of war with the United States.” Moreover, none of these initiatives have prioritized partner security sector governance — a vital element of any strategy that seeks to shape the behavior of U.S. allies and partners. As Congress considers the Pacific Deterrence Initiative, it is essential that these mistakes — failure to integrate security assistance with other instruments of national power, overemphasis on posture at the expense of cooperation, and too little ambition for assistance initiatives — are not repeated. Even avoiding them, however, will go only so far in terms of optimizing security sector assistance for the challenges ahead. The U.S. government should also address broader challenges with the way security sector assistance is prioritized and executed.

Still an Outmoded Instrument

To increase the effectiveness of security sector assistance for strategic competition, the United States should address deficiencies related to where and how it uses this assistance. Currently, assistance is focused on the wrong countries and being used to build the wrong capabilities. Assistance remains over-directed toward countries in the Middle East, Africa, and South and Central Asia, rather than to those in Europe and Southeast Asia where the main competition with Russia and China occurs. There are several reasons for this disparity.

First, annual commitments to Israel and Egypt — totaling $3.3 billion and $1.3 billion, respectively — eat up a large portion of the Foreign Military Financing budget. The origins of U.S. munificence to both countries is linked to the “payoff for peace,” that is, the U.S. commitment to Israel and Egypt after they signed the 1979 Camp David Accords. Distinct from the Foreign Military Sales program, through which the State Department brokers purchases of U.S.-made defense articles and defense services by foreign partners, the Foreign Military Financing program provides grants and loans to help partners, generally lower-income countries, purchase those articles and services. It is intended to be the premier program for building the capabilities of frontline allies and partners. Given its purpose, one would think that the United States would be steering more Foreign Military Financing toward Europe and Asia.

Second, the 9/11 attacks brought new requirements: promoting counter-terrorism cooperation and rapidly building the capacity of local part­ner forces, especially the creation or enhancement of tactical units, to address “urgent and emergent threats.” This naturally led to a focus on countries where terrorists operated or might take root, which reinforced the geographic focus on the Middle East, and expanded it to include countries in Central and South Asia. This focus was especially marked at the Defense Department. The amount of assistance it administers climbed significantly since 9/11, and totaled just over $7.5 billion in the FY2021 budget request. Approximately $6.5 billion comes from contingency funds for capacity building in Afghanistan, Iraq, and other conflict zones. Supporting these conflicts created additional security assistance cost centers among partners that played critical roles supporting counter-terrorism operations and U.S. logistics footprints. For example, Pakistan received over $23 billion in security assistance and military reimbursements as a result of its importance to the United States as a counter-terrorism partner after 9/11. Jordan has also experienced a marked increase in assistance over the same period, receiving close to $10 billion.

Overall, the United States spends about $20 billion annually on security sector assistance, of which only approximately 8 percent is allotted to Europe, East Asia, and the Pacific, according to Security Assistance Monitor. Addressing this imbalance will require the departments of State and Defense to reprioritize their budget requests, and Congress to cease earmarking security sector assistance dollars based on outmoded objectives.

The overriding focus on counter-terrorism in U.S. security sector assistance programs and national security strategy more broadly over the past two decades has not only contributed to its orientation toward the Middle East, Africa, and South and Central Asia. It also compounded challenges related to how the United States uses assistance, specifically America’s emphasis on countering urgent threats and on capacity building for counter-terrorism or special operations units. Where the State Department provides assistance to civilian security sector forces and institutions in other countries, it overemphasizes building tactical capabilities for law enforcement (that is, training small operational units on narrow capabilities like interdicting narcotraffickers or conducting counterterrorism raids) at the expense of the administrative capacity and professionalism of these forces and institutions. Defense Department assistance has similarly focused on building the tactical capabilities of partner militaries. Such tactical assistance — which often includes status-signaling weapons systems and resources to supplement partner personnel training budgets — is often prioritized by partners as well, particularly in the absence of effective U.S. messaging on the importance of broader reforms.

The U.S. emphasis on counter-terrorism led to a buildup of Special Operations Command and the services’ special operations forces components as well, and a commensurate focus on building the capacity of their special operations counterparts in other countries. Although the services dispense assistance, they don’t invest much in terms of the planning necessary to tie the execution of this assistance to either specific objectives or longer-term engagements. Other than the Army’s Security Force Assistance Brigades, the services don’t organize for the security sector assistance mission. Even in the Asia-Pacific, the main focus of assistance prior to the Maritime Security Initiative was the special operations forces capacity-building mission in the Philippines. This focus on special operations force has left the services, and U.S. partners’ conventional forces, out of the equation in many places. Iraq and Afghanistan are a notable exception, but even in these countries the United States has focused on building specific types of military units with a heavy emphasis on partner special operations capacity.

While the United States has directed security sector assistance toward the Middle East and South and Central Asia, and focused more on building partners’ tactical capacity for counter-terrorism, Russia and China are using aggressive military pressure to coerce neighbors and compete in new domains, such as cyber and space. They are also using instruments of statecraft outside the traditional security arena, such as economic pressure, lawfare, and even technical standards-setting. For example, China has used commercially flagged fishing vessels to perform militia-like functions in support of its activities around South China Sea features. Russia has used its cyber capabilities to disrupt critical infrastructure, interfere in elections, undermine political leaders, and spread disinformation throughout NATO-aligned Eastern Europe. The United States has failed to keep pace — either on its own in terms of its use of all instruments of national power, or in terms of the security assistance it provides partners to enhance their capabilities to mount effective responses and build resilience.

Optimizing Security Sector Assistance

If security assistance is to be an effective tool in strategic competition, then the U.S. government needs to step up its game. Washington should develop a sophisticated, integrated planning process at the State Department and Department of Defense for security assistance; significantly increase the Foreign Military Financing budget, or redirect spending from the Middle East and North Africa to Asia and Eastern Europe; use security assistance to convey strategic messages to both rivals and partners; and feature human rights considerations more prominently when engaging in arms sales. This would require the United States to address underlying deficiencies in planning, prioritization, and execution in ways that account for the unique challenges that Russian and Chinese approaches to competition bring: the use of disinformation, private security contractors, cyber tools, and civilian and commercial actors such as commercial fishing fleets. This is not to suggest that Washington should look to security sector assistance as the solution to all of its national security challenges — far from it. Rather, assistance should be better integrated with other instruments of national power. The following recommendations are intended to close the gap between where the United States currently is regarding its use of security sector assistance and where it needs to be to compete effectively. Some of these recommendations are focused more squarely on China and Russia, whereas others relate to broader reforms to the security sector assistance enterprise.

First, it is essential to create coordinated, department-wide planning processes at the departments of State and Defense. The U.S. government is hamstrung by inefficient and incoherent planning and coordination processes that do not allocate assistance based on U.S. foreign policy priorities, country prioritization, availability of resources, and regional and country-specific assumptions. Congressional earmarks make prioritization more difficult, but getting rid of them won’t solve the problem. Policymakers should recognize the fundamentally interdisciplinary nature of many aspects of strategic competition and begin to break down stovepipes both within and between key agencies involved in the planning and execution of security assistance. Interagency coordination should move beyond mere deconfliction and concurrence toward a truly collaborative real-time planning and response. Lack of coordination also exists within departments, which should reform their assistance planning processes. Of equal importance, security sector assistance planning and prioritization should account for the fact that China and Russia are mounting sustained challenges to governance and rule of law at the regional, national, and multinational levels. Advancing governance and rule of law therefore should be a key aim of assistance.

The State Department has a wider mandate for security assistance, encompassing both military aid and assistance for civilians. It is also supposed to use security assistance to advance broader, more long-term objectives like trade and investment, efforts to help allies and partners develop an innovation base, and major diplomatic initiatives. To fulfill this mission, the State Department should develop a planning process that elevates common interagency objectives for assistance, deconflicts competing objectives where necessary, identifies security assistance resources projected to be available for the period of time necessary to achieve such objectives, and recommends the allocation of assistance based on U.S. foreign policy priorities. Those priorities should be derived from the next administration’s national security strategy and informed by the availability of resources, and regional and country-specific assumptions. State also needs to create a framework to guide the use of assistance as dictated by the above planning process in alignment with other instruments of national power, and a framework for factoring in how arms sales — both Foreign Military Sales and Direct Commercial Sales — might affect U.S. security assistance planning and broader U.S. foreign policy objectives. Last year, the House of Representatives passed a State Authorization Act that required these and other reforms, but it has languished in the Senate since then.

Defense Department assistance should focus narrowly on four inherently military objectives: supporting State Department-coordinated efforts to build long-term capacity so that an ally or partner can manage its own security challenges; achieving a fundamental improvement in U.S. posture to prevail (including via coalitions) in a potential contingency, for example by assisting a partner to build a deep-water port or develop the capability to contribute in a specific role to potential coalition operations; generating short-term capacity when deemed necessary to achieve strategic objectives or improving interoperability for a specific goal; and responding to real-time developments, such as deterrent signaling, personnel recovery, or humanitarian response. Defense Department planners should be required to identify the objective(s) they’re serving and justify their plans on that basis. They also should be conducting a rigorous analysis to identify gaps in Pentagon plans for contingency scenarios involving near-peer competitors or other real-time developments that could impact U.S. interests, and basing priorities for security assistance on those gaps. Stronger links between contingency planning and security cooperation will help focus Defense Department security assistance and advance strategic competition.

Second, a more sophisticated and coordinated planning process should lead the United States to redirect security assistance to U.S. allies and partners in Asia and Eastern Europe, and expand the nature of assistance provided. The U.S. government has begun shifting some assistance, such as Section 333 capacity building administered by the Pentagon, away from U.S. Central Command countries to countries in the U.S. European Command and U.S. Indo-Pacific Command regions. The State and Defense departments need to accelerate this shift to compete more effectively with Russia and China. The United States should be using Foreign Military Financing, as well as Maritime Security Initiative funding and other programs, to help regional states in Asia develop anti-access/area denial systems to challenge Chinese power-projection operations. The departments of State, Defense, and Homeland Security should also be coordinating to increase support for U.S. Coast Guard cooperation with allies and partners to challenge China’s white hull strategy.

Realizing a significant reallocation of security assistance in support of strategic competition will require increasing the overall budget for Foreign Military Financing. These budgets have declined from a peak of $9.4 billion in FY2015 to the current year’s $7.5 billion, while the importance placed on security cooperation with allies and partners and the variety of threats they face have increased. The amount of such an increase will depend on the needs of key allies and partners, and whether Congress is willing to reduce Foreign Military Financing to Israel and Egypt, which in some years accounts for nearly two-thirds of the program’s budget. Unquestionably, the State Department can improve its prioritization of the remaining amount, which is spread across more than 100 partners globally, but those limited resources go only so far.

In our experience, selling Congress on an injection of resources or on reductions to Israel and Egypt will require considerable effort. The State Department would need not only to provide a compelling strategy for how resources that can be freed up by reducing commitments to Israel and Egypt will be used to improve America’s national security posture. It also will need to provide a convincing assessment that such reductions will not infringe on Israel’s qualitative military edge in the region or lead to a breakdown in the peace treaties between Israel and Egypt. We believe these crucial U.S. interests — Israel’s security and regional stability — can be maintained at lower aid levels. However, we are also realistic about the political challenges that make such a shift so difficult regardless of what any policy analysis suggests. For this reason, although we typically would recommend starting with a reallocation of existing resources before increasing the overall budget, in this instance we recognize that directing more money to the problem might be the least-worst option. A compelling case can be made for new resources and authorities to expand the types of aid provided under Foreign Military Financing — including to address the gaps identified above, such as cyber security and law enforcement. The argument will be strongest if it is articulated within broader strategies for competing with China and Russia.

In addition to Foreign Military Financing, there are a mix of other programs the United States could use to increase the capacity and capabilities of key Eastern European NATO allies. As Max Bergmann observed on these pages a few years ago, Congress is likely to be unwilling to provide much assistance funding through traditional grant methods, especially as Eastern European countries are wealthier than typical grant assistance recipients. This approach is deeply flawed: Many of Eastern Europe’s governments lack the economic wherewithal to engage in the types of military development necessary to compete with Russia. Moreover, the United States has clear and urgent goals in the region that should not be left dependent on the vicissitudes of partners’ budget politics. At the same time, we agree with Bergmann that the United States cannot and should not shoulder too much of the responsibility for these countries, which should demonstrate a commitment to acquisitions. One of the problems with Foreign Military Sales, though, is that U.S. weapons systems that Eastern European militaries would need to compete with Russia are top-of-the-line and likely unaffordable for midtier countries. Providing excess defense articles is one workaround, but this puts recipients at the mercy of what is available. Bergmann’s recommendation that the United States provide a mix of grants and loans to help NATO countries make acquisitions themselves is a fine one, and we would offer complementary or alternative approaches as well. The U.S. government could consider a lend-lease program in which equipment itself is provided via a loan or low-cost lease for a period of time to be used in an agreed-upon manner, after which the recipient could purchase the equipment at a reduced cost. Pooled sales and multilateral cooperative platforms modeled on the Movement Coordination Center Europe are other promising solutions. Any one of these models would be an improvement on the current approach.

As China, Russia, and others compete across a range of domains stretching beyond traditional military strength — cyber security, law enforcement, and disinformation — the U.S. government should enhance its ability to provide timely, relevant assistance in these areas. In our experience in government, American allies and partners routinely ask for this assistance. Yet, U.S. capacity building in each of these areas is immature. Cyber security assistance is meagerly resourced and often ad hoc, with limited assistance programs spread incoherently across government agencies. Likewise, intelligence and law enforcement capacity building are limited and often plagued by turf battles. Enabling allies and partners to counter disinformation represents an emerging area of focus, and Washington should rise to the occasion. In many of these areas, effective governance is often one of the most crucial gaps America’s allies and partners confront. To meet these challenges, the United States should reimagine security sector assistance, factor in its impact on governance and rule of law, and increase the involvement of the departments of Homeland Security, Justice, and Treasury.

#### Our impact is debatability—there are two internal links:

#### Limits. A bounded topic serves as a predictable stasis point for debate that guarantees thematic coherence. Absent defined limits, debate’s competitive incentives create a race to the margins which distorts topic research.

#### Ground. A pre-defined controversy ensures a vibrant lit base and in-depth clash, but it’s unreasonable to prepare for alternative frameworks with the ground allocated to us by the parameters of the resolution. All 2AC defense to this claim will rely on concessionary ground, which isn’t a stable basis for a year of debate.

### Anderson—T Isn’t Violent

#### Analogies between limits and violent exclusion are faulty—argumentative exclusion is inevitable, but topicality ensures it occurs around reciprocal lines.

Anderson, 6—Andrew W. Mellon Professor of Humanities and English at Brown University (Amanda, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, 281-290, dml)

My recent book, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced—if misconceived—criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement—the internal dynamic in argument that imagines argument might be the beginning of [End Page 281] a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent—and in some versions, even celebratory—attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society.

One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos—specifically, an appeal to Foucault's style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers—was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book's central arguments, though one certainly gets an incremental sense of the book's claims from Bruce Robbins. Because I don't assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.)

The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one's pre-given forms of identity or the norms of one's community, both so as to talk across differences and to articulate one's claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity—race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of [End Page 282] contingency—recommendations that get elevated into full-fledged exemplary personae in Richard Rorty's notion of the "ironist" or Barbara Herrnstein Smith's portrait of the "postmodern skeptic." These examples—and the larger claim they support—are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument.

Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is "potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument." What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite "debaterly." This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies—to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference.

More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the [End Page 283] question of disagreement about what counts as argument. In the opening essay, "Debatable Performances," I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist—and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics—that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.

Robbins claims that I violate my own ideal of dialogue by failing to engage those who, according to him, are "[my] most significant antagonists": Jean-François Lyotard and Jacques Rancière. But it is simply not true that I fail to address the fundamental concerns that neither of these thinkers owns in any absolute sense. I might have addressed their work particularly (there are significant differences between them), and I think the example of Rancière is a particularly fruitful one, especially given his own critique of sociological reductionism (and identity politics), and his universalism, which shares affinities with the forms of poststructuralist universalism (notably, Etienne Balibar's) that I address in the third chapter of my book. But the relevant issues of incommensurability of language games or cultural perspectives, and the question of intractable or "hardwired" exclusion, are adduced and repeatedly critiqued throughout the book, across a range of disciplines. The debate between the accommodationist position of Thomas McCarthy and the universalist position of Habermas addresses these issues straight on, and the discussion of Habermas clearly maps out the two main alternatives to his position as (1) incommensurable perspectives and (2) overlapping consensus. The analysis of Satya Mohanty and Martha Nussbaum is also directly relevant: Mohanty situates his project with respect to a well-known and parallel debate in anthropology represented by the opposed positions of Ernest Gellner and Talal Asad. My emphasis on the newer discussions of accommodation, [End Page 284] rather than the incommensurability theorists (e.g., Lyotard), is meant to argue for the Habermasian position against its newer and more interesting challengers, and I also wanted the book to move beyond the parochial reference points of literary and cultural studies to engage relevant work in political theory and political philosophy. And of course I do discuss the work of many influential theorists and literary critics who oppose the approach I take in the book generally. But I'm not going to reproduce my complete range of references: readers are free to decide for themselves how comprehensive and various the theoretical landscape is in my book. But I will say in response to Robbins that my "primary antagonist" considered as a position rather than a set of proper names is consistently present in the book, and taken on in a number of different ways.

There is a deeper issue at play in Robbins's invocation of Lyotard and Rancière, especially given where his discussion of what he calls my "argumentative normativity" ends up. On the one hand, Robbins wants to say that the argument I am taking up is no longer relevant, that "thankfully" literary critics have moved past the critique of Enlightenment. On this account I am sadly unaware that my earlier books have actually had some influence, and seem to be stuck in an agonistic position that has no traction, and that at this point constitutes a regression toward a naively pro-Enlightenment position that is likely to invite—and that at some level deserves to invite—a strong reiteration of the critique of Enlightenment. The moves need to be replayed in slow motion here to discover exactly what is going on, since the argument is quite kinetic, and involves a dubious framing of my own project. It is certainly the case that in diagnosing the state of academic argument in the humanities today, I invoke, as one of the contributing factors, the excesses involved in the critique of Enlightenment. It is not the only factor I invoke, but it is certainly adduced as a major contributing factor to the denigration of reason, critical distance, and formal argument. I do agree with Robbins that there are many critics challenging the critique of Enlightenment. There are also, as it happens, many critics who have walked away from the debate to do other things. But it remains the case, as Robbins's own response makes clear, that the stronger version of the critique has a kind of staying power, particularly as a way of asserting political pedigree in the last instance. Indeed, Robbins must insist that I resurrect a version of the very form of Enlightenment that was once the whipping boy of poststructuralism, in order to himself reintroduce a high-stakes political allegory that will imagine cultural criticism to be an immediate actor in the current international political landscape.

Let's first examine the claim that my book is "unwittingly" inviting a resurrection of the "Enlightenment-equals-totalitarianism position." How, one wonders, could a book promoting argument and debate, and promoting reason-giving practices as a kind of common ground that should prevail over assertions of cultural authenticity, somehow come to be seen as a dangerous resurgence of bad Enlightenment? Robbins tells us why: I want "argument on my own terms"—that [End Page 285] is, I want to impose reason on people, which is a form of power and oppression. But what can this possibly mean? Arguments stand or fall based on whether they are successful and persuasive, even an argument in favor of argument. It simply is not the case that an argument in favor of the importance of reasoned debate to liberal democracy is tantamount to oppressive power. To assume so is to assume, in the manner of Theodor Adorno and Max Horkheimer, that reason is itself violent, inherently, and that it will always mask power and enforce exclusions. But to assume this is to assume the very view of Enlightenment reason that Robbins claims we are "thankfully" well rid of. (I leave to the side the idea that any individual can proclaim that a debate is over, thankfully or not.) But perhaps Robbins will say, "I am not imagining that your argument is directly oppressive, but that what you argue for would be, if it were enforced." Yet my book doesn't imagine or suggest it is enforceable; I simply argue in favor of, I promote, an ethos of argument within a liberal democratic and proceduralist framework. As much as Robbins would like to think so, neither I nor the books I write can be cast as an arm of the police.

Robbins wants to imagine a far more direct line of influence from criticism to political reality, however, and this is why it can be such a bad thing to suggest norms of argument. Watch as the gloves come off:

Faced with the prospect of submitting to her version of argument—roughly, Habermas's version—and of being thus authorized to disagree only about other, smaller things, some may feel that there will have been an end to argument, or an end to the arguments they find most interesting. With current events in mind, I would be surprised if there were no recourse to the metaphor of a regular army facing a guerilla insurrection, hinting that Anderson wants to force her opponents to dress in uniform, reside in well-demarcated camps and capitals that can be bombed, fight by the rules of states (whether the states themselves abide by these rules or not), and so on—in short, that she wants to get the battle onto a terrain where her side will be assured of having the upper hand.

Let's leave to the side the fact that this is a disowned hypothetical criticism. (As in, "Well, okay, yes, those are my gloves, but those are somebody else's hands they will have come off of.") Because far more interesting, actually, is the sudden elevation of stakes. It is a symptom of the sorry state of affairs in our profession that it plays out repeatedly this tragicomic tendency to give a grandiose political meaning to every object it analyzes or confronts. We have evidence of how desperate the situation is when we see it in a critic as thoughtful as Bruce Robbins, where it emerges as the need to allegorize a point about an argument in such a way that it gets cast as the equivalent of war atrocities. It is especially ironic in light of the fact that to the extent that I do give examples of the importance of liberal democratic proceduralism, I invoke the disregard of the protocols of international adjudication in the days leading up to the invasion of Iraq; I also speak [End Page 286] about concerns with voting transparency. It is hard for me to see how my argument about proceduralism can be associated with the policies of the Bush administration when that administration has exhibited a flagrant disregard of democratic procedure and the rule of law. I happen to think that a renewed focus on proceduralism is a timely venture, which is why I spend so much time discussing it in my final chapter. But I hasten to add that I am not interested in imagining that proceduralism is the sole political response to the needs of cultural criticism in our time: my goal in the book is to argue for a liberal democratic culture of argument, and to suggest ways in which argument is not served by trumping appeals to identity and charismatic authority. I fully admit that my examples are less political events than academic debates; for those uninterested in the shape of intellectual arguments, and eager for more direct and sustained discussion of contemporary politics, the approach will disappoint. Moreover, there will always be a tendency for a proceduralist to under-specify substance, and that is partly a principled decision, since the point is that agreements, compromises, and policies get worked out through the communicative and political process. My book is mainly concentrated on evaluating forms of arguments and appeals to ethos, both those that count as a form of trump card or distortion, and those that flesh out an understanding of argument as a universalist practice. There is an intermittent appeal to larger concerns in the political democratic culture, and that is because I see connections between the ideal of argument and the ideal of deliberative democracy. But there is clearly, and indeed necessarily, significant room for further elaboration here.

There is a way to make Robbins's point more narrowly, which would run something like this: Anderson has a very restricted notion of how argument should play out, or appear, within academic culture, given the heavy emphasis on logical consistency and normative coherence and explicitness. This conception of argument is too narrow (and hence authoritarian). To this I would reply simply that logical consistency and normative coherence and explicitness do not exhaust the possible forms, modes, and strategies of argumentation. There is a distinction to be made between the identification of moves that stultify or disarm argument, and an insistence on some sort of single manner of reasoned argument. The former I am entirely committed to; the latter not at all, despite the fact that I obviously favor a certain style of argument, and even despite the fact that I am philosophically committed to the claims of the theory of communicative reason. I do address the issue of diverse forms and modes of argument in the first and last chapters of the book (as I discuss above), but it seems that a more direct reflection on the book's own mode of argumentation might have provided the occasion for a fuller treatment of the issues that trouble Robbins.

Different genres within academe have different conventions, of course, and we can and do make decisions all the time about what rises to the level of cogency within specific academic venues, and what doesn't. Some of those judgments [End Page 287] have to do with protocols of argument. The book review, for example, is judged according to whether the reviewer responsibly represents the scholarship under discussion, seems to have a good grasp of the body of scholarship it belongs to, and convincingly and fairly points out strengths and weaknesses. The book forum is a bit looser—one expects responsible representation of the scholarship under discussion, but it can be more selectively focused on a key set of issues. And one expects a bit of provocation, in order to make the exchange readable and dramatic. But of course in a forum exchange there is an implicit norm of argument, a tendency to judge whether a particular participant is making a strong or a weak case in light of the competing claims at play. Much of our time in the profession is taken with judging the quality of all manner of academic performance, and much of it has to do with norms of argument, however much Robbins may worry about their potentially coercive nature.

From time to time I myself have wondered whether my book is too influenced by the modes of academe. But when I read a piece of writing like the one that Elspeth Probyn produced, I find myself feeling a renewed commitment to the evaluative norms of responsible scholarship, and to the idea that clearly agreed-upon genres and protocols of fair scholarship benefit from explicit affirmation at times. Probyn's piece does not conform at all to the conventions of the forum response. She may herself be quite delighted that it does not. Robbins may find himself delighted that she represents a viewpoint that does not agree on my (totalitarian) fundamentals of forum responses. But I would simply say that here we do not have fair or reasoned argument, which is one of the enabling procedures of forum exchanges. Indeed, I hear a different genre altogether: the venting phone call to a friend or intimate. In this genre, which I think we are all familiar with, one is not expected or required to give reasons or evidence, as one is in academic argument. Here's how the phone call might go: "Ugh. I have to write a response to this awful book. I agreed to this because I thought the book had an interesting title; it's called The Way We Argue Now. But I can't get through it; it isn't at all what I expected. I find myself alternately bored and irritated. It's so from the center—totally American parochial, and I just hate the style: polemical in a slam-bam-thank-you-ma'am way—really quite mean-spirited. She's so arrogant. And you wouldn't believe the so-called critique of Foucault. I don't know, I think I'm just sick of abstract theory—I mean, aren't we past this? It's so stultifying. I wish there were some way to get out of the commitment. I don't know how I'm ever going to get to it anyway, with all my journalism deadlines." The friend: "That sounds awful. But just use the occasion to write about something else, something you think is important. Write about yourself. Direct attention to a book that you do like. Whatever you do, don't spend too much time on it. And definitely call her out on the American centrism."

Do we really want to overhear this kind of conversation when we turn to the review section of a journal like Criticism? Of what intellectual value is it to know [End Page 288] Probyn's casual reactions to a book she won't bother responsibly to describe or engage, unless of course we accord to Probyn some sort of authority in advance that makes argument unnecessary. That she herself believes in such argument-by-authority is evident when she tells us, "As Stuart Hall would say, along with any undergraduate in my classes, 'A discourse is a group of statements that provide a language for talking about a particular kind of knowledge about a topic.'" This is the extent of Probyn's searing critique of the problem with advocating debate generally. But note that it relies, first, upon the invocation of an authority, Stuart Hall, and then upon the implication that her students have all entirely absorbed her own channeling of that authority. Probyn is entirely unbothered, moreover, that the undergraduates in her classes unblinkingly accept this empty statement without protest or challenge or further inquiry into its aimless specificity.

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a pattern here: precisely the tendency to personalize argument and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. Argument is not injurious to persons. Policies are injurious to persons and institutionalized practices can alienate and exclude. But argument itself is not directly harmful; once one says it is, one is very close to a logic of censorship. The most productive thing to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to produce a response or a book that states your disagreement. But to assert that the book itself directly harms you is tantamount to saying that you do not believe in argument or in the free exchange of ideas, that your claim to injury somehow damns your opponent's ideas.

When Probyn isn't symptomatic, she's just downright sloppy. One could work to build up the substance of points that she throws out the car window as she screeches on to her next destination, but life is short, and those with considered objections to liberalism and proceduralism would not be particularly well served by the exercise. As far as I can tell, Probyn thinks my discussion of universalism is of limited relevance (though far more appealing when put, by others, in more comfortingly equivocating terms), but she's certain my critique of appeals to identity is simply not able to accommodate the importance of identity in social and political life. As I make clear throughout the book, and particularly in my discussion of the headscarf debate in France, identity is likely to be at the center of key arguments about life in plural democracies; my point is not that identity is not relevant, but simply that it should not be used to trump or stifle argument.

### Andreotti—Humility

#### Debate’s not about finding the perfect solution, it’s about learning from the failures of our imperfect ones—the belief that any one debate can translate to material outcomes is naïve at best and complicit in the systems they critique at worst—topical advocacy encourages an ethos of humility and interconnectedness which can engender ontological shifts in society and confront the crises of modernity—but that requires a willingness to be wrong

Andreotti, 18—Canada Research Chair in Race, Inequalities and Global Change at University of British Columbia and Associate Professor in the Faculty of Education (Vanessa de Oliviera, interviewed by Scott Baker, “Countless Rebellions – Decolonizing education,” <https://mcconnellfoundation.ca/interview/vanessa-andreotti/>, dml)

Andreotti: When I talk about humility, it is about sitting at the edge, understanding the limits of knowing, not only of our own knowledge, the limits of knowing itself, the limits of making sense of the world — understanding that it’s possible to reason with other senses. Although we see ourselves as individuated or as individuals, we are interwoven with everything else. If we are going to engage with the world in change-making, it would be important to both understand the contradictions and paradoxes of our own ways of knowing, but also to sit at the edge of the way of being that engendered this way of knowing so that we can engage with the world without trying to project our delusions onto the world itself, without trying to over-determine both the direction and how the relationship should happen. So, starting from a place of not knowing and engaging with the world as if we are not individuals, as we inhibit each other in multiple temporalities, and taking responsibility for this form of engagement, I think, for me, is what humility entails.

If we are able to be humble and accept that we exist as a part of a much larger society and ecosystem, how do we then go about creating systems change?

Andreotti: A system rises, peaks, and starts its decline. And, generally, when a system is in decline, a lot of people want to walk out from that system. This is the work of Debra Friesen. But one important thing to remember when we are walking out is that we can’t create a different system from the hot ashes of the system that hasn’t yet cooled down. In many alternative movements, people want results straight away. They want to substitute the system that they had before for something that they already know that they can control. This is just again a replacement of the securities that were promised by the system, the other system, and now these promises are perceived as broken. But what if we understand the promises of the systems as unrealistic from the outset and start to look for other securities? In that sense, what we need is not to replace it straight away, because we can’t, basically. We will end up reproducing the old system whether we like it or not. But what if what we need to do is experimentation? If we want to experiment, we need to start from a place of not knowing, because otherwise it’s not an experiment, it’s you trying to engineer something. But if it is an experiment, you are kind of doing it, you are designing something that you know is going to fail, and the learning from this failure is the most important thing.

How do you go about making sure that you fail in the right way?

Andreotti: The same way that a new system cannot be built on the hot ashes of the old, the role of improvisation here is that the difficulties that we face — this sitting at the limits of what is perceived as possible of what we know, the learning that can take place in that space, through failure — becomes a fertilizer for something else that happens when these ashes cool down, the ashes of the old system. What I think is important here is not to see failure as failure. Failure is also success. It’s success in terms of the learning that it generates — for the possibility that it opens, in terms of the new world that it can create. As a researcher, for example, in an experiment, if I keep doing the same experiment, with the same results, it becomes not only a waste of energy, but, because I’m not deriving any learning out of it, also boring! There is a sense of it in this experimentation and improvisation, that in order for it to be fulfilling, and rewarding, and exciting, and fun even, it needs to be learning. And it needs to be learning from failure. And it needs to make mistakes too! It’s part of the process.

So, how can we turn ourselves to this other way of experimenting where we are not afraid, we are actually quite okay with both failing and succeeding and stumbling and falling and getting back up, and not being overwhelmed or exhausted by this process — by our desire to get somewhere, right? I keep saying that if you think this is going to be a process from A to B, the only thing I can tell you is that you’re going to be frustrated. For a long time. But if you understand that there’s no end, and that the process itself, the path itself, is what you’re looking for — and with all its problems, and paradoxes and contradictions — it’s joy that comes out of walking together, and breathing together and learning together, then, I think, we are in a very different footing to be able to tackle the crisis that we have to tackle together.

It can be tempting to conceive a system’s change in terms of ourselves, our communities, or even the societies within which we live, but as Vanessa teaches, by thinking about change vis-à-vis those who are coming next, it opens up a different approach.

Andreotti: So, if we have this responsibility towards those who are coming next rather than the responsibility towards making us become the heroes of the new system, or the engineers of the new system, we are going to shift the focus of our attention and of our learning from the outcomes to this process of walking and experimenting knowing that it will require falls and stumbles and rest and laughter and being naked, and helping each other in the journey rather than trying to quickly replace the securities that we lost with the same securities disguised as something else.

What becomes possible if we change the way we view the world?

Andreotti: So, if we can get to a point where we are present to the world, we are disarmed towards the world, and we are decentered, we are with the world, extremely attentive to what we are being called to do with others in order to shift our ontological reality and also operate within this reality with responsibility, then we are onto something else. And I’m not saying that this is going to be necessarily immediately better. I’m saying that this is going to open up other possibilities that are viable — but they are unthinkable or unimaginable at the moment.

### Battistoni—Organizing

#### Debate is valuable because it iteratively teaches the skills of persuasive organizing and relationality through face-to-face dialogue over what is at stake and how to solve it—this is the foundation of successful movement organizing, which outweighs and turns the aff.

Battistoni, 19—editor at Jacobin, Department of Political Science, Yale University (Alyssa, “Spadework: On political organizing,” <https://nplusonemag.com/issue-34/politics/spadework/>, dml)

By the time I started organizing so much that it felt like a full-time job, it was the spring of 2016, and I had plenty of company. Around the country there were high-profile efforts to organize magazines, fast-food places, and nursing homes. Erstwhile Occupiers became involved in the Bernie Sanders campaign and joined the exploding Democratic Socialists of America, whose members receive shabby business cards proclaiming them an “official socialist organizer.” Today’s organizers — not activists, thank you — make clear that they are not black bloc participants brawling with police or hippies plotting a love-in. They are inspired by a tradition of professional revolutionaries, by Lenin’s exhortation that “unless the masses are organized, the proletariat is nothing. Organized — it is everything.” Organizing, in other words, is unembarrassed about power. It recognizes that to wield it you need to persuade untold numbers of people to join a cause, and to begin organizing themselves. Organizing means being in it to win.

But how do you win? Historical materialism holds that crises of capitalism spark revolts, perhaps even revolutions, as witnessed in the eruption of Occupy and Black Lives Matter; uprisings in Spain, Greece, and Egypt; and the British student movement against tuition fees. But there’s no guide for what happens in the long aftermath, as the left has often learned the hard way.

In previous moments of upheaval and promise the left has often turned to Antonio Gramsci, who sought to understand why working-class revolts in Europe following the Russian Revolution had led to fascism. Gramsci concluded that on some level people consent to subservience, even take it for granted, when the order in which they live comes to seem like common sense. Hegemony was subtler than outright coercion, more pervasive, permeating the tempos of daily life.

It was hegemony, Stuart Hall argued in 1983, that was key to understanding the disappointment of his own generation — why Thatcher and the new right had triumphed in remaking common sense after a decade of labor union revolt. Hegemony shaped how people acted when they weren’t thinking about it, what they thought was right and wrong, what they imagined the good life to be. A hegemonic project had to “occupy each and every front” of life, “to insert itself into the pores of the practical consciousness of human beings.” Thatcherism had understood this better than the left. It had “entered the struggle on every single front on which it calculated it could advance itself,” put forth a “theory for every single arena of human life,” from economics to language, morality to culture. The domains the left dismissed as bourgeois were simply the ones where the ruling class was winning. Yet creating hegemony was “difficult work,” Hall reminded us. Never fully settled, “it always has to be won.”

In other words, there is no economic deus ex machina that will bring the revolution. There are still people, in their stubborn, contradictory particularities, as they exist in concrete space and time. It is up to you to figure out how to act together, or not; how to find common ground, or not. Gramsci and Hall insist that you must look relentlessly at things and people as they are, face your prospects with brutal honesty, and act in ways that you think can have an effect. In these ways they are an organizer’s theorists.

BUT IN FACT, one doesn’t become an organizer by reading theory, or at least I didn’t. I went to graduate school to study political theory, in hopes of figuring out what to do about the dilemmas that weighed on me. But it took something else to give that theory meaning in my own life. This was the experience of graduate school, which wasn’t necessarily your typical workplace — so the Yale administration kept telling us.

I’d joined the union as a matter of course, stopping by the Graduate Employees and Students Organization (GESO) table at the extracurriculars fair before I’d gone to a single day of class. Politically, it seemed obvious: I supported unions in general, so why not join? Plus my college roommate had been at Yale and organizing for years already: I’d heard from him of struggles and triumphs, of how he’d knocked doors all summer to help a slate of union members and supporters take over city government the year prior. A few days after I signed my card, I went to a union pizza lunch in my department to welcome our new cohort — I was one of just three people who’d showed up, out of seventeen — and nodded along with the organizer’s rap about why the union was good. I didn’t need convincing.

Yet when another organizer asked me to join the union communications team a few weeks later, I burst into tears. I was already completely overwhelmed with hundreds of pages of reading I couldn’t possibly hope to complete, response papers to write and presentations to give on said reading, obligatory departmental workshops and talks to attend. Doing one more thing seemed impossible. She talked me down from panic and I agreed to do something small — an interview with a union member for a newsletter we hoped to revive. I took on a series of other projects — more interviews, filming testimonials for a new website. At the end of our first year, my closest friend in my graduate cohort ran for a municipal office on the union slate, and I spent the summer knocking doors for his campaign. I met up with other organizers for “visits,” where we walked around campus looking for members to sign whatever petition we were running at the time, and joined my department’s organizing committee. I cried in many more meetings.

Graduate school, I came to realize, was not the place to go to learn about politics. I was bewildered by its rituals, which counterintuitively seemed structured around avoiding intellectual conversation in favor of gossip and shoptalk. At house parties and department receptions, we rarely talked about the things we’d read or thought about; instead we complained about how many papers we’d written that week, how many deadlines loomed for funding applications or summer programs, how little sleep we’d gotten. We tiptoed around more sensitive conversations: access to mental-health care, caring for children on a stipend, the cratering job market and growing pool of adjunct labor. I was desperate for those conversations, and organizing, I found, was the way to have them. Like a consciousness-raising group, organizing conversations allowed you to air grievances long suppressed in the name of politeness or professionalism, to create a space for politics where it wasn’t supposed to be. The point was to locate the fundamental experience of powerlessness lurking beneath the generalized misery. Yet for all that we griped about how much we worked, in organizing conversations the question of whether we were really workers came up constantly.

Why was it so hard to see ourselves as people who might need a union? Gramsci had observed that any individual’s personality was “strangely composite,” made up of a mixture of beliefs, thoughts, and ideas gleaned from family history, cultural norms, and formal education, filtered through their own life experiences read through the prevailing ideology of the time. Hall had taken this up to argue that when the working class failed to espouse revolutionary thought, women to embrace feminism, or people of color to advocate antiracism, it wasn’t because they suffered from false consciousness. The idea that consciousness could be true or false simply made no sense: it was always, Hall stated, “complex, fragmentary, and contradictory.” This was just as true for those on the left as for anyone else. “A tiny bit of all of us is also somewhere inside the Thatcherite project,” Hall had warned in 1988. “Of course, we’re all one hundred per cent committed. But every now and then — Saturday mornings, perhaps, just before the demonstration—we go to Sainsbury’s and we’re just a tiny bit of a Thatcherite subject.”

The Thatcherite project was since then much advanced, and we had internalized its dictates. For our whole lives we had learned to do school very well; in graduate school we learned to exploit ourselves on weekends and vacations before putting ourselves “on the market.” Many of us still believed in meritocracy, despite learning every day how it was failing us. The worse the conditions of academic life became, the harder everyone worked, and the harder it became to contest them. Plus, we were so lucky to be there — at Yale! Compared to so many grad students, we had it good, and surely jobs were waiting on the other side for us, if for anyone. Who were we to complain? Organizing a union of graduate students at Yale seemed to many like an act of unbearable privilege — a bunch of Ivy League self-styled radicals doing worker cosplay.

Then there was the prevailing ideology. Many people liked unions in the abstract, for other people, but had reservations about whether one made sense for us. We worked independently for the most part (getting paid to read!); we exercised control over our own work — or at least hoped to one day. Nearly all of us had grown up hearing about how bad teachers’ unions were for our own precious educations. Few of us came from union families; almost no one had belonged to a union before, and those who had sometimes cited bad experiences. Even among those who were nominally sympathetic, “I think unions are good, but . . . ” was a common refrain.

The really controversial thing, though, wasn’t joining the union but organizing it. We asked people to help build the union, and to help lead it. We asked them to sign a card, then to ask a friend to sign one, too; to commit to meeting regularly with an organizer; to join the organizing committee and bring the people they knew to meetings and to rallies. We asked a lot — too much, some thought. Many people were happy to sign a membership card and a petition from time to time but didn’t want to go to more meetings or talk to colleagues about the union: they were already busy, so busy. They supported the union, they said, but they wanted it to leave them alone.

This seemed like a distinctive challenge of organizing graduate students, who on the one hand were notoriously overworked and never really off the clock, and on the other were not quite immiserated, at least at Yale. (In fact, this was partly because the university had increased graduate stipends and benefits over the years in order to undercut the union; it was the price of success.) Yet I came to think it was part of the challenge of organizing more generally. Reading Charles Payne’s I’ve Got the Light of Freedom, about civil rights organizing in the Jim Crow South, I was struck by the list compiled by Student Nonviolent Coordinating Committee (SNCC) canvassers of reasons black Mississippians gave for not wanting to register to vote in the early 1960s, which could by and large have been given by grad students: “Just not interested.” “Don’t have the time to discuss voting.” “Feel the politicians are going to do whatever they want, regardless of votes cast.” “Too busy, engaged in personal affairs.” “Wants time to think it over.” “Satisfied with things as they are.”

We were not, of course, fighting Jim Crow. Yale was miserable and feudal in many respects, but we were there temporarily and by choice; many of us feared our advisers but did not fear for our lives. We might give the same excuses, but they didn’t mean the same things. Still, certain dynamics of the two organizing campaigns were similar, despite the obvious differences. People often told you why they weren’t going to do something, often with perfectly good reasons, and you tried to convince them that they should.

We were all too busy, but the too-busyness wasn’t really about time, or at least not only. Being too busy meant people didn’t see why the union was worth making time for. Your job as an organizer was to find out what it was that people wanted to be different in their lives, and then to persuade people that it mattered whether they decided to do something about it. This is not the same thing as persuading people that the thing itself matters: they usually know it does. The task is to persuade people that they matter: they know they usually don’t.

“THE BEGINNER WHO has learned a new language always translates it back into his mother tongue,” Marx observed in The Eighteenth Brumaire of Louis Bonaparte, “but he assimilates the spirit of the new language and expresses himself freely in it only when he moves in it without recalling the old and when he forgets his native tongue.” Organizing requires you to learn the language of politics so well that it becomes your own. Like any other language, it takes a lot of practice, during which time you often feel awkward and unsure. For this stage there are exercises like “stake, take, do,” which lays out a sequence of questions for you: What is at stake for you? What will it take to win? What will you do about it? You have to start with what matters to you and the person you’re organizing before jumping into how hard it’s going to be and why they should do it anyway. These exercises are useful, but they can be stiff and artificial, because you’re not really speaking politics yet: you’re still translating. It’s why new organizers often sound slightly robotic, repeating something they’ve clearly learned from someone else. But eventually you learn to leave this scaffolding behind and speak as yourself.

Often, however, you have to learn to speak differently — to speak as a different version of yourself. This means discarding many of your most familiar habits. Like many women, for a while I managed to get by on likability; I was already good at a certain kind of emotional labor. But as the asks got bigger, I hit a wall: people might spend thirty seconds signing a petition they didn’t think mattered much because they liked me, but they weren’t going to piss off their boss just to stay in my good graces. So I had to learn something else. “An axiom of organizers,” writes Jane McAlevey, “is that every good organizing conversation makes everyone at least a little uncomfortable.” The most awkward part is what McAlevey calls “the long uncomfortable silence” — the moment when you make an ask and let someone think about their answer. For a long time my biggest weakness was my tendency to shy away from making sure people knew that winning the things they said they wanted was up to them. Too often I tried to gloss over the discomfort instead of letting it sit. It was a lot easier to talk about our brilliant plan or how much support we had from our allies than to insist with the people I was organizing that whether we won our own union or not depended on them. As a result, people saw me as the union person who would deliver information and lay out a plan and keep them posted; they did not see themselves as union people who were also responsible for helping to win the things they said they wanted. McAlevey would call this a shortcut; we called it protecting people from the organizing. To soften the ask seems compassionate, but like any other protective measure, it condescends, and like any other shortcut, it makes things harder in the long run.

Realizing that it was not enough for people to like me was revelatory. I had to learn to be more comfortable with antagonism and disagreement, with putting a choice in front of people and letting them make it instead of smiling away tension and doing the work myself. I had to expect more from other people. With other organizers, I role-played the conversations I feared most before having them; afterward, I replayed them over and over in my head. I struggled to be different: the version of myself I wanted to be, someone who could move people and bend at least some tiny corner of the universe.

It’s not easy to be the site of a battle for hegemony. It’s not a beatific Whitmanesque “I contain multitudes”; it’s an often painful struggle among your competing selves for dominance. You have one body and twenty-four hours in a day. An organizer asks what you’ll do with them, concretely, now. You may not like your own answer. Your inner Thatcherite will raise its voice. You can’t kill it off entirely; you will almost certainly find that it’s a bigger part of you than you thought. But organizing burrows into the pores of your practical consciousness and asks you to choose the part of yourself that wants something other than common sense. It’s unsettling. It can be alienating. And yet I also often felt I was finally reconciling parts of myself I’d tried to keep separate — what I thought, what I said, what I did. To organize, and to be organized, you have to keep in mind Hall’s lesson: there is no true or false consciousness, no true self that organizing discovers or undoes. You too, Hall reminds us, were made by this world you hope to change. The more distant the world you want to live in is from the world that exists, the more deeply you yourself will feel this disjuncture. “I’m not cut out for this,” people often say when they struggle with organizing. No one is: one isn’t born an organizer, but becomes one.

THE SOBER, UNSEXY character of organizing is often reromanticized in paeans to the “real work.” Organizing’s defenders are the most likely to insist that it is boring. For a generation maligned as flighty and self-absorbed, the mundanity and dullness signify authenticity, like political normcore. Organizing signals heroic commitment rather than faddish dilettantism, a noble resolve to do something in real life rather than trade memes in Facebook groups or dunk on Twitter enemies. It’s true that organizing is the day-to-day work of politics — what Ella Baker called “spadework,” the hard labor that prepares the ground for dramatic action. But I’ve never understood the charge of mundanity. Canvassing on a slow day can be tedious, but no other part of organizing has ever felt dull to me. Quite the opposite: nothing has ever felt more thrilling or more wrenching. Nothing has ever been harder to do, or harder to stop thinking about.

In The Romance of American Communism, Vivian Gornick tells a story I think about often, about a young woman tasked with selling the Communist Party newsletter The Daily Worker. “My God! How I hated selling the Worker!” she recalls. “I used to stand in front of the neighborhood movie on a Saturday night with sickness and terror in my heart, thrusting the paper at people who’d turn away from me or push me or even spit in my face. I dreaded it. Every week of my life for years I dreaded Saturday night. . . . God, I felt annihilated. But I did it, I did it. I did it because if I didn’t do it, I couldn’t face my comrades the next day. And we all did it for the same reason: we were accountable to each other.”

No one ever spat in my face, but the rest I recognize. Though I didn’t always dread organizing, I often woke up with a pit in my stomach, thinking of the phone calls I’d have to make that day and the people I was supposed to catch in the hallway after class. If anything, it was worse: the people I was talking to weren’t strangers on the street, but friends and colleagues. It hurt when they stopped picking up the phone or looked away in the halls. Why on earth did I keep doing it?

Why did anyone? Because of their political beliefs? Maybe at first — I didn’t want to be an armchair revolutionary. But sheer ideological conviction is rarely a predictor of someone’s organizing stamina. More importantly: because your father was in a union, or — more likely — your mother needed to be; because your friend needed child care or you needed a therapist. These things genuinely mattered. But at some point you took a leap into excess. Was I really organizing forty hours a week because I wanted dental? At the rate we were going, I was unlikely to see any of the benefits anyway.

If much of my daily struggle was against the experience of grad school itself, I had also been looking for something like the union for a long time. I had ended up at the community-organizing nonprofit all those years prior after a few months spent volunteering with an anarchist collective in the ruins of New Orleans after Katrina, frustrated with the limits of mutual aid in the face of total state breakdown, and had been grasping for some kind of political activity that was both transformative and pragmatic ever since. Organizing was all about that dialectic. The union connected our demands — which were real but not exactly world-historical — to the long history of labor struggles, contemporary efforts to rebuild worker power, visions of a radically different future that we could play a role in bringing about.

So we demanded bread and butter, but we were ultimately organizing for the future of academic life, which was visibly crumbling around us; or for the revival of the labor movement, which had mostly already crumbled; or because it was intolerable to live in a city as segregated as New Haven and not do something about it. That our union had been organizing for three decades was both motivating and burdensome. We knew the past triumphs and failures, attachments and wounds; we inherited hope and melancholy. In this, it was not unlike the broader left: so much history, so much struggle — sometimes too much. We knew we had tuition waivers and stipends and health care because of the union; still, the fact that no one yet had won the whole thing in the end could be sobering. Why would we be the ones to succeed where so many others had failed? But it was also comforting: as there was GESO before us, so there would be GESO after. The campaign to unionize US Steel had taken nearly fifty years; more recently, Smithfield Foods had taken twenty-four.

Sometimes I felt I was organizing for the future of the entire world, in a deductive train that went: capitalism was going to devastate the planet; to fight it we needed strong unions, which meant new organizing, particularly in low-carbon fields like teaching, which meant building the academic labor movement — which meant that I needed to unionize the Yale political science department. It was absurd. Could I have been more quixotic, more grandiose, more self-important? Our style of organizing was intense, often all-consuming, and I knew that, too. I didn’t always like it. Often I longed for a nice life, an easy life, the life of the mind that academics were supposed to have. Couldn’t I just go to demonstrations here and there on the weekends before stopping off for groceries, the way I had before?

But that hadn’t worked. And the gap between the smallness of everything I could realistically do and the largeness of everything I wanted to happen was so immense. I was deeply pessimistic, intellectually. The time in which to transform the global economy in order to prevent untold death and destruction shrank daily, and the forces of reaction grew stronger just as fast. So I wanted to do something ambitious and hard: something commensurate with the monstrosity of the world, with the distance of utopia and the nearness of catastrophe. There was so much I wanted to change, so many people I wanted to move. In the daily struggle to build the union and beat the boss and the odds, I saw something I desperately wanted to learn.

THE RELATIONALITY of organizing is maybe the hardest thing to understand before you’ve done it. But it is the most important. This is not because people are governed by emotions instead of reason, though they sometimes are. It’s because the entire problem of collective action is that it’s rational to act collectively where it’s not to act alone. And you build the collective piece by piece.

Organizing relationships can be utopian: at their best, they offer the feminist dream of intimacy outside of romance or family. In the union, I loved people I did not know very well. In meetings I was often overcome with awe and affection at the courage and wisdom of the people there with me. I came to count many of the people I organized with as my dearest friends. When I needed help, there were always people I could call, people who would always pick up the phone, people I could and did talk to about anything. These relationships often served as a source of care and support in a world with too little of those things. But they were not only friendships, and not only emotional ballast. The people I looked to for support would also push me when it was called for, as I would them; that, I knew, was the deal.

Our relationships forged the practical commitments to one another that held the union together. They made us accountable to each other. They were difficult and multifaceted, often frustrating, intensely vulnerable, and potentially transformative but no less prone than any other relationship to carelessness, hurt, and betrayal, and always a lot of work. We were constantly building them and testing their limits, pushing each other harder the closer we got. They had to bear a lot of weight. In more abject moments, I wondered whether they were anything more than instrumental. More often, though, I wondered what was so menacing about usefulness that it threatened to contaminate all else.

The word comrade, Jodi Dean argues, names a political relationship, not a personal one: you are someone’s comrade not because you like them but because you are on the same side of a struggle. Comrades are not neighbors, citizens, or friends; nor are they any kind of family, though you might call them brother or sister. The comrade has no race, gender, or nation. (As one meme goes: “My favorite gender-neutral pronoun is comrade.”) Comrades are not even unique individuals; they are “multiple, replaceable, fungible.” You can be comrades with millions of people you have never met and never will. Your relationship is ultimately with the political project you have in common. To many noncommunists, Dean readily admits, this instrumentalism is “horrifying”: a confirmation that communism means submitting to the Borg. But the sameness of the comrade is a kind of genuine equality.

Being an organizer is like being a comrade in some ways but different in others. The people you organize alongside may be comrades, but the people you are organizing often aren’t; the point of organizing, after all, is to reach beyond the people who are already on your side and win over as many others as you can. So you can’t assume the people you organize share your values; in fact, you should usually assume they don’t. This means that unlike comrades, organizers aren’t interchangeable. It matters who you are. McAlevey’s theory of the organic leader is that people have to be organized by people they know and trust, not by strangers who claim to have the right ideas. The SNCC looked for “strong people” — not necessarily traditional leaders, but people who were respected and trusted among their peers, on the logic that people would only take risky political action alongside people they trusted. When organizers reflect the people they organize, they win: when women of color organize other women of color, a 2007 paper by Kate Bronfenbrenner and Dorian Warren shows, they win almost 90 percent of elections. This cuts both ways: when women and people of color led the organizing in my department, we often struggled to get white men to take us seriously.

Yet the comradely element of organizing can also open up space for building relationships with people beyond those boundaries. It’s not that class and race and gender disappear, transcended by the cause — but the need to work together to achieve a shared end provides a baseline of commonality that makes it possible to relate across difference and essential to figure out how. That’s why you meet people one-on-one and talk about what you both care about, why you open up to someone you only know as a colleague or share with a stranger things you hardly even discuss with your friends. It’s why I cried about the humiliation of the grad-school pecking order with my organizer when I wouldn’t admit to anyone else that I was struggling. One-on-ones are countercultural: the conversations you have in them challenge your default expectations of who you can relate to, force you outside of the demographic categories that organize most of your life and the scripts you’ve learned for interacting with people accordingly. You build trust with people you have no prior reason to trust not simply by affirming your commitment to the shared project, your devotion to the Borg, but by coming to understand what brought someone else to it.

### Brescia—Creative Lawyering

#### Creative lawyering: The skills of creative legal problem solving and iterative design thinking that debate inculcates are essential responses to multiple global threats. Our model teaches students the skills to succeed as social change lawyers, but we don’t need to win everyone goes to law school because learning how the law intersects with activism and society is relevant for everyone.

Brescia, 19—Hon. Harold R. Tyler Chair in Law and Technology, Albany Law School (Raymond, “CREATIVE LAWYERING FOR SOCIAL CHANGE,” Forthcoming: Volume 35, GEORGIA STATE LAW REVIEW (2019), dml)

Whether evidenced by the election of Donald J. Trump to the U.S. presidency, the Brexit vote in Great Britain, the Women’s Marches, or advocacy on behalf of stricter gun laws in the wake of the school shooting in Parkland, FL, there appears to be a clamoring, on the right and the left, for social change.1 Many of these efforts are organized at the grassroots, organically, and some are orchestrated by wealthy donors.2 Whether organic or orchestrated, many participating in such efforts are dissatisfied with the status quo and seek social change, regardless of their political perspective. 3 When people seek social change, they often see a problem before them that they want solved, whether it is to end gender-based, work-place harassment and sexual violence,4 or relieving corporations of what are perceived as burdensome, “job-killing” regulations.5 In what Gillian Hadfield calls a “law-thick world,”6 in order to address such problems, the solutions often involve some change to the legal infrastructure that addresses the social issue advocates seek to affect when they pursue social change. 7 And in order to affect such social change, creativity in finding solutions is often a critical feature of any effort to change that legal or regulatory infrastructure. In addition to the conscious efforts of individuals, groups, and corporations to effectuate social change, through legal and policy advocacy, campaign donations, and community mobilization, social change is also happening, whether it is driven by forces that may have humans at the center of them, like commercial ventures that produce technological change,8 or occurring despite the best efforts by some to curtail them, like climate change as a product of human activity that sets natural forces and responses in motion.9 Whether humans cause such problems directly, and with intention, or only indirectly, and unintentionally, human agency is central to address the range of problems the world faces at present.10 Given the complexity of such problems, creativity is needed to craft solutions.11 What is more, the curation of legal, policy, and regulatory solutions to these problems will likely be at the center of efforts to address them, whether they involve building up and increasing, or taking away and reducing, the size and scope of the legal, policy, and regulatory infrastructure that addresses such problems. If creative problem solving is a necessary element of social change now and in the future, and a core element of such problem solving will require legal, policy, and regulatory responses to these problems, lawyers will be at the center of social change for the foreseeable future.12 Given the complexity of the problems and the need for creative solutions to address them, it will not be just any lawyers at the center of this change, but, rather, creative ones. If this is the case, can we identify the elements of creative lawyering for social change so that we might understand what it will take to prepare and train lawyers to assume their proper role in efforts to bring about such change? This Article is an attempt to identify these elements by a review of three moments in American social and political history when lawyers played a critical role in crafting creative solutions to thorny social problems.

The lawyers I will choose to highlight in this review include several lawyers involved in the effort to end slavery in the United States, those engaged in the legal fight to dismantle the Jim Crow system in the South in the mid-20th century, and the recent effort to bring about marriage equality for the LGBTQ community. While the lawyers in these moments were not the sole actors in the social change effort that unfolded in these particular points in history, nor were they even the main drivers of the campaign to end slavery, nevertheless, in all three examples, the lawyers I will highlight played key roles in helping to craft not just our understanding of these problems but also creative responses to them.13 In at least the last two examples, the creative lawyers I will highlight helped to lead the legal struggle to reconstruct an edifice of inclusion and equality and solve dramatic legal inequalities with an ultimate goal of rectifying broader, societal inequalities. The hope is that this review can help unearth lessons from past instances when lawyers used creativity to advance social change, particularly social change that had a legal component at its center, to help inform efforts in the present and future to effect similar social change.

With these goals in mind, this Article proceeds as follows. In Part I, I will review the literature on creativity in the law in an effort to show that, contrary to popular perception, there can be creativity to the lawyer’s craft generally, and I will try to review the techniques that lawyers often use when they seek to address their clients’ problems creatively. I will also explore the ways in which social change lawyering is different from, and can often be more complex than, more traditional lawyering.

In Part II, I will explore three examples of instances where lawyers played a significant role in helping to advance social change in the hope that such an exploration will help unearth common themes regarding the approaches these lawyers appear to have taken in advancing social change creatively and with intention. These three examples, as discussed, will involve the effort to end slavery in the United States, the campaign to dismantle Jim Crow, and the effort for recognition of same-sex marriage. I submit that these three examples offer critical lessons about what creative lawyering for social change entails.

In Part III, I will identify what I consider to be the five common components of these campaigns for social change. This review suggests that these components include, first, that the lawyers have often proceeding incrementally and in an iterative, experimental fashion. They have looked for ways to build support for their legal position both in the courts of law and in those of public opinion, seeking a tipping point where the solutions they propose gain and secure traction and ultimately create a new legal paradigm around the problem.14 Second, creative lawyers advocating for social change have typically viewed the legal problem that presented itself in a way that others have not viewed it, often taking the arguments of their adversaries, coopting them, turning them on their heads, reframing them, and shifting them to the lawyers’ advantage.15 Third, creative lawyers are humble enough to incorporate the viewpoints and approaches of other disciplines, bringing different domains into the advocacy effort in order to strengthen their legal arguments.16 Fourth, lawyers often seek out, both consciously and unconsciously, what the late Derrick Bell called “Interest Convergence”: opportunities for different sectors in society to share a common goal based on their similar, though often different, particular interests.17 Fifth, creative lawyers for social change often recognize that their advocacy does not appear in a vacuum: it is dependent on and occurs simultaneously with changes occurring in broader society.18 In these ways, it is interdependent with larger social forces and the creative lawyer must take them into account when she engages in efforts to bring about social change.

The final section, Part IV, will explore the implications of this taxonomy of creative social change lawyering and attempts to chart a path forward for those who might want to bring creativity to such an endeavor, either because they are currently lawyers advocating for social change, they are current law students or law faculty, or even those who are simply contemplating going to law school. It tries to spark a discussion about the proper role of creativity in lawyering at this time of great social ferment, when many seek to advance social change and to alter the legal landscape in order to address what they see as societal ills.

I. CREATIVE PROBLEM SOLVING AND THE LAW

A. Lawyering as Creative Problem Solving

The world’s natural resources are under threat and the ability to feed a growing global population faces serious challenges due to the specter of drought, the inundation of farmlands, the erosion of top soil, and other problems caused by climate change.19 Armed conflict in the Middle East and Africa,20 political unrest in South America,21 and criminal terror in Central America have created a global refugee crisis.22 The rise of authoritarianism and a hard-edged form of conservative populism threaten the rule of law.23 A threat to the rule of law, in turn, is a challenge for economic growth, as fairness, consistency, and predictability in governance is directly correlated with the economic health of a nation as well as its long-term survival.24 Rapid technological change, which is a product of compounding technological innovation, is already remaking society and is likely to have dramatic effects on social and economic relations for generations.25 Whether it is autonomous vehicles, the Internet of Things, or Big Data and artificial intelligence, the rapid increase in computing power that has been unleashed could address some of the world’s problems, like pedestrian, passenger, and driver deaths from automobiles,26 but has also created new ones, like privacy breaches, cyber-security, and the threat of a drone or unmanned vehicle delivering a dirty bomb or, worse, a nuclear payload, from a remote location on the other side of the planet.27 Rapid technological change has also remade the economic landscape, and stands to alter the relationship of many workers to their employers, a shift we are already seeing in the sharing economy.28 Whether it is complete displacement from automation, or a shift from regular employment to sporadic, contract, “on demand” work, the relationship of many of the world’s workers, in such diverse fields as truck transport, manufacturing, and even the law, are likely to see dramatic changes to the ways in which they relate to their employer and earn a living over the coming decades.29 Furthermore, as the evidence of the use of modern technologies like the internet and social media to undermine elections in several democratic nations is overwhelming, it is apparent that sometimes the forces described above, like authoritarianism, technological change, and threats to the rule of law, compound each other, as technological advances can support efforts to undermine the rule of law, exacerbating the threats to stability and democracy.30 Similarly, technological change is having a dramatic impact on economic well-being across the world, creating vast wealth for a few and increasing inequality in some nations.31 These problems are all crying out for a solution; and lawyers are in the problem solving business.

For Gerald Lopez, “Lawyering means problem-solving.”32 Similarly, for Carrie Menkel-Meadow a lawyer is a “professional with formal legal training who employs law, as well as other relevant disciplines, to solve human problems and disputes, plan transactions, prepare legal instruments and regulations.”33 Lawyers often find themselves in the “problem space” where they must either find solutions, or, in order to advance a client’s interests, make situations more complex or difficult.34 According to Gary Blasi: “At bottom, lawyering entails solving (or making worse) problems of clients and others, under conditions of extraordinary complexity and uncertainty, in a virtually infinite range of settings.”35 The American Bar Association describes problem solving and legal analysis as the two “conceptual foundations for virtually all aspects of legal practice.”36 But lawyers do more than bring mere technical skill to this problem space. As Paul Brest argues, a lawyer must certainly utilize her legal training and judgment to address a client’s problem, she must also understand the other constraints—like the political setting or the economic capacity with which a client operates—that bound that client’s actions.37 Indeed, as he and Linda Hamilton Krieger explain: “finding the best solution—a solution that addresses all of the client’s concerns—usually requires more than technical legal skill.”38 Lawyers thus solve client problems that have a legal component to them, taking into account a range of interests and needs, in the pursuit of solutions that address those needs.39

But what role does creativity play in lawyering and problem solving? According to Shultz and Zedeck, creativity is one of the core lawyering skills they have identified as essential to contemporary law practice.40 Legal problem solving tends to require some degree of creativity, regardless of the nature of the work involved.41 When engaging in creative problem solving, Menkel-Meadow argues that the lawyer uses analogy and metaphor, draws lessons and insights from other fields, “extend[s] a line of reasoning, principle or solution beyond its original purpose”, challenges conventional assumptions, deploys narrative, and reframes problems by looking at them from different perspectives.42 Another way to think about these approaches is that they represent what is sometimes called “lateral thinking”; moving beyond purely linear, analytical thought; and shifting mental paradigms.43 Similar to Menkel-Meadow, Linda Morton has identified the characteristics of creative problem solving in the law as including a focus on the “underlying needs and interests . . . of individuals as well as society;” an analysis of the values at stake in a situation, including those of an individual but also “society as a whole;” the use of interdisciplinary resources; a focus on problem prevention; and “self-reflection and analysis.”44

B. Problem Solving and the Social Change Lawyering

While the problem-solving work of lawyers often involves creativity, particularly when she is asked to solve complex problems, the lawyer who works for social change—however she defines that change—faces unique challenges that add another layer, or layers, of complexity to the lawyer’s work and the choices she must make.45 Social change lawyers certainly must bring creativity to their work to solve the complex problems they are often asked to solve, or take it upon themselves to solve, but the role they assume when seeking to address social problems takes on new dimensions beyond that which the traditional lawyer must address.

1. Social Change Lawyers Work to Change the System.

The most important difference between a social change lawyer and a traditional lawyer is that the social change lawyer is generally working to change the legal infrastructure affecting her client’s life.46 The traditional lawyer, by contrast, generally works within that infrastructure.47 Certainly, there are situations where a traditional lawyer might argue for a novel or creative take on a particular precedent so as to gain an advantage for a specific client, but the social change lawyer generally works for broader, societal change, and the novel or creative arguments about precedent can, at times, have tremendous impact on not just her client, but society more broadly. The lawyers who argued Obergefell v. Hodges48 were claiming recognition of their clients’ marital relationships. A traditional lawyer might do that when seeking recognition of spousal support on behalf of a client. But the arguments the traditional lawyer might make are likely asking for recognition for the client within existing definitions of marital relations. The marriage equality lawyers were arguing, similarly, for recognition of LGBTQ relationships using existing legal frameworks, for sure: in fact, that was the point of the marriage equality effort.49 But what that required was a new understanding of not just marital relations, but also of the Equal Protection clause itself.50 This is just one example of a situation in which the social change lawyer is often arguing not inside the system, but seeking to change the system itself, making her job much more complicated and challenging than that of the traditional lawyer in many instances.51

2. Social Change Lawyers Must Strive to Empower Their Clients and Not Further Marginalize Them.

Not only must social change lawyers work to improve the lives of their clients and the communities in which they live, they must also strive to ensure that they are placing the clients out in front of the advocacy, empowering them.52 The wave of legal advocates that emerged in the wake of the successes of the Civil Rights Movement in the late 1960s and early 1070s, and the work they shouldered on behalf of marginalized groups, generated critiques of lawyer-driven advocacy.53 Some raised concerns that such advocacy, which was often focused on such lawyer-centric strategies like litigation, ran the risk of disempowering grassroots groups and detracting from efforts to build grassroots campaigns and, ultimately, grassroots power;54 moreover, some critics argued that such lawyer-driven strategies, on their own, fail to lead to lasting change.55 Such lasting change is difficult to achieve when efforts to promote social change do not fundamentally attack and alter existing power relations.56 Making matters worse, there is a threat that advocacy that places the lawyer at the center of the work can even further marginalize clients, typically by casting such clients as victims, and often treating them as such, rather than recognizing the potential of their own power as individuals and groups of individuals to pursue and obtain selfdetermination, autonomy, and power.57 Thus, social change lawyers should strive to put their client at the center of their work so as not to further marginalize them. Society does that enough. The traditional lawyer likely does not face similar challenges.

3. Social Change Lawyers Have Different Constraints in Case Selection.

There is also a unique financial component to the lawyer-client relationship that exists between the social change lawyer and her clients when compared to that typically involved in the traditional lawyer-client relationship.58 This different relationship can have ramifications for the actions the lawyer takes, or does not take, on behalf of her client. In the typical lawyer-client relationship in the contemporary legal profession, the lawyer is paid on a feefor-service basis, often at an hourly rate, and sometimes based on a flat fee depending on the service she provides.59 Sometimes a lawyer proceeds on a contingency-fee basis, where she bears the risk of an unsuccessful outcome, receiving compensation only if she is successful on behalf of her client.60 Each of these relationships hinge on the economic relationship between the lawyer and the client; the client often makes decisions based on an economic calculus of whether it is worth it to proceed with the representation based on—to put it crudely—how much justice she can afford.61 Thus, critical tactical decisions may come down to whether the client wishes to pay for the service offered by the lawyer.62 A client may wish to spare no expense and give the lawyer great freedom to make tactical decisions, regardless of the cost.63 The client may choose certain tactics based solely on a cost-benefit calculus of the likely gains possible through the use of different tactics and the potential outcomes and risks associated with those tactics.64 Of course, while cost may impact the tactical choices a lawyer might make on behalf of a client, with the decisions about those choices made with the client’s costconsciousness in mind, it is also entirely possible that the lawyer and client may have no tactical choices to make because the clients foregoes legal representation altogether based on the perceived costs associated with that representation and the likely benefits that might accrue, or, more simply, because she cannot afford any level of service from the lawyer.65 Indeed, many Americans face their legal problems without a lawyer, with cost being one of the main contributing factors to their decision to proceed, or not proceed, with representation.66 In many ways, this is a relative easy decision. The client consults with the lawyer, makes a decision on the likely costs and potential benefits of representation, and decides how she would like the lawyer to proceed.67

In the social change context, the calculus is often much different. There is certainly some small degree of overlap in the approaches utilized by some social change lawyers and those in traditional settings. With certain socialchange oriented fields of practice, like employment discrimination, employee wage-and-hour rights, police brutality actions, and social security benefits to name just a few, social change lawyers may operate from within the private bar, charging contingency fees for their work and taking a portion of the award they may win on behalf of their clients or earning remuneration through fee-shifting provisions in the statutes governing the claims.68 At the same time, the possibility of contingency-fee arrangements often crowds out the work of the social change lawyer, who might make strategic decisions about the types of cases she tends to take based on whether a particular client might have other options for representation based on the availability of lawyers from the private bar willing to take the client’s case through a contingency-fee-based retainer.69

But in other fields, where there are few contingency-fee opportunities, where the private bar might see the client’s claim as too risky to take (even on contingency), or where fee shifting might not be available, the social change lawyer will typically work in a non-profit legal services provider, whether that provider is a small, local organization that addresses local concerns, or a large, national organization, that seeks to promote a national agenda in a particular field.70 Indeed, the diversity of issues non-profit lawyers address is quite large, from animal rights and environmental justice, to claims on behalf of the transgender community and the rights of low-wage immigrant workers.71 For lawyers not operating in fields typically dominated by paying clients, or clients who can be served through contingency-fee arrangements, lawyers face a different calculus when it comes to the costs associated with providing representation.72 They must find funding to provide the representation, and that funding might come from a government entity, a private foundation, or a private donor.73 While the decision to take on a case in the traditional lawyer-client relationship may come down to whether a particular client will pay for the services she will receive from the lawyer, in the social-change setting, the lawyer must make a different calculation: whether the case is one that fits within the constraints that may be imposed by the donor or the source of funds.74 If the source is a government entity, the client must fit within the constraints imposed by that source, which is typically a function of the income of the client or the nature of the case.75 If the source of the funds that might allow the representation of the client is a private foundation or individual donor, the lawyer must ensure she provides services consistent with the donor’s intent when that donor made the contribution to the legal organization.76

The decision to represent a particular client in a particular case is not made simply on whether the client fits within the confines of the constraints imposed by the sources of funds the organization receives. While that is certainly a baseline requirement—i.e., the lawyer’s organization typically must have funding to provide the services—the organization will also take into account other concerns when considering whether to take on the case. In a world of scarce resources, legal organizations may impose a sort of “lifeboat” ethics when make decisions with respect to which cases to take.77 The degree of complexity of the case may make it so resource intensive that the decision to accept the case might mean that the organization is unable to accept other clients who might also fit within the categories of cases the organization may handle. If, for example, the lawyer were to take on a complicated eviction case, and, even if she were to save the client’s apartment, that representation might mean that three other families go without representation and face eviction as a result. Lawyers in these situations must make decisions about which cases to take based on some rubric of cost, merit, resources required, likely benefits that might flow from the representation, and the opportunity cost associated with rejecting other clients.78 While these decisions come down to resource constraints and costbenefits analyses, not unlike the factors that weigh on the client in the traditional attorney-client relationship, the social change lawyer and the organization in which she works typically make the decision whether to accept the case for representation. As a result, where in the traditional lawyer-client relationship the cost-benefit analysis is one made by the client, in the social change context, this decision is one typically made by the lawyer and the organization in which she works, adding a layer of complexity to the work that is mostly not present in the traditional setting.79 A private lawyer certainly may make the decision that, despite a client’s desire for representation, the lawyer may not take on the case, based on her present workload or other factors.80 Such decisions do not take on the same degree of complexity as in the social change setting. They may not take on the same moral or social weight either. A private lawyer turning down a paying client probably can rest assured that client will find another lawyer to represent her; that is not always, or even often, the case with the social change lawyer.81

Moreover, for the social change lawyer, there is often another aspect of the decision to take on a case: whether a particular client’s case presents itself as a vehicle for furthering the lawyer’s social change goals or agenda.82 In other words, one client’s case may offer the lawyer an opportunity to advance the social change goals she wants to pursue. The factors that go into the decision as to whether a particular case might advance the social change the lawyer wants to see are often quite complex, offering another degree of complexity to legal advocacy for social change.83 For many social change lawyers, as with any lawyers, the primary issue they must face when deciding whether they can take a case is often, first, whether the case has merit, and, second, whether the lawyer thinks she can win it. But whether one can win the case is often, itself, a question involving a highly complicated calculus, as is the case with all lawyering. For the social change lawyer, however, even defining what a win is can be complicated.84 The lawyer may score a moral victory, may delay an eviction or deportation, or may apply enough political pressure on a government agency that it decides to change a policy even when that policy is upheld by the courts.85 Some of these same considerations may play into the traditional lawyer’s calculus, but the decision to proceed is often left to the client in that setting. In the social change setting, the lawyer will have to balance the interest of the client before her, the interest of the broader community in seeing the policy challenged, and the interests of the funders of the organization in seeing activity consistent with the organizational goals the funder supports. These other interests may weigh on the social change lawyer in other ways as well, which introduces considerations the traditional lawyer does not typically face.86

4. Social Change Lawyers Face Different Opportunity Costs Related to the Tradeoff between Direct Services and Law Reform Activities.

Another aspect of social change lawyering that emerges in the face of resource constraints is that in order to pursue a longer-term legal strategy, when resources are committed to such a strategy (toward what is often called law reform), that necessarily means that such resources are channeled away from direct services that might solve a particular client’s immediate problem without addressing larger social change goals.87 While long- and short-term strategies do not need to be in tension, they can be when an organization does not have the resources to do both, and it must choose between law reform and other, similar strategies, and emergency, direct, and atomized services to individual clients.88 When members of the community the social change lawyer is dedicated to serving face real harm in the absence of legal interventions, social change lawyers can face a devastating choice: prevent an eviction, defend against the loss of custody of a child, or secure public assistance benefits on the one hand, or, on the other, pursue strategies that might restructure the legal relationships, over time, such that fewer members of the community face such harrowing outcomes.89 In some ways, these choices may have become less complex for some lawyers, because they have fewer choices to make: cutbacks to federal funding for legal services programs and restrictions imposed on such funding mean that lawyers in programs receiving funds from this source are able to serve fewer clients and have fewer tactical choices among which to choose. 90 This means both that lawyers who do not face such restrictions have more clients from which to choose (meaning greater complexity and choices), even as the overwhelming majority of low-income people face their legal problems without legal assistance.91

5. Social Change Lawyering Often Involves Complex Goals.

Putting aside the question of how resources should be deployed in the service of social change, and whether lawyers should choose between direct services and longer-term strategies, for the social change lawyer, there are often other, “larger” interests she must weigh in the decision to take on a case.92 If the cause she promotes is a goal identified by a particular community-based organization or the expansion of rights for a particular social or demographic group, taking on a case, pressing certain rights, and bringing them to the attention of the courts and the general public can sometimes undermine the long-term interests of the cause the lawyer supports because it can spark a backlash, a retrenchment of rights through the adoption of legislation that undermines any victory the lawyer may achieve in the courts, either through the acts of a hostile legislature or an electorate willing to adopt a ballot initiative to scale back or reverse such victories.93 In the marriage equality context, lawyers won victories in the state courts in several states, only to have those victories undermined by legislative action and even ballot initiatives.94 Thus, when considering the interests of the client that presents herself for representation to the social change lawyer, that lawyer often must balance the interests of that client against other interests.95 Once the lawyer accepts the case for representation, these other interests should generally factor less in the decisions that transpire throughout the course of the representation, however. But before the lawyer agrees to accept the representation of the client, these issues will likely weigh heavily on her decision to proceed or not to proceed with the case.96

6. Social Change Lawyers Must Often Chose among a More Complex Array of Tactics in Pursuant of Complex Goals.

If the decision is made to take on the case, another decision that the lawyer must make in the social change setting, often in consultation with the client, is the tactics that she will deploy in proceeding with the representation. In the traditional attorney-client relationship, these decisions might present themselves in a more straightforward way. The client wants to purchase property. She wants to sue over a breach of contract. The goals are often more discrete and more easily identifiable in such settings. For the social change lawyer, the goal or goals she might pursue might be more amorphous, and present more challenging problems to solve.97 The lawyer’s social change objectives might include improving the treatment of a particular social group in society generally or to protect a community from a particularly destructive government or business practice. The goals, and the tactics that one might use to achieve them, might not present themselves in so obvious a fashion. When the goals are themselves less defined, the lawyer will often find that the decision choosing among tactics is more complex. The lawyer, in consultation with the client, will likely weigh the likely costs and benefits of the different tactics that could be utilized to achieve the overarching goals of the representation, introducing even more complexity into the situation.98

7. Social Change Lawyers May Find It Difficult to Identify the Client.

Another layer of complexity comes from not just defining the goals of the representation or the tactics to be utilized to achieve them. Indeed, social change lawyering sometimes involves some debate over even identifying the client in each situation.99 Is the client the individual or group who presents him-, her- or itself to the lawyer for representation, or is the client someone or some group the lawyer has identified as serving as a strategic partner to advance the cause the lawyer seeks to further?100 Sometimes the social change lawyer goes out in search of the appropriate client who may serve as a participant in the social change strategy because that sometimes idealized and sought-after client’s situation is sympathetic or compelling, offering a salient narrative that both illuminates the plight of those whose situation the social change lawyer wants to improve through her advocacy and helps present facts that might garner support from the courts, policymakers or legislators who the lawyer may need to persuade in order to convince them to embrace the cause and advance the social change the lawyer is pursuing.101 This search for the client or clients that might help fill this narrative role might mean the client in such settings may assume a different role than one in the traditional lawyer-client relationship.102 Contemporary legal ethics requires even the social change lawyer to maintain a relationship with every client such that the client controls the critical ends of the representation.103 When the lawyer may have a different sense of who the client is in any given situation—is it the person who is the nominal representative plaintiff in a class action, is it the community the individual represents, is it someone or some other entity or group—the lawyer’s sense of whom she serves may change. The social change lawyer may thus perceive that she is entitled to have a different relationship to a specific client in a particular matter because the social change lawyer might see a living and breathing client as representing some larger cause or interest. This then means the process of identifying the clients’ interests and needs, and the tactics the lawyer should pursue, becomes more complex, and the lawyer, whether we like or not, must try to both understand who the client is, what the client wants, and how the lawyer should proceed on the client’s behalf. But all that depends on how the lawyer defines the client. When the client is an amorphous group like “the community,” with no clear spokesperson or constituent who can provide the guidance to the lawyer as to the interests and preferred tactics of the client, the process of identifying both who the client is as well as how the lawyer should proceed becomes more challenging.104 Admittedly, for some lawyers, they may feel that gives them license to proceed as they see fit, substituting their sense of what that undefined, incorporeal “client” wants; for others, the lawyer who truly wants to ensure that she proceeds with the interests of a client or clients at the center of what she does, that process becomes only harder, not easier.

C. What Complexity Means for Social Change Lawyers

When comparing the social change lawyer’s role to that of what I have called a traditional lawyer, it would appear that there is some greater level of complexity that adds to the general complexity of the problem the lawyer is attempting to address. The decision to accept or reject a client often has different components in the social change context when compared to that decision in the traditional, private relationship. In fact, that identity of the client may itself shift when the lawyer is engaged in social change lawyering; in turn, that shift in the identity of the client means the considerations and factors a lawyer must weigh are also different—and also more complex. So, the additional complexity often centers around what clients to accept for representation; what strategies to deploy to achieve them; the tactics to utilize in pursuing those strategies; and the direction the lawyer should take, and from whom, when pursuing those tactics and strategies. To a certain extent, some of these decisions play a role in the traditional lawyer-client relationship, but, generally, they involve a greater deal of complexity in the social change context. This complexity brings new dimensions to problem solving in this type of advocacy, requiring a greater degree of creativity from the social change lawyer in pursuing solutions to such problems.

Despite these additional considerations that lawyers working for social change have faced when engaging in creative problem solving for their clients (however they define those clients), lawyers have long played roles in attempting to help engineer social change. The unsuccessful litigation that would lead to the Supreme Court’s decision in Plessy v. Ferguson, which enshrined the doctrine of separate but equal, was in many ways the product of the type of legal campaign that became commonplace by the 1970s. 105 The prominent role that lawyers played in the Civil Rights Movement helped to serve as a model for efforts of progressive lawyers that have sought to promote environmental protection; women’s rights; the rights of different racial and ethnic groups, like the Latinx and Asian-American communities; and LGBTQ rights.106 It also prompted the rise of conservative legal organizations that promoted a pro-business or libertarian agenda through the courts.107

With some degree of urgency, there is a growing understanding that the law must be used to promote social justice and social change, but there is also an emerging appreciation for the fact that there is not just one way to use the law to promote social justice, and that those who would use the law to do so must be sensitive to community needs. This work is thus not only tactically flexible, “but also responsive and accountable to community interests and needs.”108 Scott Cummings describes this reemergence, with a focus on advocates seeking to promote workers’ rights, as follows: “[L]abor activists have, in fact, begun to leverage a broader range of legal regimes to advance multiple labor goals, from direct worker mobilization to the protection and expansion of unionized industries.”109 They have done this by filing suits pressing international human rights claims in order to “to mobilize immigrant workers,”110 brought land use claims “in an effort to block big-box retailers from entering markets dominated by unionized groceries,”111 and “threatened environmental lawsuits”112 in order to strengthen their negotiating position when seeking “community benefit agreements with labor-friendly provisions.”113 He argues that this suggests that “a more fundamental reorientation is under way within the labor movement,”114 because activists are adopting what he calls a “legal pluralist”115 approach which recognizes the many ways in which the law interacts with the employer-employee relationship to “leverage the power of law to advance labor goals.”116 This work is thus a “more politically integrated, tactically versatile model of legal practice,”117 where legal victories are only “moments in broader campaigns to stimulate collective action and leverage political reform”118 as opposed to ends in themselves. As Cummings further explains, litigation affords advocates just “one of many problem solving tools,” and clients are “allies to be educated and empowered for future struggles.”119 Others scholars have identified the ways in which low-wage worker legal advocacy has embraced this accountable and tactically pluralistic approach.120

It is also evident in the housing context.121 In my own work and research, I was a part of, and attempted to assess, the coordinated effort to fight the radical transformation of what was two middle-class and working poor housing developments in New York City, Peter Cooper Village and Stuyvesant Town, into luxury housing for the very rich. That effort, which combined community education, grassroots organizing, direct services through brief advice and assistance and direct representation, and an affirmative class action case, ultimately prevented the conversion of affordable housing to unaffordable housing.122 This was done in a tactically pluralistic way, in collaboration with a range of community partners, including an engaged, local elected official and a robust tenant association, as well as non-profit lawyers and private lawyers working on contingency. That work showed that lawyers from different backgrounds and experiences could bring a range of tactics to bear to bring about important social change, or at least prevent an erosion of significant economic rights from befalling the residents of these developments.123 This required effective coalition building, and the delivery of targeted, customized, and focused representation and assistance in an efficient way in order to balance the need for direct services that would prevent displacement while bringing tactical, affirmative litigation that would ensure the protection of broader, comprehensive rights for the collective benefit of the residents of these developments. This tactical pluralism provided effective relief, and required creativity both in terms of pulling together the different strands of the services to be provided as well as the individuals and organizations that would provide them. The complex problem of preserving affordable housing required innovative legal and advocacy strategies, as well as a diverse team of stakeholders and service providers, to bring about a successful outcome.124

The example of the work of labor rights activists and the housing lawyers involved in the effort to defend affordable housing in New York City show that lawyers engaged in problem solving in pursuit of social change face additional creative challenges that add new dimensions to their work when compared to the work of traditional lawyers. At the same time, as the following Part shows using just three examples, though there are many, many more from which to choose, despite these challenges, lawyers working for social change have helped to bring about dramatic change by playing a role in reforming the legal institutions that structure the relations between individuals, communities, broader society, and the government. Lawyers have helped sparked meaningful change in terms of improving civil, political, and human rights for countless millions of Americans. Thus, lawyers have found ways to confront the complexities associated with social change lawyering with creativity and zeal, helping to advance new understandings of the U.S. Constitution, the laws, and social relations in the United States.125 Are there lessons we can learn from the examples of such successful efforts to bring about positive social change that I will highlight here, particularly those ways in which such efforts involved creative solutions to solving complex social problems? In the next section, I will use three examples of lawyers playing a role in addressing complex social problems through legal advocacy in an effort to identify some of the common approaches and themes of such lawyers. It is to these examples that I now turn.

II. LAWYERING FOR SOCIAL CHANGE

In this Part, I will describe the role that lawyers played in three moments of significant social change in the United States: the effort to combat slavery, the decades-long struggle for Civil Rights for African Americans, and the campaign for marriage equality for members of the LGBTQ community. In the first example, much larger forces played a greater role in ultimately bringing about an end to slavery, yet lawyers still played an important role in addressing the treatment in the law of slaves, particularly escaped slaves, and that approach helped inform the larger effort to end slavery. In the Civil Rights Movement and the effort to attain marriage equality, lawyers played central roles (and at least in the Civil Rights Movement, subsequent critiques have argued that their role was too central).126 In each of these examples, however, the lawyers whose work I will highlight did not operate in a vacuum. The lawyers all were sensitive to forces playing out in the wider world, brought in other disciplines to support their efforts, and sought to form broad coalitions. What follows is a description of each of these three examples of lawyers working for social change. In subsequent Parts, I will explore some common themes that emerge from this analysis as well as what this analysis might say about creative lawyering for social change now and in the future.

A. Lawyers and the Abolition of Slavery in the United States

The first example to explore recounts the efforts of two lawyers who played roles in the effort to end slavery in the United States: one famous one and one not-so famous. Of course, lawyers had a significant hand in crafting the laws that first enshrined slavery in the U.S. Constitution127 and then in the many legislative compromises and proposals that would ultimately prove unsuccessful in either maintaining or ending slavery, with the failure of such efforts to end slavery peaceably ultimately leading to the U.S. Civil War. One of the main tensions between the Northern and Southern states was the Fugitive Slave Act, which had been updated as part of the package of provisions that would become the Compromise of 1850.128 The 1850 version of the law required that any slave holder whose slave escaped to free state or territory could petition federal authorities to return that slave to his or her master.129 Riots would sometimes occur in free states when federal authorities would move in to enforce the law, as abolitionists would seek to protect the escaped slave from return to bondage.130

With the outbreak of the Civil War, a question remained whether a slave holder from a Confederate state (or even a non-seceding slave state like Maryland) could enforce the law despite the open hostilities. An abolitionist general in the Union Army in the Western theater, John C. Frémont, issued a military proclamation freeing the slaves of any slave holder in Missouri who took up arms in rebellion.131 Abolitionists cheered this move, but conservatives in the north did not approve of it and Lincoln was concerned that such efforts might alienate border states that still recognized slavery. He would ultimately rescind the order. 132

Another Union officer, Benjamin Butler, a lawyer-turned-general who was commanding Fort Monroe, a Union garrison in northern Virginia, took a slightly different approach, and this creative approach helped advance the abolitionist cause on firmer ground than Frémont’s efforts had done. When three slaves who had been forced to assist the Confederate forces in building breastworks across the river from the Union fortress slipped under cover of darkness behind Union lines and presented themselves to Butler, he was forced to confront the applicability and enforceability of the Fugitive Slave Act in their situation. Butler seems to have had a complicated view of slavery. A northern Democrat before the war, some paint him as an abolitionist, and others reveal he very much feared that free slaves might, if armed, rise up in rebellion and strike out mercilessly against slave owners and their families.133

Nevertheless, as any self-respecting lawyer should do when faced with whether to apply a law to a particular situation, he consulted the text of the Fugitive Slave Act. For Butler, a plain reading of the law seemed to require that a slave owner residing in a slave state could petition federal authorities for return of an escaped slave. But Butler read the law literally, and took into account the position of the slave states, those in open rebellion like Virginia, from which these slaves had escaped. That position held that Virginia, since it had claimed that it seceded from the Union, was no longer a state. And if it was no longer a state, a slave owner from Virginia could no longer claim rights under the Fugitive Slave Act.134

Moreover, Butler took into account the role the slaves had played in supporting the enemy troops across the river. They had been dragooned into helping to build fortifications opposing the Union position and thus had supported the Confederate war effort. Logically, if Butler had come across a cache of Confederate gunpowder or cannon, it would be preposterous to expect that he would return such contraband of war to the rebel forces. Butler claimed the slaves were no different; they, too, were contraband and he would not return them to the southern side.135 Again, Butler used his enemy’s own logic against it, arguing that slaves were property, and used to aid in the enemy war effort. As such, he determined he should not return them. Indeed, a Confederate officer appeared under flag of truce, someone Butler knew from his days as a politician and who was acting as an emissary of the Confederate Colonel who claimed ownership of the slaves, and sought to reclaim the slaves and enforce the Fugitive Slave Act, Butler refused.136 According to Butler’s autobiography, he told the adversary the following: “‘I mean to take Virginia at her word, as declared in the ordinance of secession passed yesterday. I am under no constitutional obligations to a foreign country, which Virginia now claims to be.’”137 Butler’s position would anger abolitionists, like Frederick Douglass, who proclaimed that these escaped slaves were not to be considered contraband, as if they were pistols,138 nevertheless, Butler’s clever use of the Southern arguments to undermine their position seemed to offer a basis upon which Butler could conclude he was under no obligation to return the escaped slaves. What it would also do would solve a problem that President Lincoln faced: how to hold his coalition together, i.e., his collection of factions that included those who wanted to abolish slavery and those who wanted to save the Union. The value of this decision for assuaging the different factions within Lincoln’s coalition was not lost on an editorial published in the Atlantic Monthly at the time:

There is often great virtue in such technical phrases in shaping public opinion. They commend practical action to a class of minds little developed in the direction of the sentiments, which would be repelled by formulas of a broader and nobler import. The venerable gentleman, who wears gold spectacles and reads a conservative daily, prefers confiscation to emancipation. He is reluctant to have slaves declared freemen, but has no objection to their being declared contrabands. His whole nature rises in insurrection when Beecher preaches in a sermon that a thing out to be done because it is a duty, but he yields gracefully when Butler issues an order commanding it to be done because it is a military necessity.139

Nevertheless, Butler’s position put the other lawyer I will highlight in this example, Abraham Lincoln, in another uncomfortable spot, as Frémont had months earlier. As said, Lincoln had a fragile coalition of unionists who were supporting the war effort to preserve the republic, and abolitionists who believed it was a crusade to end slavery.140 Lincoln needed some way to tie this coalition together and he would consider the question whether bringing escaped slaves and free blacks into the war effort by arming them and forming black regiments to fight on the Union side.141 He knew he was depleting his stock of eligible fighting men in the North and saw the opportunity that presented itself of recruiting thousands of blacks to join the war effort. But he knew also that he would have to take steps toward freeing the slaves, at least escaped slaves and those liberated from southern territories, in order to offer these potential recruits, and the abolitionists who supported such an effort, cause to support black enlistment.142 His policies toward slavery over the years had evolved. At times he would support colonization for freed slaves, and, at others, compensation for slave owners who would be forced to give up their slaves.143 Lincoln would ultimately settle on the notion that in order to keep his coalition together, he would need to both support the enlistment of black troops while giving them and their supporters reason to enlist. This would satisfy the unionists who would recognize the need to recruit black troops to support the war effort and the desire of the abolitionists to end slavery, at least in the South.144 This two-pronged approach would culminate in the drafting of Lincoln’s Emancipation Proclamation, which would free slaves in occupied territories and those who escaped to Union lines (a recognition, in a way, of the predicament in which Butler found himself and a nod to his on-the-fly solution). But Lincoln still faced another hurdle before he could release the Proclamation.

The Union war effort had stalled. General McLellan’s campaign to strike decisively at the heart of the Confederacy had ground to a frustrating halt on the Virginia peninsula.145 Grant had not yet emerged as the brilliant and dogged tactician he would prove to be in subsequent years and his campaign in the Mississippi was not going well.146 The major foreign powers of Great Britain and France watched developments in the war with great interest, poised to recognize the Confederacy, if not aid it outright, if it appeared that the South might be able to secure some kind of brokered peace and remain intact.147 Were Lincoln to release the Emancipation Proclamation at a point the Union war effort was going poorly, he might seem weak, and its issuance a desperate, last-ditch effort to alter the course of the war. Lincoln needed a victory on the battlefield to give him an opening in which he could issue the proclamation, and he would get one when Robert E. Lee would test the Union resolve in a march on Maryland, a slave state that, the Southern general felt, might welcome Confederate troops as heroes as opposed to invaders. Such a move would also likely have the effect of drawing McLellan’s troops away from their likely march on Richmond, should the “Little Napoleon,” as he was called, ever exhibit any of the French emperor’s aggressiveness on the battlefield (he would not). McLellan’s forces would clash with Lee’s near the tiny town of Antietam in Maryland, which would ultimately lend its name to the bloody melee that would ensue there.148 While historians often consider the battle a stalemate, Lee’s retreat from the field, after both sides suffered heavy losses, gave Lincoln the opportunity he needed to claim victory and issue the Emancipation Proclamation at one of the few high points of the war for the North, at least to that point.149 What this edict would do would help unite Lincoln’s fragile coalition around the cause of ending slavery because it was through the effort to end slavery, in Lincoln’s eyes, that would ultimately bring about the preservation of the Union.

Lincoln’s chosen tactics in promoting abolition, at least in the Confederate states, was consistent with a prior statement on the interplay between abolition and maintaining the integrity of the nation. In a letter to abolitionist publisher Horace Greeley, Lincoln emphasized that his primary goal was to save the Union. To do so, he believed he needed to end slavery. Thus, his war aims, and those of the abolitionists who sought to end slavery, would converge.

My paramount object in this struggle is to save the Union, and not either to save or destroy slavery.

If I could save the Union without freeing any slave, I would do it; if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that.

What I do about slavery and the coloured race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help to save the Union.150

Lincoln’s issuance of the Emancipation Proclamation was consistent with this approach. It satisfied the abolitionists, for sure, but also tied the unionists to the abolitionist cause by linking emancipation directly to the war effort. As one excerpt of the proclamation reads:

And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.151

Lincoln, the tactician, proved adept, and creative, at using a legal strategy—here, the Emancipation Proclamation—and timing it in light of a major development in the war (the battle of Antietam), to help achieve what would appear to have been his ultimate social change goal: preservation of the Union.

Of course, the cause of civil rights would not end with the victory of Union forces, or even passage of the Reconstruction Amendments to the Constitution. The next example to highlight is the effort to end Jim Crow segregation, which followed the collapse of the effort at reforming the South in the wake of Reconstruction. 152

B. Lawyers and the End of Jim Crow

Unlike most discussions of this legal campaign, hatched in the offices of the NAACP Legal Defense Fund (LDF) and those of other legal allies, I will not start with a discussion of the landmark case of Brown v. Board of Education, in which the Supreme Court ruled unanimously that segregation in educational institutions violated the Equal Protection Clause of the 5th and 14th Amendments to the Constitution, which would spell the beginning of the end of the institutional edifice of Jim Crow.153 The paradigm of social change litigation through which the lawyers would take direct legal aim at segregation in a broad-based challenge to the practice, would have its predecessors in more modest, incremental, and narrowly crafted challenges to other institutions in an effort to build the legal case that might serve as a base that could help launch the broader attack with success.154

Hemann Sweatt was a postman in Texas who wanted to go to law school in the late 1940s.155 The problem was, there were no law schools in the state of Texas that admitted African Americans. Sweatt would submit his application to the University of Texas School of Law, asserting that, since the state university system did not have a separate law school for African Americans, the law school that system did operate had to admit him.156 The state hastily put together what it would try to call a law school, but that entity would have no full-time faculty (it would “borrow” faculty from the main law school), no law books, no alumni base, and was unaccredited.157 The LDF would challenge the university’s solution to the Sweatt application, arguing that, yes, segregation was unconstitutional. The lawyers also had a fallback position, however. They would argue that, taking the holding in Plessy seriously, the university system was obligated, if it was planning on offering separate institutions, those institutions also had to be equal.

By any objective measure, the law school for African Americans was in no way equal to that offered to white students in the University of Texas system. The unaccredited school for African Americans with no faculty and essentially no students and no books could not measure up to the University of Texas’s school of law, which had 850 students, a vast alumni network, 65,000 books in its library, and was fully accredited.158 Even when the case had gone to trial and the law school for African Americans had 23 students, five full-time faculty, and 10,000 books, it still could not compare in quality or degree to the opportunities afforded the students enrolled in the all-white institution.159 Even putting aside these objective measures, the LDF lawyers also argued that a law school is so much more than the books in its library or the physical accommodations. A law school is a platform for knowledge exchange and a network that creates mentorships and job opportunities for its students. It connects those students to the bench and the broader practicing bar. A good law school is more than just the sum of its parts and develops value to its students because of the relationship of those parts to each other and to the broader community. A law school with fewer faculty, no alumni network, and weak ties to the broader community could not possibly afford its students the same opportunities that the University of Texas’s law school for whites offered its students.160

While the lawyers knew all these things about the qualities that make a great law school, they knew something else as well. They intuited that the judges would also know this about a law school.161 The judges before whom such a case would come would all have gone to law school, would all know the ineffable qualities of a good law school, and they could compare the extent to which two law schools were comparable along these difficult-tomeasure metrics. While the LDF had tried to bring other, somewhat successful lawsuits challenging segregation in other graduate and professional schools, it was the action filed against segregation in a separate and unequal law school where they would gain the greatest legal traction.162 While they would certainly include a direct challenge to segregation itself, and they enlisted the support of an anthropologist (who was also a lawyer) to make the claim that segregation was itself stigmatizing (foreshadowing the arguments they would make in Brown), they would also rely on a secondary position that, even if one recognized that separate but equal was still the law of the land, and Plessy was good law, if one took Plessy seriously, the separate and clearly unequal institution set up as the law school for African Americans in the University of Texas law school would not pass muster.163 Moreover, by challenging the way in which segregation operated in an institution judges would understand well, the LDF lawyers made a brilliant tactical decision to appeal to the judge’s own appreciation for the special qualities upon which one can compare separate institutions, more so, perhaps than they might understand other institutions that the LDF might target. Ultimately, the Supreme Court would conclude, unanimously, in the Sweatt v. Painter decision, not that segregation was unconstitutional on its face, but, rather, that the operation of a separate—and clearly unequal—law school for African Americans could not pass constitutional muster.

One of these reasons—apart from the objective criteria—that the Court reached this conclusion was that it was “more important” that the law school for whites “possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school.”164 These qualities included, but were not limited to the following: the “reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.”165 While the Court could easily differentiate the two schools along objective criteria, concluding that “[i]t is difficult to believe that one who had a free choice between these law schools would consider the question close.”166 Moreover, “[f]ew students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.”167 The school for African Americans “excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar.”168 For these reasons, the Court could not conclude “that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.”169

In many ways, this incremental challenge to segregation would ultimately set the stage for the lawyers’ work that followed in bringing the broader challenges to segregation in primary and secondary educational institutions in several jurisdictions across the country, which would culminate in the victory in Brown. In those challenges, the LDF lawyers would bring in experts from other disciplines, like sociology, to establish that segregation had a stigmatizing effect.170 They would build on the arguments made in Sweatt that separate was inherently unequal, and, once again, the Supreme Court would rule unanimously in their favor, this time concluding that separate but equal would no longer stand.

C. Lawyers and Marriage Equality

The final example to use here is the work of the lawyers who helped to lead the successful campaign for recognition of marriage equality for the LGBTQ community. That campaign, which was really many campaigns, the first of which was launched in the early 1990s in Hawaii, proceeded in fits and starts. There were victories in the courts in Hawaii, Vermont, and Massachusetts, on state constitutional grounds, but at least some of those victories were undermined by legislative action, or the work of advocacy groups that organized ballot initiatives to overrule those courts by adopting constitutional amendments that barred recognition of same-sex marriage.171 In addition, fear that states would be expected to recognize same-sex marriages in states where they were legal prompted Congress to take legislative action and pass the Defense of Marriage Act (DOMA),172 which would attempt to offer states protection from such a requirement and ensure that the federal government would not be expected to recognize marriage rights for same-sex couples with respect to a range of federal benefits that accrued to married heterosexuals. Moreover, the forces aligned against marriage equality gained enough momentum that they would seek to introduce anti-same-sex marriage ballot initiatives in many states, mostly timed to generate conservative voter turnout for the 2004 presidential election year.173 Most of these ballot initiatives would succeed.174 When conservative groups sought to promote a ballot initiative in California, a deeply liberal state, many thought they had gone too far, and that the voters of the state would reject it.175

On election night 2008, when the nation was electing its first AfricanAmerican president, and voters in California voted overwhelmingly in his favor, they would also pass so-called Proposition 8, which banned same-sex marriage in the state.176 This came as a shock to advocates for same-sex marriage across the nation and led them to take stock of their efforts and consider what, if anything, they might do differently in the future to promote same-sex marriage and rebound from this devastating defeat.177

Advocates in the LGBTQ community and their allies conducted a review of their efforts to defeat Proposition 8. They worked with researchers to conduct focus groups and surveys of voters to assess what they had done wrong and how they might change their strategies and tactics. This review produced startling results.178 They learned that the way they had been going about promoting same-sex marriage was all wrong. They had made legalistic arguments, like same-sex couples were denied hospital visiting privileges and other benefits granted heterosexual couples. These types of arguments, they would learn, left many potential allies cold and led them to believe that the advocates were seeking something different from what heterosexual couples achieved through marriage.179 Voters told them they thought the advocates were looking for special treatment for same-sex couples. For the advocates, nothing could be farther from the truth. Indeed, what the advocates wanted was simply equal treatment: i.e., marriage equality. 180 They took this feedback to heart and began to shift their message in subtle yet powerful ways. They would begin to advocate for marriage equality, not same-sex marriage. They would stress that what the LQBTQ community wanted was equal recognition of their relationships and equal access to the institution of marriage, on the same terms as heterosexual couples. This subtle shift would begin to turn the tide.181

In addition to the shift in messaging, as with the desegregation litigation, legal advocates challenging Proposition 8 in the courts would deploy expert witnesses from the disciplines of sociology and psychology to undermine the key arguments of the ballot initiative’s supporters.182

In 2012, just four years after the devastating loss in California, they would win ballot initiatives in Maine, Minnesota, Maryland and Washington State.183 Two years later, they would win a challenge to certain core aspects of DOMA in U.S. v. Windsor. 184 Finally, in 2015, they would win the landmark Obergefell v. Hodges, 185 which would establish that states could not deny members of the LGBTQ community access to marriage. Justice Kennedy, speaking for the majority, would side with those who favored the marriage equality arguments as opposed to the “special treatment” arguments that preceded the loss in the Proposition 8 fight:

[B]y virtue of their exclusion from that institution, same-sex couples are denied the constellation of benefits that the States have linked to marriage. This harm results in more than just material burdens. Same-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives. As the State itself makes marriage all the more precious by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society. Same-sex couples, too, may aspire to the transcendent purposes of marriage and seek fulfillment in its highest meaning.186

The triumph of the marriage equality campaign follows a tradition of creative lawyering for social change that dates back to the Civil War era, and even to the framing of the U.S. Constitution. I have used three examples of lawyers who contributed to successful efforts to bring about social change. Are there common lessons that one can draw from these experiences? The next Part addresses this question.

III. A TAXONOMY OF CREATIVE SOCIAL CHANGE LAWYERING

This review of the role of lawyers in the campaign to end slavery in the United States, defeat Jim Crow, and advance the cause of marriage equality for the LGBTQ community reveals some common themes of such work and the ways in which lawyers working for social change can adopt creative strategies for promoting that change. As the following discussion shows, some of these themes include that the work is often incremental and iterative; it involves what is sometimes referred to as “reframing” – looking at issues in new, and different ways, especially the arguments of one’s opponents; it often borrows from other disciplines; it seeks out opportunities for interest convergence among otherwise disparate groups; and it does not operate in a vacuum in that it is often conscious of corresponding events in society that might have a bearing on the ways in which legal strategies will be perceived and whether they will be supported at a particular point in time. I will discuss each of these characteristics, in turn, below.

A. Incremental, Iterative Advocacy

Probably the main common feature of these three examples of creative lawyering is that each involved incremental and iterative steps. For the end of slavery, while the factions within Lincoln’s fragile coalition may have disagreed about what the North’s goals should be, the smaller steps taken to address the issue of escaped slaves finding themselves among Union troops helped to lay the ground work for what would ultimately become the Emancipation Proclamation, and, at the conclusion of the war, adoption of the 13th Amendment during Reconstruction. Lincoln did not announce an end to slavery at the outset of the war. If he had done so, he might have faced the prospect of the border states that had both remained slave holding but also stayed in the Union deciding to secede, or at least not supporting the war effort. Similarly, conservatives in the North might have aligned themselves behind the war effort for the purpose of preserving the Union, but might not have embraced such an effort if it was perceived as primarily a campaign to end slavery. The incremental steps taken by Union generals like Frémont and, more effectively, the attorney and fortress commander General Butler, helped lay the groundwork for the Emancipation Proclamation, where Lincoln was able to satisfy different elements of his fragile coalition. It was only through this incremental, iterative strategy that showed that doing nothing about slavery would be unacceptable to the abolitionists, but Frémont’s strategy went too far for some. In the end, Butler’s approach seemed to be “just right”, a balancing of interests that tied abolition to the war effort. This type of approach, accomplished through experimentation and iteration, may have helped show Lincoln the way forward, by revealing a strategy that would bind the different fractious elements of his ruling coalition.

Similarly, the LDF’s iterative, incremental approach also helped to lay the groundwork for the campaign that would ultimately succeed, bringing about the victory in Brown v. Board of Education and an end to Jim Crow in education, and which would help light a fire among the activists that helped them bring about changes in public accommodations, housing, and voting through legislative victories, the organizing for which had been prompted by the end of separate but equal. The LDF lawyers in Sweatt and other, similar cases, took on smaller, individual institutions rather than those they would assail in the collection of cases that would lead to Brown, which attacked the broader edifice of Jim Crow. While these lawyers certainly challenged Jim Crow directly, cases like Sweatt afforded the judges before whom the cases were filed an opportunity to slowly chip away at the broader system. By filing this sort of smaller, probing attack against an institution like a law school, an institution the judges would understand, they made it possible to show that a school system would have a hard time offering separate and equal institutions.

Incrementalism also helps advocates develop different types of arguments, field test them, explore how well they are received by a wider audience, and bring back the feedback from such efforts to further hone those arguments in broader contexts. In many ways, this iterative, incremental approach is akin to the concept known as “design thinking,”187 which is sometimes seen as having four, main components: inspiration; synthesis; ideation and experimentation; and implementation.188 The inspiration phase is investigatory. It involves communicating with those who are most affected by a problem or issue to work with them to explore potential solutions.189 Once the inspiration phase is complete (although, in some ways, it is never really complete), the design thinker moves into the ideation and experimentation phase where prototypes are developed and field-tested to assess their effectiveness in terms of addressing the problem at hand.190 The results of this rapid prototyping help to create a feedback loop and the original efforts and tactics are then altered in response to the data received through the successes and failures of those prototypes to create new prototypes and run new experiments.191 After successful prototyping, a finished product or idea can go “mainstream,” although the experimentation, iteration, feedback, and modification is an ongoing process.192 This design-thinking approach is similar to how Linda Morton describes legal creative problem solving. That process, for her, includes identification of the problem, understanding it, posing solutions, choosing solutions, implementing solutions, and engaging in a final analysis of such solutions.193 Similarly, the ABA, in its 1992 report, identifies several technical steps related to problem solving, including identification of the problem, the generation of solutions to the problem, developing and implementing a plan of action, and remaining open to new information and ideas.194

A design-thinking approach to creative problem solving would seem perfectly suited for social change advocacy in the legal context.195 Lawyers can gather the perspectives of their clients to understand the problem they are trying to solve and begin to develop solutions to such problems, can prototype potential solutions based on that fact-finding process, can launch “prototypes” of such solutions into the world to see how they fare and bring feedback from those efforts to craft more robust solutions, and then can take more dramatic steps based on those iterated prototypes and the lessons learned from the prototyping process and the feedback loop it generates. 196

B. Interpretive Creativity

We also see in these examples that the creative lawyers seeking social change engaged in a degree of interpretative creativity, often re-framing the legal issues in new ways or borrowing from their opponents’ arguments and using such arguments against them. Menkel-Meadow calls this notion of reframing finding new “entry points”: a new way of looking at a problem from different perspectives.197 Of course, many lawyers spend much of their time interpreting statutes, regulations, contracts, and behavior in light of all three, but social change lawyers are often in a more difficult position than the traditional lawyer because their paths to interpretative success are narrower. They are trying to change the status quo and alter the legal infrastructure that governs behavior within that status quo. Common interpretations of the scope and contours of that infrastructure gain some interpretive force because of the widely shared and widely accepted understandings of their meaning. Of course, this forces the social change lawyer to be more creative in her interpretive efforts, and can leave her with little choice but to attempt to seize upon her opponents’ arguments, embrace them, and bend them to support the social change lawyer’s position.198

This is often apparent in many efforts by lawyers to advance social change. They may have little support for their own positions so they turn to the positions of their opponents to show the hypocrisy of them, or the fact that they are based on weak legal force themselves. This is often an important asset for the social change advocate fighting long odds. Malcolm Gladwell, in his work, David and Goliath: Underdogs, Misfits, and the Art of Battling Giants, points out that our perception of power asymmetries are often wrong. The very qualities that may appear to give strength to a dominant individual or entity are often a source of “great weakness.”199 The Biblical Goliath was weighted down by his bulk and heavy armor.200 Turkish fortifications were easily overrun by Lawrence of Arabia’s nimble Bedouin cavalry.201 For the social change lawyer, when the arguments of her [their] adversary, that may have enjoyed support from what may be seen as common sense arguments, are held up to rigorous analysis, they often collapse under their own weight.

In the decades leading up to the decision in Obergefell, advocates for the rights of the LGBTQ community won victories in the Supreme Court showing that a state constitutional amendment in Colorado stripping local communities of the ability to pass pro-LQBTQ rights ordinances, and laws against sodomy, were based on little more than the moral preferences of legislators that could not withstand careful scrutiny.202 Similarly, in the state courts of New York, a legal definition of family that appeared based on little more than “traditional” notions, with no basis in law, failed to recognize the many ways in which families form and their members recognize themselves as such.203 The arguments supporting the opponents’ position may have been, at one time, consistent with the common sensibilities of some portion of the population and may have, at one time, seemed inevitable and subject to little criticism. When analyzed for their source and their logic, however, these arguments proved insufficient to support discriminatory treatment through the force of law.

At the same time, if the force of the common sense support for the opponent’s position is too strong to overcome through a direct attack, the social change lawyer often uses her opponents’ own arguments against them. We saw this in Butler’s controversial cooption of Southern arguments about property and secession in order to justify his refusal to enforce the Fugitive Slave Act. Similarly, although the LDF would challenge segregation directly in Sweatt, they also tried another line of argument: that, even accepting separate but equal as the law of the land, the separate law school for African Americans was not, in fact, equal by any measure. Thus, forcing their opponents to defend their own position, it became untenable on the facts.

Artist Pablo Picasso is sometimes quoted as having said that “good artists copy, great artists steal.”204 Perhaps the best, most creative social change lawyers also steal—they just steal from their opponents.

C. Interdisciplinary Approaches

Another common feature of the social change efforts highlight here is that lawyers in at least two of the three examples, the LDF lawyers and the marriage equality advocates, explicitly incorporated interdisciplinary approaches in their advocacy.205 Thurgood Marshall would bring together sociologist, historians, political scientists, educators and anthropologists when planning the anti-segregation strategy.206 The Sweatt trial, like those that would lead to the Supreme Court’s decision in Brown that would follow, included expert testimony from another discipline. In fact, anthropologist Robert Redfield, chairman of the Department of Anthropology at the University of Chicago, himself embodied interdisciplinarity: he held a doctorate in Anthropology as well as a law degree.207 Redfield would testify about the lack of differences in the educational capacity of African Americans as compared to whites as well as the dangers of segregation in education, particularly as they related to the price that society pays for the distrust segregation creates among the population. 208 In Brown, Thurgood Marshall and the legal team would utilize the research and testimony of psychiatrist Frederic Wertham and sociologist Kenneth B. Clark to show the harmful effects of segregation on African-American children.209

In the marriage equality litigation, expert witnesses were used in trial courts to show the complete lack of evidence to support the opponents’ positions that marriage could not be open to same-sex couples because, the opponents argued, children did not fare well when reared in families headed by parents of the same sex.210 In addition, in the wake of the failure to defeat Proposition 8, advocates enlisted the support of researchers in surveying and conducting focus groups to understand the failure of the campaign’s messaging strategies.211

In many ways, the social change lawyer’s use of interdisciplinary strategies builds on the iterative and interpretative approaches described above in that it helps to reframe arguments and tests other theories against perceived wisdom and common understandings of the law and society that may need to change in order to bring about wider social change. Such interdisciplinary approaches are not new, as Louis Brandeis, then a practicing lawyer in the early 20th century, utilized social science to support his legal claims.212 By incorporating disciplines other than law, social change advocates widen their own lens when they view a problem and start to begin to see legal issues in a different light, which then helps them frame their arguments and present new theories and new ways of looking at the world to judges, juries, policymakers, legislators and the general public. In turn, these theories, informed by interdisciplinary views, might find an audience more receptive to these arguments because they help that audience see the law in different ways, undermining traditional understandings and interpretations of the law and social relations. Those new understandings and interpretations can lead to the social change the lawyer and those she serves may seek to bring about.

D. Interest Convergence

The lawyers for the Civil Rights Movement and President Lincoln knew not only that they could build a coalition to achieve their social change goals, but that they had to do so, and they both crafted these coalitions around the interests different members and groups shared. This convergence of interest helped to build and sustain critical coalitions necessary to support and advance the social change movement leaders and their lawyers wanted to bring about. The late Derrick Bell first identified the notion that interest convergence could justify changes to our collective understanding of constitutional law. Bell first articulated his Interest-Convergence Theory in response to Herbert Wechsler’s argument critiquing the Court’s decision in Brown. Weschler argued that Brown was not supportable by what he called “neutral principles”: when a court “reach[es] judgment on analysis and reasons quite transcending the immediate result that is achieved.”213 Wechsler argued that promoting the freedom of association of blacks could not undermine the freedom of association of whites.214

Countering Weschler, Bell asserted that the shared interests between the black community and a large proportion of the white community justified the decision in Brown. 215 For Bell, the interests of blacks (and others) in seeking an end to segregation aligned with national white elites who were concerned with the U.S. standing in the world, particularly as it sought to maintain its influence in post-colonial nations where the Soviet Union was using the Jim Crow system as a wedge between the U.S. and potential allies.216 Mary Dudziak’s archival research lends ample support for Bell’s explanation of the forces that aligned to bring about the unanimous decision in Brown. 217

Bell utilized Interest-Convergence Theory in order to explain and justify the Court’s decision in Brown. Some have taken this theory a step farther, as a way to not just understand but also to promote social change generally: when one wants to advance social change, one should look for an alignment of interests among different factions and communities and seek out ways to build coalitions around such interests. 218 The theory itself is not above critique, however, and it is argued that it is flawed in that it appears to discount the agency of advocates in spurring social change, suggesting that one needs to wait for interests to converge to bring about social change.219 But lawyers who seek to support efforts to bring about social change can turn to Interest-Convergence Theory as an organizing principle and guide, and work with clients and partners to be the agents of that change.

While Bell identified the convergence of interests at the center of the Civil Rights Movement’s advocacy, this idea appears in the two other examples described above. First, Lincoln tied an end to slavery to preserving the union. In order to hold his coalition together, he knew he needed to address the slavery question and seek to bring about its end. He could only go so far with his Emancipation Proclamation, however, and slavery was not abolished in the border states that both maintained slaveholding yet remained loyal to the union. For those who saw victory on the battle field as essential to preserving the union, freeing the slaves in confederate states and territories occupied by Union forces increased the number of eligible males available to serve as troops in the Union army. The North’s martial strategy, particularly in the latter years of the conflict, was to field much larger armies, attack Southern forces at as many points as possible to test their capacity, and to strike at critical transportation and supply hubs.220 Each aspect of this strategy needed as many troops as possible, and Lincoln knew that he could increase recruitment by making former slaves available to join the army in order to carry out these strategic goals. The Emancipation Proclamation would ultimately satisfy his coalition’s goals by tying the abolition of slavery to the goal of preserving the union.

For the marriage equality advocates, within the LGBTQ movement generally there was not always support for the effort to promote same-sex marriage rights. As Nathaniel Frank recounts in his work Awakening: How Gays and Lesbians Brought Marriage Equality to America, 221 members of the more radical elements of the LGBTQ movement did not support the effort to recognize same-sex marriages initially, but different strains of the movement would ultimately coalesce around the idea of marriage equality as a way to accomplish broader protections for the community, gain respect, counter discrimination, and attain cultural acceptance of LQBTQ members and relationships. 222 This sort of interest convergence also occurred outside the movement itself as well. After President Obama signaled his support for marriage equality, the NAACP announced its own support for the effort, which represented a shift for the African-American community after the results of the Proposition 8 vote in California showed communities of color narrowly supporting the ban.223 For the NAACP, they identified a robust interpretation of the Equal Protection Clause of the Constitution, which is what the marriage equality advocates sought, as consistent with their own interests and their own views on the applicable constitutional protections.224 In each of these situations, Bell’s Interest-Convergence approach seems to represent an aspect of the lawyers’ strategy: keep fragile coalitions together, and bring new groups into the coalition, through the thoughtful curation of shared interests.

E. Interdependence

Similarly, the legal advocates in each of these situations did not advocate in a vacuum and were always conscious of events and trends in the culture and society generally. Lincoln waited for a victory on the battle field before he released the Emancipation Proclamation. A deeply religious man, he is sometimes described as waiting for a victory because he sought a spiritual sign that his cause was just.225 He and his cabinet advisors were also keenly aware that release of the proclamation when the North was losing the war would be seen as an act of desperation.226 Lincoln’s willingness to create a new legal approach to slaves that had escaped lands controlled by Confederate forces was in some ways beholden to the larger forces at play as he considered the proclamation’s release. Moreover, Lincoln would strike a delicate balance in the manner and timing of the issuance of the proclamation, particularly as it related to both enhancing the northern forces’ capacity to recruit more able-bodied soldiers as well as preserving the slaveholding status of loyal border states.

With the lawyers supporting the Civil Rights Movement, they were keenly aware of the predicament in which national leaders found themselves on the geopolitical stage. They exploited the fact that the standing of the U.S. with developing nations while the country was engaged in competition with Soviet Bloc countries for global influence.227 Throughout the course of the Civil Rights Movement’s struggle in the courts and as the movement went from the courts to the streets and the halls of Congress in the 1960s, the national security and foreign policy components of the civil rights strategy played a role in the movement’s advocacy to bring about legislative changes to private accommodations, housing, and voting rights. This aspect of the strategy was not lost on national leaders. In a conversation with Dr. Martin Luther King, Jr., President Lyndon Johnson praised his legislative efforts in promoting civil rights, referencing the Civil Rights Act of 1964, as follows: “I think the greatest achievement in foreign policy [of the Johnson administration]…was the passage of the 1964 Civil Rights Act.” 228

Progressive advocates have also shifted their focus away from the federal courts in many instances as a reaction to the ways in which the federal judiciary has become more conservative since the Reagan Administration began to use the judicial appointment power to select more overtly partisan judges, something that continued through the presidency of George W. Bush, and has proceeded apace during the Trump Administration. As a part of this campaign, at least originally, Reagan Administration officials sought to curtail the type of social change litigation, like Brown, that came to be known as public law litigation.229 This effort was designed to protect not just federal actors from judicial oversight, but also state and local government allies of the Administration, from judicial intervention in their practices.230 In what Derrick Bell might call an interest convergence, pro-business forces also advocated for relief from litigation.231 Finally, members of the judiciary, for political reasons or out of a desire to control their own dockets, sought mechanisms for reining in many different types of litigation, including public law/social change litigation.232 Indeed, in decisions such as Bell Atlantic v. Twombly233 and Ashcroft v. Iqbal, 234 the Supreme Court altered the rules of pleading to require litigants to set forth their claims and defenses with such specificity that they might render such claims “plausible” in the eyes of the judge. 235 Second, courts have made the dispositive remedy of summary judgment more readily available by interpreting Rule 56 of the Rules more favorably for moving parties so that they might avoid trial on the merits. 236 Third, courts have interpreted fee-shifting statutes more narrowly than in the past, making contingency fee cases less attractive to the private bar. 237 Fourth, courts have taken a more expansive view of government immunity for both state and local officials.238 In addition, courts have raised the standard for certifying expert witnesses,239 made class actions more difficult to commence and sustain,240 recognized the enforceability of arbitration clauses, 241 and refused to engage in oversight of institutions that are the subject of reform litigation.242 Owen Fiss has described these and other trend away from public law litigation as a “counterrevolution” in the courts. 243 As a result, in many instances, progressive lawyers have had to explore tactics for promoting progressive social change objectives other than through the filing of highprofile impact litigation in the federal courts.

In many ways, the fact that the federal courts have become more hostile to public law litigation in general, and, by extension, social change litigation in particular, has led to the type of pluralistic approaches that many social change lawyers are adopting, seeking out new avenues for redress and advocacy apart from looking solely to the federal courts as the venue for and the target of advocacy.244 While litigation is often a common tactic used by progressive lawyers, many have turned to state courts as the forum in which to litigate claims based on state constitutions and state law.245 But litigation alone is not the only tactic utilized by lawyers working for social change. They are also engaged in legislative advocacy,246 policy change,247 community development efforts through the provision of transactional legal services,248 and lending support to grassroots organizing.249

Since the Brown litigation preceded this conservative backlash in the courts, and, some would argue, was the reason for it,250 we must turn to the tactics of the marriage equality movement to assess whether this turning away from federal courts is a part of that pluralistic tactical approach, embedded in a realpolitik that recognizes these wider trends in society in general and their ramifications on the federal judiciary. As we saw with Lincoln with Antietam and the civil rights advocates and their recognition of the role that foreign policy interests could play in applying pressure on the federal government to support their cause, the marriage equality advocates waited until the point where the wider aims could be served by litigating in federal court despite the obstacles described above, choosing to litigate in state courts, under state constitutional provisions, until the opportunity presented itself to bring the broader challenge to prohibitions on same-sex marriage under the U.S. Constitution. At the same time, the landmark cases of the LQBTG rights advocacy—Romer v. Evans, 251 Lawrence v. Texas, 252 U.S. v. Windsor, 253 and Obergefell v. Hodges254—were all filed in federal court and made their way to the U.S. Supreme Court. For each of these cases, a federal constitutional issue was at the heart of the litigation, and, even if the case had begun in state court, the Supreme Court would have been the ultimate arbiter of the claims. The litigants may have had a choice of where they might file the case, there was no doubt where the cases would ultimately end up. At the same time, with the painstaking, incremental work of the marriage equality advocacy, that work, seeking out strategic victories where they could find them in order to create a critical mass of victories at the state level, was, for the most part, carried out in state courts. From Hawaii to Massachusetts and Vermont, the marriage equality advocates, fearing resistance at the Supreme Court and the fact that the federal judiciary might not be ready to rule in their favor, filed lawsuits based mostly on state constitutional grounds. Thus, these advocates were not insensitive to the trends in the courts and wider society, and crafted strategies that were mindful of those trends when they decided the legal steps to advance the cause of marriage equality.255

The legal advocacy directed at social change described here seems to indicate that these highlighted efforts shared several common themes. These efforts were often incremental in nature. They required creativity in terms of the ways in which the advocates viewed the law. They often involved interdisciplinary approaches. The advocates sought out opportunities to build coalitions through finding common ground—referred to here as interest convergence—with likely and unlikely partners. And they viewed their work in the context of what was happening in the world outside of their advocacy, assessing their work in light of the broader social context and making tactical decisions based on that context. In the previous Part, I identified the challenges that lawyers working for social change and the extent to which those challenges require creativity. In the next and concluding Part, I will attempt to assess the extent to which these components of the three efforts to bring about social change I have highlighted here might offer ways for social change lawyers to overcome these challenges, through creativity.

IV. CREATIVITY AND THE SOCIAL CHANGE LAWYER

In Part II, I set forth some of the challenges lawyers must face when they try to bring about social change. We hope that such lawyers seek to make the lives of their clients—however they identify their clients—better, through efforts to create lasting social change that is meaningful to those clients. Such change work is challenging, however, precisely because it involves change: change to power relations, change to the status quo, change in the policies that impact clients. Those challenges include that, first, they must alter the existing laws and policies; they cannot simply work within existing legal frameworks, using tried-and-true, formulaic, and time-tested solutions to straightforward problems. Second, they must involve their clients and the communities they serve in the critical strategic decisions the lawyers make as they chart a course for the advocacy out of fear that the legal strategy and the process by which it is developed may further marginalize the clients. There is always a risk that lawyer-centric strategies may weaken and distract from community efforts to achieve self-determination and a more democratic society. Relying on elites like members of the legal profession to engage in social engineering that is not grounded in the lives and lived experience of the clients those lawyers ostensibly serve might actually perpetuate misunderstanding and marginalization, offering those communities victories they have not sought and changes that are not necessarily beneficial to them, further solidifying their outsider status. Lawyers for social change must also strive to avoid a backlash against their clients and the communities they represent, ensuring the ultimate goals of the representation are not undermined by short-term victories. Third, they must navigate between client demand and donor intent, finding ways to fit their work within the constraints of existing funding sources, or find ways to locate new financial support for work not supported by existing funding streams. Fourth, social change lawyers must balance the need to meet ongoing and direct needs of individual clients against the longer-term, law reform efforts that build the political power that is likely to bring about a re-ordering of social relations that are more just. Fifth, and related to the fourth challenge, social change lawyers must pursue complex goals and must do so on behalf of clients that are not always easily identified. Sixth, the social change lawyer might have to choose among a wider array of tactics than the traditional lawyer simply because she may be foreclosed from using tactics commonly utilized in most lawyering work. This limitation on tactics means that the lawyer must look for other means of achieving client goals.

The main point of this Article is that these challenges the lawyer faces when trying to serve her clients in advancing social change create complexities for the lawyer that go beyond those which the traditional lawyer faces when serving her client. Such complexities require creativity to address them and to serve the client with zeal to achieve the social change that will benefit that client. To what extent do the common features of the examples of successful social change lawyering I have provided here help chart a course for the social change lawyer? Do the common characteristics of these examples of social change lawyering offer techniques and tactics for bringing creativity to this work?

While iterative, incremental approaches help advocates hone better ideas, they also advance the cause of social change in a more just and democratic way by incorporating clients in the problem-solving effort. Incremental approaches can help to satisfy them, at least partially, on the way toward bringing about the larger strategic measures that might ultimately lead to the broader social change the lawyer seeks. Of course, some clients might express frustration by the conservative nature of an incremental approach, but incrementalism might turn out to serve the longer-term goals of the client and the client’s community better. Moreover, an incremental, iterative approaches should include clients in the inspiration and experimentation phases by consulting with them as the lawyers and clients together determine the proper course of action. The lawyer should engage those clients in developing the experimental arguments that the lawyer may utilize, helping to “crowdsource” the ideas that the lawyer will promote, likely leading to better ideas, but also investing the clients in the process itself, giving them confidence that the lawyer is taking the client’s problem seriously.256 In addition, the lawyer can balance the need for broader change with addressing the client’s immediate needs through incremental measures that are designed to test ideas that can build toward more wide ranging impacts in a way that helps alleviate the direct and immediate legal needs of the client. In this way, the lawyer can use incrementalism as a way to thread the needle between broader social change and meeting the urgent needs of the client while she is waiting for that broader change to transpire. The “test case” model is a perfect example of this. A lawyer has a client with facts that serve to exemplify the broader problem other clients and communities face, but the lawyer files a narrow case on that client’s behalf in the hope of testing out her arguments on the courts, hopefully finding ones that will address the client’s immediate needs while also garnering feedback about what arguments might resonate with the courts should a larger, more wide-ranging action follow.257

Incrementalism might also serve as an effective antidote to potential backlash: the reversal of victories or an erosion of rights that might come as opponents are energized by their own losses to harness their own collective energy and will to take action to counteract the strides made by the forces of social change. Taking small steps allows the community to begin to see what social change might look like, experience it, realize that the change is itself not all that different from the status quo, and to come to accept that change a small amount at a time. As more people begin to accept the change, even if at a slow pace, it gives opponents of the change a smaller base of support when they begin to mount their challenge to the change.

Another aspect of the creative social change lawyering described in Part II is that each of the lawyers engaged in the exercise so critical to lawyering generally and social change lawyering in particular: they utilized their interpretive powers to reframe issues, often seizing on the weaknesses of their opponents’ position and exploiting them. For the social change lawyer, her primary role in the context of efforts to bring about such change is to serve as the translator of legal concepts in ways that can support the social change she and her clients seek. What makes this aspect of social change lawyering so creative is that the lawyer often must face received wisdom and the controlling legal narratives of dominant interpretations of the law that help to maintain and preserve the status quo.258 Their dominance often leaves little room for outsider perspectives on the law to convince decision makers of the interpretation that the social change lawyer seeks. This is precisely why social change lawyers often must attempt a reassessment of the legal, sociological, ethical, moral, and factual bases and underpinnings of their opponents’ arguments. When faced with little room to maneuver, and few options to make the affirmative case on their clients’ behalf, the creative lawyer can seek to encourage a reassessment of the support of the opponents’ position. And in order to carry out this reassessment the lawyer deploys to tools of creativity described earlier, particularly reframing.259

But does this type of reframing, and reimagining, help to overcome some of the challenges the social change lawyer must overcome in pursuing such change? One of the main uses of this type of reframing is that it can often reaffirm the dignity of the community on whose behalf the lawyer is advocating. In the marriage equality litigation, reframing the issues helped to promote the interests of the LQBTQ community by undermining the arguments of the marriage equality opponents. In so doing, advocates destroyed the factual justifications for opposing marriage equality and helped to fight the stigma those justifications created. When marriage equality opponents said that heterosexual marriage needed the endorsement of the state in order to ensure procreation, marriage equality advocates argued that there were plenty of heterosexual couples who could not procreate: should the state not recognize their marriages then?260 When opponents argued that children needed heterosexual couples to raise them, marriage equality advocates presented overwhelming support for the proposition that children raised in same-sex households fared the same as those in households headed by heterosexual couples.261 Instead of further marginalizing and oppressing their client communities, the reframing of the issues helped to reaffirm the dignity of their LGBTQ clients and their families. Through creative reframing, the lawyers were able to overcome obstacles to the social change they sought, while also avoiding some of the deeper pitfalls of social change lawyering.

Admittedly, this is not always the case. Indeed, the reframing carried out by Benjamin Butler, when he called escaped slaves contraband, did not sit well with abolitionists who thought Butler was accepting the South’s view of slaves as property too readily, and this reframing undermined the efforts to recognize the humanity and dignity of the slaves themselves, the very individuals Butler was trying to protect and save. There is thus sometimes a risk that accepting the opponents’ position in an effort to undermine it can have the effect of further marginalizing and demeaning the very clients the lawyer seeks to serve. I do not know if anyone ever asked the escaped slave who presented themselves on Fort Monroe in the early days of the war whether they approved of Butler’s tactics. My guess is, they preferred freedom, but that is not to say that every interpretive act carried out by the social change lawyer will always advance the client’s interests, while also reaffirming her basic dignity and humanity.262 Thus, while reframing can offer social change lawyers an opportunity to advance their legal position, the process of identifying those arguments to make, how and when to make them, and to what ends, are issues that should always be addressed in collaboration with the client and the community the lawyer serves. That brings us back to the design thinking/incremental approach described above. To the extent the interpretive strategies deployed by the lawyer are carried out in collaboration with the client, it is likely to yield better results that are reaffirming of the client and effective in the course of the representation.

Similarly, by expanding the tools the lawyer uses to carry out these interpretive functions, the lawyer can create more creative strategies by developing an appreciation for the ways in which the dominant legal interpretation of particular social relations the lawyer is challenging cannot hold up when assessed under the scrutiny of other disciplines. By leaving the realm of law altogether, and seeking out support for one’s position from other disciplines, the social change lawyer is able to overcome the opponents’ dominant position and undermine it by looking at the problem in different ways, from different perspectives.263 These different perspectives help to reveal the weaknesses, inconsistencies, and baselessness of the assumptions that often underpin dominant narratives and interpretations of the law and social relations. By incorporating insights from different disciplines in creative ways, the social change lawyer identifies flaws in the dominant interpretation of the law and the extent to which those flaws often tend to find a basis in unsupportable stereotypical and discriminatory animus. By bringing in perspectives from other disciplines, the lawyer can reveal the narrowness of the thinking that supports the opponents’ position and use those perspectives to advance a richer understanding of the human experience and further the social change goals she seeks.264

One way to further those goals in creative ways is to help the clients and the communities the social change lawyers serves build power. A critical way in which she helps those communities build power is through creative coalition building. Central to creative coalition building is the notion that coalitions often form around shared interests, together with shared ways of viewing the world, which is sometimes referred to in the social science literature as “frame alignment.”265 The ability to identify those shared interests—to find opportunities where interests converge and align—requires creativity, an ability to sense opportunities for collaboration, and to craft a campaign’s message in such a way that it will attract supporters from as wide a section of the populace as possible. Such message crafting requires creativity, and a sense of the needs and interests of different sectors of society. That requires a willingness to seek out, stay attuned to, and listen for opportunities where one’s clients’ interests will align with other individuals and groups who might serve as potential allies and supporters. In many ways, the pursuit of such potential allies requires the tools of creativity as well: an ability to reframe ideas, to see things from different perspectives. In addition, by testing out theories through incremental steps, the social change lawyer can begin to identify potential allies and test out new theories that might bring new allies into the supportive fold. An example of this was the submission of an amicus brief filed on behalf of the U.S. military’s service academies266 in support of the University of Michigan in defense of the use of racial diversity in admissions decisions in Grutter v. Bollinger267 and Gratz v. Bollinger. 268 In these ways, some of the components of the social change lawyering described here can work together to identify and tap into where interests converge.

### Hansen—Limits

#### Limits—

#### a) We control uniqueness, debate’s oversaturated with perspectives—preparing for this inevitably requires filtering out arguments whether we do it consciously or not—only a mandated focus on controversy can effectively narrow this down. There’s no offense—it’s T, not framework—we’re not a universal standard for every debater to meet, we’re a reasonable metric for judging the deliberative value of speech acts—they can critique our interpretation, but they can’t win without a clearly-defined method of assessing the relative worth of proposals under theirs.

Hansen, 17—Danish School of Media and Journalism (Ejvind, “Aporias of courage and the freedom of expression,” Philosophy & Social Criticism, October 2, 2017, dml)

In the following we will pursue the idea that current discussions of the (negative) freedom of expression should be supplemented with discussions of how we achieve making the public spheres more open to courageous truth-tellers. The main argument for going this way is a worry that with the enormous growth in the number of those projecting their expressions into the public spheres, without a similar growth in the span of attention, we may end in a situation in which the public exchanges become as ineffectual as in the pre-Enlightenment times. It is thus necessary that we evaluate the public spheres not only in terms of their permission for an unlimited number of voices, but also in terms of the mechanisms in place that allow attention to be attached to courageous expressions.

The relationship between the number of active participants in public sphere discourses and the span of our attention entails that a certain screening of information and expressions will happen whether we do it actively or not. The traditional idea of the freedom of expression as just the absence of external constraints is thus in a certain sense a naïve approach to achieve diverse public spheres inasmuch as expression does not necessarily translate into discussion or any larger social focus.

The same applies to our suggestion based on both negative and positive notions of freedom. Even though we argue that public spheres that favour courageous truth-telling are democratically preferable to those that do not, to think of our argument as a framework to articulate some clearly defined criteria that must be met by discourse participants misunderstands its nature. Such scenarios, as we know, put the political order on a path that does not evoke pleasant historical memories. On the one hand, our proposal is mainly a suggestion of how to assess the democratic worth of expressions – certainly there are other legitimate reasons to participate in public discussions. Second, even for the evaluation of the democratic value, we will argue that the quest for courageous truth-telling functions as a critical, counterfactual ideal – an ideal that is itself open for public discussions.

This is not to say that a counterfactual ideal is without actual relevance in society. If the suggested account of a positive freedom of expression is credible, it can serve as an implicit reference or standard from which to judge, on the one hand, deliberative discussions of actual expressions in the public spheres and, second, deliberations of the relationship between concrete, prevailing interpretations of the ideal and the actual society.

The main aim with the ideal is thus not to suggest a norm that unequivocally determines whether or not actual expressions are of democratic worth in the public sphere. In order to have practical worth the ideal must, admittedly, be able to serve as a paradigm for the articulation of rules and values against which actual expressions can be evaluated. More importantly, however, the ideal is something that we can, and should, argue about. If a speaker is criticized for not being a courageous truth-teller, she or he [they] can either respond to the critique by showing that the expression is actually courageous according to the existing norms for courage, or can challenge the norms as being inadequate.

This definitely opens the way to a certain amount of unavoidable relativism, since the articulated ideals could otherwise serve repressive interests by preventing expressions of views. The relativism is, however, conditional. In the challenge of existing norms of courage it will still be necessary, in order to be counted as a relevant voice in the democratic public sphere, to substantiate an alternative suggestion as to how the notion of courage should be conceived. In doing this, one will partake in a democracy-enhancing discussion.

We will return to this discussion in section VI in which we argue that on this aspect the deliberative understanding of communication and democratic will formation (as articulated in Cohen, 1989, 1997; Habermas, 1992, 1996; Rawls, 1999[1971]) bears some important insights. Our account of deliberative reasoning is, however, furthermore inspired by poststructuralist accounts in which it is taken seriously that deliberative exchanges to a large extent have to focus on issues that are by their very nature impossible to agree upon – because the crucial social challenges are aporetic in nature and thus any articulated account will be inadequate. This is where ideals of courage come in, courageous truth-telling being the practice of risking our lives in order to attain some higher goal. The ideals of deliberation and courage indeed carry some tensions (aporias), but these tensions should not lead us to reject the ideals – the tension is, as it were, a product of two mutually dependent and opposing ideals. In our case this will be a tension between the quest both for deliberative consensus and courageous challenging. However, in order to understand the structure of such paradoxes, we must turn our attention to Derrida’s notion of aporia.

#### b) Limits outweigh and turn case—rule-bounded debate is the only metric you have to fairly determine the winner, which is a prior concern to anything else you do with the ballot. Voting for disruption for its own sake when they don’t have a broader vision for how to settle disputes achieves nothing more than trolling racists online—articulating a vision for change and defending it against reasoned disagreement from a well-prepared opponent is a prerequisite to using the form of debate effectively, no matter what for.

Hansen, 17—Danish School of Media and Journalism (Ejvind, “Aporias of courage and the freedom of expression,” Philosophy & Social Criticism, October 2, 2017, dml)

We can now return to the field of public exchanges. According to Derrida, courage carries the aporia of death: we are courageous if we risk life in order to be able to live – but a life lost is not worth living. In the field of public exchanges this can be translated into: expressions are courageous if the speaker risks his or her public life – i.e. if he or she brings out views that radically challenge existing horizons of exchange. In doing so the speaker will risk losing his or her public reputation. If this is all that happens, the speaker ‘dies’ (and so does the message – ‘Isaac’) without having achieved his or her goal (a life lost is not worth living). Thus the paradox at the moral limit is that we need radical courage at the same time as courage needs to be moderated by the consideration of survival. It is not enough that we are courageous – we need to be courageous in ways that actually achieve our goals.

In a certain sense this aporia embodies a common experience that communicative exchanges are best if they carry a certain amount of disagreement between the participants (otherwise they cannot challenge each other), but without the disagreements becoming overwhelming (because then exchanges turn into quarrels – elaborated in Hansen, 2009, 2011, 2015b). When we analyse or assess actual public spheres it is thus important not only to focus upon the plurality of voices (because of our limited bandwidth of attention). Plurality needs to be supplemented with quests for radical courage that is moderated. We will return to this in sections VI and VII.

However, Derrida’s point is opposite to Aristotle’s: the mean challenge is not the right solution to the aporia. In some cases we may have to settle on some kind of mean between radicality and moderation; however, at other points compromise-communication may in itself have become part of the established normativity. In such cases courage calls for more radical expressions.

To take an example: discussions of the freedom of expressions are often summarized with the quote attributed to Voltaire: ‘I disapprove of what you say, but I will defend to the death your right to say it’ (actually it was written by Evelyn Beatrice Hall in Tallentyre, 1906: 199 – however, as a summary of Voltaire’s general attitude at a certain moment). Articulated as a statement in France in the 18th century it is fair to consider it as a radical moderation: to allow a public existence of unethical, dangerous or false statements was quite radical at the peak of Enlightenment cultures in which censorship was not all that uncommon. In some situations it probably still is.

At the same time, however, in other situations the quest for tolerance can itself become a public dogma used to de-legitimize or at least reduce voices of critique. Hardt and Negri have argued that power-holders in modern societies increasingly use the ability of cultures to contain critique as a mechanism to fortify the existing power structures (Hardt and Negri, 2000: ch. 2.4; Hardt and Negri, 2009: ch. 2.3). So, even though the saying attributed to Voltaire at first sight makes room for disagreement and critique, in a second step it actually also reduces the relevance of the other: ‘I disagree with you, but I don’t have to respond to your critique, because our culture is strong enough to be able to carry and contain differences.’

Furthermore, it may be argued that certain interpretations of the quest for tolerance, on the other hand, leave room open for recent public developments of ‘post-truth’ and ‘fake news’ (which means the use of expressions with very vague, alternative or even false references to truth claims are used to de-rail public discussions) because they need to be tolerated too. In Hansen (2015a) I thus argue that it is important that public expressions too are evaluated as to their commitment to some shareable account of truth.

To summarize: even though we grant that the Voltaire/Hall statement in a previous historical situation was an important radical challenge (if we cannot reach an agreement, then we must settle on agreeing to disagree) tolerance in historical situations coming after it and influenced by it may become a way to escape challenges put forward in the public sphere by shifting the focus to the issue of tolerance instead of the content of the disagreement. The saying embodies a compromise – but a compromise that should itself continuously be challenged by new radical challenges in order not to lose its public relevance.

VI

Derrida’s voice in the previous section certainly embodies a disruptive impulse in public cultures. In his reading, the aporia of courage calls for continuous challenges of existing structures. He is, however, on the other hand quite aware that this impulse leads to both responsibility and irresponsibility (cf. the quote above), and according to the deconstructive approach no destruction is possible without a construction. Justice is not possible without the laws and norms of right; challenges to existing rules and norms are not courageous in themselves. In the public spheres there are numerous examples of expressions that challenge prevailing norms and rules, trolls that obstruct ongoing communicative expressions without necessarily being courageous. We will in this section seek to explain the moral status of the notion of courage by looking at two ways courage can be said to operate in the public spheres. On the one hand, the mere challenge is not enough to establish the courageousness of the interlocutor. Second, the aims or goals of the acts are constituent of the degree to which a gesture is courageous.

In order to see that the mere challenge is not enough for an act to be courageous we can think of the recent emergence of trolls in Internet communication (Hardaker, 2010; Binns, 2012). Trolls specialize in disruptive and non-constructive interferences in discussions through expressions of outrageous views. Their practices should not, however, be called courageous because they do not actually risk any reputational capital (at least to the extent that the anonymity measures are effective).

Second, however, the notion of courage, as Aristotle noticed, is more than mere challenge and the risking of life – the notion of courage also carries an implication of fighting for something. Aristotle distinguished foolhardiness from courage. For instance, to go to war unarmed against an armed enemy is foolhardy. There are many instances where lack of preparation or foresight, or emotional acting out, vitiate the bravery of the action.

In order for a practice to be courageous there needs to be some kind of goal, and, furthermore, some kind of connection between the goal and the practice. This is admittedly still pretty vague. Insofar as we define courage as a challenging practice in which we risk our lives in order to reasonably further some kind of goal, we have reached a definition with elements (‘risk’, ‘lives’, ‘reasonably’ ‘further’, ‘some kind of goal’) that are very open to differing views.

On the one hand, this is certainly as it has to be. If we are to articulate a positive supplement to the negative definitions of the freedom of expression, it must be very open, because it should be open to the improvisational and disruptive impulses of courage. As soon as we start to define the goals and the ways of reaching them too strictly, these very definitions might themselves become objects of challenge through the aporias of courage.

On the other hand, even though the positive freedom we are seeking to instantiate is open to differing views, this does not mean that we might as well do without it – especially not when we are talking about communicative expressions. It draws on the intuition that life at the outset is the prime value, and if you risk your life you are thus expected to be able to say something about why this sacrifice is necessary. The agent who risks her or his life always has the burden of proof.

Certainly, what is taken to be necessary may vary almost endlessly. That cannot be determined in advance, once and for all. But an agent who risks her or his life without being able to give some account of why, is foolhardy – and the chances that she or he in some sense will be taken seriously is minimal.

With this last move, we are, as premised above, closing in on a deliberative approach (as articulated in Cohen, 1989, 1997; Habermas, 1981, 1992, 1996; Rawls, 1999[1971]), something that may seem surprising given the French inspiration of the previous sections. Knowing Habermas’ hostility towards the anti-rational impulses in these positions (Habermas, 1985) on the one hand, and Derrida’s hesitation on linguistic generality (cf. the previous sections) on the other hand, this calls for some comments.

We are not going to claim that the Habermasian and Derridean approaches could be reconciled. In previous writings we have, however, argued that Habermas’ deliberative approach and the world-disclosing approaches (in this article: Foucault and Derrida) articulate two different (and to some extent opposing) impulses in our social, political and communicative practices: the impulses of systematicity (attempting to bring together seemingly disparate phenomena) and the quest for adequacy (attempting to understand phenomena in their entire diversity) (e.g. in Hansen, 2005a, 2005b, 2013).

As shown above, Derrida’s deconstructive approach can certainly be seen as an attempt to reveal the necessary gaps and aporias embodied in the generalizing aspects in argumentative deliberation. At the same time, however, the findings of his analyses do not lead to a refusal of the generalizing approaches as such:

The undecidable is not merely the oscillation or the tension between two decisions; it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged – it is of obligation that we must speak – to give itself up to the impossible decision, while taking account of law and rules. (Derrida, 1994: 539; emphases added)

Even though Derrida in the above quote is reflecting upon the undecidable and the moment of freedom he still acknowledges that the resulting decision needs to take account of laws and rules. Derrida is very clear that true decisions are not determined by existing rules and laws, but at the same time, however, neither are they entirely independent of rules and laws.

Habermas and Derrida certainly disagree in their analyses of how rules and laws are (should be) established – Derrida focusing on emergence through continuous challenges, Habermas focusing on the deliberative and argumentative trying to overcome mutual disagreements. Habermas’ account has its limits when it comes to articulating reasonable resentments towards existing discursive structures (this is an often raised criticism of Habermas’ approach – see, for example, in Thomassen, 2007), Derrida’s approach is lacking in reflections on the forces or mechanisms that bring back new accounts of the general: how and why do new rules, laws and accounts of courage come about?

Both positions are (if not in their full articulations then at least in their founding intuitions) in fact right. In order for deconstruction not to become merely destructive, we need to understand how reason in communication plays the role of helping agents to reach reasonably towards each other. Otherwise public discussions will tend to dissolve into an infinite ocean of unconnected conversations; any point of view will appear as equally valid; any decision will be prevented by the persistent possibility of raising counter-voices by minority groups. Deliberation is the responsibility of trying to reach common understandings in spite of initial disagreements. This is where Habermas is right. On the other hand, in order for such reasonable accounts not to freeze into dogma, we need (courageous) challenges of the very accounts of reasonability. This is where world-disclosing approaches as suggested by Foucault and Derrida are at their strongest.

However, having seen that every human practice is embedded in aporetic paradoxes, it should not come as a surprise that even reason is aporetically structured: seeking deliberative consensus is a legitimate aim only insofar as the exchanged arguments seek to include courageous challenges (possible disturbances of consensus) of the discursive horizons, just as we have seen that notions of courage make sense only through some deliberative reflections of our means and goals.

VII

The quest for a reasonable account of the necessity of change does not imply that (1) an act without such accounts is by itself illegitimate – sometimes we do things without any reason or clear ideas of what we try to accomplish that turn out to be of value nevertheless. But in public exchanges where we want to affect others, the others should in some way come to understand why change is necessary.

Neither do we want to imply that (2) changes may never come about without agents being able themselves to give an account of why this is necessary. Quite often actions and events are conceived in ways that the initiators did not foresee.

What we are trying to argue here is thus not that the suggested reflections on positive freedom of expression should replace prevailing accounts of negative freedom. It may be argued that a freedom of expression that is only thought through negative accounts of freedom is problematic, but that is quite another argument and it is not implied by the above reflections. The reflections merely suggest that in evaluations of actual public spheres it is inadequate merely to consider the plurality of voices (as suggested in the negatively conceived accounts of the freedom of expression).

This is where we suggest turning our attention towards notions of courage. If our bandwidth of attention is limited, it is important that we in our engagements in the public spheres are not overwhelmed by insignificant utterances that merely affirm existing states of affairs. For public deliberation to become democratically fruitful it is important that we are attentive to courageously challenging statements; challenges that are, certainly, made comprehensible to us by the speakers’ attempts to convince us of the underlying goals and means.

Certainly, if these reflections are to gain any real relevance they will need to be further articulated, and in such articulations it will be necessary to substantiate notions of ‘life’, ‘reasonably’, ‘some kind of goal’, etc. And these substantiations might narrow the plurality of voices heard in the public.

As demonstrated in the previous sections the alternative to doing this is, however, not to make every voice visible in the public spheres. Even though they may exist in the public sphere, it is not certain that the limited bandwidth of attention leaves room for their actually being heard by any critical mass.

Insofar as we consider the public spheres not merely as spheres in which voices should be uttered but also as spheres in which voices should be heard, we need some way to select out those voices from the chorus that are significant in relation to some given context. Unlimited plurality is not an option. The question thus becomes how plurality should be limited. Should plurality be limited according to explicitly articulated rules and norms, rules and norms that can, due to their explicit articulations, themselves become subjects of dispute? Or should plurality be limited according to unconscious power structures, the rules of the strongest?

### Hvidsten—Testing

#### Debatability outweighs—shared understanding of the conceptual horizons of the topic allows us to work out internal contradictions and achieve higher levels of understanding—that’s a prerequisite to the capacity to critique societal norms and institutions in the first place. There’s no offense, it’s T, not framework—we’re agnostic about content because entering in debate means accepting you could be wrong—but the form of debate demands a common criterion for internal coherence that alternative roles for the ballot make impossible.

Hvidsten, 18—PhD Fellow, ‎Department of Political Science, University of Oslo (Andreas, “Arguing with the enemy: A dialectical approach to justifying political liberalism,” Philosophy & Social Criticism, April 10, 2018, dml) [gendered language modifications denoted by brackets]

Deciding between competing understandings of the same issue through reasoning necessitates a good deal of common understanding. This common ground is partly epistemological—an (implicit or explicit) consensus on what counts as good reasons, valid arguments, and so forth—and partly in the form of some overlap in conceptual horizons: the fundamental categories through which the issue is understood.

Philosophers have used different terms for this conceptual horizon, such as “background” (Searle 1995, chap. 6), “paradigm” (Kuhn 2012, chap. 2), “inescapable framework” (Taylor 1989, chap. 2), or “world view” (Weber 2004, 103). Regardless of the particular term one prefers, the main point—now ubiquitous in modern philosophy—is that we human beings inescapably relate to the world, to ourselves, and to others through conceptual lenses of which we might be more or less conscious.

Kuhn, famously, pointed out that even when we seemingly have an external standard of reference, such as when observing physical objects, we still rely on a shared conceptual framework in order to agree on what we are seeing: “a paradigm is prerequisite to perception itself” (Kuhn 2012, 113). Kuhn’s scientific paradigms are but one example of a general phenomenon that extends also to political philosophy and ideology. Before Kuhn, Karl Mannheim, known as the founder of the sociology of knowledge, argued that having different ideologies—being, say, a liberal, a Marxists or a fascist—amounted to comprehending the world very differently, even incompatibly (Mannheim 1997). Ideological divisions, Mannheim argued, reached all the way down to the very meaning of words.

Just as a Aristotelian and a Newtonian physicist would not mean the same thing when speaking of “force”—and a Newtonian and an Einsteinian physicist would not mean the same thing when speaking of “space” and “time”—a liberal and a Marxist would not mean the same thing when speaking of concepts like “liberty.”8 A Lockean liberal for whom “private property is […] the natural expression and realization […] of individual freedom” (Scruton 2017)—and who sees the chief end of political society to protect that property (Locke 2009, 97)—might find it absurd to learn that Marxists envision a society without private property as the final emancipation of man.9

The issue, of course, is that word the “liberty” has different meanings and different relations to other values in different political philosophies and ideologies. It is not the case that liberals believe in liberty and Marxists believe in something else. It was not freedom that Marx sought to abolish but the oppression of the working class, which, according to him, was ideologically justified by “bourgeois” concepts of freedom, such as we find in Locke and in the liberal constitutions in Marx’ own time (see e.g. Marx 1994: 17–20).

Real freedom, Marxists have always argued, is economic freedom, which, for classical Marxism/socialism at least, rests on ownership of the means of production. Consequently, universal emancipation means communism and collective ownership of land, factories, and resources—the exact opposite of the liberal conclusion. Obviously, if a consensus on fundamental political principles is ever to be obtained among liberals and Marxists, a consensus of meaning must be established first. (And foreshadowing a second point: such a consensus would change the ideological positions involved, insofar as the content of an ideology is partly defined by the meaning of its central concepts.)

That people use the same word to mean different things in political discourse obviously makes communication difficult, but I would contend that the fact that everybody claims to be the proper interpreters of the same values such as “freedom” actually carries a good deal of hope. This transforms at least some political value conflicts into conceptual conflicts. And if we can translate (at least some of) our fundamental ideological differences into conceptual issues, then we can potentially handle these difference within the domain of reason.

Dialectical argument

What I have portrayed above would be a case of what Mouffe calls a “conflictual consensus”—”consensus on […] ethico-political values […], dissent about their interpretation” (Mouffe 2005, 121)—which is a form of “agonistic” relation that a democracy is supposed to be able to handle. How, however, should we handle them? If we want to handle such disagreement through reasoning and deliberation, the circumstance that we lack a consensus on meaning is an obvious obstacle. How can we talk to each other if we use words differently? And in what sense can we really be said to have a consensus on, say, the importance of human liberty if we have deeply conflictual interpretations of “human liberty”—especially when these differing interpretations translate into radically different visions for political society?

It seems that focusing less on the expression of values and more on their interpretation—less on the use of words, such as “liberty,” “equality,” and “democracy,” and more on the meanings of those words—could be fruitful. Once we realize that these political values are conceptualized very differently in different ideologies, we can no longer take their meaning as self-evident. This circumstance necessitates self-reflection—“reasoning through cross-examination and the constant repositioning of one’s thought” (Brincat 2014, 590)—which is the driving force of dialectical argument.

Most theoretical positions have internal inconsistencies or contradictions as they are often referred to in dialectical parlance (we will find such contradictions in both liberalism and Islamism in the next section), which often come to light only when confronted with alternative ways of thinking.10 The working out of these contradictions usually has a transformative effect. At the end of a truly dialectical process, neither side rarely find themselves in the exact same theoretical position they had at the beginning. Conversion is, of course, a possibility—so is synthesis. At the very least one can expect more robust versions of the original positions, even perhaps amounting to new positions, insofar as fundamental parts of one’s conceptual apparatus may have been altered in the process.

The possibility of progress in political–philosophical argument

A crucial premise for dialectic reasoning is that reasoning, if done properly, can move subjects not only towards a common understanding, but also—as an integral part of that process—from lower to higher levels of understanding. A higher level of understanding entails a better grasp of issues that could not be properly dealt with within a lower-level paradigm. One example from the natural sciences is how Einsteinian physics—the higher-level position in this example—can account for the discrepancies in the orbit of Mercury that Newtonian physics—the lower-level position—could not account for, by changing the fundamental conceptual apparatus of physics.11

When comparing positions in political philosophy, the situation is more complicated than in the case of physics in (at least) two important ways. First, in the Einstein–Newton example there exists a clear criteria, common to both paradigms, can serve as an “umpire” in Gaus’ terms, namely the purpose and principles of physics itself. Neither Einstein nor Newton, presumably, would dispute that part of the purpose of physics is to account for the movement of planetary bodies, and that any theoretical innovation that allowed for a better account of this movement, without sacrificing (indeed, in Einstein’s case improving) explanatory power in other areas, would constitute an advance.

Second, paradigms in physics are directed towards a physical reality that, in the long run at least, serves as an arbiter that rewards good theories and punishes faulty theories. Political philosophy works rather differently. How to best conceptualize “space” and “time” will have to be worked out through combining reasoning and experimentation, but there is no scientific experiment that can be run to decide on the best conceptualization of “freedom.” When it comes to conceptual disagreements in political philosophy, reason has to carry the burden on its own. Thus, any progressive development in political philosophy will primarily be an internal movement in reason itself. The dialectical expression of this would be that the relation between a higher and a lower level of understanding in political philosophy is such that the higher-level position understands—not some external reality—but the lower-level position better than the lower-level position understands itself (Skjervheim 1996, 274).

That it is possible to gain understanding in political philosophy such that one might conceivably at some point in a larger process of intellectual maturation look back at previous positions one used to hold as inadequate in comparison to the position one now holds, is, I would think, uncontroversial. The first complication, then, seems more urgent to address. Do we have a (or several) dialectical yardstick(s) of progress in political philosophy as we arguably have in physics? Do we have a set of criteria rooted not in a particular political–philosophical position, but in the very purpose of political philosophy itself, that might serve as a common standard for this practice? Perhaps we do.

I began this essay by connecting political philosophy to the idea of political legitimacy. The purpose of political philosophy, I claimed, is to establish the contours of the politically legitimate: what can be justified as just, fair, reasonable, and right when it comes to political institutions and practices. Even if particular ideas about what is just, fair, reasonable, and right are likely to be contested, it is difficult to contest the very ambition of justifying political institutions and practices in the first place. Indeed, I would like to entertain the notion that abandoning this ambition in political philosophy is like abandoning the ambition of explaining physical phenomenon in physics—it would mean, in effect, abandoning the practice itself.

Everyone who argues from and for a political–philosophical position—be it liberalism, Marxism, Islamism, or any other “ism”—has, regardless of any other disagreements they might have, implicitly or explicitly agreed that political institutions and practices should be justified; that these institutions and practices should be backed by argument and not simply by force. Even the most hard-nosed political realists who believe the Hobbesian dictum that “before the names of Just, and Unjust can have place, there must be some coercive Power” (Hobbes 2012, 66) cannot completely escape justification. They too feel the need to argue the supposed futility of political argument and its surrender to power, which then turns into an (implicit) justification of any political order as long as it is powerful enough.

This commitment to justification, then, can form a criterion of internal coherence of a political–philosophical position: does the position accommodate the demands that justification, and therefore political philosophy itself, places upon us? The specification of these demands and the answer to this question will be crucial components of this justificatory strategy in practice.

One way to cash this out is to consider the implicit assumption about human nature involved in the claim that political institutions and practices should not merely exist, but also be justified. This is actually, I would contend, a very specific claim about human liberty. First, it is a claim that institutions and practices are, in some form, under our collective control; that the laws, rules, and norms that govern these institutions and practices are social constructs that can sensibly be critiqued and not immutable natural laws (which, of course, cannot be sensibly critiqued in the same way). Second, it is a claim that that such critique is possible; that the individual human being in some way is ontologically detached from his [their] political (and social) surroundings in such a way that he or she is [they are] capable of taking a critical stance towards those surroundings. In short:

The practice of political philosophy is built a liberal concept of human freedom as a private sphere for reflection of self-definition—which is the basis for, among other things, adopting an autonomous stance on political arrangements. Only against this background understanding of human freedom does the practice of philosophy and the BLD become sensical.

If the above claim is true, then non-liberal political philosophy, that is, political philosophy that does not put the individual’s autonomy at its core, is not only anti-liberal but anti-philosophy. Or to put it another way: non-liberal political philosophy is, in the last instance, incompatible with political philosophy itself. As such, Marx’ admonition to stop philosophizing and start acting—to stop interpreting the world and start changing it—is a perfectly coherent part of his attack on the bourgeois–liberal state. In a liberal state, philosophy, insofar as it is aware of its own conditions of possibility at least, is a conservative force. Abolishing liberalism means abolishing philosophy (or at least curtailing it), as indeed totalitarian states usually do—sometimes, perversely, in the name of “freedom.”

Of course, the liberal concept of freedom could be accepted as a condition for political philosophy and yet devalued in particular political–philosophical positions. Human liberty (in the liberal sense) could be recognized as real, but not worthy of political protection and nourishment. Would this make the particular political–philosophical position theoretically incoherent? Perhaps not, but I would argue that maintaining such a position would make the practice of political philosophizing incoherent, in the sense that it would undermine its own foundation. To politically argue against the conditions of possibility of political argument is to rebel against the project of political philosophy no less than to abandon the quest for explaining physical phenomena is to rebel against the project of physics.

### Manin—Clash

#### Debate is distinct from discussion due to its adversarial nature—we control uniqueness and the internal link is linear, multiple factors predispose us to avoiding clash, so you should seek to guarantee it as much as possible—the mere presence of limits or concessionary ground lapse into confirmation bias at best and mutual ignorance at worst. Centering debate on the instrumental consequences of the 1AC’s proposal solves.

Manin, 17—Professor of Politics, NYU (Bernard, “Political Deliberation & the Adversarial Principle,” Daedalus, Volume 146, Issue 3, Summer 2017, p.39-50, dml)

Let us begin with improving the quality of collective decisions. A long tradition of thought, including, in particular, the reflections of John Stuart Mill and Karl Popper, has highlighted what we can call the epistemic virtues of criticism. Several arguments have shown that to submit an idea to criticism constitutes one of the best means of testing its validity. This holds for practical ideas. A decision is more likely to be of a high quality – whether in factual and technical terms, or in terms of values – if the proposals for action have been submitted to criticism beforehand. Criticism permits the elimination, or at least the reduction, of proposals involving false factual beliefs, logical errors, or objectionable moral choices. We do not need to repeat here the arguments establishing the epistemic merits of criticism. No one today would deny that criticism is one of the best means at our disposal to test the quality, technical and moral, of practical proposals. Nevertheless, the conclusion that we generally draw from these arguments is that it is enough simply to establish the freedom to express criticism to produce its benefits. This is without doubt how Mill reasoned. We find an even more striking expression of this position in the famous free-speech dissent of Supreme Court Justice Oliver Wendell Holmes. Men, he wrote, will eventually realize “that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market.”7 Yet the conclusion that the free exchange of ideas is a sufficient guarantee is not justified. Freedom of speech on its own does not ensure that the right to criticize will be exercised. Furthermore, as we shall see, the fact that criticisms are put forward does not guarantee that they will receive proper consideration. Several mechanisms can prevent the ability to criticize freely from leading to its exercise. I group these together here under the label of conformism. Social psychology has long told us (with elaboration in Rousseau) that people want to be liked. Being esteemed and approved of by others also provides a gratifying image of one's self. It follows that when people perceive that, in a given social environment, others' opinions lean in a certain direction, they tend to bend their own expressions in the same direction to gain the approval of their peers. They avoid expressing dissenting or critical views, reinforcing the mechanism of the “spiral of silence.”8 Even in the context of discussion, we observe the disposition to conform to what is perceived as the norm within the group. This phenomenon is at the heart of what has been named, since the works of psychologist Serge Moscovici, the polarizing effect of group discussions.9 Thus, even if criticism is formally free, a powerful social force works to marginalize, or even to stifle, its expression. Contrary to what liberal theorists often affirm, social or cultural diversity within a group does not suffice to assure a confrontation of opinions critically opposed to one another. Suppose, for example, a deliberating body whose members, while being diverse with regard to social position, education, and beliefs, also share a fear of some danger. Let us imagine, furthermore, that this assembly discusses a measure that would contribute to the reduction of this danger; for example, strengthening the powers of the police. In this context, it is unlikely that collective deliberation will bring forth many arguments against the adoption of this measure, however much social or cultural diversity there may be in the group. Rather, the discussion will produce an accumulation of reasons in favor of increased police power, with various members finding, from within their own particular perspectives, diverse reasons for adopting this course of action that others, differently situated, may not have seen on their own. Yet even if increasing the prerogatives of the police did, in fact, contribute to the realization of the desired end, the measure might also present undesirable effects or features in other ways. Collective deliberation should precisely bring to light these potential negative effects and weigh them in the balance against the benefits of the measure. But in our case, the assembly will systematically underestimate these possible negative features even though members of the assembly have the liberty to oppose the measure and criticize one another. It appears, then, that if one wants to obtain from political deliberation the favorable epistemic effects of criticism, the expression of opposing opinions must be encouraged, not merely permitted. But there is another reason to ensure that the participants in a deliberation are actually confronted with opposing points of view; it concerns the reception of arguments, rather than their production. Studies in social and cognitive psychology show that, confronted with new information or evidence, people have a systematic propensity to see in it a confirmation of their previous beliefs. In a now-classic experiment, psychologists presented the same ensemble of documents and studies concerning the death penalty and its effects to two groups of subjects selected on the basis of their antecedent opinions: one group composed of subjects favorable to the death penalty, the other subjects who are rather hostile to it. After being confronted with these documents, the group that was favorable to the death penalty became more favorable to it, and the group hostile to it became still more hostile.10 This phenomenon is particularly marked when the documents presented to the subjects were ambiguous and called for interpretation. The propensity to find support for one's antecedent beliefs is known as “confirmation bias.”11 Research has also shown that group discussion reinforces the effects of confirmation bias. Groups interpret information with more bias than do individuals; and they privilege information that supports their antecedent beliefs to an even greater degree than do individuals.12 Two mechanisms explain this tendency. First, as noted earlier, group settings accentuate tendencies that predominate among individuals. If privileging information supportive of prior beliefs is already the dominant tendency among individuals, it is not surprising that this tendency should be amplified in group discussion. But a second, and more surprising, mechanism is also at work. It seems that groups tend to discuss principally the information that was already known to all the members before the beginning of the discussion. Within groups, it turns out, discussion turns essentially on shared knowledge. Members of the group are reluctant to discuss those bits of information that are known only to one or a few other members prior to the discussion.13 Shared information appears to have more weight in the eyes of the group members, and has a greater chance of being mentioned during the discussion, and thus remembered later.14 Finally, information supporting the position preferred by the greatest number of group members has a greater likelihood of becoming the object of discussion than information supporting the contrary position.15 Collective discussion thus tends to produce a disproportionate volume of information and arguments in favor of the already-dominant belief in the group. If one wishes to check the effects of confirmation bias – a phenomenon to which groups are particularly vulnerable – one must take proactive measures. One can, for example, call special attention to arguments contrary to prior beliefs by highlighting them (literally) or by making them cognitively more salient. Not only is the free expression of a multiplicity of voices not sufficient to assure the confrontation of opposing views, but the mere expression of contrary arguments is not sufficient for others to understand those arguments or consider them objectively. In the absence of measures that actively induce individuals to pay particular attention to evidence and points of view opposed to their own, collective deliberation will have the greatest likelihood of simply reinforcing antecedent opinions. In a political deliberation, in short, we cannot expect that the gathering of diverse points of view will spontaneously produce a clash of arguments pro and contra, nor that it will bring about a balanced consideration of views. Mill was wrong to assume that, in a society or an assembly composed of diverse members, opposing opinions would already be there, waiting to be set against one another once they were allowed to be uttered. Mill wrote: “The most intolerant of churches, the Roman Catholic Church, even at the canonization of a saint, admits, and listens patiently to, a ‘devil's advocate.'”16 He failed to see that the presence of a devil's advocate was required, not merely admitted. And through the requirement, the Church secured that objections to the canonization of a given person were aired and considered, even if no individual would otherwise have spontaneously offered them.17 The confrontation of opposing opinions also has merit beyond eliciting unshared perspectives. It unifies the field in which opinions are formed and expressed, counteracting the fragmentation of the public sphere. In order to be opposed to an opinion and to contest it, it is necessary that one be cognizant of that opinion and take it into consideration. In a society in which points of view are objectively diverse, the open and explicit clash of opposing ideas is neither the natural state nor the sole possible condition. Another configuration is just as likely: mutual ignorance. The German sociologist Georg Simmel therefore argued that conflict between social groups paradoxically served the cause of social integration: first, by placing the conflicting groups into a relationship with one another and, second, by exerting a pressure for unity among the secondary divisions within each group. We can advance a similar argument in matters of opinion. The clash of opinions unifies the field in which beliefs confront one another, creating a space in which those beliefs are addressed to and respond to one another. This task of mutual addressing is harder when the space of opinions is fragmented into a multitude of islets, homogenous within themselves but formed in conditions of little communication with outsiders. Several factors – some older, some of more recent origin – now trend in the direction of this sort of fragmentation. First, we have long known that people are selective in their choice of contacts and social relations. They tend disproportionately to be in contact with people who share their political opinions.18 Psychologically, many fear the face-to-face expression of political disagreement and want to avoid it as much as possible. More recent factors also work in the direction of fragmentation: the development of cable television and its thematic stations, the spread of the Internet, and finally the movement toward residential and territorial segregation. Although the effects of these transformations are still difficult to estimate, they all present an analogous structure: people are now offered, in multiple ways, greater opportunities for communicating and coming into contact only with other individuals like themselves. Cable television and the rise of opinion-based television stations (a phenomenon currently more pronounced in the United States than in Europe) provide viewers with the possibility of receiving a high proportion of their information only from a channel to which they feel ideologically close. Worse still, cable TV allows individuals with little interest in politics to avoid political news altogether and watch only entertainment programs.19 For its part, the Internet has dramatically increased the number and types of people with whom one can enter into contact. But studies on the usage of the Web suggest that contacts and links are established primarily through personal affinities, and in particular through ideological affinities within the political domain. Progressive blogs and forums link to other progressive sites but not to conservative sites, and vice versa. From these islets and networks of like-minded individuals we can expect the increased effects of reinforcement and polarization, because, in general, interacting with people of similar beliefs pushes one more toward the extreme positions of the views common to the group.20 Finally, the movement toward residential segregation, which has already progressed in the United States and is at work today in Europe, further contributes to the fragmentation of the public space of communication. If it is true that opinions are strongly correlated with sociocultural and ethnic factors, then in a neighborhood whose inhabitants share the same sociocultural or ethnic profile, each person is likely, for the most part, to encounter neighbors who share the same opinions. A selective exposure to similar opinions emerges de facto. Faced with these forces of fragmentation, only intentional collective action can be expected to produce a degree of unification of the public political sphere. This second justification for the deliberate encouragement of adversarial political debates is particularly salient today. True, adversarial debate is by nature reductive. Faced with some political problem, the polity usually has a multitude of possible courses of action, not all of which will be mutually exclusive. Yet the reductive character of the adversarial method is also one of its merits. It simplifies complexity, making the choices easier to grasp. There is no doubt, for example, that the current economic situation in Europe and the United States calls for a range of measures that are more or less intermingled and complementary to one another. To obtain a synoptic view of these measures and their relations and to choose among them would require considerable cognitive effort. There are cognitive advantages to presenting the policy response as a choice between reducing public deficits now and maintaining or increasing these deficits in the short term to prevent further decline until the economy has regained its normal growth rate. As democrats, we cannot discount the value of such cognitive simplicity. Groups of experts may be able to deliberate without using the adversarial method. But if we want ordinary (or even well-informed) citizens to participate ably in collective deliberation, the simplification achieved by the adversary system is an almost indispensable instrument. The fourth principle in support of the adversarial method is the value of treating the minority with respect. No matter how conscientiously citizens deliberate, it is likely that disagreement will remain at the end of the process. Decisions will therefore be taken by the majority. The majority of people will get to live with the decision they desired; a minority of people will have to live under a decision they did not support. To be sure, the decision itself formed the minority: it did not exist per se before the vote. But the manner of conducting the deliberation before the vote entails consequences for the treatment of those who, after the vote, will make up the minority. If the deliberation has been conducted as a debate between opposed positions, with each camp presenting its reasons in favor of its position and criticizing those advanced by the opposition, two consequences follow. After a vote has been taken, the minority must obey the decision, but at least the reasons aiming to justify this decision will have been formulated and made public. The minority might still refuse to listen to these reasons seriously and in good faith, but it was given the chance to consider them. The minority members were therefore treated with the respect owed to autonomous beings. Once children have reached the age of autonomy, parents must justify the orders they give them. When they are not yet autonomous, children must obey orders simply because they are orders. So, too, if the minority members have not had the possibility of hearing the reasons for the decision they must obey against their wishes, they are placed in a situation of having to obey the order simply because it is an order, or simply because it obtained the most votes. I do not mean to imply that the members of the minority will consequently be more disposed to obey the decision. Sometimes justifications exacerbate the opposition. But justifying orders shows greater respect for the autonomy of those receiving them. On the flip side, the reasons for not taking the decision that ultimately triumphed would also have been put forward. These criticisms and objections did not prevail, but they were at least articulated and made public. From the majority's perspective, because it won, it will naturally think that it was right; but in the process, it had to listen to the opposition explaining their justification. The members of the majority were at minimum forced to see that there were reasons supporting the other side. It seems reasonable to think that, as a result, the majority will be less inclined to consider the minority as unintelligent or ill-intentioned. Before I proceed to the practical consequences that we can draw from my argument, I must first respond to an objection: that rendering obligatory the presentation of opposing points of view in the public sphere would require constraints on public discourse and encroachments on freedom of speech. In response to this objection I would first suggest turning to an institution that in the relatively recent past followed just this path: the fairness doctrine in effect in the United States from 1927 to 1987. The fairness doctrine, implemented by the Federal Communications Commission, made it obligatory for radio and television stations to give an evenly balanced presentation of “opposing viewpoints on controversial issues of public importance.” The fairness doctrine not only imposed equality in airtime; it also required the presentation of viewpoints opposed to one another. The doctrine did not apply to airtime during electoral campaigns, which was regulated on other terms. It applied instead to any question that became the object of public controversy outside of electoral periods. The constitutionality of this doctrine was upheld by the U.S. Supreme Court in the famous 1969 decision of Red Lion Broadcasting Co. v. FCC.21 The central argument that the Court invoked in support of the constitutionality of the fairness doctrine was that, in regard to liberty of expression on the airwaves, it is “the right of the viewing and listening public, and not the right of the broadcasters, which is paramount.” The Court thus held that listeners and viewers had the right to hear conflicting viewpoints in order to make up their mind on the issues: “Speech concerning public affairs is more than self-expression; it is the essence of self-government.”22 The fairness doctrine was abandoned for two reasons. First, the doctrine led radio and television stations to avoid controversial subjects for the sake of not exposing themselves to lawsuits claiming they had violated the law. Second, the question of what exactly constituted the opposition of one point of view against another became the subject of repeated litigation, and the fcc proved unable to reduce the insecurity and juridical uncertainty that arose on this front. Despite its eventual abandonment, however, the Red Lion decision shows that the obligation for the media to present conflicting viewpoints is compatible with a certain interpretation of freedom of speech in the public sphere, an interpretation that focuses on the rights of the receiving public. That the U.S. Supreme Court has since rejected this interpretation does not mean that the arguments advanced in Red Lion were objectively weak. They are, in any case, consistent with the claims of this essay. What, then, should we do in practice to foster the confrontation of opposing arguments in today's democracies? Without claiming to provide a complete and detailed response to this question, I will conclude by suggesting two concrete means for promoting the adversarial principle in politics. The first is a practice yet to be invented, which would be implemented outside of electoral periods. The second consists of reinforcing a practice already used in electoral campaigns. First, my suggestion for the future. Outside of electoral periods, civil-society actors (such as foundations or think tanks) could organize adversarial debates on subjects of public interest. These debates would not be regularly scheduled, but would be organized only when a question sparked significant interest from the public (as with such topics as nuclear energy, assisted suicide, or, in certain countries, the wearing of the hijab) or when a large number of citizens mobilized in favor of a cause. More generally, these public debates would not aim to replace any existing democratic practices (such as electoral campaigns or parliamentary debates), but would complement them. Neither the exposition of conflicting viewpoints nor communication across ideological divides can be made mandatory. This does not mean that it is useless to try to facilitate them. Indeed, the probability of being confronted with opposing points of view matters: it tends to make one's thoughts more anticipatory, careful, and subtle.23 In contemporary circumstances, this probability tends to diminish. The active promotion of adversarial debates aims to counteract this pernicious tendency. Given that the goal of these debates would be to further the formulation and diffusion of arguments for and against a given public decision, they should be guided by the following principle: speakers should defend or criticize a given policy or position only with reference to its own merits, and not in response to reasons external to the policy or position. The arguments advanced in these debates should concern the advantages or disadvantages – whether technical or moral – inherent in the decision. I call this the principle of relevant reasons. This principle has two implications: the first concerns simplifying the debate to one issue; the second concerns choosing the right participants. In order to encourage citizens to take account of and weigh the reasons for and against a given decision, each question that can be defined objectively and independent from other questions should be debated separately. Multidimensionality and the bundling of different questions undermine the coherence of the arguments. To be sure, at election time, the voter will vote for a candidate or party that has bundled questions without an objective connection between them. Such grouping may be desirable, because it permits negotiations between different strands of the party. Nevertheless, to understand the bundling and negotiation well enough to cast an informed vote, the voter needs to have thought through the different issues separately, aided by adversarial debate. It is probably too difficult to completely exclude nonrelevant reasons – that is, reasons not substantively linked to the policy in question – at the moment of organizing a deliberative debate. But the principle remains valid: nonrelevant arguments should be sidelined as much as possible. As a consequence, each debate should focus on a specific theme, rather than on platforms comprising multiple dimensions.

### Mellers—Tournaments

#### Debating policy forecasts in a competitive tournament format anchored by fair adjudication encourages epistemic humility and cognitive flexibility that spills outside debate—it’s unique because broad under-forecasting is breeding societal dogmatism now

Mellers, et al, 18—George Heyman University Professor in the psychology department at the University of Pennsylvania (Barbara, with Philip Tetlock and Hal R. Arkes, “Forecasting tournaments, epistemic humility and attitude depolarization,” Cognition, 30 October 2018, dml)

We assume that the future is not perfectly knowable by any political faction—and that political beliefs are better framed as continuous probabilities than as off-on, dogmatic certainties. Although this assumption sounds uncontroversial, it is widely ignored in the heat of political controversies. Content-analytic studies of election campaigns and of debates in elite legislative bodies have found a widespread tendency to express political opinions in sharply dichotomous fashions (Hopkins and King, 2010, Tetlock, 1981, Tetlock et al., 1984). Good-bad, categorical rhetoric is common, and nuanced probability judgments are rare. Americans are more polarized now than at any time in decades (Pew Research Center, 2014, Pew Research Center, 2017). Many of us appear to be Manichaean thinkers to whom probabilistic thinking does not come naturally (Kahneman, 2011). All of which raises a question that is part descriptive and part normative: How feasible is it to induce people to treat their political beliefs as testable probabilistic propositions open to revision in response to dissonant as well as consonant evidence and arguments?

A survey of the psychological literature suggests the grounds for pessimism out-number those for optimism. People are often too quick to jump to conclusions from fragmentary evidence (Fiske and Taylor, 1991, Ross, 1977), too slow to update their views in the wake of disconfirming evidence (Lord, Ross, & Lepper, 1979), too tempted to apply weak “can-I-believe-this?” tests to agreeable claims and tough “must-I-believe-this?” tests to dissonant claims (Belsky & Gilovich, 2010), too prone to over-confidence (Moore & Healy, 2008; Lichtenstein, Fischhoff, & Phillips, 1982) and over-estimation of how much others share their views (Mullen et al., 1985, Ross et al., 1976), and too fond of seeking out the company of like-minded others (Sunstein, 2004) and, once in their company, of embracing increasingly extreme views (Myers and Lamm, 1976, Sunstein, 2007). Whether working individually or in groups, people are often susceptible to self-justifying cycles of reasoning that make them progressively more self-righteous and contemptuous of the competence and morality of the other side (Haidt, 2012). In this gloomy view of citizen reasoning, we are “naïve realists” (Ross, in press) who are fated to be “prisoners of our preconceptions” (Tetlock, 2005).

There are however pockets of experimental evidence that give us guarded grounds for optimism that, under well-defined conditions, people can shift into more flexible modes of thinking and treat their political attitudes less as dogmas and more as testable propositions. Debiasing studies have shown that careful engineering of the questioning process and social context can induce people to become more aware of how little they know, more attuned to alternative ways of looking at the same reality, and more skilled at constructively criticizing their own views as well as those of others—all of which are widely seen as essential cognitive virtues of democratic citizenship (Gutmann & Thompson, 2009). We divide the existing work on debiasing citizen reasoning into three categories.

First, building on Rozenblit and Keil’s (2002) work on the illusion of explanatory depth, Fernbach et al., 2013, Sloman and Fernbach, 2018 have shown that asking people to explain complex policies, such as transitioning to a single-payer health care system, makes people appreciate the depth of their ignorance which in turn causes them to moderate their policy preferences. It is essential though that the requests be explanations for “how” policies work, not “why” one supports or opposes them—and that the requests fall in utilitarian rather than deontic domains, topics on which people feel that merely invoking feelings or hunches would not count as a sufficient rationale.

Second, building on the work of Ross (Lord et al, 1979) and Koriat et al., 1980, Hirt and Markman, 1995 showed that directing people to “consider the opposite” and “consider an alternative strategy” reduces their confidence in the focal hypothesis and allows them to entertain divergent scenarios. Arkes, Faust, Guilmette and Hart (1988) found that this strategy helped neuropsychologists asked to read a case study and assign confidence judgments to three diagnoses. Those who listed at least one piece of evidence consistent with each diagnosis before assigning confidence judgments were less prone to the hindsight bias than those who were told the cause and then asked to imagine the confidence ratings they would have assigned to each causal candidate.

Third, building on classic symbolic-interactionist ideas about perspective taking in social interaction (James, 1890, Mead, 1934), many studies have shown that carefully choreographed forms of accountability can induce people to become more “integratively complex” thinkers, that is, people who respect and balance opposing views and resist biases such as belief perseverance and over-confidence (Lerner and Tetlock, 1999, Tetlock and Kim, 1987). But researchers need to ensure that participants know they are accountable before voicing their opinions, and researchers also need to ensure that participants cannot easily guess the opinions of those to whom they must answer.

In brief, researchers need to create pre-decisional accountability to an unknown audience—a type of accountability that we do not often encounter in the world but that blocks off cognitively simpler coping strategies, such as attitude shifting toward the evaluative audience (Cialdini, Levy, & Petty, 1976) and defensive bolstering of past attitudinal commitments (Festinger, 1957). This sweet-spot form of accountability boosts the integrative complexity of reasoning in numerous studies (Lerner & Tetlock, 1999). People seem to engage in a coping response known as pre-emptive self-criticism, in which they concede legitimacy to a wider range of views (evaluative differentiation) and try to understand how reasonable people can see the same events differently (Schroder et al., 1967, Tetlock, 1983). Having done so, people are also likelier to moderate their beliefs.

Across all three lines of investigation, it is striking how careful “debiasing” investigators need to be in designing their interventions to pry open otherwise closed minds. Much hinges on who is requesting explanations for which opinions, how they word their requests and why people think they are being asked.

We explore a complementary approach to debiasing political judgment: forecasting tournaments that challenge people to assign accurate probability estimates to a wide range of events. Tournaments are inherently multifaceted manipulations that have arisen in response to the practical demands of real-world organizations to provide policy-makers with timely probability estimates of the consequences of options (Tetlock and Gardner, 2015, Wolfers and Zitzewitz, 2004). When we inspect each facet however, we find close parallels between their intended functions in tournaments and the goals behind debiasing manipulations developed by experimental psychologists.

Tournaments put participants in an unusual social world in which all three debiasing factors mentioned above are at work. First, players are strictly accountable for the accuracy of their views, not for offering views that play to the prejudices of the like-minded as is common in the political world. Wishful ideological thinking will quite directly translate into worse performance. Second, tournaments pressure people to acknowledge opposing arguments in the news, as well as gaps in their knowledge, both of which should have effects that parallel those observed in the illusion-of-explanatory-depth research: reduce confidence to more realistic levels and moderate affective preferences. Third, if one’s goal is to do well in a political forecasting tournament, one is well advised to engage in perspective taking, a defining property of actively open-minded thinking (Baron, 2008) and an empirical correlate of top performance in tournaments (“superforecasters”—Tetlock & Gardner, 2015).

These parallel lines of work—laboratory debiasing and forecasting tournaments—raise two questions for democratic theory: (a) if political opponents were to participate in forecasting tournaments focused on issues of the day, would they learn to be more circumspect in their beliefs?: (b) if so, would that process also reduce the extremity of their political attitudes, even political preferences with no logical connection to the probabilistic forecasts elicited in the tournament?

We present evidence for conditional optimism. Forecasting tournament, participants must learn to cope with the “culture shock” of moving from the hurly-burly of the political world, in which polemics dominate, to the pure-epistemic-accountability world of tournaments. Tournament organizers can help with this adjustment by giving participants guidance on the larger purpose of the exercise, on how to translate inchoate hunches into precise probability metrics and on how the scoring rules convert probability judgments into accuracy scores. In sharp contrast to the vague-verbiage predictions so common in high-visibility, social-media debates in op-eds and blogs, forecasting tournaments do not give bonus points for witty put-downs. They incentivize forecasters to do one thing: getting the best “Brier scores” (Brier, 1950) by being faster than others at putting higher probabilities on things that happen and lower probabilities on things that do not while avoiding the steep scoring penalties that accrue to too hastily declaring outcomes “certain” or “impossible” (Mellers, Stone, Atanasov, et al., 2015). This trade-off is tricky. It requires balancing caution and courage (Tetlock, 2005), where caution refers to skill at making well-calibrated probability judgments that match relevant base rates (e.g., events assigned 70% probabilities happen about 70% of the time) and courage refers to skill at decisively discriminating between signals and noise, events and non-events, as the evidence warrants. Forecasting tournaments are cognitively demanding.

1.1. The Good Judgment Project The largest scale, political-forecasting tournaments to date have been sponsored by IARPA or the Intelligence Advanced Research Projects Activity. From 2011 to 2015, IARPA invested tens of millions of dollars in five university teams, each of which competed to invent the best methods of eliciting and aggregating large numbers of human forecasts in tournaments focused on geopolitical events. Our team, the Good Judgment Project, won these contests. Psychologists and statisticians working together constructed aggregate forecasts on the “right side of maybe” on more than 85% of all daily forecasts on over 500 questions, outperforming even professional intelligence analysts who made predictions on the same questions and had access to classified information (Goldstein, Hartman, Comstock, & Baumgarten, 2018). The Good Judgment Project conducted experiments by randomly assigning forecasters to conditions that tested hypotheses about the drivers of accuracy. We discovered five such drivers: (a) recruitment and retention of better forecasters; (b) cognitive-debiasing training; (c) more engaging work environments, in the form of collaborative teamwork and prediction markets; and (d) better aggregation rules for distilling the wisdom of the crowd (the log-odds-extremizing algorithm of Baron et al., 2014, Satopaa et al., 2014, Satopaa et al., 2014). But the most potent driver was to skim off the top 2% of forecasters at the end of each tournament year and place them in elite, superforecaster teams. Despite skeptics’ predictions to the contrary, superforecasters largely resisted regression to the mean in follow-up years (Mellers, Stone, Murray, et al., 2015). Superforecasters learned to make well-calibrated, high-resolution probability judgments with quite impressive consistency (Moore et al., 2016, Tetlock and Gardner, 2015). They figured out how to treat uncertainty in a nuanced fashion and use more distinctions on the probability scale to express their beliefs. These distinctions turned out to be meaningful. When we examined the loss of accuracy with counterfactual analyses in which forecasters were assumed to use fewer probability distinctions by rounding their predictions to the nearest 10% or 20%, accuracy scores based on rounded forecasts were worse than accuracy scores based on the original forecasts. Rounding forecasts produced a loss of information that took the largest toll on the most accurate participants– superforecasters (Friedman, Baker, Mellers, & Zeckhauser, 2017). 1.2. The spillover hypothesis: beliefs and attitudes Our main goal is testing the hypothesis that the process of making subjective-probability forecasts in tournaments has spillover effects on attitudes toward controversial political issues. From a formal philosophical perspective, these two classes of variables are clearly logically distinct. Forecasts are beliefs about matters of (future) fact, whereas policy attitudes are ultimately value judgments about what society ought to do. But of course that does not imply that fact-grounded forecasts and value-grounded attitudes must also be psychologically distinct. Much hinges on one’s preferred cognitive-affective framework for representing the connections between beliefs (often operationalized as probability judgments in the attitude change literature) and attitudes (operationalized as evaluative or affective judgments). For instance, viewed from the standpoint of attitude theories that stress the primacy of affect and treat cognition (i.e., beliefs) as post hoc justifications for feelings (Haidt, 2001, Zajonc, 1980), our spillover hypothesis is unrealistically optimistic. Tails don’t wag dogs. Changing policy affect is far likelier to change policy beliefs than is changing the beliefs to change attitudes. But viewed from the standpoint of cognition-driven theories that depict attitudes as derivative products of expectancy-value calculations, as in Fishbein and Ajzen’s (1975) theory of reasoned action and in classical decision theory, the spillover hypothesis is reasonable as long as the attitudes are woven into networks of relevant beliefs. If so, when the beliefs moderate, so too should the relevant attitudes.

Neither of these theoretical camps would however predict the strong version of the spillover effect that we are proposing: namely, that tournaments can moderate attitudes by changing how people think, a cognitive-stylistic shift in which the more flexible and analytic style of thinking about beliefs encouraged by tournaments spills over into how people make “should” or attitudinal judgments on topics with close-to-zero expectancy-value linkage to the probabilistic beliefs they endorsed in tournaments.

To operationalize this idea, imagine we ran a study in which the forecasting questions focused on exactly the same topics as the attitude questions—and we discovered, say, that the (humbling) process of trying to forecast in which cities charter schools boosted test scores caused people to moderate their policy attitudes about charter schools. Few observers would be surprised. But the current design provides a tougher test. There are no strong connections between the forecasting questions and the policy-attitude questions asked at the end of the forecasting year. We test the hypothesis that the cognitively demanding process of participating in a tournament—of having to balance evidence to put well-calibrated probability estimates on, say, third quarter GDP growth or presidential popularity—has a spillover effect when people take normative/”should” attitude positions on unrelated issues such as the minimum wage or voter-identification laws or U.S. policy toward Iran.

Tournaments require forecasters to transform their hunches into numbers that roughly conform to the axioms of probability, a nontrivial task. When they do internet searches to discover what high-profile pundits say, they get little help because the “predictions” advanced in such debates are rarely sufficiently explicit to be testable. After all, elites need to preserve their long-term credibility so they tend to avoid numerical probability judgments that could later be mocked as embarrassingly far off (Tetlock & Gardner, 2015). It is safer to make vague-verbiage forecasts, such as “x might well happen” or “there is a distinct possibility of y” that psychological research has shown comfortably straddle both sides of 50/50 or “maybe” (Wallsten, Budescu, & Zwick, 1993). If an event happens, one can say “I warned you it was a distinct possibility” and if the event never happens, one can shrug it off by saying “I merely said it was possible.”

To avoid this problem, forecasting tournaments press people to make their beliefs explicit and do what Nate Silver, the founder of the 538 website, routinely does: attach specific numerical probabilities to possible futures. After the 2016 US Presidential election, Silver was chastised for falling on what appeared to be the “wrong side of maybe.” He had placed a 70% probability on a Clinton presidency. Was he wrong? Drawing the correct conclusion requires an understanding that: (a) 70% might have been the best forecast possible at the time; (b) the poll aggregation techniques on which Silver relies were well calibrated, which means that when Silver makes probabilistic predictions of events, those events tend to occur roughly 70% of the time. They will “look wrong” about 30% of the time (Lichtenstein et al., 1982).

Unfortunately, the vague-verbiage forecasting habits that confer political safety on pundits also make it extremely difficult, arguably impossible, to become a more realistic appraiser of the probabilities of real-world events. Without measurement of forecasting accuracy, learning can’t take place. To invoke an old Wittgenstein aphorism, the limits of our language are the limits of our world. It is hard to figure out whether probability judgments of 70% are well-calibrated if one is unsure when one made 70% forecasts and unsure of what happened when one did. The potential mind-opening power of forecasting tournaments comes from the fact that they pressure us to recognize the limits of our knowledge and focus on the world as it is, not as we wish it to be. They expose us to the same criticisms that Nate Silver experienced -- being on the “wrong side of maybe.”

Forecasting tournaments push people out of their vague-verbiage comfort zone and ask them to quantify uncertainty in as granular a fashion as the problem permits. It is this more tentative and granular mode of thinking inculcated in forecasting tournaments that we hypothesize can spill over into unrelated attitude judgments outside the tournament.

### Poscher—Ground

#### Neg ground outweighs—the labor of the negative is the only unique feature of debate. Their model can’t explain why we switch sides and why there has to be a winner and a loser.

**Poscher, 16**—director at the Institute for Staatswissenschaft and Philosophy of Law at the University of Freiburg (Ralf, “Why We Argue About the Law: An Agonistic Account of Legal Disagreement”, *Metaphilosophy of Law*, Tomasz Gizbert-Studnicki/Adam Dyrda/Pawel Banas (eds.), Hart Publishing, forthcoming, dml)

Hegel’s dialectical thinking powerfully exploits the idea of **negation**. It is a **central** feature of spirit and consciousness that they have the power to negate. The spirit “is this power only by looking the negative in the face and tarrying with it. This […] is the magical power that converts it into being.”102 The tarrying with the negative is part of what Hegel calls **the “labour of the negative”**103. In a loose reference to this Hegelian notion Gerald Postema points to yet another feature of disagreements as a **necessary ingredient** of the process of practical reasoning. Only if our reasoning is **exposed to contrary arguments** can we **test its merits**. We must go through **the “labor of the negative”** to have trust in our deliberative processes.104

This also holds where we seem to be in agreement. Agreement without exposure to disagreement can be **deceptive** in various ways. The first phenomenon Postema draws attention to is the **group polarization** effect. When a group of like‐minded people deliberates an issue, informational and reputational cascades produce more extreme views in the process of their deliberations.105 The polarization and biases that are well documented for such groups106 can be **countered** at least in some settings by the **inclusion of dissenting voices**. In these scenarios, disagreement can be a cure for dysfunctional deliberative polarization and biases.107 A second deliberative dysfunction mitigated by disagreement is **superficial agreement**, which can even be manipulatively used in the sense of a “presumptuous ‘We’”108. Disagreement can help to police such distortions of deliberative processes by challenging superficial agreements. Disagreements may thus signal that a deliberative process is not contaminated with dysfunctional agreements stemming from polarization or superficiality. Protecting our discourse against such contaminations is valuable **even if we do not come to terms**. Each of the opposing positions will **profit from the catharsis it received** “by **looking the negative in the face** and **tarrying with it**”.

These advantages of disagreement in collective deliberations are mirrored on the individual level. Even if the probability of reaching a consensus with our opponents is **very low from the beginning**, as might be the case in deeply entrenched conflicts, entering into an exchange of arguments can still serve to **test** and **improve our position**. We have to **do the “labor of the negative” for ourselves**. Even if we cannot come up with a line of argument that coheres well with everybody else’s beliefs, attitudes and dispositions, we can still come up with a line of argument that achieves this goal **for our own personal beliefs**, attitudes and dispositions. To provide ourselves with the most coherent system of our own beliefs, attitudes and dispositions is – at least in important issues – an aspect of personal integrity – to borrow one of Dworkin’s favorite expressions for a less aspirational idea.

In hard cases we must – in some way – lay out the argument for ourselves to figure out what we believe to be the right answer. We might not know what we believe ourselves in questions of abortion, the death penalty, torture, and stem cell research, until we have **developed a line of argument** against the background of our subjective beliefs, attitudes and dispositions. In these cases it might be rational to **discuss the issue** with someone unlikely to share some of our more fundamental convictions or who **opposes the view** towards which we lean. This might even be **the most helpful way of corroborating a view**, because we know that our adversary is **much more motivated** to find a potential flaw in our argument than someone with whom we know we are in agreement. It might be more helpful to discuss a liberal position with Scalia than with Breyer if we want to make sure that we have not overlooked some counter‐argument to our case.

It would be **too narrow** an understanding of our practice of legal disagreement and argumentation if we restricted its purpose to **persuading an adversary** in the case at hand and inferred from this narrow understanding the **irrationality of argumentation** in hard cases, in which we know beforehand that we will not be able to persuade. Rational argumentation is a much more complex practice in a more complex social framework. Argumentation with an adversary can have **purposes beyond persuading** him: to **test one’s own convictions**, to **engage our opponent** in inferential commitments and to **persuade third parties** are only some of these; to **rally our troops** or **express our convictions** might be others. To make our peace with Kant we could say that “there must be a hope of coming to terms” with someone though not necessarily with our opponent, but maybe only a third party or even just ourselves and not necessarily only on the issue at hand, but maybe through inferential commitments in a different arena.

f) The Advantage Over Non‐Argumentative Alternatives

It goes without saying that in real world legal disagreements, all of the reasons listed above usually play in concert and will typically hold true to different degrees relative to different participants in the debate: There will be some participants for whom our hope of coming to terms might still be justified and others for whom only some of the other reasons hold and some for whom it is a mixture of all of the reasons in shifting degrees as our disagreements evolve. It is also apparent that, with the exception of the first reason, the rationality of our disagreements is of a **secondary nature**. The rational **does not lie** in the discovery of a **single right answer** to the topic of debate, since in hard cases there are no single right answers. Instead, our disagreements are instrumental to rationales which lie beyond the topic at hand, like the **exploration of our communalities** or of our **inferential commitments**. Since these reasons are of this secondary nature, they must **stand up to alternative ways** of settling irreconcilable disagreements that have other secondary reasons in their favor – like swiftness of decision making or using fewer resources. Why does our legal practice **require lengthy arguments** and **discursive efforts** even in appellate or supreme court cases of irreconcilable legal disagreements? The closure has to come by some non‐argumentative mean and courts have always relied on them. For the medieval courts of the Germanic tradition it is bequeathed that judges had to fight it out literally if they disagreed on a question of law – though the king allowed them to pick surrogate fighters.109 It is understandable that the process of civilization has led us to non‐violent non‐ argumentative means to determine the law. But what was wrong with District Judge Currin of Umatilla County in Oregon, who – in his late days – decided inconclusive traffic violations by publicly flipping a coin?110 If we are counting heads at the end of our lengthy argumentative proceedings anyway, why not decide hard cases by **gut voting at the outset** and **spare everybody the cost** of **developing elaborate arguments** on questions, where there is not fact of the matter to be discovered?

One reason lies in the mixed nature of our reasons in actual legal disagreements. The different second order reasons can be held apart analytically, but not in real life cases. The hope of coming to terms will often play a role at least for some time relative to some participants in the debate. A second reason is that the objectives listed above **could not be achieved by a non‐argumentative procedure**. Flipping a coin, throwing dice or **taking a gut vote** would not help us to **explore our communalities** or our inferential commitments nor help to **scrutinize the positions** in play. A third reason is the overall rational aspiration of the law that Dworkin relates to in his integrity account111. In a justificatory sense112 the law aspires to give a coherent account of itself – even if it is not the only right one – required by equal respect under conditions of normative disagreement.113 Combining legal argumentation with the non‐argumentative decision‐ making procedure of counting reasoned opinions serves the coherence aspiration of the law in at least two ways: First, the labor of the negative reduces the chances that constructions of the law that have major flaws or inconsistencies built into the arguments supporting them will prevail. Second, since every position **must be a reasoned one** within the given framework of the law, it must be one that **somehow fits** into the **overall structure** of the law along **coherent lines**. It thus protects against **incoherent “checkerboard” treatments**114 of hard cases. It is the **combination** of **reasoned disagreement** and the **non‐rational decision‐making mechanism** of counting reasoned opinions that provides for both in hard cases: a decision and one – of multiple possible – coherent constructions of the law. Pure non‐rational procedures – like flipping a coin – would only provide for the decision part. Pure argumentative procedures – which are not geared towards a decision procedure – would **undercut the incentive structure** of our agonistic disagreements.115 In the face of unresolvable disagreements endless debates would seem an idle enterprise. That the debates are **about winning** or **losing** helps to **keep the participants engaged**. That the decision depends on **counting reasoned opinions** guarantees that the engagement **focuses on rational argumentation**. No plain non‐argumentative procedure would achieve this result. If the judges were to **flip a coin** at the end of the trial in hard cases, there would be **little incentive** to engage in an **exchange of arguments**. It is specifically the count of reasoned opinions which provides for rational scrutiny in our legal disagreements and thus contributes to the rationales discussed above.

2. THE SEMANTICS OF AGONISTIC DISAGREEMENTS

The agonistic account does not presuppose a fact of the matter, it is not accompanied by an ontological commitment, and the question of how the fact of the matter could be known to us is not even raised. Thus the agonistic account of legal disagreement is not confronted with the metaphysical or epistemological questions that plague one‐right‐answer theories in particular. However, it must still come up with a semantics that explains in what sense we **disagree about the same issue** and are not just **talking at cross purposes**.

In a series of articles David Plunkett and Tim Sundell have reconstructed legal disagreements in semantic terms as metalinguistic negotiations on the usage of a term that at the center of a hard case like “cruel and unusual punishment” in a death‐penalty case.116 Even though the different sides in the debate define the term differently, they are **not talking past each other**, since they are engaged in a metalinguistic negotiation on the use of **the same term**. The metalinguistic negotiation on the use of the term serves as a **semantic anchor** for a disagreement on the substantive issues connected with the term because of its functional role in the law. The “cruel and unusual punishment”‐clause thus serves to argue about the permissibility of the death penalty. This account, however only provides a very superficial semantic commonality. But the commonality between the participants of a legal disagreement go deeper than a discussion whether the term “bank” should in future only to be used for financial institutions, which fulfills every criteria for semantic negotiations that Plunkett and Sundell propose. Unlike in mere semantic negotiations, like the on the disambiguation of the term “bank”, there is also some kind of identity of the substantive issues at stake in legal disagreements.

A promising route to capture this aspect of legal disagreements might be offered by recent semantic approaches that try to accommodate the externalist challenges of realist semantics,117 which inspire one‐right‐answer theorists like Moore or David Brink. Neo‐ descriptivist and two‐valued semantics provide for the theoretical or interpretive element of realist semantics without having to commit to the ontological positions of traditional externalism. In a sense they offer externalist semantics with no ontological strings attached.

The less controversial aspect of the externalist picture of meaning developed in neo‐ descriptivist and two‐valued semantics can be found in the deferential structure that our meaning‐providing intentions often encompass.118 In the case of natural kinds, speakers defer to the expertise of chemists when they employ natural kind terms like gold or water. If a speaker orders someone to buy $ 10,000 worth of gold as a safe investment, he might not know the exact atomic structure of the chemical element 79. In cases of doubt, though, he would insist that he meant to buy only stuff that chemical experts – or the markets for that matter – qualify as gold. The deferential element in the speaker’s intentions provides for the specific externalist element of the semantics.

In the case of the law, the meaning‐providing intentions connected to the provisions of the law can be understood to defer in a similar manner to the best overall theory or interpretation of the legal materials. Against the background of such a semantic framework the conceptual unity of a linguistic practice is not ratified by the existence of a single best answer, but by the unity of the interpretive effort that extends to legal materials and legal practices that have sufficient overlap119 – be it only in a historical perspective120. The fulcrum of disagreement that Dworkin sees in the existence of a single right answer121 does not lie in its existence, but in **the communality of the effort** – if only on the basis of an **overlapping common ground** of legal **materials**, **accepted practices**, **experiences** and **dispositions**. As two athletes are **engaged in the same contest** when they **follow the same rules**, **share the same concept of winning and losing** and act in the same context, but **follow very different styles** of e.g. wrestling, boxing, swimming etc. They are in the same contest, **even if there is no single best style** in which to wrestle, box or swim. Each, however, is engaged in developing the best style to win against their opponent, just as two lawyers try to develop the best argument to convince a bench of judges.122 Within such a semantic framework even people with radically opposing views about the application of an expression can still **share a concept**, in that they are **engaged in the same process** of theorizing over **roughly the same legal materials** and **practices**. Semantic frameworks along these lines allow for adamant disagreements without abandoning the idea that people are **talking about the same concept**. An agonistic account of legal disagreement can build on such a semantic framework, which can explain in what sense lawyers, judges and scholars engaged in agonistic disagreements are **not talking past each other**. They are engaged in developing the best interpretation of roughly the same legal materials, albeit against the background of diverging beliefs, attitudes and dispositions that lead them to divergent conclusions in hard cases. Despite the divergent conclusions, semantic unity is provided by the **largely overlapping legal materials** that **form the basis** for their disagreement. Such a semantic **collapses** only when we **lack a sufficient overlap** in the materials. To use an example of Michael Moore’s: If we wanted to debate whether a certain work of art was “just”, we share neither paradigms nor a tradition of applying the concept of justice to art such as to engage in an intelligible controversy.

### Shively 2K

#### Shively 2K

Shively 2K – Professor of Political Science, Texas A & M

(Ruth, *Political Theory and Partisan Politics*, p. 181-2)

The requirements thus far are primarily negative. The ambiguists must say “no” to—they must reject and limit—some ideas and actions. In what follows, we will also find that they must say “yes” to some things. In particular, they must say “yes” to the idea of rational persuasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake in thinking that agreement marks the end of contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the starting condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no agreement except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not communicating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if one’s target audience simply thinks everyone is resting or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Registers, demonstrators, and debaters must have some shared ideas about the subject and/or terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator’s audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony.∂ The point may seem trite, as surely the ambiguists would agree that basic terms must be shared before they can be resisted and problematized. In fact, they are often very candid about this seeming paradox in their approach: the paradoxical or "parasitic" need of the subversive for an order to subvert.∂ But admitting the paradox is not helpful if, as usually happens here, its implications are ignored; or if the only implication drawn is that order or harmony is an unhappy fixture of human life. For what the paradox should tell us is that some kinds of harmonies or orders are, in fact, good for resistance; and some ought to be fully supported. As such, it should counsel against the kind of careless rhetoric that lumps all orders or harmonies together as arbitrary and inhumane. Clearly some basic accord about the terms of contest is a necessary ground for all further contest. It may be that if the ambiguists wish to remain full-fledged ambiguists, they cannot admit to these implications, for to open the door to some agreements or reasons as good and some orders as helpful or necessary, is to open the door to some sort of rationalism. Perhaps they might just continue to insist that this initial condition is ironic, but that the irony should not stand in the way of the real business of subversion.∂ Yet difficulties remain. For agreement is not simply the initial condition, but the continuing ground, for contest. If we are to successfully communicate our disagreements, we cannot simply agree on basic terms and then proceed to debate without attention to further agreements. For debate and contest are forms of dialogue: that is, they are activities premised on the building of progressive agreements.∂ Imagine, for instance, that two people are having an argument about the issue of gun control. As noted earlier, in any argument, certain initial agreements will be needed just to begin the discussion. At the very least, the two discussants must agree on basic terms: for example, they must have some shared sense of what gun control is about; what is at issue in arguing about it; what facts are being contested, and so on. They must also agree—and they do so simply by entering into debate—that they will not use violence or threats in making their cases and that they are willing to listen to, and to be persuaded by, good arguments. Such agreements are simply implicit in the act of argumentation.',∂ Imagine, then, that our two discussants have the following kind of exchange:∂ Mary Cuns don't kill people; people kill people.∂ Tom: Yes, but guns make it a lot easier for people to kill one another.∂ Mary: That's not necessarily true. There are lots of other murder weapons—knives or rat poison, for instance—that may be just as handy and lethal.∂ At this point, the argument reaches an impasse. Tom has presented i claim that Mary does not accept. Thus, if the argument is to continue, Tom must either find a way to convince Mary oi this claim or he must go on to a different line of argument. Let us say that, in this case, lorn backs up his initial claim with further evidence. Perhaps he has some evidence to show that people are less apt to survive a gunshot wound than they are to survive being stabbed or poisoned. Mary then relents on this point:∂ ∂ Mary: All right, I'll grant you that gun shot wounds an? more apt to kill people. But that's exactly the reason I want lo own a gun—so I can effectively protect myself and my family.∂ Tom: Well I sympathize with that motive, but 1 don't think owning a gun is the best way to protect yourself. In fact, I've heard that people who own guns are more apt to get injured or killed them¬selves than to protect themselves against an intruder.∂ Mary: What?! I find that very difficult to believe.∂ Here, again, our discussants reach an impasse. If the argument is to go further, they must either find a way to agree on the disputed claim, or move on to another claim (if there is one). Thus, if Tom has some further evidence that Mary will find convincing, they can continue this line of reasoning; if he does not, then they must move on to something else or give up the argument completely.∂ This is the ordinary ebb and flow of debate. Argument continues .is long as there is some hope of progress in coming to agreement or as long as there are other lines of argument to be explored. But if there∂ ∂ comes a point a I which the two sides run out of new claims or cannot igree about the facts supporting claims already made, the argument is effectively over. The participants may continue to shout at one an¬other, as they often do, but there is no longer anything positive or informative that can come from their interaction. There is nothing more to be learned and nothing that either side will find convincing.∂ The point here is that in arguing—and the point holds equally for other forms of contest—we assume that it is possible to educate or persuade one another. We assume that it is possible to come to more mutual understandings of an issue and that the participants in an argument are open to this possibility. Otherwise, there is no point to the exercise; we are simply talking at or past one another.∂ At this point, the ambiguists might respond that, even if there are such rules of argument, they do not apply to the more subversive or radical activities they have in mind. Subversion is, after all, about questioning and undermining such seemingly "necessary" or universal rules of behavior.∂ But, again, the response to the ambiguist must be that the practice of questioning and undermining rules, like all other social practices, needs a certain order. The subversive needs rules to protect subversion. And when we look more closely at the rules protective of subversion, we find that they are roughly the rules of argument discussed above. In fact, the rules of argument are roughly the rules of democracy or civility: the delineation of boundaries necessary to protect speech and action from violence, manipulation and other forms of tyranny.

## Blocks

### AT: Agency=Illusory

#### Even illusory agency is productive. Imagining possible changes is necessary to motivate action.

Elizabeth SHOVE Sociology @ Lancaster AND Gordon WALKER Geography @ Lancaster ‘7 [“CAUTION! Transitions ahead: politics, practice, and sustainable transition management,” *Environment and Planning C* 39 (4)]

For academic readers, our commentary argues for loosening the intellectual grip of ‘innovation studies’, for backing off from the nested, hierarchical multi-level model as the only model in town, and for exploring other social scientific, but also systemic theories of change. The more we think about the politics and practicalities of reflexive transition management, the more complex the process appears: for a policy audience, our words of caution could be read as an invitation to abandon the whole endeavour. If agency, predictability and legitimacy are as limited as we’ve suggested, this might be the only sensible conclusion.However, we are with Rip (2006) in recognising the value, productivity and everyday necessity of an ‘illusion of agency’, and of the working expectation that a difference can be made even in the face of so much evidence to the contrary. The outcomes of actions are unknowable, the system unsteerable and the effects of deliberate intervention inherently unpredictable and, ironically, it is this that sustains concepts of agency and management. As Rip argues ‘illusions are productive because they motivate action and repair work, and thus something (whatever) is achieved’ (Rip 2006: 94). Situated inside the systems they seek to influence, governance actors – and actors of other kinds as well - are part of the dynamics of change: even if they cannot steer from the outside they are necessary to processes within. This is, of course, also true of academic life. Here we are, busy critiquing and analysing transition management in the expectation that somebody somewhere is listening and maybe even taking notice. If we removed that illusion would we bother writing anything at all? Maybe we need such fictions to keep us going, and maybe – fiction or no - somewhere along the line something really does happen, but not in ways that we can anticipate or know.

### AT: Defending State=Violent

#### Demands on the state are a productive center of discussion but don’t tie us to the government or its legitimacy

Saul Newman, PhD, Professor of Political Theory, Goldsmith University, London, ’11

(*The Politics of Postanarchism*, pg. 114)

Despite the obvious pitfalls of the Leninist vanguard strategy, we should nevertheless take Zizek's challenge to Critchley seriously: that, in other words, the problem with the strategy of working outside the state is that it **may essentially leave the state intact**, and entail an irresponsible and even **self-indulgent politics of demand** that hides a secret reliance on the state to take care of the everyday running of society. Is there some truth to this claim? There are two aspects that I would like to address here. First, the notion of demand: making certain demands on the state - say for higher wages, equal rights for excluded groups, to not go to war or an end to draconian policing - is one of the **basic strategies** of social movements and radical groups. Making such demands does not necessarily mean working within the state **or reaffirming its legitimacy.** On the contrary, demands are made from a position **outside the established political order,** and they often **exceed the question of the implementation** of this or that specific measure. They implicitly **call into question the legitimacy** and even the sovereignty of the state by highlighting fundamental inconsistencies between, for instance, a formal constitutional order that guarantees certain rights and equalities, and state practices that in reality violate and deny them. Jacques Ranciere gives a succinct example of this when he discusses Olympe de Gouges, who, at the time of the French Revolution, demanded that women be given the right to go to the Assembly. In doing so, she demonstrated the inconsistency between the promise of equality - invoked in a general sense and yet denied in the particular by the Declaration of the Rights of Man and the Citizen - and the political order which was formally based on this: Women could make a twofold demonstration. They could demonstrate that they were deprived of the rights that they had, thanks to the Declaration of Rights. And they could demonstrate, through their public action, that they had the rights that the constitution denied to them, that they could enact those rights. So they could act as subjects of the Rights of Man in the precise sense that 1 have mentioned. They acted as subjects that did not have the rights that they had and had the rights that they had not.21

### AT: Exclusion

#### Our interpretation is open to contestation but comparatively better than a model that allows affirmation of anything whatsoever – criticisms of “exclusion” do not invalidate the utility of using a model of debate centered around state praxis as a *regulative ideal* toward which debate moves towards – their model reduces politics to luck

Ruti ‘15 (Prof. of English and Critical Theory @ U. Toronto, *Between Levinas and Lacan: Self, Other, Ethics*, pp. 170-176)

After the collapse of metaphysical justifications for universality, we do not have any choice but to admit that the version of universality we conjure into existence – and the a priori norms that support this universality – inevitably arises in a particular context: it is historically and culturally specific even as it strives to transcend this specificity. But – and my point here mirrors the argument I made about rationality above – this does not mean that our universalism is intrinsically worthless; while the loss of metaphysical foundations for our normative systems complicates their claim to universality, it does not automatically invalidate them. This is exactly what Allen is getting at in the passage I quoted at the beginning of this chapter: we make a mistake if we assume that our only options are either the delusion of being able to transcend our context into a realm of "pure" universality or a descent into "anything-goes" relativism. More specifically, Allen argues that we can profess the universal validity of some of our principles – such as the principles of equality, reciprocity, or mutual respect – as long as we remain aware that these principles are derived from the historical and cultural resources of Western modernity. In this manner, Allen advocates what she calls "principled contextualism": we may take our norms "to be universal and context transcendent, as long as we recognize that the notions of universalizability and context transcendence are themselves situated in the context of late Western modernity" (PS 180). An important part of this recognition is the admission that "it may turn out from some future vantage point that our normative ideals are themselves, in some ways that we have yet to realize, pernicious and oppressive" (PS 180). That is, we need to be "more historically self-conscious and modest about the status of our normative principles" (PS 180); among other things, we need to be open to the possibility that our principles can be contested. Yet this does not imply that "we are incapable of making normative judgments in light of such principles" (PS 180). Allen is looking for a way out of nihilistic relativism by proposing that our awareness that we must continuously interrogate our ethical principles does not mean that these principles are devoid of all value. Nor does our recognition that our principles cannot be divorced from their context mean that we cannot claim that they are capable of transcending their context; that is, our principles can be context-transcending without being context-neutral. This, as we saw in Chapter 2, is Butler's argument in *Parting Ways*, even if she ends up backpedaling on the univcrsalist implications of her approach. 14 More important for our present purposes, this is how Allen arrives at the "historical a priori" I have referred to in passing. As Allen explains, "The historical specificity of our a priori categories, their rootedness in historically variable social and linguistic practices and institutions" (PS 31-2) does not cancel the power of these categories to order our existence. However, if we want others to be convinced by our a priori ideals, we need to persuade them through a democratic process. If the Enlightenment resorted to aggression to spread its views, the Habermasian democratic method, according to Allen, relies on more collectively formed public opinions. Allen's point is akin to the one Benhabib makes through her notion of "democratic iterations": rather than the solitary Kantian subject trying to figure out in the abstract what everyone might conceivably agree on, the Habermasian approach offers a model where social agents collaborate with each other to forge a perspective that everyone can agree on. This junction of compatible views, then, becomes the current "historical a priori," the current version of the universal. Any given "historical a priori" can obviously take hegemonic forms. I grant, as does Allen, that we need to remain vigilant about the constitutive exclusions that a priori norms often imply. Yet the merits of a normative system that is brought into being through a continuous democratic process – a process that can accommodate the tensions of rethinking, refinement, and renegotiation – also seem considerable. Borrowing from Fraser, one could say that the historical a priori is always open to reframing. Such reframing happens, for instance, when individuals or groups who have been excluded from a given ethical frame demand admission to it, thereby automatically altering the parameters of the frame. Proposing that "misframing" may be "the defining injustice of a globalizing age," Fraser advocates – echoing Butler's observations about the necessity of revising the frames of perception that eliminate some populations from the status of the fully human – "an enlarged, transnational sense of who counts as one's fellow subjects of justice." 15 This implies that when the frame shifts – say, from a national to a transnational one – so does the historical a priori: an a priori that was formulated in a given national context might not be appropriate for a transnational one. There must thus be a period of readjustment, but this does not imply the neutralization of the a priori – as some cultural relativists might assume – but merely its reconfiguration. Or, to restate the larger argument I have tried to articulate, the concept of the historical a priori requires that we admit that an a priori principle can be normatively meaningful even as it is open to alteration; the a priori – as I noted above – holds until it is deemed somehow flawed or unjust. In Fraser's words, "The result would be a grammar of justice that incorporates an orientation to closure necessary for political argument, but that treats every closure as provisional – subject to question, possible suspension, and thus to reopening" (SJ72). The model Fraser advocates hence treats every ethical closure as provisional. Fraser calls this model "reflexive justice," specifying that it scrambles the opposition between the Habermasian democratic model on the one hand and the more poststructuralist, Marxist, and skeptical model (which she calls "agonistic") – the model that dominates contemporary progressive criticism – on the other. If the first of these is sometimes accused of being excessively normalizing, the second-which is essentially the model I have been analyzing in this book (with the exception of Levinas) – is, as Fraser puts it, "often seen as irresponsibly reveling in abnormality" (SJ73 ). Against this backdrop, the advantage of Fraser's model is the following: Like agonistic models, reflexive justice valorizes the moment of opening, which breaches the exclusions of normal justice, embracing claimants the latter has silenced and disclosing injustices the latter has occluded-all of which it holds essential for contesting injustice. Like discourse ethics, however, reflexive justice also valorizes the moment of closure, which enables political argument, collective decision-making, and public action – all of which it deems indispensable for remedying injustice. (SJ73-4) In this manner, Fraser declares the standard opposition between the Habermasians and the agonists to be a false one, for it is possible to admit the best insights of both by acknowledging the value of both opening (contestation) and closure (binding norms that enable ethical and political decisions). Such an approach rejects relativism, enabling normative judgments and political interventions, but without thereby locking the content of such judgments and interventions into a fixed, immutable definition. All of this of course implies that there is one norm that stands above every other: what Fraser calls "the overarching normative principle of parity of participation" (SJ60). On this view, Fraser explains, "Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction" (SJ 60). In other words, for Fraser's paradigm to function, one needs a base-level faith in the democratic process even as one acknowledges that it is always going to fall short of its own ideals. Like Levinasian justice, which knows that it will never he able to live up to the demands of ethics, concrete democratic formations are invariably guilty, humiliated by their failures, but this cannot, for the Habermasians at least, discourage us to the point that we stop trying to improve them. As Benhabib explains: As with any normative model, one can always point to prevailing conditions of inequality, hierarchy, exploitation and domination, and prove that "this may be true in theory but not so in practice" (Kant). The answer to this ancient conflict between norm and reality is simply to say that if all were as it ought to be in the world, there would be no need to build normative models, either. The fact that a normative model does not correspond to reality is no reason to dismiss it, for the need for normativity arises precisely because humans measure the reality they inhabit in the light of principles and promises that transcend this reality. The relevant question therefore is: Does a given normative model enable us to analyze and distill the rational principles of existing practices and institutions in such a fashion that we can then use these rational reconstructions as critical guidelines for measuring really existing democracies? 16 Allen sums up the matter by noting that though imbalances of power are important for Habermasian critical theory to grapple with, the solution to this "can only be more discourse or debate" (PS 18). This continued faith in the perfectibility of the democratic process is what distinguishes the Habermasian feminists I have cited in this chapter from the thinkers – perhaps, again, with the exception of Levinas – I have discussed in earlier chapters of this book. The latter thinkers, as well as those aligned with these thinkers, would in fact ridicule the Habermasian stance for its naive inability to recognize how power corrupts the democratic process, how, for example, neoliberalism and global capitalism have torn democracy into shreds. As Wendy Brown explains, "This is a political condition in which the substance of many of the significant features of constitutional and representative democracy have been gutted, jettisoned, or end- run, even as they continue to be promulgated ideologically, served as a foil and shield for their undoing and for the doing of death elsewhere." 17 Indeed, what good can the ideal of participatory parity do in the context of biopolitical and other invisible forces of power that constitute us as compliant subjects well before we understand the basic principles of such parity? If our psychic lives, including our unconscious desires, fantasies, and motivations, are shaped by hegemonic power, then participatory parity seems like a mere stopgap measure – something that makes us feel slightly better about being nothing but the obedient marionettes of power. 5 To some degree I agree with such pessimism about the Habermasian democratic process. But I am not convinced that the alternative approaches I have analyzed in this book necessarily fare any better in terms of being capable of addressing the problem of power. I have already explained my reservations about the ability of Zizek and Badiou to do so. Butler may at first glance seem more competent in this regard, given that the critique of disciplinary power has always been central to her theory. Yet, as I have demonstrated, I am not reassured by her assertion that opposing power is a matter of negotiating with it. Nor am I persuaded by the haphazardness of her understanding of resistance – a haphazardness that arises from her rejection of agency. Take her assertion that the Benjaminian messianic rupture of divine violence – outlined in Chapter 3 – offers the possibility of a political intervention based on distraction: Perhaps we need to be more distracted, as Baudelaire was said to be, in order to be available to the true picture of the past to which Benjamin refers. Perhaps, at some level that has implications for the political point I hope to bring out here, a certain disorientation opens us to the chance to wage a fight for the history of the oppressed.JS Butler here offers disorientation and chance – rather than action, choice, or decision – as a political strategy. As she adds, "We have to be provisional situationists, seizing the chance to fight when it appears" (PW 110). This is not a new problem, for long before Butler's turn to ethics, she wrote, in relation to our tendency to identify with the power structures that subjugate us: "The very categories that arc politically available for identification restrict in advance the play of hegemony, dissonance and rearticulation. It is not simply that a psyche invests in its oppression, but that the very terms that bring the subject into political viability orchestrate the trajectory of identification and become, with luck, the site for a disidentificatory resistance."19 I have already expressed my dissatisfaction with the idea that the psyche invariably "invests in its oppression," but in the present instance I want to call attention to Butler's reduction of resistance – here configured as a practice of disidentification – to a kind of lucky break from the generalized background of power. Allen has noted the same problem, arguing that luck is too flimsy a basis for political resistance, and pointing out, furthermore, that Butler's reluctance to theorize the social world as anything but hegemonic makes it difficult for her to envision the possibility of social solidarity, including nonsubordinating, nonstrategic forms of mutual recognition. As Allen asserts: Without a more fully developed and less ambivalent notion of recognition, Butler is left unable to explain the possibility of collective or, ultimately, individual resistance .... Without an account of how the recognition of our commonality provides the basis for political community and collective resistance, Butler is left suggesting that the transformation from identification to disidentification, from signification to resignification, from subjectivation to a critical desubjectivation, is nothing more than a matter of luck. (PS 93) Exactly. As complicated and potentially flawed as the democratic ideal of participatory parity may be, it still seems like a better basis for political action than dumb luck.

### AT: Identity First

#### Identity support *alone* leaves students unprepared to situate their personal experiences within an institutional framework. This shuts down discussions of solutions and disempowers students’ agency. Political education involving the identification of specific problems and concrete policy solutions is the best way to support youth activism. This evidence beats the case and proves that the alt is best.

Lewis-Charp et al. 6 — Heather Lewis-Charp, Senior Associate and Social Scientist at Social Policy Research Associates, holds an M.A. in Education Research from the University of California-Santa Cruz, et al., with Hanh Cao Yu, Vice President and Senior Social Scientist at Social Policy Research Associates, holds a Ph.D. in Education Administration and Policy Analysis from Stanford University, and Sengsouvanh Soukamneuth, Social Scientist at Social Policy Research Associates, holds an M.A. in Education Policy from the University of California-Los Angeles, 2006 (“Civic Activist Approaches for Engaging Youth in Social Justice,” *Beyond Resistance! Youth Activism and Community Change: New Democratic Possibilities for Practice and Policy for America’s Youth*, Edited by Shawn Ginwright, Pedro Noguera, and Julio Cammarota, Published by Routledge, ISBN 0415952506, p. 26-29)

Nurturing Collective Forms of Identity

We believe that before you go out into the community and make change, you have to really understand where you’re coming from and understand yourself. This is about identity development, the history of your people, where your people stand in the bigger picture.

—Staffer at CAPAY (Coalition for Asian Pacific American Youth), in Boston, Massachusetts

As evidenced by this quote, civic activism organizations focus on raising awareness and strengthening individuals’ ability to navigate and negotiate the challenges they face. In doing so, they seek to “make the personal political” among youth from marginalized social groups in the United States. Civic activism organizations recruit youth from marginalized ethnic, racial, or cultural groups; within our study, there were organizations focused explicitly on African American, Native American, Asian American, and gay, lesbian, bisexual, transgendered, and questioning (GLBTQ) identity. There were other organizations that coalesced around larger identity categories, such as youth of color.

We found that there was a clearly defined need for identity support among the young people within these organizations. Youth we interviewed described that before joining these groups they had a poor view of themselves, had been ignorant about their history, and/or had been involved in self-destructive behaviors. For instance, as one youth explained, “When I first realized I was queer I felt really powerless and really scared of myself. And that was really scary; to be scared of who you are is totally diminishing.” Other youth said that they “didn’t know there were so many different kinds of Asians,” “didn’t know about self-hatred,” or didn’t “understand what really happened in the civil rights movement; schools didn’t really give you more than the basics.” The need for identity affirmation, therefore, within these youth populations was particularly strong. It is important, however, to point out that civic activism organizations moved beyond mere identity affirmation, gearing their work in such a way as it set the groundwork for a broader social justice orientation.

Most organizations offered “critical education” on prejudice and discrimination as an entry point for social justice issues in order to help youth understand [end page 26] the legacy of oppression and identify present-day challenges facing their identity group. One organization, for example, believed that the barriers faced by African American youth are best addressed once youth have considered the legacy and impact of their own history, including the painful scars left by slavery and segregation. They encouraged youth to reflect on and “heal” these scars so that they could transcend internalized racism and learn to effectively function in society. This approach is consistent with Watts et al.’s argument that African Americans benefit from an understanding of the social structure of power and privilege. In their struggle against oppression, African Americans can “benefit from a strong sense of self that incorporates both the cultural and sociopolitical aspects of their African American heritage” (2003, p. 188).

Civic activism organizations move beyond the exploration of the history of particular identity groups, seeking to emancipate youth through a process of deep critical analysis and reflection. Some organizations are intentional about pushing youth out of their “comfort zone” by asking that they interrogate their assumptions about themselves, each other, and about the society around them. One youth captured this aspect of this approach when he said,

I don’t think it’s about being comfortable all the time. It’s about learning different circumstances that make you uncomfortable, where you have to stand up for what you say, even if it’s not the majority opinion. It’s about getting over the discomfort you feel.

Thus, youth within these organizations are pushed to extend their thinking, to confront their own biases, and to ask hard questions of the leaders within their communities. Further, they analyze issues of oppression and consider how their own personal experiences relate to the struggles of others within and outside of their own community. This kind of identity support, in turn, creates a sense of purpose in young people to take a civic activist stance and to work with others in their communities to end various forms of oppression.

Making Social Change Tangible

Social change happens at the personal level, at the gut level, and has to come out of self-interest. People mobilize because their daughter has asthma and they need to do something about it.

—Staffer at 21st Century Youth Leadership Movement, in Selma, Alabama

As captured by this quote, the desire for social change is often rooted in personal needs and experiences, and as such, connection to collective forms of identity can be a precursor to social action. Civic activism, however, also [end page 27] depends on the identification of tangible goals for social change, an articulation of a coherent strategy for reaching those goals, and a belief in the power and efficacy of groups of people to effect change.

Further, we have found that the social change goals or “wins” that civic activism groups use to measure their own progress are, by design, incremental so that youth can remain engaged in the process. These include press coverage of their issues, the number of people they recruit to attend rallies or events, and the number of meetings they hold with people in power. Over the course of the study, civic activism groups achieved some relatively large-scale community wins. These include one organization’s success in closing down a cement plant in their community, another’s successful defeat of a city council measure to create a daytime curfew for teens, and a third organization’s successful effort to have a sexual harrassment policy created for their school district. These types of victories fueled young people’s sense of purpose and their belief that they could make a difference. The following quote from one youth is illustrative of the sense of enthusiasm and competence that young people within these groups radiated.

We have a big voice. There aren’t a lot of other youth who are as involved as we are.... But, we’re at the point now where we are taken seriously. We earned their respect by the actions we take. When we were opposing the cement plant, the owner challenged us at a city council meeting. He told us to be more “productive.” So, we went out and got 1,000 sig- natures opposing his plant and that shut him up and impressed the city council people.

Civic activism groups use a variety of strategies to build the capacity of youth leaders to effect change. One of most universal and potent strategies used by organizing groups is political education. This approach enables youth to learn about social movements (e.g., the civil rights movement), political processes (the electoral process) and current events (e.g., racial profiling and the effects of 9/11 on immigrant communities). Through political education, youth organizing groups hope to support critical-thinking skills and develop values and attitudes that move youth to act against injustice. Political education sessions often seek to make connections between larger social issues and young people’s day-to-day lives, and center on such issues as policing, school quality, environmental justice, and immigrants’ rights. On one level, youth are seen as experts on these issues, and they are encouraged to share their experiences as well as compose and defend their own opinions. On another level, youth are pressed by program leaders to think about these issues abstractly, on a scale beyond their individual experience, including a consideration of the international or global characteristics of power and oppression.

From a base of political education, civic activism groups have progressed toward the development of a clear and manageable community-change [end page 28] agenda. They have sought, at the most basic level, to empower youth to take leadership on issues in their lives, emphasizing their role as grassroots leaders within their communities. The first step in that process is to identify the issues most salient to the youth who participate in the organization. The second step is to ask youth to actively seek out the perspectives and concerns of other community members, in an effort to find issues of broad concern that can serve as the basis for sizable coalitions and collective action. Thus, the issues that civic activist groups address are reflective of issues that community members face. The process of listening to and raising awareness about such issues is seen as a high priority in and of itself. Issues identified as most relevant to youth and their communities include the lack of recreational spaces, lack of green spaces, environmental pollution, sexual harrassment in schools, policing and the increased incarceration of youth offenders, and unfair working conditions.

Coaching Strategies for Fostering Lifelong Activism

Without grounding youth in the larger sociohistorical context of social movements and introducing them to concrete strategies for social change, impassioned youth would be at a loss to translate their ideas and beliefs into action. Civic activism groups use a variety of mechanisms or levers (“direct actions”) for change, including education, letter-writing campaigns, petitions, public presentations, meetings with people in power, protests, and boycotts. In taking such approaches to civic engagement, youth activism groups dispel some of the stereotypes that characterize their work as “oppositional.” They emphasize the need to work within the system to the extent possible (i.e., through participation in decision-making bodies), while always being prepared to apply pressure from outside the system (i.e., through protests and boycotts). In the words of one program director, “We’re clear that being in the system or out isn’t important. It’s a strategy that’s rooted in systems change that is important.” Further, civic activism groups embrace a philosophy of nonviolent and peaceful activism; they are concerned that youth develop a social justice orientation that is positive and affirming, because they believe that this is necessary to sustain social action in the long run. The following quote, by a staff member at one organization, speaks to this issue:

We don’t organize out of hate, but out of love—our love for people. Because hate is very defeating, and can motivate and charge you to do something about injustices. But [we ask youth], how long is your hate going to sustain your commitment to social justice?

Hence, these organizations promote spiritual and/or human rights arguments for social justice. In doing so, they seek to strike a delicate balance, supporting young people’s ability and opportunity to actively question authority while at the same time enabling youth to resist cynicism that could potentially lead to social distrust and/or alienation.

### AT: Limits/Fairness=Exclusionary

#### Limits don’t uniquely produce exclusions, those are external features of society that aren’t unique to debate and that voting aff can’t solve—using a limited topic to develop provisional consensus through reciprocal and fallible argumentation is a better method of exposing how those exclusions function

**Dahlberg, 14**—Centre for Critical and Cultural Studies, University of Queensland (Lincoln, “The Habermasian Public Sphere and Exclusion: An Engagement with Poststructuralist-Influenced Critics”, Communication Theory Volume 24, Issue 1, pages 21–41, February 2014, dml)

Normatively then, the Habermasian (or deliberative)4 public sphere refers to the communicative space constituted through **rational-critical deliberation** over **practical problems**, deliberation that leads to **critically (in)formed public opinion**, which in turn enables the democratic **scrutiny** and **guidance** of **official decision-making processes**. The criteria for rational-critical deliberation are understood to involve **inclusive**, **reasoned**, **reciprocal**, **reflexive**, **sincere**, and **coercion-free argumentation** (Habermas, 2005, 2006). Communicative rationality is supported by open information flows (publicity), motivated by the aim of reaching understanding and agreement (public opinion), and moved toward this end by the “**forceless force of the better argument**” (Habermas, 2005, p. 384). Claims and agreements are here **contingent** since **every claim can be met by a “no”** and every deliberatively achieved agreement can be challenged and potentially undone. It is important to note that “public” here refers to the mode, rather than the content or place or medium, of communication. Thus, the public sphere may come into existence, for instance, through face-to-face or technologically mediated argumentation between individuals and within informal groups, or through the more organized discussions found in civil society associations and explicitly political organizations, or through the reflection and debate engendered by the whole range of mass media forms and contents—“news, reports, commentaries, scenes and images, and shows and movies with an informative, polemical, educational, and entertaining content” (Habermas, 2006, p. 415; see also Habermas, 1996a, pp. 373–374).

Habermas does not see rational-critical deliberation, which he also refers to as “communicative rationality,” as some sort of metaphysical ideal, but rather argues that it can be identified as an idealization implicit in the “inconspicuous daily routines of asking for and giving reasons”: It is “built into communicative action” (Habermas, 2006, p. 413). In other words, the set of public sphere criteria listed above are, and must be, **tacitly presupposed** by **anyone engaging in any practical argument**. As such, these criteria are **conditions of possibility** for such engagement, “constitutive of the game of argumentation” (Habermas, 2005, p. 385). These presupposed criteria, Habermas (1984) argues, can be “rationally reconstructed”—using the “presuppositional analysis” of “formal pragmatics”5—from out of everyday arguments, illuminating a universal public sphere norm that sets out “nonarbitrary standards for the identification of communication pathologies” (Habermas, 2006, p. 416). That is, the implicit idealization provides a **critical ideal** by which to **evaluate** the **deliberative quality** of actual public sphere communication and thereby identify communicative “distortions” or “deviations” and associated “moments of inertia,” the latter resulting from a “scarcity of those functionally necessary resources on which processes of deliberative opinion- and will-formation significantly depend” (Habermas, 1996a, p. 326, drawing on Bernhard Peters' work). Such identification of **limits** in turn provides the basis for **reflection** on the **cultivation** of **more rational-critical deliberation**. The aim of such reflection is **not** to set out **strict procedures** for deliberation, as is required in formal decision-making (on this see Habermas, 1996a, pp. 302–308), but to **identify** the “functionally necessary” sociopolitical resources (or positive conditions) needed to **enhance**—in quality and quantity—rational-critical deliberation in everyday practical argumentation (Chambers, 1996; Habermas, 1996a, p. 325). Specific resources will depend on context, but according to Habermas (1996a, 2006; see also Carleheden & Gabriëls, 1996) they will, in general, include: (first) a mass media system regulated in relation to the idealized criteria, (second) a network of autonomous civil society associations supporting communicative reasoning and public opinion formation, the emergence, reproduction, and influence of which depend on (third) “a liberal-egalitarian political culture sensitive to problems affecting society as a whole” (Habermas, 1996a, p. 488), which, in turn, requires (fourth) social rights to the provision of sustainable living conditions, and (fifth) a population accustomed to (universal) freedom and versed in critique.

This deliberative public sphere norm, as already noted, is reconstructed from presuppositions of actual argumentation. However, there is always a gap between idealization and practice: “due to their idealizing content, the universal presuppositions of argumentation can only be approximately fulfilled” (Habermas, 1996a, p. 178, see also pp. 323–326). As an idealization, rational-critical deliberation (communicative rationality) is not burdened by the demands and impediments of everyday communicative practice, which means the latter always falls short of the idealized presuppositions that are made. Habermas accepts the impossibility of realizing the always-already-presupposed idealization of communicative rationality: “the public sphere ideal is **not perfectly reachable**” (Habermas 1992b, p. 477). This impossibility is not just due to empirical “distortions” (which will be discussed further in the next section), but also to logical limits: Responding to his critics,6 Habermas has, particularly in recent times, argued that communicative rationality, and thus the deliberative public sphere norm, **cannot be understood as an “end state,”** a “final stage which can be realized in time” (Habermas as cited in Carleheden & Gabriëls, 1996, p. 10), because if realized it “would make all further communication superfluous” (Habermas, 1996b, p. 1518). In other words, the full realization of communicative rationality would mean the end of communication, and human history, as it would eliminate those negative social conditions that make communication in social life necessary, “conditions such as inadequate information, interpersonal misunderstandings, lack of insight, and so on” (Cooke, 2004, p. 417, referring to Albrecht Wellmer's work). By blocking the realization of fully rational-critical deliberation, these negative social conditions ensure that no actual deliberation or agreement can ever be fully rational, which invites challenges to any democratic process and agreement (including over deliberative criteria), and calls for ongoing argumentation. Thus, in parallel with Derridian logic, the “unavoidable moments of inertia” (Habermas, 1996a, p. 326) of everyday communication, along with the idealized criteria of communicative rationality that they limit, are conditions of possibility and impossibility of fully realizing in actual argumentation the deliberative public sphere norm.

This deliberative conception of the public sphere is seen by advocates as **radically democratic**—in the sense of being based solely on the will of those affected by a dispute—for a number of reasons: First, because it conceives of a rational-critical public and associated public opinion that can **scrutinize**, **inform**, and **hold** publicly **accountable** political decisions; second, because it sees all instituted processes and decisions as **open to contestation** by any **excluded voices**; and third, because it understands the **criteria** for **guiding** and **judging** the deliberative practice of participants as **immanent to these practices**.

However, poststructuralist-influenced critics, including those focusing on contemporary communication systems (e.g., Nguyen & Alexander, 1996; Poster, 1997), see the Habermasian public sphere conception failing to be as radically democratic due to its not taking full account of exclusion, both exclusion in everyday deliberative practice and exclusion resulting directly from the conception's formulation. I will now outline this critique, and examine how Habermasians have responded and might further respond to it.

The Habermasian public sphere conception and exclusion

Poststructuralist-influenced critics, generally speaking, argue that by promoting a universal rational norm as the basis for public sphere communication, Habermasians make (at least) two fundamental mistakes with respect to exclusion. First, they assume the possibility of the eliminability, or near eliminability, of exclusions in actual argumentation, so that given the right conditions we could approximate (if not fully reproduce) communicative rationality, which underestimates the **pervasiveness** of power and the extent of exclusions in everyday communicative interaction (e.g., Flyvbjerg, 2000; Shabani, 2003). Second, and more widely articulated than the first critique, the Habermasian public sphere norm is **itself seen as exclusionary**, despite its democratic aims. Poststructuralist-influenced critics, paralleling feminist concerns (e.g., Dean, 1996; Fraser, 1997; Gould, 1996; Young, 2000) and rhetorical studies critique (e.g., Huspek, 2007a; Phillips, 1996), argue that the deliberative public sphere criteria, which are supposed to define democratically legitimate communication and to differentiate between reasoned argumentation and coercion, actually support domination and exclusion (e.g., Coole, 1996; Devenney, 2009; Lyotard, 1984, pp. 65–66; Mouffe, 1999, 2000; Rabinovitch, 2001; Villa, 1992). In order to be considered legitimate deliberators, subjects must come to internalize the rules of the particular form of communication deemed to be the universally valid form of democratic engagement or be excluded from the public sphere. As such, the Habermasian public sphere conception is seen as an exemplary form of what critical theorists would refer to as ideology (a universal claim obscuring its particularity) and of what Foucault showed to be the operation of modern disciplinary power—the deliberative public sphere norm relying on the subjugation of selves through subjectivation, a normalizing that constitutes subjects as “rational-critical” communicators (Villa, 1992, p. 715). As a result, participants who have internalized modes of communication closer to what is determined valid are advantaged over others. That is, in order to be equally included, some participants must be disciplined more than others—those more accustomed to rational-critical deliberative forms of communication—so as to be capable of reproducing the idealized deliberative mode, disciplining that involves the exclusion or suppression of those voices judged “illegitimate” (irrational, strategic, private). The problem for poststructuralist-influenced critics here is not with exclusion per se, as they see norms as necessarily exclusionary, but with such exclusion being unaccounted for in relation to democratic communication and in fact obscured by the claim to universality.

I will briefly outline how Habermas and Habermasians have responded and might further respond to these two interrelated lines of critique. In response to the first line of critique—that the Habermasian public sphere conception does not adequately account for exclusions in practice—I have already noted how Habermas not only understands the public sphere norm, despite being reconstructed from everyday communicative interaction, as being logically impossible to fully realize in practice but sees “moments of inertia” as ever-present and **necessary features** of actual deliberation: They block the full realization of communicative rationality and yet **make communication necessary** in the first place. These moments of inertia include **“illegitimate”** exclusion: Any deliberative practice will involve exclusion, not just “legitimate” exclusion of “undemocratic” elements but exclusions defined as “illegitimate” with respect to the idealization of communicative rationality. Such “illegitimate” exclusions result from: “unequal distribution of attention, competencies, and knowledge” (Habermas, 1996a, p. 325); strategic manipulation of various sorts, including bribes, threats, or violence (Habermas, 1996a, pp. 307–308); and systemic coercion—state and corporate interests and their instrumental media of money and power colonizing more and more areas of life including those that should, for a healthy democratic society, be coordinated by public opinion derived from rational-critical deliberation (for an overview of the forms of distorted communication identified by Habermas, see Huspek, 2007b, pp. 827–830). In relation to systemic coercion, Habermas has been particularly critical of the instrumentalization of communication media: How the potential of the mass media to support rational-critical deliberation, with maximum inclusion of voices, is continually thwarted by system colonization, and particularly the “intrusion of the functional imperatives of the market economy in the ‘internal logic’ of the production and presentation of messages” (Habermas, 2006, p. 422).

As well as exclusion resulting from such explicitly “distorted communication,” Habermasian theory also considers the exclusionary effects of culturally specific (lifeworld) contexts. The interpretation and application of public sphere criteria as well as the validity and strength of arguments will **always be contextually affected** and historically specified (Habermas, 1992b, p. 477; 1996a, p. 324). As a result, what comes to be defined as “legitimate” deliberation will be colored by taken-for-granted meanings, leading to some voices being illegitimately (according to the deliberative public sphere norm) valorized over others, with the illegitimate marginalization or exclusion of these other voices.

Thus Habermas (2006) and adherents are **fully aware** of how public spheres in practice are “dominated by the kind of mediated communication that lacks the defining features of deliberation” (p. 414), “the kind of political communication we know goes against the grain of the normative requirements of deliberative politics” (p. 420). However, as we have seen, for Habermasians it is not just culture and power that determine communicative practice, as some poststructuralist-inspired critique suggests. Rather, presuppositions of communicative rationality are understood as **implicit in every argument**, providing a **countervailing force** to distorted communication and the basis for a postmetaphysical **critique of exclusion** and “a potential for self-transformation” (Habermas, 1992a, pp. 419–429; 1992b, pp. 476–479; 1996a, p. 374, 2006, p. 419; see also Benhabib, 1996; Chambers, 1996; Cooke, 1994). We can see this historically in the labor and women's movements, as Habermas (1996a) points out, which have been able to draw on “the rights to unrestricted inclusion and equality built into liberal **public spheres** . . . in order to **shatter the structures** that had initially constituted them as ‘the other’ of a bourgeois public sphere” (p. 374). The central purpose in reconstructing the public sphere idealization of rational-critical deliberation, as already outlined in the previous section, is to illuminate this basis for critique and transformation. Yet, poststructuralists see such a universal norm as **in itself producing exclusions**, exclusions that are not only unaccounted for but are, in fact, obscured by the claim to universality. This is the second line of critique outlined above.

In reply to this second line of critique, it must first be noted that Habermasians accept that there is a **necessary constitutive exclusion** involved in the deliberative public sphere conception. In fact, any conception of democracy must involve normative claims about what democracy is and is not, including **what is acceptable as democratic communication** and what is not, drawing a line between reasoned argumentation and coercion, democratically “legitimate” and “illegitimate” exclusion. It is simply **not possible** to call on democracy and **escape invoking a norm** of democratic communication with **associated exclusions**. The question is then whether we can, as Habermas claims, reconstruct from everyday communicative practice a universal norm of the public sphere that distinguishes between democratically “legitimate” and “illegitimate” exclusion.

According to Habermas (1992a), not only can we reconstruct such a norm, but the public sphere norm thus identified is **not normalizing** in the **disciplinary** and **exclusionary sense** suggested by the poststructuralist critique. Of course, **any norm will require certain behavior** from participants, and thus **the constitution of subjectivity** in **particular ways**. But Habermasians **do not see such requirements** and constitution as necessarily **antidemocratic**. More specifically, they do not see the deliberative public sphere norm as **having to be internalized** in a **disciplinary** and exclusionary **fashion**. Rather, they see it as **an always already presupposed communicative structure** that can be **explicitly reconstructed** as a **critical ideal** by which to **illuminate “illegitimate exclusion”** within deliberation specifically, and society more generally, and enable **reflection upon possibilities** for **greater freedom** and equality (Habermas, 1996a; Markell, 1997). As Chambers (1996) argues, rational-critical deliberation here is about “the endless questioning of codes,” **the reasoned questioning of normalization** and thus of **exclusions** (pp. 233–234). Through deliberation, participants presuppose themselves as **rational-critical subjects** (and in the process are constituted as such), able to **reflexively interrogate** all aspects of their situation, including the **particular deliberative rules** applied in practical disputes. Of course, as critics point out, subjects whose everyday communicative practice is already more in line with the deliberative public sphere norm will be **advantaged over others** in becoming such rational-critical interlocutors. However, for Habermasians, it is **not** the reconstructed **norm** that should be seen as at fault—seeing the reconstructed norm marginalizing or excluding voices—but the **uneven distribution** of the sociocultural resources **necessary for engaging in rational-critical deliberation** (that fall under the five general positive conditions of the public sphere listed in the previous section). This unevenness, which is in fact highlighted by the Habermasian public sphere norm in its critical role, indicates the need to provide for these resources so as to **enhance** and **extend communicative rationality**. That is, we are faced here with a sociological problem, one that the Habermasian public sphere norm illuminates and demands be addressed for the advancement of democracy, rather than a problem internal to the character of the norm.

### AT: Personal Experience First

#### Positioning of experience as a justification for belief creates a self-referential insulation from criticism [“How can you know how I felt? You can’t criticize how I felt!”] and prevents meaningful criticism of the status quo which can always be rendered as purely subjective – any theory of politics that takes as transparent the meaning of personal experience can only but naturalize the categories it attempts to criticize.

Scott 97. Joan Scott, Professor of History at Princeton, 1997, Feminists Theorize the Political, “Experience”

When the evidence offered is the evidence of “experience,” the claim for referentiality is further buttressed – what could be truer, after all, than a subject's own account of what he or she has lived through? It is precisely this kind of appeal to experience as uncontestable evidence and as an originary point of explanation – as foundation upon which analysis is based – that weakens the critical thrust of histories of difference. By remaining within the epistemological frame of orthodox history, these studies lose the possibility of examining those assumptions and practices that excluded considerations of difference in the first place. They take as self-evidence the identities of those whose experience is being documented and thus naturalize their difference. They locate resistance outside its discursive construction and reify agency as an inherent attribute of individuals, thus decontextualizing it. When experience is taken as the origin or knowledge, the vision of the individual subject (the person who had the experience of the historian who recounts it) becomes the bedrock of evidence upon which explanation is built. Questions about the constructed nature of experience, about how subjects are constituted as different in the first place, about how one's vision is structured – about language (or discursive) and history – are left aside. The evidence of experience then becomes evidence for the fact of difference rather than a way of exploring how difference is established, how it operates, how and in what ways it constitutes subjects who see and act in the world.

To put it another way, the evidence of experience, whether conceived through a metaphor of visibility or in any other way that takes meaning as transparent, reproduces rather than contests given ideological system- those that assume that the facts of history speak for themselves and, in the case of histories of gender, those that rest on notions of a natural or established opposition between sexual practices and social conventions, and between homosexuality and heterosexuality. Histories that document the hidden world of homosexuality, for example, show the impact of silence and repression on the lives of those affected by it and bring to light the history of their suppression and exploitation. But the project of making experience visible precludes critical examination of the workings of the ideological system itself, it's categories of representation (homosexual/heterosexual, man/woman, black/white as fixed immutable identities), its premises about what these categories mean and how they operate, its notions of subjects, origin, and cause.

The project of making experience visible precludes analysis of the workings of this system and of its historicity; instead it reproduces its terms. We come to appreciate the consequences of the closeting of homosexuals and we understand repression as an interested act of power or domination; alternative behaviors and institutions also become available to us. What we don't have is a way of placing those alternatives within the framework of (historically contingent) dominant patterns of sexuality and the ideology that supports them. We know they exist, but not the extent of the critique. Making visible the experience of a different group exposes the existence of repressive mechanisms, but not their inner workings or logics; we know that difference exists, but we don't understand it as constituted relationally. For that we need to attend to the historical processes that, through discourse, position subjects and produce their experiences. It is not individuals who have experience, but subjects who are constituted through experience. Experience in this definition then becomes not the origin of our explanation, not the authoritative (because seen or felt) evidence that grounds what is know, but rather what we seek to explain, that about which knowledge is produced. To think about experience in this way is to historicize it as well as to historicize the identities it produces. This kind of historicizing represents a reply to the many contemporary historians who have argued that an unproblematized “experience” is the foundation of their practice; it is a historicizing that implies critical scrutiny of all explanatory categories usually taken for granted, including the category of “experience”

### AT: Predictability/Rules Bad

#### No link—our argument is a set of contestable guidelines for competitions. Only a standard like the resolution is limited enough to enable prep AND creativity

**Armstrong 2K** – Paul B. Armstrong, Professor of English and Dean of the College of Arts and Sciences at the State University of New York at Stony Brook, Winter 2000, “The Politics of Play: The Social Implications of Iser's Aesthetic Theory,” New Literary History, Vol. 31, No. 1, p. 211-223

\*aleatory = depending on luck, i.e. the throw of a die

Such a play-space also opposes the notion that the only alternative to the coerciveness of consensus must be to advocate the sublime powers of rule-breaking.8 Iser shares Lyotard’s concern that to privilege harmony and agreement in a world of heterogeneous language games is to limit their play and to inhibit semantic innovation and the creation of new games. Lyotard’s endorsement of the “sublime”—the pursuit of the “unpresentable” by rebelling against restrictions, defying norms, and smashing the limits of existing paradigms—is undermined by contradictions, however, which Iser’s explication of play recognizes and addresses. The paradox of the unpresentable, as Lyotard acknowledges, is that it can only be manifested through a game of representation. The sublime is, consequently, in Iser’s sense, an instance of doubling. If violating norms creates new games, this crossing of boundaries **depends on** and carries in its wake the conventions and structures it oversteps. The sublime may be uncompromising, asocial, and unwilling to be bound by limits, but its pursuit of what is not contained in any order or system makes it dependent on the forms it opposes. ¶ The radical presumption of the sublime is not only terroristic in refusing to recognize the claims of other games whose rules it declines to limit itself by. It is also naive and self-destructive in its impossible imagining that it can do without the others it opposes. As a structure of doubling, the sublime pursuit of the unpresentable requires a play-space that includes other, less radical games with which it can interact. Such conditions of exchange would be provided by the nonconsensual reciprocity of Iserian play. ¶ Iser’s notion of play offers a way of conceptualizing power which acknowledges the necessity and force of disciplinary constraints without seeing them as unequivocally coercive and determining. The contradictory combination of restriction and openness in how play deploys power is evident in Iser’s analysis of “regulatory” and “aleatory” rules. Even the regulatory rules, which set down the conditions participants submit to in order to play a game, “permit a certain range of combinations while also establishing a code of possible play. . . . Since these rules limit the text game without producing it, they are regulatory but not prescriptive. They do no more than set the aleatory in motion, and the aleatory rule differs from the regulatory in that it has no code of its own” (FI 273). Submitting to the discipline of regulatory restrictions is both constraining and enabling because it makes possible certain kinds of interaction that the rules cannot completely predict or prescribe in advance. Hence the existence of aleatory rules that are not codified as part of the game itself but are the variable customs, procedures, and practices for playing it. Expert facility with aleatory rules marks the difference, for example, between someone who just knows the rules of a game and another who really knows how to play it. Aleatory rules are more flexible and openended and more susceptible to variation than regulatory rules, but they too are characterized by a contradictory combination of constraint and possibility, limitation and unpredictability, discipline and spontaneity.

### AT: Switch Side Negates Identity

#### At worst we require a “devils advocate” – which is on balance good for activism—their ethics args are bad for the aff itself

**Haskell 1990** – history professor at Rice University (May, Thomas, History and Theory, 29.2, “Objectivity is Not Neutrality: Rhetoric vs. Practice in Peter Novick’s That Noble Dream”, p. 129-157)

Detachment functions in this manner **not by draining** us of **passion,** but by helping to **channel** our intellectual passions in such a way as **to insure collision** with rival perspectives. In that collision, if anywhere, our thinking transcends both the idiosyncratic and the conventional. Detachment both socializes and deparochializes the work of intellect; it is the quality that fits an individual to participate fruitfully in what is essentially a communal enterprise. Objectivity is so much a product of social arrangements that individuals and particular opinions scarcely deserve to be called objective, yet the social arrangements that foster objectivity have no basis for existence apart from individual striving for detachment. Only insofar as the members of the community are disposed to set aside the perspective that comes most spontaneously to them, and strive to see things in a detached light, is there any likelihood that they will engage with one another mentally and provoke one another through mutual criticism to the most complete, least idiosyncratic, view that humans are capable of. When the ascetic effort at detachment fails, as it often does, **we "talk past one another**," producing nothing but discordant soliloquies, each fancying itself the voice of reason. The kind of thinking I would call objective leads only a fugitive existence outside of communities that enjoy a high degree of independence from the state and other external powers, and which are dedicated internally not only to detachment, but also to intense mutual criticism and to the protection of dissenting positions against the perpetual threat of majority tyranny. Some hypothetical examples may clarify what I mean by objective thinking and show how remote it is from neutrality. Consider an extreme case: the person who, although capable of detachment, suspends his or her own perceptions of the world not in the expectation of gaining a broader perspective, but only in order **to learn how opponents think** so as to demolish their arguments more effectively - who is, in\* short, a polemicist, deeply and fixedly committed as a lifelong project to a particular political or cultural or moral program. Anyone choosing such a life obviously risks being thought boorish or provincial, but insofar as such a person successfully enters into the thinking of his or her rivals and produces arguments potentially compelling not only to those who already share the same views, but to outsiders as well, I see no reason to withhold the laurel of objectivity. 10 There is nothing objective about hurling imprecations at apostates or catechizing the faithful, but as long as the polemicist truly engages the thinking of the enemy he or she is being as objective as anyone. In contrast, the person too enamored of his or her own interpretation of things seriously and sympathetically **to entertain alternatives, even for the sake of learning** how best to defeat them, fails my test of objectivity, no matter how serene and even tempered. The most common failure of objectivity is preaching to the converted, proceeding in a manner that complacently presupposes the pieties of one's own coterie and makes no effort to appreciate or appeal to the perspectives of outsiders. In contrast, the most commonly observed fulfillment of the ideal of objectivity in the historical profession is simply the powerful argument-the text that reveals by its every twist and turn its respectful appreciation of the alternatives it rejects. Such a text attains power precisely because its author has managed to suspend momentarily his or her own perceptions so as to anticipate and take account of objections and alternative constructions -not those of some straw man, but those that truly issue from the rival's position, understood as sensitively and stated as eloquently as the rival him- or herself could desire. Nothing is rhetorically more powerful than this, and nothing, not even capitulation to the rival, could acknowledge any more vividly the force and respectability of the rival's perspective. To mount a telling attack on a position, one must first inhabit it. Those so habituated to their customary intellectual abode that they cannot even explore others can **never be persuasive** to anyone but fellow habitues. That is why powerful arguments are often more faithful to the complexity and fragility of historical interpretation - more faithful even to the irreducible plurality of human perspectives, when that is, in fact, the case -than texts that abjure position-taking altogether and ostentatiously wallow in displays of "reflexivity" and "undecidability." The powerful argument is the highest fruit of the kind of thinking I would call objective, and in it **neutrality plays no part**. Authentic objectivity has simply nothing to do with the television newscaster's mechanical gesture of allocating the same number of seconds to both sides of a question, or editorially splitting the difference between them, irrespective of their perceived merits

#### And, extend our “role of the neg” DA—authenticity tests make debate a lecture—that displaces any ethical baggage onto the neg by precluding objection

**Subotnik 1998** – professor of law, Touro College, Jacob D. Fuchsberg Law Center (7 Cornell J. L. & Pub. Pol'y 681)

Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that **the minority scholar** himself or herself hurts and hurts badly.

An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [\*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, "I hurt bad"? n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74

"Precarious." "Obliterating." These words will clearly invite responses only from fools and sociopaths; they will, by **effectively precluding objection**, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti [\*695] cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition. n77

[\*696] Last, as we have seen, it precludes the possibility of **open and structured conversation** with others. n78

[\*697] It is because of this conversation-stopping effect of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny.

If through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of cynicism in white audiences which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. It drives the American public to the right and ensures that anything CRT offers is reflexively rejected.

In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are too important in their implications  [\*698]  for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of great importance that white thinkers and doers participate in open discourse to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

## High Theory Helpers

### Bjerg/Baudrillard Votes Neg

#### T as a rule of the game may resemble [what the aff says is violent], but the only thing that makes the two materially equivalent is the ideological investment in T’s ability to do violence that they espouse. This straight turns the aff at the level of form even if they win the content of the 1AC is radical—voting aff requires agreeing with the assumption that following the rules is worse than breaking them, but that act of transgression gains satisfaction from violating the system it indicts. This reifies the coherence of that system—you can’t make the rules of debate less insidious by playing the game, because the act of playing itself affirms the game that brings the rules to life. You should vote neg because considering debate as simply a rule-guided game divests the rules of any authority but that which we grant it. This is a better way of exposing the contradictions of dominant power outside of debate—their link can’t outweigh this link turn because topicality can’t have the violent force of law if we vacate the driving ideology behind it

Bjerg, 11—Department of Management, Politics and Philosophy, Copenhagen Business School (Ole, *Poker: the parody of capitalism* pg 190-198, dml)

In order to understand the conceptual difference, it is important to note that when Baudrillard speaks of the law, he is not referring to law only in the strictly judicial meaning of the term. Baudrillard is rather drawing on a psychoanalytical tradition from Freud and Lacan in which the concept of law stands for any kind of social regularity, such as prohibitions, norms, values, morals, conventions, and so on, that structures the way we act and construct meaning in society. Law constitutes the social order of society.

Viewed from the perspective of an individual immersed in the daily life of society, the difference between the law of society and the rule of the game is a difference between necessity and arbitrariness. The law consists not only of a series of prohibitions and norms. It carries also an account of the justification and rationality of the law. The law tells us not only what we should and should not do; it tells us also why we should or should not do this or that. The law claims to be valid and necessary regardless of the opinions held by the individual subject included in the law. The necessity of law is founded on transcendence. This may be the transcendence of a religious order, a principle of reason and rationality, or a system of tradition. In any case the law justifies itself with reference to some order beyond the immediate content of itself.

Contrary to the law, the game and the rule are characterized by their arbitrariness. The rule claims no justification beyond its immediate appearance. It does not profess to represent a higher religious order or rational principle. In this way the rule is purely immanent to the game. Furthermore, the rule tells the subject engaged in the game what to do and not to do, but it does not give him [them] any reasons why he [they] should follow the rule. When asked, the rule provides no other justification for itself than the mere reference to the game itself: “Because these are the rules of the game!” Baudrillard sums up the difference between the rule and the law: “The Rule plays on an immanent sequence of arbitrary signs, while the Law is based on a transcendent sequence of necessary signs.”4

Think of the very simple game you can play when walking on the street in which you are not allowed to step on the lines between the flags of the pavement. The game is instituted by the invocation of the rule “Don’t step on the lines!” This rule is purely arbitrary. The game could be played just as well with the complete opposite rule: “You must step on a line for every single step you take!” Furthermore, the rule gives no reason that it should be followed. It has no “formal, moral or psychological structure or superstructure”5 to support its functioning. The functioning of the game is dependent on the voluntary submission to the rule by the players engaging in the game.

Compare this to the traffic regulations prescribed by law: “Don’t walk in the street.” “Cross the street only at the green light.” These regulations apply unconditionally and must be obeyed by anyone regardless of whether he wants [they want] to or not. Traffic regulations come with a series of explicit and implicit reasons why they should be followed, for instance, that they secure the social order of the traffic situation for the safety of everyone.

The transcendence of law makes the validity of law unconditional. It is not up to the individual subject of law to decide whether he wants to submit to the law or not. Conversely, the purely arbitrary character of the rule sets free the subject and leaves it up to the individual whether he [they] wants to participate in the game and become obliged by the rules of the game or not. In Homo Ludens Huizinga indeed proposes voluntariness and freedom as the first in his list of characteristics of play.6

“because it’s fun”

Law as understood by Baudrillard not only constitutes society. In the psychoanalytic tradition that Baudrillard is drawing on, law also plays a crucial role in the very constitution of the subject. To be a subject is to be subject to law. Without law, there would be no subject.

At first glance, law manifests itself as a prohibition banning our access to certain objects and acts. We may think of the law as an institution necessary in order to discipline our wild and otherwise uncontrolled desires for different forbidden things such as other people’s property (Thou shalt not steal) or transgressive sexual acts (Thou shalt not commit adultery). In this line of thinking, a society without law would be an anarchical allagainst-all with everybody satisfying her every desire at the expense of everybody else.

However, working along similar lines as Baudrillard, Zizek argues that law has also the latent function of structuring our very being as subjects since the law is what institutes our desires in the first place. When the law tells us not to do this or that, it carries an underlying fantasmatic message promising that beyond the prohibition of the law lie the objects that may satisfy the desire of the subject. Inherent in the law is the fantasy of what might happen if the law was not there to prevent me from pursuing my immediate desires.

As was the case with the concept of law, it is important to note that the concept of fantasy differs from its usual meaning. Here is how Zizek explains the term:

Fantasy is usually c]onceived as a scenario that realizes the subject’s desire. This elementary definition is quite adequate, on condition that we take it literally, what the fantasy stages is not a scene in which our desire is fulfilled, fully satisfied, but on the contrary, a scene that realizes, stages, the desire as such. The fundamental point of psychoanalysis is that desire is not something given in advance, but something that has to be constructed—and it is precisely the role of fantasy to give the coordinates of the subject’s desire, to specify its object, to locate the position the subject assumes in it. It is only through fantasy that the subject is constituted as desiring: through fantasy, we learn how to desire.7

Based on this understanding, Zizek often uses the concept of fantasy in conjunction with the concept of ideology.8 Only on a very superficial level is fantasy opposed to law in the sense that we fantasize about the transgression or even the abolition of law. We might think here of consumerist fantasies of the kind where we imagine gaining access to products that we cannot afford to buy: “If only the law of property or the law of equivalences did not prevent me from having this sweater or that car I would . . .” On another level, fantasy and law work together in structuring the desire of the subject. By restraining the subject’s access to the objects of desire designated by fantasy, law prevents the subject from realizing that the qualities and possibilities for enjoyment imagined to belong to the object are in fact projections of the subject’s own fantasy. In this way, the different laws of the market restraining our access to consumer goods are the condition of possibility for the fantasmatic projections about the amount of happiness, enjoyment, and fulfillment we would attain if we had free and unlimited access to these goods.

The idea of law instituting order in an otherwise anarchical world of unrestrained desire (e.g., in Hobbes) is actually a myth produced in the domain of fantasy and ideology. First, the myth gives legitimacy to law by explaining why it is necessary, but second and perhaps more importantly the myth tells us what we would really want if it were not for the law restraining us. Thus, the message of the law is split into the explicit prohibition and the fantasmatic injunction to transgress the law.9 In this way law interacts with fantasy in the domain of ideology in order to teach the subject what and how to desire.

An important implication of this understanding of the relation between fantasy and law is that even in transgression, the subject does not move beyond the domain of law. A thief illegally appropriating consumer goods by transgressing the law of property does not violate the fundamental principles for the structuring of desire in the consumer society. It may in fact even be argued that his transgressive act confirms the desirability of the consumer goods. Since the thief will go to such extremities in order to attain the goods, the goods must indeed be something extraordinary.

In Baudrillard’s analysis of the difference between law and rule, we find the following reflection related to transgression: Ordinarily we live within the realm of the Law, even when fantasizing its abolition. Beyond the law we see only its transgression or the lifting of a prohibition. For the discourse of law and interdiction determines the inverse discourse of transgression and liberation. However, it is not the absence of the law that is opposed to the law, but the Rule.10

Instead of transgression or absence of law, Baudrillard suggests the rule as being opposed to law. The argument is here not that by following the rule of the game, the player is violating the law of society. The point is rather the much more subtle one that by entering the sphere of the rule and the game the player moves beyond the ideological domain of the law.

Law, desire, and subjectivity tie into each other in a kind of Gordian knot. In the game, where law is substituted for the rule, this knot is cut. In its explicit contingency, the rule is not supported by fantasy. The rule does not hold a promise of satisfaction; no sublime object is imagined beyond the rule. The rule claims to be nothing more than what it is.

So what is the attraction of the rule and the game, if not satisfaction of a desire? Entering the game means voluntarily submitting to an arbitrary rule with no higher meaning. This act is, however, a way of delivering oneself from the law. Since transgression is already inscribed in the law even in the violation of a prohibition, we are still caught in the web of the law and its matrix of satisfaction/unsatisfaction. In the violation, we may contradict the explicit word of the law but we are still confirming its underlying principle of desire.

When choosing to submit to the rules of a game, however, we step into another order not structured by the law and desire. We renounce our desire, not in an ascetic abstinence from particular objects of desire (which is by the way only an extreme sublimation of the objects of desire), but by letting ourselves be seduced into an order not promising any kind of satisfaction at all. In this way, we move beyond the law’s matrix of satisfaction/unsatisfaction. When obeying the law, our conscious rational belief in it is supported by an unacknowledged irrational belief. Yet, entering the game, we openly acknowledge the pure contingency of the rule, and so our conscious submission to it is based on no belief whatsoever. We have no illusions that the game is nothing but an illusion, and so our approach to the game is perhaps more “realistic” than our approach to the law.

The game’s sole principle . . . is that by choosing the rule one is delivered from the law. Without a psychological or metaphysical foundation, the rule has no grounding in belief. One neither believes nor disbelieves a rule—one observes it. The diffuse sphere of belief, the need for credibility that encompasses the real, is dissolved in the game. Hence their immorality: to proceed without believing in it, to sanction a direct fascination with conventional signs and groundless rules.11

In the game, desire is suspended and so is desire’s eternal shadow figure, unsatisfaction, which is a necessary condition for the reproduction of desire. In the game, there is no promise and therefore no disappointment. In the order of the law, we may find enjoyment in the momentary and partial satisfaction of our desires through obtainment of different objects. The joy of the game stems not from this kind of satisfaction but exactly from the suspension of the satisfaction/unsatisfaction matrix.

In order to understand the intensity of ritual forms, one must rid oneself of the idea that all happiness derives from nature, and all pleasure from the satisfaction of a desire. On the contrary, games, the sphere of play, reveal a passion for rules, a giddiness born of rules, and a force that comes from ceremony, and not desire.12

As an equivalent to the “giddiness” of which Baudrillard speaks here, we find in Huizinga’s characteristic of play the notion of “fun.” People play games because it is fun. Rather than providing a full and conclusive explanation for the engagement in games, the concept of fun seems to mark the limitation of such an explanation. “The fun of playing,” Huizinga notes, “resists all analysis, all logical interpretation.”13

Think again of the game Don’t Step on the Lines. Why would someone engage in this game? Why would someone chose to submit himself to the stupid and completely arbitrary rule of not stepping on the lines? In the obvious absence of sanctions, potential rewards or other kinds of meaningful satisfactions, the question can only be answered: “Because it’s fun.” This, however, is probably more of a displacement of the question than an actual answer.

In the tradition of psychoanalysis, we find also the concept of drive. Drive is opposed to desire insofar as desire is focused on a particular object imagined to provide satisfaction for the desire, whereas drive is not directed at any object. Drive is a short circuit unmediated by fantasy, where the joy of an act derives from the activity of acting itself. Here is how Zizek defines the difference between drive and desire:

Drive . . . stands for the paradoxical possibility that the subject, forever prevented from achieving his Goal (and thus fully satisfying his desire), can nevertheless find satisfaction in the very circular movement of repeatedly missing its object, of circulating around it.14

The point is here of course that the concept of drive as opposed to desire provides an account of fun as opposed to the meaning of ordinary goal-oriented behavior. Here is how the distinction between goal-oriented desire and self-propelling drive turns out in the words of the legendary poker player Nick “The Greek” Dandalos: “The next best thing to gambling and winning is gambling and losing.”15

game as parody

We have seen that the rule is opposed to the law and that the choice of the rule delivers the player from the ideology of law. What does this say about the relation between game and society? We might for a brief moment be tempted to proclaim the playing of games as an act of criticism toward the ideology of society. This, however, would be jumping ahead, and it would fit very badly with the actual position held by different games in our society. How would we think, for instance, of Champions League football as a form of resistance toward society? Furthermore, our analysis has just shown that the domain of the rule and fun is characterized by arbitrariness and absence of meaning. Hence, it would be contradictory to project a certain critical and normative intentionality into the mere engagement in a game.

At the same time, the analyses carried out in this book are motivated by the assumption that there is indeed some kind of sociologically significant relation between the games played in society and society as a whole. This assumption is shared by Huizinga, whom we have already quoted saying: “All play means something.”16 In order to avoid the pitfalls of formally fixating the normativity of the meaning of games in relation to society by making general statements such as: “games constitute a critique of the ideology of society,” “games constitute a celebration of societal values,” “games constitute a way of governing the subjects of society,” “games constitute a way of opposing dominant power structures of society,” and so on, we shall once again turn to Baudrillard for conceptual support:

The rule functions as the parodic simulacrum of the law. Neither an inversion nor subversion of the law, but its reversion in simulation. The pleasure of the game is twofold: the invalidation of time and space within the enchanted sphere of an indestructible form of reciprocity—pure seduction—and the parodying of reality, the formal outbidding of the law’s constraints.17

Insofar as the game emerges as the institution of an extra set of rules governing the subject, it seems to constitute an addition to the order of the law. Perhaps the social significance of the game lies, however, in the subtraction of fantasmatic ideology from the prescriptions of law. On an immediate level, the rules of a game look like the law of society. The rule “Don’t step on the lines” looks like the regulation “Only walk on a green light.” However, on closer inspection the rule lacks the fantasmatic support of ideology. The game thus presents the rule in its naked arbitrariness.

To the extent that the rules of a game carry some similarity to particular laws of society, the institution of the game may affect and transform our view of the particular law. The subtraction of ideology in the game may make us aware of the ideological dimension of the law, thus causing us to view the law in the same “naked arbitrariness” as the rule.

According to Zizek, any law is inherently contradictory and basically founded on a violent and illegitimate move in which law constitutes itself as law. The obvious example here is of course the allegedly humanistic laws of democracy, which are founded on the cruel, violent, and anything but democratic brutality of the French Revolution. Underneath the surface of the normal, rational, legitimate, universal law lies a traumatic truth about the abnormal, irrational, illegitimate, contingent foundation of the law, and for law to function this traumatic truth must remain concealed. Zizek states: “Every reign of law has its hidden roots in such an absolute—selfreferential, self-negating—crime by means of which crime assumes the form of law, and if the law is to reign in its ‘normal’ form, this reverse must be unconditionally repressed.”18 The function of ideology is to conceal the traumatic contradictions of law in order for law to function in a smooth and orderly fashion.

When the rule, in the words of Baudrillard, functions as the parodic simulacrum of the law, it simulates the law in the context of the play world. Since the play world is devoid of the fantasmatic projections of ideology, the rule stands forth in a more “naked” appearance than the way we are used to seeing the law. The rule of the game mimics law. It does not pretend to be law. In fact, the rule does not pretend to be anything more or less than what it is.

Given that the rule is conventional and arbitrary, and has no hidden truth, it knows neither repression nor the distinction between the manifest and the latent. It does not carry any meaning, it does not lead anywhere; by contrast, the Law has a determinate finality.19

The absence of any kind of justification or rationalization transcending the rule produces a vacuum around the game. Contrary to the laws of the social order, the game does not explain or account for itself. It merely offers itself. Consequently, the game does not pass any critical or normative judgment on the law and society. However, the vacuum produced by the rule— the space devoid of ideology constituted by the game—opens the potential for critical reflections on the nature of law and society. Indeed, these reflections cannot be made from within the game. The game merely opens the space for such reflections.

### XT—Baudrillard Votes Neg

#### Game-playing DA –

#### 1. We should not seek meaning nor should we move towards a legitimate engagement with alterity. Rather, debate should be as a ritual dramaturgy wherein we submit absolutely and totally submit to the rules of the game as a transgression of the law. The only impact to game playing is the ability to lose oneself in total submission to the rules.

Baudrillard 79. Jean, Seduction, pg. 131-3

The Diary of the Seducer claims that in seduction the subject is never the master of his master plan, and even when the latter is deployed in full consciousness, it still submits to the rules of a game that goes beyond it . A ritual dramaturgy beyond the law, seduction is both game and fate, and as such pushes the protagonists towards their inevitable end without the rule being broken - for it is the rule that binds them. And the rule's basic dictum is that the game continue whatever the cost, be it death itself. There is, then, a sort of passion that binds the players to the rule that ties them together - without which the game would not be possible. Ordinarily we live within the realm of the Law, even when fantasizing its abolition. Beyond the law we see only its transgression or the lifting of a prohibition. For the discourse of law and interdiction determines the inverse discourse of transgression and liberation. However, it is not the absence of the law that is opposed to the law, but the Rule. The Rule plays on an immanent sequence of arbitrary signs, while the Law is based on a transcendent sequence of necessary signs. The one concerns cycles, the recurrence of conventional procedures, while the other is an instance based in an irreversible continuity. The one involves obligations, the other constraints and prohibitions. Because the Law establishes a line, it can and must be transgressed. By contrast, it makes no sense to "transgress" a game's rules; within a cycle's recurrence, there is no line one can jump (instead, one simply leaves the game). Because the Law - whether that of the signifier, castration, or a social interdiction - claims to be the discursive sign of a legal instance and hidden truth, it results in repression and prohibitions, and thus the division into a manifest and a latent discourse. Given that the rule is conventional and arbitrary, and has no hidden truth, it knows neither repression nor the distinction between the manifest and the latent. It does not carry any meaning, it does not lead anywhere; by contrast, the Law has a determinate finality. The endless, reversible cycle of the Rule is opposed to the linear, finalized. progression of the Law. Signs do not have the same status in the one as in the other. The Law is part of the world of representation, and is therefore subject to interpretation or decipherment. It involves decrees or statements, and is not indifferent to the subject. It is a text, and falls under the influence of meaning and referentiality. By contrast, the Rule has no subject, and the form of its utterance is of little consequence; one does not decipher the rules, nor derive pleasure from their comprehension - only their observance matters, and the resulting giddiness. This also distinguishes the passion for the game's rituals and intensity from the pleasure that attaches to obedience to the Law, or its transgression. In order to understand the intensity of ritual forms, one must rid oneself of the idea that all happiness derives from nature, and all pleasure from the satisfaction of a desire. On the contrary, games, the sphere of play, reveal a passion for rules, a giddiness born of rules, and a force that comes from ceremony, and not desire. Does the delight one experiences in a game come from a dream-like situation, where one moves free of reality, but which one can quit at any time? Not at all. Games, unlike dreams, are subject to rules, and one just doesn't leave a game. Games create obligations like those found in challenges. To leave a game is unsportsmanlike. And the fact that one cannot refuse to play a game from within - a fact that explains its enchantment and differentiates it from "reality" - creates a symbolic pact which compels one to observe the rules without reserve, and to pursue the game to the end, as one pursues a challenge to the end. The order instituted by the game, being conventional, is incommensurable with the necessary order of the real world: it is neither ethical nor psychological, and its acceptance (the acceptance of the rules) implies neither resignation nor constraint. As such, there is no freedom in our moral and individual sense of that term, in games. They are not to be equated with liberty. Games do not obey the dialectic of free will, that hypothetical dialectic of the sphere of the real and the law. To enter into a game is to enter a system of ritual obligations. Its intensity derives from its initiatory form - not from our liberty, as we would like to believe, following an ideology that sees only a single, "natural" source of happiness and pleasure. The game's sole principle, though it is never posed as universal, is that by choosing the rule one is delivered from the law. Without a psychological or metaphysical foundation, the rule has no grounding in belief. One neither believes nor disbelieves a rule - one observes it. The diffuse sphere of belief, the need for credibility that encompasses the real, is dissolved in the game. Hence their immorality : to proceed without believing in it, to sanction a direct fascination with conventional signs and groundless rules.

#### 2. Their attempt at transgression of the rules of debate is the ultimate conformity. Not only is this a very clear reason to vote negative on presumption, they reify the rules of debate, which turns the case.

Baudrillard 79. Jean Baudrillard, Seduction, pg. 140-1

If games had a finality, the only true player would be the cheater. Now, if a certain amount of prestige can be acquired by transgressing the law, there is no prestige in cheating or transgressing a rule. In truth, the cheater cannot transgress the rules since the game, not being a system of interdictions, does not have lines one can cross. One does not "trangress" a rule, one fails to observe it . And non-observance does not lead to a state of transgression ; it brings one back under the jurisdiction of the law. This is the case with the cheater, who denies or, even better, profanes the game's ceremonial conventions for economic reasons (or psychological reasons, if he cheats simply for the pleasure of winning), and thereby restores the laws of the real world. By introducing factors of an individual nature, he destroys the game's "duel" enchantment . If cheating was once punished by death and is still condemned strongly, it is because, as a crime, it resembles incest : cultural rules being broken to the sole profit of the "laws of nature." For the cheater, there is no longer anything at stake. He confuses the stakes with surplus-value. But the stakes are what enables one to play, and to turn them into the game's purpose is to abuse one's position of trust. In a similar manner, the rules establish the very possibility of playing, the space within which the sides confront each other. To treat the rules as ends (or as laws or truths) is to destroy both the game and its stakes. The rules have no autonomy, that quality which, according to Marx, characterizes commodities, both individually and in general, and is the sacrosanct value of the economic domain. The cheater too is autonomous: he establishes a law, his own law, against the arbitrary rituals of the rule - this is what disqualifies him. And he is free -this explains his downfall . Moreover, he is rather dreary, because he no longer exposes himself to the seduction of games, because he refuses the vertigo of seduction. By way of hypothesis, one might postulate that personal advantage is only an alibi: in reality he cheats in order to escape seduction ; he cheats because he is afraid of being seduced.

### Bogost/Fun

#### The impact outweighs—adhering to limits isn’t uncritical faith in them, rather, it cultivates an ethos of play that breeds respect for the world outside us and helps navigate existence ethically

Bogost, 16—holds a joint professorship in the School of Literature, Media, and Communication and in Interactive Computing in the College of Computing at the Georgia Institute of Technology, where he is the Ivan Allen College of Liberal Arts Distinguished Chair in Media Studies (Ian, *Play Anything: The Pleasure of Limits, the Uses of Boredom, and the Secret of Games* pg 115-120, kindle, dml)

Play entails a paradox: it is an activity of freedom and pleasure and openness and possibility, but it arises from limiting freedoms rather than expanding them. The boundaries of a playground, the contents contained within them. Their structures. Colloquial senses of game, play, and fun would hold that these activities amount to going outside the boundary of normal behavior, of doing whatever you want: “Don’t play with your food” or “stop fooling around.” But in fact the opposite is true: interesting play experiences arise from more constraints rather than fewer. Erecting barriers and boundaries more clearly delineates a system. As Bernard Suits puts it, play requires its participants to accomplish something “using only means permitted by rules, where the rules prohibit more efficient in favor of less efficient means, and where such rules are accepted just because they make possible such activity.” 21

Normally, we address a play experience like my daughter’s either as if it were separate from the trip to the mall or as if it were perpetrated in the service of the errand I had dragged her along on. On the one hand, we could construe my daughter’s activity as a distraction from the “real” work of running errands and therefore existing outside the domain of mall going, a play activity meant to release the boredom and unrest of being somewhere unpleasant. On the other hand, we could see her improvised play as a welcome and even a necessary distraction to help facilitate the rest of the afternoon’s errands. The first interpretation assumes the work-play differential— that the work of chores exists nearby but orthogonal to the play that would divert a young child from boredom. The second interpretation invokes the productive repurposing of play as a means to pleasure or sanity, a resource to be put to use in the interest of “real” effort.

The truth is stranger than either option. My daughter’s game isn’t a distraction from errands, nor is it a mechanism to make errands possible. Instead, it’s an activity made out of errands and other things too, like legs and ceramic tiles, in the same way golf is made out of grass and sand and rubber and wood— and leisure and wealth and zoning. A playground.

While Huizinga’s examples of the play element in culture are far weightier than shopping, the profundity of war and politics and the like can hide the ubiquity of play. Play isn’t only an activity whose surprising uses can be found in serious, consequential activity. It is also a condition of the world, everywhere we look, available to us should we choose to see it— and even if we don’t.

PLAY IS THE WORK OF WORKING SOMETHING

An apparatus or experience fashioned by the boundaries of a magic circle is not necessarily a “game” or a “toy.” After all, a highway system or a family budget has as many constraints as Monopoly or Super Mario Bros. Instead of calling everything a game, we should think of everything as playable: capable of being manipulated in an interesting and appealing way within the confines of its constraints. All media are playable when we look at them in the right light. And that light need not entail the total reform of our educational system, as Gray implies, and it need not signal the resolution of insufferable institutional autocracy, as Sicart suggests. Rather, play is the work of operating a subset of the world, one separated from itself via the circumscription of the magic circle.

The playground offers another perspective on the ironoiac madness of its mirror image, the protective encasing symbolized by the plastic sofa cover. By enclosing and encapsulating objects of experience, irony protects us from them, but in so doing it removes them from possible experience. Malls and school and food and everything else are transformed into motifs rather than cohorts. The best we can do with them is to emblazon them on T-shirts or tweets or Tumblrs, to use them as catalogs of insufficiency, bestiaries of lost opportunities.

On first blush, ironic circumscription looks similar to tracing the magic circle, to erecting a playground. A thing arises, cheeseburger-flavored Pringles or espresso machines or a Frisbee, and it preoccupies the attention of its observer. That thing is isolated, then contained within the security of irony’s seemingly impregnable blister pack. Inevitably, irony’s makeshift prison doesn’t hold, and both the object and its prison prove untrustworthy, demanding new enclosure. And irony’s gambit continues on ever larger scales, never offering succor but only increasingly larger and more cumbersome enclosures.

But there’s a difference between the ironic and the playful circumscription. The former holds the object at arm’s length— beyond arm’s length, really, far enough to defuse it as a threat, and in so doing shields the ironist from all possible encounter. Irony is the playground circumscribed but then abandoned. Encounter leads to potential disappointment or betrayal. Better to treat everything as a threat, to trust nothing, to experience nothing save involvement with distrust itself. Confinement, regulation, and control characterize ironic circumscription. And like all good prisons, the ironoiac’s object of mistrust is caged, isolated from its warden so to hold its savagery at bay. Who knows what potato chips and roadways and lawns might do if unleashed?

By contrast, the playground includes the observer as a member. It fashions the would-be ironist into a participant— whether as operator or observer— but still maintains the tenuousness of that involvement. Like a chalk line on pavement, the playground knows that it is arbitrary and temporary, flexible and negotiable. Play takes ironic detachment and transforms it into the conditions that bring about the experience it makes possible. Play refuses to presume that the golf course or the shopping center is reasonable or even desirable, a legitimate and certain source of basic operation, let alone success or meaning or joy. Instead, it merely asks what might be possible when things like fairways and malls are encountered by human agents.

The playful stance is the opposite of the ironic one: an embrace of the thing in question rather than a rejection of it. But not because play is more earnest or sincere, and not because it represents the free and liberated will of the player, whose volition elects the play experience instead of some other, less desirable labor or chore. For the ironoiac, the threat of an object’s insufficiency produces paralysis. But for the player, this insufficiency is assumed from the start, as a necessary condition of play. Play is impossible without restriction— not doing what you want, but determining what is possible to do given the meager resources provided.

Play and the resulting effect we call fun are not loose human actions and emotions. They are created in conjunction with external objects. To experience fun, we must shift our reference from the joy or enjoyment we have come to expect from play, and instead understand play as a condition of objects and situations. Things are at play more so than we play with them. And when we encounter things that are subject to play,we need not subsume them into the domain of toys or games or playthings or other mere amusements, but we might instead simply allow them to be exactly what they are. Indeed, perhaps viewing them as what they are is the only way we can truly allow objects, situations, events, people, communities, and anything else to produce pleasure. Not by subsuming or capturing them, and not by deluding ourselves into believing that we are exerting our own control, creativity, and disruption over them. But rather by addressing each thing for what it is, while all the while acknowledging that anything is not entirely ours to address in the first place. If fun is an admiration for the absurd arbitrariness of things, play is the process by which we arrive at that respect. Play is an activity, but even more so it’s a material property of all objects— from guitars to steering columns to malls to lawns to language to, well, games— and fun is a sensual quality that emanates from them when we touch these things in the right way. Discovering, choosing, managing, and living with what’s inside a particular playground— that’s where fun, and where meaning, resides.

#### Fun is an impact! It’s not just some vacuous sense of enjoyment, it’s an ethos of willfully enjoying a game shaped by arbitrary limits—this cultivates a joyous approach to the world that lets value to life flourish, but not one they can access through transgressing the rules

Bogost, 16—holds a joint professorship in the School of Literature, Media, and Communication and in Interactive Computing in the College of Computing at the Georgia Institute of Technology, where he is the Ivan Allen College of Liberal Arts Distinguished Chair in Media Studies (Ian, *Play Anything: The Pleasure of Limits, the Uses of Boredom, and the Secret of Games* pg 77-84, kindle, dml)

An old aphorism about golf calls the game “a good walk spoiled.” That funny quip underscores a fundamental feature of games: games make no sense, and yet we take them seriously precisely because they make no sense. The philosopher Bernard Suits calls that seriousness “a voluntary attempt to overcome unnecessary obstacles.” 15 Golf is a desirable experience because it distorts space and time in order to make the player’s experience of a landscape more deliberate. We seek out this deliberateness when we play.

Fun is not a feeling, it turns out. And it’s certainly not the feeling of enjoying ourselves by doing exactly what we want, by making something easy or by rewarding ourselves with points, as if life is some latent version of Space Invaders that turns chores into chortles. Instead, fun is a name for deliberately manipulating a familiar situation in a new way. We can only have fun once we have accepted the truth of a situation and treated it for what it is. When we’ve agreed to suspend our disbelief in its preposterousness. Golf isn’t a good walk spoiled, but a way to transform landscapes into a centuries-long hobby.

And like golf, the things we tend to find the most “fun” are not easy and sweet like the Bankses’ cleanup routine. Manual transmissions and knitting are fun because they make driving and fashion hard rather than easy. They expose the materials of vehicles and fabrics, and they do not apologize for doing so. They make playgrounds in which gear ratios and yarn loops become materials like ceramic floor tiles or zoysiagrass or espresso. Terror is at work in real fun, the terror of facing the world as it really is, rather than covering it up with sugar.

The process of fun turns out to be work. But not work like you find in the workplace. Rather, work like you find when working something: working wood, or working the muscles, or working the dance floor. In each of these cases, the extraction of pleasure or enjoyment we derive does not constitute the fun of the act, but the experience of oscillating between the potential and actual properties of a set of people, things, events, and ideas outside of us. In Marshall McLuhan’s terms, fun is the process of flipping figure and ground, taking something unseen and forcing it to become visible again or anew and taking something obvious and hiding it away temporarily. In Martin Heidegger’s terms, fun is taking something ready-to-hand (in use, but unseen) and reframing it as present-at-hand (outside implementation, with potential). And then, after circumscribing a playground around it to set its materials in relief, imagining and deploying new actions on and with that thing.

This explanation may sound somewhat abstract and unnecessarily philosophical, but actually, it’s precisely what people do when they partake in the activities they think to call fun.

Golf isn’t a good walk spoiled, but an approach to encountering a designed and tended environment. A playground made of playgrounds. First, a natural environment is reformed into a manicured one, with fairways, rough, sand-and-water traps, rocks, curves and switchbacks, trees, and so forth. In this respect, the golf course is similar to the English garden, insofar as both create an invitation to pastoral traversal. The garden stops there, and that fact is its delight: the opportunity arises to watch, to think, to listen, to stroll, or to attend to nothing whatsoever.

But at the golf course, traversal is only the beginning. The ball and the clubs and the rules of the game shift the ground of the course— the actual grounds, in this case— into figure. They recast the fairways and roughs and greens as possible vantage points or obstacles for moving the ball toward the hole. New playgrounds get circumscribed as others fall away, and then spring up again anew. The golfer’s own strength, experience, adeptness, and tactical wherewithal perform further oscillations of figure and ground, use and potential. So do the other material conditions that might intersect with the game: the weather, such as the effects of heat on the golfer’s stamina or the effects of a prior rain on the ball’s ability to rebound from a bounce on the fairway; the time of day and week, and its impact on the crowds on the greens; the familiarity of a local course, or the novelty of a new one; the languor or pressure of a particular foursome, filled with friends or family or strangers or business prospects. Instead of a good walk spoiled, golf is a walk refactored, turned in on itself like a helix, again and again.

The gyres and volutions of fun activities help explain another counterintuitive property of the phenomenon. Fun isn’t a distraction or an escape from the world, but an ever deeper and more committed engagement with it. The golfer who fails to engage with the various figures of the course and its related materials, whether through incompetence or refusal, is likely to have far less fun than the player who has, through practice and attention, found reason to address those conditions as a part of the play experience.

Proponents of Csikszentmihalyian flow would add a codicil here: that the novice or the amateur’s fun only arises from goals and capacities carefully balanced between anxiety and boredom. And here, the role of flow may indeed have a place: difficult courses like Pebble Beach or Torrey Pines push even competent golfers to the edge of useful action. Without the capacity to engage the materials of golf as materials, to work them like one works wood, the resulting experience would be inferior.

But these local minima of fun rely too heavily on human goals and accomplishments, and not enough on the unassailable nature of reality. Flow may help us optimize experience, but viscosity is needed to understand where such optimizations might take place. A supposedly inferior experience, like the novice golfer at Pebble Beach, is only terrible if we are unwilling to engage with boredom or anxiety in the first place, if we are so selfish as to see our performance as central to the encounter with a sublime place like Pebble Beach.

Fun is not only the delight in success, but also the panic of uncertainty, the agony of failure. It arises when figure and ground swap places and surprise us. The familiar turns strange; we no longer grasp it fully. There, facing the world’s stark truth, we either throw up our hands in disgust or dread— or we persist and discover something new.

THIS PROCESS OF discovery that we have heretofore nicknamed fun is a good candidate for the physical therapy we require to overcome ironoia. Irony, remember, arises when we fail to trust things as they are, but instead hold them at arm’s length for fear they will turn on us or otherwise disappoint. But in the symptom we also discovered a possible cure: treating the sensation of ironoia as a signal that something is worthy of further attention. As a sign that we’ve already found or constructed a playground— all we need to do is accept the invitation to make use of it.

The desire to encapsulate something in the safety of a new covering or to reject it as insufficient signals an opportunity to renew one’s commitment toward it. My flight-mate’s discomfort at the air marshal (the ironic not-fun “super fun”) or the novice golfer’s anxiety when facing the unfamiliar rituals of a foursome— these moments of distrust offer evidence that something deeper and weirder is present than each agent had previously considered possible.

And just as Wallace argued that satisfaction and joy and contribution might come from work— even boring work— as much as from entertainment, so the feelings that we might extract from a particular playground are far more numerous and more complex than the simple, easy pleasure we have mistakenly named “fun.” Anxiety, uncertainty, sorrow, and even misery and horror prove compatible with fun, once we’ve allowed ourselves to think of fun as treating something for what it is rather than as a nickname for diversion or satisfaction.

A job is made fun not by turning it into a game, but by deeply and deliberately pursuing it as a job. Jobs are fun when their work is meaningful, when their activities matter, and when the act of conducting them can be done over and over again with increased commitment. Fun can’t be added to something, like sugar to coffee or like songs to chores.

In their book All Things Shining, the philosophers Hubert Dreyfus and Sean Dorrance Kelly talk about this same issue in the context of Wallace’s depression and eventual suicide: in a secular age, meaning has to come from within, created from nothing. 16 Dreyfus and Kelly argue that this demand to make something wholly from nothing, by sheer force of will, is the weight that undid Wallace— and that the same demand is eating away slowly at all the rest of us, too. Wallace’s desperate attempt to make fun equal delight on the cruise he took for Harper’s or to see literary and televisual irony as a means to uncovering hypocrisy are the desperate grasps of the secular ironoiac who knows that dissatisfaction is only your fault, given the infinity of options available instead of ocean cruises and contemporary fiction and golf and air travel and all the rest.

But near the end of Pale King Wallace puts his finger on an alternative: boredom. Working through boredom in order to find deeper structure can form the boundary and contents for a playground. “It is the key to modern life,” he writes, “If you are immune to boredom, there is literally nothing you cannot accomplish.” 17 Embracing boredom doesn’t really mean enjoying being bored. Rather, if we can bore through the boredom when paying attention to ordinary, mundane things (tax returns and televised golf are Wallace’s examples), then something magical happens underneath. Ride that out, writes Wallace, “and it’s like stepping from black and white into color. Like water after days in the desert. Constant bliss in every atom.” Achieving this bliss requires giving yourself over to the structure of a situation rather than asking it to return its spoils to you.

This tactic is the cure for ironoia, too: you accept that meaning can come from outside of you rather than from within. Perhaps, even, that it must.

THE SUSPENSION OF FOLLY

Along with Mary Poppins, we assume that finding the fun starts with us rather than the thing itself. That we must bring something to the table that makes intolerable things tolerable, like a song covers chores or like chocolate covers broccoli. But as Suits suggests, a game is something good enough on its own, something for which on-its-ownness is precisely the point. Suits calls this willingness to accept the arbitrariness of a game the “lusory attitude.” Golf would be worse than “a good walk ruined” were it a Broadway song and dance number about dropping balls in holes, Mary Poppins style.

To reject these systems as insufficient is certainly possible— the ironoiac does so all the time, after all. To doubt that anything positive, credible, or long-lasting could arise from something like the thankless, arbitrary world, or else to capture its surface effects and to see them as mere signs, exchangeable for one another via new proverbial blister packs of ironic appropriation. Or else to assume that you yourself are unprepared for them, not good enough for Pebble Beach— or anything else. It turns out we can hold ourselves at an ironic distance, too. But to issue such rejections just because the materials in our midst are annoying or unsatisfactory is to miss the point: they are meant to be annoying and unsatisfactory. Meaningful things contain something abhorrent, something revolting even though sublime. And every now and then, when you stare down their abhorrence, they will reward you.

### XT—Fun

#### We straight turn the aff and solve it better—playing within limits in an isolated game space like debate reveal that play is a condition of the world in that all objects we encounter can be approached in new, playful and experimental ways. Affirming the arbitrariness of limits by adhering to the baseline constraint of being topical is key to this—it’s the only method you as a judge can choose that approaches the object of the game on its own terms by affirming limits have value even if we’d prefer total self-expression—that’s a better way of cultivating a posthuman ethos than demanding affective solidarity via the ballot

**Bogost, 16**—holds a joint professorship in the School of Literature, Media, and Communication and in Interactive Computing in the College of Computing at the Georgia Institute of Technology, where he is the Ivan Allen College of Liberal Arts Distinguished Chair in Media Studies (Ian, *Play Anything: The Pleasure of Limits, the Uses of Boredom, and the Secret of Games* pg 220-224, kindle, dml)

Even in philosophy humans have sat at the center of being, ethics, and aesthetics since the Enlightenment, when Immanuel Kant imagined a Copernican Revolution in philosophy to mirror the one in cosmology. It was from this common origin in Enlightenment rationalism that human culture spread in the different directions Watts judged insufficient. Science broke down the biological, physical, and cosmological world into smaller and smaller bits in order to understand its truth, which would then be deployed to service the betterment of humankind. Religion redoubled its investment in God via a new dedication to reason, both through hybrids like God-as-watchmaker deism, and via the religious revivalism that rose up against the new era of reason. In both cases, the reign of mankind on Earth remained absolute, its terrestrial matter at our absolute disposal thanks to the pending eternity we would find in heaven. For its part, philosophy concluded that reason could not even explain external objects but only experience itself— this was Kant’s position, one that still hasn’t outworn its influence in epistemology and metaphysics. And it was the position in more populist cultural debates, too, where all reality gets strained through the sieve of culture, religion, science, politics. Everything whatsoever becomes but the expression of human will or ideology.

The sociologist Bruno Latour wraps all of it— religion, science, philosophy, and more— into one historical era: **modernity**. Starting in the Renaissance, human cultures began dividing and “purifying” the domains of nature and culture from one another. 17 But this modern idea is really a misconception; instead, things are **hybrids** of **nature** and **culture**, **[hu]mankind** and **world**, **society** and **individualism**. We are all **bound up** with so many other actors, as Latour calls them: roadways and chlorofluorocarbons, mature woods and IKEA boxes, global banking networks and the wayward birds that clog jet turbines.

Worse, the modern misconception is a positive feedback loop, a Chinese finger trap in which we only become more imbricated the more we try to escape it. Climate change is a hybrid created by the fusion of human progress with planetary fragility, a collaboration underwritten by myriad political, industrial, and economic circumstances. But when we insist on the inevitable defeat of nature by science, we end up with even more hybrids, and even more hybridized ones: robotic car services that promise to end the reign of the passenger automobile, or the dream of uploading ourselves to powerful computers that will simulate human consciousness. Latour advocates for a “parliament of things” that accepts hybridization and ends the false dream of purification. 18 Among those who have carried Latour’s torch is the philosopher Graham Harman, whose revision of the Heideggerian idea of readiness-to-hand and presence-at-hand applies to the relationships between objects of all sorts we visited earlier. It’s not only that people find hammers to be ready-to-hand when in use and present-at-hand when broken; it’s also that hammers and nails, hammers and hooks, hammers and rust have the same relationship.

That concept leads us back to Alan Watts. When we feel insecurity, we are really feeling the wish for our own permanence. “We do not actually understand that there is no security,” writes Watts, “until we realize that this ‘I’ does not exist.” 19 It’s a decidedly Buddhist statement whose new age bell ringing might make your eyes roll, but Watts is really saying the same thing as Latour and Harman: we humans are not separate from the world, but a part of it, just another thing among all the other things, from ketchups to ketch boats, RAV4s to ravines.

And as Burkeman also divines, mistaking the world for our world is another name for ironoia. Thinking of ourselves as centered bodies drawing meaning and contentment toward ourselves like gravity to planetary bodies, bodies that deserve something from everything. But our refusal to relinquish faith in the “I” that does not exist, says Burkeman,

. . . explains in the most complete sense why our efforts to find happiness are so frequently sabotaged by ‘ironic’ effects, delivering the exact opposite of what we set out to gain. All positive thinking, all goal-setting and visualizing and looking on the bright side, all trying to make things go our way, as opposed to some other way, is rooted in an assumption about the separateness of “us” and those “things.” But on closer inspection this assumption collapses. 20

**Embracing the play made possible by limitations** turns happiness inside out. When you circumscribe a magic circle around something, you **inaugurate a different attitude** from the modernist, from the self-help happiness seeker, from the ironoiac. **Instead** of **asking for an affective return** on investment transferrable to **specific psychological outcomes**, you **submit yourself** to the **same system** as the elements you have drawn into your magic circle. You **become a thing** like them, imbricated, bound up, twisting, dancing, trying to make the Rube Goldberg machine that is you-and-them work, turning the crank **not** because it **does something useful**, but **just to see what it does**.

PLAY INVITES US to draw an **overdue conclusion**: that the potential meaning and value of things— anything: relationships, the natural world, packaged goods— is **in them rather than in us**. Play is **not** a kind of **self-expression**, nor a **pursuit of freedom**. It is a **kind of creation**, a kind of craftsmanship, even. By adopting, inventing, constructing, and reconfiguring the **material** and **conceptual limits** around us, we can fashion novelty from **anything at all**. Although they refer to poiesis— the making that grounds poetry— instead of play, the philosophers Bert Dreyfus and Sean Kelly come to a similar conclusion about finding meaning in a secular age: “The task of the craftsman is **not** to **generate** the **meaning**, but rather to **cultivate** in himself the **skill** for **discerning the meanings that are already there**.”

### Caillois/Play

#### Their nihilistic depictions of the political present and its commitment to a ressentiment based politics can be true about the world, academia, or their own lives in the abstract – debate is DIFFERENT because it is a game – the space of play must remain unique as it carves out moments of play and joy despite the depleted condition of modern life and work. Play is different than work BECAUSE adherents agree to minimal consensus based work – this is a UNIQUE link turn to the aff value claims.

Caillois 61. Roger Caillois, famous French intellectual and sociologist, Bataille’s friend, Man, Play and Games, trans. Barash, University of Illinois Press, 1961, 54

In effect, play is essentially a separate occupation, carefully isolated from the rest of life, and generally is engaged in with precise limits of time and place. There is place for play: as needs dictate, the space for hopscotch, the board for checkers or chess, the stadium, the racetrack, the list, the ring, the stage, the arena, etc. Nothing that takes place outside this ideal frontier is relevant. To leave the enclosure by mistake, accident, or necessity, to send the ball out of bounds, may disqualify or entail a penalty.

The game must be taken back within the agreed boundaries. The same is true for time: the game starts and ends at a given signal. Its duration is often fixed in advance. It is improper to abandon or interrupt the game without a major reason (in children’s games, crying “I give up,” for example). If there is occasion to do so, the game is prolonged, by agreement between the contestants or by decision of an umpire. In every case, the game’s domain is therefore a restricted, closed, protected universe: a pure space.

The confused and intricate laws of ordinary life are replaced, in this fixed space and for this given time, by precise, arbitrary, unexceptionable rules that must be accepted as such and that govern the correct playing of the game. If the cheat violates the rules, he at least pretends to respect them. He does not discuss them: he takes advantage of the other players’ loyalty to the rules. From this point of view, one must agree with the writers who have stressed the fact that the cheat’s dishonesty does not destroy the game. The game is ruined by the nihilist who denounces the rules as absurd and conventional, who refuses to play because the game is meaningless. His arguments are irrefutable. The game has no other but an intrinsic meaning. That is why its rules are imperative and absolute, beyond discussion. There is no reason for their being as they are, rather than otherwise. Whoever does not accept them as such must deem them manifest folly.

One plays only if and when one wishes to. In this sense, play is free activity. It is also uncertain activity. Doubt must remain until the end, and hinges upon the denouement. In a card game, when the outcome is no longer in doubt, play stops and the players lay down their hands. In a lottery or in roulette, money is placed on a number which may or may not win. In a sports contest, the powers of the contestants must be equated, so that each may have a chance until the end. Every game of skill, by definition, involves the risk for the player of missing his stroke, and the threat of defeat, without which the game would no longer be pleasing. In fact, the game is no longer pleasing to one who, because he is too well trained or skillful, wins effortlessly and infallibly.

#### Second, this a unique case turn – the corruption of the principle of play fuels endless global warfare thru the justified destruction of all limits.

Caillois 61. Roger Caillois, famous French intellectual and sociologist, Bataille’s friend, Man, Play and Games, trans. Barash, University of Illinois Press, 1961, 54

What we set out to analyze was the corruption of the principles of play, or preferably, their free expansion without check or convention. It was shown that such corruption is produced in identical ways. It entails consequences which seem to be inordinately serious. Madness or intoxication may be sanctions that are disproportionate to the simple overflow of one of the play instincts out of the domain in which it can spread without irreparable harm. In contrast, the superstitions engendered by deviation from alea seem benign. Even more, when the spirit of competition freed from rules of equilibrium and loyalty is added to unchecked ambition, it seems to be profitable for the daring one who is abandoned to it. Moreover, the temptation to guide one’s behavior by resort to remote powers and magic symbols in automatically applying a system of imaginary correspondences does not aid man to exploit his basic abilities more efficiently. He becomes fatalistic. He becomes incapable of deep appreciation of relationships between phenomena. Perseverance and trying to succeed despite unfavorable circumstances are discouraged.

Transposed to reality, the only goal of agon is success. The rules of courteous rivalry are forgotten and scorned. They seem merely irksome and hypocritical conventions. Implacable competition becomes the rule. Winning even justifies foul blows. If the individual remains inhibited by fear of the law or public opinion, it nonetheless seems permissible, if not meritorious, for nations to wage unlimited ruthless warfare.

Various restrictions on violence fall into disuse. Operations are no longer limited to frontier provinces, strongholds, and military objectives. They are no longer conducted according to a strategy that once made war itself resemble a game. War is far removed from the tournament or duel, i.e. from regulated combat in an enclosure, and now finds its fulfillment in massive destruction and the massacre of entire populations.

Any corruption of the principles of play means the abandonment of those precarious and doubtful conventions that it is always permissible, if not profitable, to deny, but the arduous adoption of which is a milestone in the development of civilization. If the principles of play in effect correspond to powerful instincts (competition, chance, simulation, vertigo), it is readily understood that they can be positively and creatively gratified only under ideal and circumscribed conditions, which in every case prevail in the rules of play. Left to themselves, destructive and frantic as are all instincts, these basic impulses can hardly lead to any but disastrous consequences. Games discipline instincts and institutionalize them. For the time that they afford formal and limited satisfaction, they educate, enrich, and immunize the mind against their virulence. At the same time, they are made fit to contribute usefully to the enrichment and the establishment of various patterns of culture.

### Negarestani/Engineering

#### Debate should be a site of engineering in which we adhere by shared norms of communication to experiment with concrete political visions—you should reject explanations of metaphysical totalities that can’t account for the reverberating effects of individual experiments. Communication and rationality are inevitable—trying to subvert them fizzles out at best and is proto-fascist bad faith at worst—only proactively engineering political visions within the constraints of the world we live in can prevent extinction.

Gironi and Negarestani, 18—IRC Postdoctoral Research Fellow in the School of Philosophy, University College Dublin AND Iranian philosopher (Fabio and Reza, “ENGINEERING THE WORLD, CRAFTING THE MIND,” <https://www.neroeditions.com/docs/reza-negarestani-engineering-the-world-crafting-the-mind/>, dml)

As long as, we are not willing to recognize education in the aforementioned sense as the scaffolding upon which any political movement should be built we are doomed to live in the status quo. Short of an unconditional prioritization of education, all we ever can hope for are quick fixes accompanied with phases of socio-political overexcitement which soon fizzle out, leading us to a position which was worse than before. Politics without education as its premise can never maintain its long-term traction. It effectively exempts itself from the concerns of the next generations. But what is a politics without the potential concerns for next generations—whoever or whatever they might be—if not an extension of our egotism and selfishness here and now? While I consider myself a leftist, I nevertheless think that my frustration with the left is precisely the issue of education. Look at something like left accelerationism: where is the acknowledgment of education or developmental psychology i.e. nurturing as the unconditional factor? Where is your logistical-financial and organizational plan for education? If you lack these then no matter how much you insist on egalitarian ends, you are not going to attain them. However, being the hopeless leftist that I am, I believe that left, has “in principle” more chance to concretely address the issue of education than the right.

I believe in something like a universalist paradigm of education or equality of minds. Here, the appellation universal does not mean a pre-conceived global paradigm that can be indiscriminately imposed upon everyone. Education is all about context sensitivity, fulfilling local exigencies. But at the same time, I think there are deep cognitive frameworks which are common to us all and can be augmented under a universal or global framework. I think Kant was onto something important. His hierarchies of faculties as elaborated under the rubric of transcendental psychology—i.e. the necessary conditions for the possibility for having a mind—are not merely a trivial or arbitrary list of faculties. They were as much a necessary list of abilities as they were an example of an epistemological inquiry into the specific modes of cognition required for critical and objective thinking. For example, what he calls sensibility, reproductive and productive imagination, understanding and reason are actually necessary “classes” or “types” for being a minded subject. If we believe in the equality of all minds then we ought to also believe in complex recipes that can universally augment such necessary classes, regardless of whether we belong to different geographic locations, ethnicities, or even species.

Fabio Gironi: The delicate question of universalism was indeed my next target. Those who grew up intellectually in the leftist academic environment of the late twentieth century were taught, more or less explicitly, that “universalism” is something of a taboo term. Indeed, you just mentioned the left’s penchant for intersubjectivity without objectivity—that is to say for a celebration of irreducible particularities, local practices, identities and so on—which renounces global and universalist ambitions. Now, I think that this anti-totalizing intellectual season (a former teacher of mine once told me how, sometime in the mid-80s, he witnessed a heckler shout “you totalizing bastard!” during a public talk by Fredric Jameson—this peculiar “insult” always makes me chuckle) was a necessary step, contextually justified by a certain post-World War II socio-political environment. However, it has now become unreflective doxa, leading to a counterproductive knee-jerk reaction against a whole constellation of ideas and concepts—many of which you are explicitly committed to. Universalism is one of those and (neo)rationalism is another, and the two are obviously related.

This stance of yours has occasionally led you to a collision course with, let’s say, more “orthodox” leftists, since all too often universalism is equated with authoritarianism, while neo-rationalism is confused with dogmatism and blinkered logicism (just like any talk of “norms” is taken to be an implicit call for normalization—may Foucault save us all!). As if “rationalism” in general was always necessarily guided by an ambition of comprehensive and total control: a reactionary intellectual orientation for the preservation of good societal order, the adversary of the philosophical and political projects prioritizing the bottom-up affective development of vectors of individual freedom. What are the methods and goals of the universalist rationalism?

Reza Negarestani: Calling yourself a rationalist universalist is even worse, it is doubly taboo. It is akin to identifying yourself as an agent of some totalitarian nightmare straight out a postmodern parody where you actually take pride in having a poor sense of humour, being cretinous and shamelessly insensitive. The corresponding image would be not O’Brien from 1984 but a villain from a Donald Barthelme’s story who just wants to liquidate people using absurdist methods for the sheer experimental joy of it. So, the question, as you brought it up, is: how did we come to have such a cultural perception about reason or universalism? Can we ever step outside of this culture? If the answer is positive, what can we accomplish by doing so? And correspondingly, if we continue to remain in this culture what do we lose or risk? The answer to these questions is obviously not straightforward. It requires not just a historical analysis of economic and social conditions using adequately objective diagnostic tools, but also a system of thought for imagining and concretely building an alternative world, one that does not begin with the year zero but is built in continuity with the existing one which we currently inhabit. Both, of course, require the adoption, refinement and development of our concepts of reason and universality as the first step.

As you mentioned, given the historical contamination of these concepts, there is an immense work to be done not just to gain the trust of people but also to repair or discard their negative aspects in theory and practice. Let me begin with universalism. I see universalism as a necessary, concrete and global labour of collectivization. It is very much in tandem with the idea of concrete self-consciousness or collective self-determination as a matter of practical achievement built simultaneously on inter-subjectivity and objectivity, particularities and universalities which are a priori. Even in our particularities and differences, we always begin with abstract or formal universalities, things like being concept-users, private thoughts which are modelled on a public language, deep cognitive faculties and categories which even in their specificity have universal logical structures. So, in a sense, we already live in a universalist state, albeit an abstract one. We are experiencing, thinking and acting individuals to the extent that we are socially constituted through and through. Kant and Hegel—despite their shortcomings in appreciating the true consequences of the sociality of mind—make this point quite clear: we could not have experience—through which it is possible to develop a conception of ourselves in the world—in the first place, if we did not have some shared repertoire of universal and necessary conditions. Speaking of experience as something originally particular or individual is hardly anything more than a symptom of a purely solipsistically perspectival view that is irreconcilable with the reality represented by cognitive science, logic, computation, mathematics, and even evolutionary biology.

However, there is nothing in this abstract universality that safeguards it from pathologies of individuation and particularism precisely because the real social conditions in which it is embedded can in fact be pathological as it is the case. So, universalism in its genuine form is the concrete and critical expression of universalities at the level of real social conditions. And its aim is the maximization of the capacities to think and act, to entertain and actualize possibilities beyond the confines of the existing world in which we live—a world that purports to be a completed totality. To achieve this aim, to build a new world in which the possibility of disenthralled thinking and action coincides with possibilities of a world in which the individual and social problems and pathologies are resolved, however, is impossible without first responding systematically and rationally to the constrains of the world in which we already live. In this sense, I would say universalism is at its core concerned with world-building or more precisely world-engineering to the extent that our premise, resource and space of labour is always this world and not some imaginary world or an afterlife heaven. The possible world cannot be one that is sealed off from this world, a universe or a commune that exists parallel to our world. The former is merely a fantasy, the latter is not only phantasmic but also parasitic upon the pathologies the real world without even realizing it.

To sum up, the path to concrete universalism always begins from particularities of our experience of the world which are constituted by abstract universalities. So, in a sense, the trajectory of universalism should always begin from local conditions of thinking and action, rather than a purported universal condition under which we can all be integrated and unified. But this trajectory does not end with the local, it must pass through stages and encompass the global conditions of thinking and action. Remaining in the ambit the local is actually what suffers from a delusive idealism, not universalism. Why? Because this localism abides by the myth of a closed system in which jobs can get done effectively and perfectly. But a closed system is simply an idealized state, to mistake an idealized model with the messy reality is a hallmark of credulity. Not to mention, the microlocalist setup is destined to be afflicted with what I call theoretical-practical Habsburg syndrome, i.e., you end up breeding thoughts and actions which are increasingly less optimal to address your initial ambitions and problems. In other words, the logarithmic curve of thinking and acting which were supposed to optimally solve your local problems suddenly drops after a sufficient time, precisely because you run out of computational or cognitive resources, the majority of them you have chosen to call enemies. Without interaction with the environment, your system becomes ever more fragile and soon a premature death knocks at your door.

Fabio Gironi: So what are the main obstacles and resistances posed to universalism by its detractors, and how can they be countered?

Reza Negarestani: With regard to the demand to resurrect rationalist universalism—or more broadly the rationalist reconstruction of the world to appropriate the Vienna Circle as opposed to the Frankfurt School—there are at least three major objections:

(1) Universalism will flatten differences and is ultimately, another form of imposed global order whose parameters are set in advance. In response to this objection, I would say that yes this was the case with old traditions of universalism coming from European thinkers such as Kant. But concrete universalism cannot be imagined without the non-trivial or synthetic integration of local conditions. A paradigm of universalism that does not respond to local exigencies in their own context is only a disguised imperialism.

(2) The second objection might come from a communitarian perspective: surely we can build a world sealed off from the pathological systems that plague this planet. I counter this claim by saying that this supposed world is built on two presuppositions: (a) You are implicitly endorsing a metaphysical totality in which everything that is going on in this world of ours has been assimilated by a pathological system (e.g., Capitalism) but this totality is only an illusion which you have chosen to take for reality; (b) your commune in fact parasitizes on the affordances provided by our world. The alleged purity of your thoughts and actions is actually made possible by the pathologies from which you think you have diverged. Your commune is not a solution but only another anonymous contribution to the status quo.

(3) The third objection comes from the neoreactionary doctrine: the whole pursuit of universalism is misguided, for we are particular individuals so entrenched in the particularities of our experiences and ideologies that any recipe for universalism is nothing more than a fable for naive ideologues. My retort to this third objection is: ok, let us believe that universalism, hegemony-construction and consensus-building are just the logics of illusion. But surely your neoreactionary island requires a certain labor to integrate the like-minded individuals. In this process, you have assumed that doctrinal preferences trump over individual preferences, but you are sadly mistaken. For even in your neoreactionary island, you should deal with the problems of hegemony and consensus, albeit in a restricted scope. It is not that your idea of universalism is naïve—even though it really is but rather that you cannot even fathom the scope of particularities. Even in the case of people subscribing to the same agenda, we are always the creatures of our own particular experiences.

Now, an advocate of neoreaction might object that the institution of such islands does not require any form of unified ideology or consensus-building. Biorealism, or cybernetic circuitry of capitalism and untethered economic competition, can effectively consolidate those who have enlisted for neoractionary experimentations. But again, what is missing in such scenarios is a deeper understanding of the scope of human experiential particularities as dynamic perturbations of the system. Over time, even minor disturbances will have cumulative effects which, if not attended to in a context-sensitive manner, are guaranteed to throw the entire system into disarray. As for biorealist schemas, even if they were more than unscientific and dogmatic fantasies about nature—which they aren’t—that could consolidate and orient populations at an accelerated rate in the fashion depicted by Theodore Sturgeon in his story Microcosmic God: they will be still impinged upon by norms and personal desires of individuals. Not to mention, that the apt metaphor for natural selection is nature as a slow tinkerer rather than a great accelerator. What I would say to my neoreactionary friends is that to the extent that they do not take seriously the depths of incommensurable experiences, their island will eventually sink. For they think that in the Hobbesian game-theoretic jungle, all you need to do is to ward off enemies and make islands for those who believe in the same social experimentations. But as time passes, the Hobbes Inferno will exact its revenge upon you. Without an adequate understanding of particularities even when a common ideology or a so-called universal method of pruning is at stake, you will end up not just devouring your enemies but also eating your kin alive.

(4) The final objection comes from various fatalist doctrines, particularly, the doctrine of anti-praxis with its slogan “let it go.” First of all, I think anti-praxis attempts to present itself as a zero-claim ideology, one that has no claim, no practical norm, and no recipe for collective political action. In this sense, one can get the impression that perhaps anti-praxis is more genuine than the other tenets I listed above, in so far as it does not deceive you with lofty promises of salvation, emancipation or the great outdoors. It is what it is and stands in sharp contrast to the illusions of collective political action. However, such an impression is fundamentally credulous. There is no such a thing as a zero-claim doctrine. If we look at the early doctrine of fascism—particularly its Italian offshoot—we realize that this is precisely how fascism took root. It began with the claim that we indeed have no claim, no recipe because all recipes are oppressive.

This is not to equate anti-praxis with fascism but to simply point out that a zero-claim doctrine—one that sees all practical norms as oppressive—is rife for fascist appropriation. When the proponents of anti-praxis tell us that they have no political norm or recipe, we should look at them with utter suspicion. They are either trying in the worst case to dissimulate their ulterior motives under the rubric of ideological innocence or, in the best case, they are not conscious of their own implicit practical norms because they have already dispensed with the responsibility, authority, presuppositions, and implications involved in consuming and producing norms. Saying that we must abandon all practical norms is already a normative recipe to the extent that is predicated on the impermissibility—i.e. what we ought not do—of practical norms. In this sense, anti-praxis is just a false consciousness of its so-called lack of normativity or purported innocence.

Therefore, either anti-praxis is an implicit normative recipe or it is not. If it is, then it is not really anti-praxis, and it means that it is unaware of its own normative and/or practical assumptions. If it is not normatively practical, then it must be a theoretical position and as such it is predicated upon theoretical norms such as the knowledge of the current state of affairs, and thus beholden to epistemological norms of attaining the knowledge of the current situation. In other words, how do we know that the current state of affairs is thus-and-so? Either we have a procedure of determination that is in accordance with the public norms of doing theory, epistemology, etc, or it is the case that anti-praxis assumes we do not follow norms of theory (which are fundamentally entangled with norms of practical reasoning). In the latter case, anti-praxis is just another variation of the myth of the given and/or private access to reality. Or, maybe it is the case that anti-praxis is not even a theoretical position. In that case, it should be an aesthetic position. But if that is the case, it then has no purchase on the knowledge of the state of affairs on which it is built, nor does it have any saying as what ought to be done and what ought not, even doing nothing. We should realize that doing nothing is itself a practical norm to the extent that we can only say “do nothing” insofar as we assume we ought not do such and such things. I would say anti-praxis is more like a new age monotheistic religion that prohibitively feeds off of practical norms of other religions, all to present itself as the last religion you should embrace.

So, in a nutshell, the first concrete recipe of universalism is the realization of our world: the real world is not a division between us and them, but a trap or enigma in which we are all ensnared. Aiming towards the construction a better world, entails seeking more computational resources. To see an enemy as an enemy is the first unwise strategy. The enemy is he or she who gives us a perspective otherwise unavailable to our intuitive or so-called immediate experience of the world. The abolishment of our pathological particular traits can only start when we diagnose what these particularities are and strive to change them by global or universal conditions.

Fabio Gironi: Let us move deeper into a more explicit political register. Some of your comments above regarding universalism and its detractors remind me of the “first law” of what the late Mark Fisher infamously called the “Vampire Castle,” i.e. the priestly, resentment-ridden left-wing intelligentsia. As he put it: “the first law of the Vampires’ Castle is: individualise and privatise everything. While in theory it claims to be in favour of structural critique, in practice it never focuses on anything except individual behaviour”. Similarly, your polemic against communitarianism and particularism, and against an understanding of the “local” as terminal horizon rather than as synthetic step for the piecemeal construction of a global framework seems in broad agreement with those political-economic stances that in recent years have been assimilated under the banner of accelerationism (as most concretely expounded in Srnicek’s and Williams’ Inventing the Future). I know that you were a friend of Fisher, and that you know Srnicek and Williams well, but can you offer me a clear description of your political stance, in relation to this broad orthodoxy-breaking and future-oriented trend in leftist thinking? Do you have any prescriptive stance regarding political action?

Reza Negarestani: I’m afraid that my political stance—or rather my philosophical view concerning what ought to be done in the arena of politics—oscillates between deep pessimism regarding our methods and optimism about future possibilities. Yet, insofar as any possibility can only be actualized by adequate and malleable methods and tools, and to the extent that our methods, ways of systematization, intervention with socio-economic reality and so on are either quite rudimentary or disoriented with regard to the realization of consequential political changes, I think I am more comfortable to identify myself as a rational pessimist. I reject passive pessimism in the sense that as long as possibilities can be imagined, we have to actively gamble and push beyond any vestige of resignation. Without imagining possibilities and piecewise attempts at actualizing them, there is in fact no good justification for surviving as a species. As Seneca has pointed out, in complete absence of such a struggle, we must perhaps devise the most cunning and artful contrivance for bringing our death about. In that case, even the slogan “let it go,” once inflated, is nothing but a disingenuous pessimism that attempts to fabricate a semblance of profundity. In reality, it is the very exemplification of human conservatism and an adolescent disgruntlement which secretly hopes for a miraculous change even when it tries to seem detached from such concerns. After all, romantic fatalism is the shallowest form passive optimism, rather than genuine pessimism.

Other than the question of methods and tools, another reason for my doubt is what I mentioned in my answer to your previous question and which you brought up through Mark. It is the enigma of the particular. It is enigmatic precisely because the particular as a real condition can shapeshift and come in different guises, play different even contradictory roles in the domains of both the individual and the collective, the local and the universal piecewise integration and mobilization of localities. Mark was one of the best critics of the Hobbesian myth of the state as that which guards the human from their complete transformation into wolves, as that without which humanity is inconceivable. In a sense, Mark was far more radical than Hobbes in that he fathomed the depth of the enigma of the particular. The particular can be pernicious or even illusory through and through. The absolutization of the particular, the individuals—whether in the name of the victim, the sufferer or in the name of individual choices and preferences—completely misses the fact that the conditions of individuation can themselves be pathological. The overemphasis on the particular or the local, accordingly, can very well the blind perpetuation of the conditions of exploitation and misery. But particulars can also be positively non-trivial and implicitly collective perspectives: by making these perspectives explicit, we can shed light onto the problems of the individual and the collective. However, one thing is certain—as Mark would have agreed—the depth of particularities is inexhaustible. So much that, as I argued earlier, even those who dismiss the universalist labour have to deal with its drastic implication within their neo-reactionary floating islands. Absent a diagnosis of different kind of particularities, and short of analysing them with regard to the mechanisms responsible for generating and distinguishing such causal factors or mechanisms at different levels of socio-economic reality, we are all—and I mean everyone—on the same Hobbesian Raft of the Medusa. We will eventually betray ourselves and eat one another, irrespective of whether we think we should strive for a future universalist collective project, we should denounce such endeavours, or we should do nothing and just let it go.

Given the endless series of particularities, of individuals, and of localities, as well as their protean nature, I think that—given our current tools, modes of thinking and action, methods, etc.—we have at this point a very slim, if any at all, chance to do anything that leads us beyond the nightmare of this auto-cannibalistic raft. While I wholeheartedly support the paradigms raised by people like Patricia Reed, Nick Srnicek and Alex Williams which are focused on consensus-building, hegemony-construction and the critical integration of particularities of the human condition, I think as a philosopher I should take side with the Socratic method of the courage of truth with regard to the political action. And as such, I believe the prospects are now very dim, shockingly so. This claim should not incite the cheer of the right-inclined, resignatory, neo-reactionary, and conservative thinkers. If anything, it should lead them to confront the prospects of their own reality as well in terms of a pure terror, insofar as this dim prospect is not exclusive to the emancipatory politics to which we have subscribed but also includes their recipes or the lack thereof.

This brings me to the main question you raised regarding my political stance. I think this question is predicated on the assumption that we can define our political position by rummaging through and resorting to the concretely instantiated political paradigms which have already been realized and then choose one that fits our methodological and ideal ambitions. I really fail to see such an exemplification that I can hold to or define as my political position. One should engage a great feat of self-deception to see contemporary political paradigms as adequate to respond the existing tribulations and problems. Sure, I am a leftist who believes in the reality of the class struggle, but this is not really a political position, only a consciousness of the socio-economic reality. I take seriously Marx and Engels’s thesis that communism “is not a state of affairs which is to be established, an ideal to which reality (will) have to adjust itself. Communism is the real movement which abolishes the present state of things. The conditions of this movement result from the premises now in existence.” This is what I would call—again following Mark—the possibility of actualizing that which is possible but from our perspective, here and now, seem impossible. For me the task of politics in conjunction with the support of philosophy and technoscience is to not only show—in theory and in collective imagination—that the reality of our world is neither inevitable nor a completed totality, but also manages to concretely build a new world from whose perspective our reality will be exposed as the illusion of the inexorable and finality. But then again, even this, is not a clear-cut political position. It is merely a philosophical thesis on the possibility of a different world and the range of political actions that can fully actualize it.

Fabio Gironi: You merge this rational pessimism with the “engineering approach” for the construction of a better world, as you explained before. To some, this paradigm of political action will sound like you are vouching for a dispassionate and formalist approach to politics, and a government of experts—a “technocracy,” something that in recent times has become anathema in most public discussion (but that, the critic might enjoy pointing out, has been proven to be a failure at least since Plato’s political misadventure in Syracuse)—or even for a nefarious kind of “social engineering.” I suspect that in large part this depends precisely on am equivocation about the very concept of “engineering.” In our folk understanding “engineers,” broadly conceived, are often considered too naive to deal with the intricacies of politics, a domain fraught with normative considerations.

But if I am not mistaken, your expert engineer is as much a technically-minded problem-solver as it is a creative conceptual builder: a figure that applies his or her intelligence to the resolution of problems by means of more than the unilateral application of simple formulas or pre-packaged precepts. Indeed, it seems to me that this is where many contemporary ideas converge. Srnicek’s and Willams’ proposal to “move beyond folk politics and create a new hegemony” and their insistence on the practical/political concept of “repurposing.” Ben Singleton’s reflection on cunning reason (metis) as employed for the strategic and piecemeal construction of freedom from constraints. And of course, your own “speculative inquiry into the future of intelligence,” or functional reconceptualization of intelligence as an emancipatory tool of self- and collective improvement—as well as for practical action upon the world—where conception and transformation are two sides of the same coin. Is it then correct to say the concept of “engineering” (rather different from its “folk” equivalent) is at the core of both your philosophical and political thinking?

Reza Negarestani: Among computer scientists, there is this joke: when computer scientists go into a room full of political theorists, philosophers, cultural critics and linguists, they say to each other, “get rid of all of them and replace them with engineers.” Well, perhaps this joke is a bit too much but it has a grain of truth. Neither philosophers nor political theorists are able to design proper methods adequate to actualize possibilities, imagined or not. We need politically and philosophically informed engineers and designers. Engineers are indeed not mindless technicians, they are people who have one foot in the domain of thinking and one in the realm of an external reality or worldly affairs. They do not see action as a form of hubristic mastery to the extent that they know whatever we do at any level of reality—be it natural, social or cultural—will meet the resistance of that reality. To use a Sellarsian metaphor, reality in the broadest possible sense is not a block of wax ready to be imprinted. Engineers truly know that. They also never see reality in any sense as a flat universe, they see it as vast and deeply multi-scaled structure. In order to concretely intervene at any level of reality we must not only have a multi-level view of the reality but also know which methods, models or tools should be implemented, and at which level. To cut at the joints without splintering the bones is a description of what engineers—as Plato’s good butchers—do.

There are at least two other important tasks which are deeply entangled with the discipline and philosophy of engineering. One is the labour of modelling and the other, the design of approximation techniques. Michael Weisberg has recently written a wonderful book on models and modelling, a topic which in the past was not being taken seriously but was central to engineering. Weisberg elaborates why all our encounters with reality involve one or another kind of model, for example, descriptive, explanatory and predictive models. Even what we call empirical data are not ready-made, they are products of model projection, which means data can be distorted or even false data may be derived if the model is inadequate, too small or too big, misapplied to a target system or applied to a wrong sector of reality. The thing about models is that they are packed with all sorts of implicit and explicit theoretical, mathematical, logical and computational assumptions. Such assumptions encompass not just the model’s description but also the core of the model i.e. the structure and its interpretive factors or construals which include information about the scope, assignment, and fidelity criteria of the model itself. The latter criteria pertain to the exact information which specify the model’s representational, dynamic and resolution constraints for a given level or scale. Without proper attention to such details and the assumptions underlying them, all data and facts can be fundamentally distorted or erroneous. The whole myth of raw or pure data is perpetuated by people who have no clue about how data is mined—irrespective of what kind of data we are talking about. The other task, the design of approximation techniques, is even trickier. Mark Wilson sums up the nature of the approximation techniques in his new book, Physics Avoidance. Engineers—like Ben Singleton’s designers as embodiments of metis or cunning intelligence—are adept at trickery, hacking the system and reality. They know that it is not the best solution to modify a given target system by intervening with lower levels or fine-grained scales (like for example, the atomic scale-length of a metal beam). Intervention at such bottom levels is rife for what Wilson calls computational hazards, due to extreme fine-grained details of lower levels, any attempt at modification and intervention will either fail or become sub-optimal. Not to mention that we often lack any solid grasp of lower level mechanisms, sometimes we don’t even have any indication as what these fine-grained scales are, we can only postulate them. So what engineers do is first they model scales or levels pertaining to the structure of the target system or the phenomenon in question. Such modelling always involves a controlled amount of simplification and/or idealization which can at a later time be revised or equipped with more details. Then, they think of how to carefully bridge lower levels to upper levels where the structure is less fine-grained and more accessible and more hospitable to intervention and modification. These bridges—which are essentially mixed-level in that they contain information regarding middle scales between the bottom and the top—are called approximation techniques. These are procedures by which engineers circumvent the messy problems of physics without forgetting about them. Such techniques allow engineers to modify a given system optimally without always the need to deal with all sorts of details which make intervention fundamentally impractical from an applied perspective, from the computational cost standpoint, etc.

Here, however, a problem arises that André Carus, in his critique of Wilson’s work, has elaborated with the utmost lucidity. What is this problem? It is the idea that engineering conceived this way would be anti-Enlightenment in the sense that all we can ever do is to reform our local concepts and descriptive pragmatic resources in a piecemeal manner, without hoping to achieve unification. We can no longer have ambitious concepts that can be applied across the board—those global concepts treasured by philosophers such as the Copernican imperative, reason, freedom, etc. Our situation is similar to that of a child who plays in the tub and is in command of a rubber duck. But, of course, the picture of reality is more like that a river where torrential flows, undertows, and chaotic behaviours take hold of the rubber duck. In order to make sure this rubber duck sails in the river, we can no longer adopt a global concept of sail or navigation. We should have atlases of local theory façades which are responsive to such turbulent quandaries. And of course, to conform to such a picture of reality, we can only develop local concepts and heuristic norms which are informational packages that reflect varying and non-unifiable perspectives such as the concept of hardness—as for example applied to a metal beam—which fundamentally varies across different scale-lengths of the metal structure.

While I have a sympathy for such view, I believe Carus is right. Our encounters with reality are not merely such heuristic or pragmatic devices. Engineers always have a main solution—a global concept—in mind. Then they try to bring various real-time scenarios under it such that neither the global concept nor local pragmatic concepts are mutually exclusive but are rather mutually positively constraining and self-reinforcing. Engineering, in this sense, is about the commensuration of the local and the global, the ideal and the messy, the strategic and the tactical. Engineering, therefore, incorporates two senses of the Enlightenment’s rational reconstruction of the world or—to use Carnap’s later term—explication. One in the sense of realism and one in the sense of idealism, naturalism and constructivism. To reengineer and recognize reality, one can neither adopt a universal concept or paradigm nor just local and perspectival concepts. Both the overarching paradigm and local malleable solution are needed.

Now, as you asked, how do we adapt this engineering paradigm to politics? My friend Ray (Brassier) cautioned me regarding this unconditional espousal of engineering as a political method. I fully agree with him. Politics fundamentally differs from engineering from the perspective of norms of political action. The philosophically and politically informed engineering as a political method is predicated on the hard labour of politics which, to a great degree, consists of diagnosing our current situation and then deciding how should we move forward, the work necessary for arriving the global concept. However, I do disagree with the idea that unlike the realm of politics where “what ought to be done” is a matter of antagonism and consensus-building, engineering is centred on a pre-established conventional norm (i.e., this is what the system should do, or this is the agreed upon norm by which the system should behave). Even in engineering, we know that the system can have multiple diverging trajectories of evolution. There is no pre-established norm or consensus as what the system is and how it should behave. For engineers, there is no pre-established function of a given system since such functions do change over time and in accordance with local contexts. Modelling a system is as daunting a task for engineers as it is for political theorists and activists to diagnose pathologies of society, and to find a way to eliminate them. Reality is not a given totality: sometimes you should approach it as a black box that can only be unveiled by systematically playing or intervening with it. Other times, you should do the hard work of modelling under epistemological constraints. All in all, the task is to integrate global concepts with contrasting local concepts.

So yes, in response to your question I take the paradigm of engineering as a profoundly composite—epistemological and practical—way of thinking about the world. And this also leads me to finally answer the question you posed earlier regarding what can be the concrete way of getting political ambitions done. Our first step in a concrete political project should be focused on diagnosing the precise causal mechanism responsible for the pathologies of individuation, to detect the levels at which such mechanism are entrenched, and then proceed to develop tools to intervene at those exact levels—like an engineer. If you don’t have the adequate tools to intervene at that level, then devise approximation techniques, resolve the problem at a different level. And, again like an engineer, attempt to lay out the logic(s) of existing worlds at different scales. Make new tools to construct new worlds from the detritus of the old one. The new different world is not a miracle or a religious afterlife, it is a world engineered from what is available to us. To recapitulate, we need to first understand the plural logics of this world almost like the multi-level ontologies of information science to even think what ought to be done and decide exactly what methods or tools at what level should be exercised.

### AT: Debate=Will To Transparency/Predictability

#### They link at the level of how to play the game, which outweighs their links and solvency args about why they play. They are the ones trying to map out debate in form even if they claim to be mysterious in content, they excise otherness from debate by stacking the deck of prep in their favor—which means their vision of debate isn’t radically subversive and even if they do collapse debate, it’s not in a way that breaks down the logic they critique. You should vote neg for a passion for rules. This resituates the debate game as a totally insular space that squanders the will to transparency through a de-subjectifying immersion within the experience of the game. Fairness outweighs and link turns all of their offense.

**Forester, 14**—East Tennessee State University (Gus, “Was Gawain a Gamer?,” <http://dc.etsu.edu/cgi/viewcontent.cgi?article=1260&context=honors>, dml)

The Green Knight’s game serves as the catalyst for all these changes. I see it as no coincidence that Baudrillard claimed, “The world is a game,” and argued that gaming, in turn, indicated a “**passion for rules**” (Baudrillard Live 46, Seduction 131). In understanding the complex mechanisms behind how a “passion for rules” can bring about a **utopia of liberation** defined by hyperreality, I feel that it is appropriate to turn to the work of the philosopher of sport, Bernard Suits in defining a game. In his book The Grasshopper he provides his most oftenquoted version of the definition in his concise claim, “playing a game is the voluntary attempt to overcome unnecessary obstacles” (Suits 55). In the same book, he offers an expanded version of the definition:

To play a game is to attempt to achieve a **specific state of affairs** [prelusory goal], using only means **permitted by rules** [lusory means], where the rules **prohibit use** of **more efficient** in favour of **less efficient means** [constitutive rules], and where the rules are accepted **just because they make possible such activity** [lusory attitude] (54-55).

Perhaps the most complex, but important, part of Suits’s definition is his concept of “constitutive rules.” Although the Gawain critic Victor Yelverton Haines rejects Suits’s definition on the basis that a game world can exist with “God-made laws,” Suits anticipates and refutes such an argument later in The Grasshopper (Haines 223). Suits uses the example of mountain climbing, arguing that even in a world where an elevator cannot be used to get to the top, a mountain climber would still be adhering to the game’s constitutive rules because they would reject such means if available. Thus, Suits’s phrase, “less efficient means,” does not literally mean that there must be more efficient means, but that the player partakes in the means allowed by the game **purely for the sake of doing such** and would **reject more efficient means** if they were available. This is key to Suits’s later argument that a “utopia” would effectively be a world where everyone plays games all day every day. To game is essentially to do what one desires **purely because it satisfies that desire** and **without any grander utilitarian purposes** for doing such. Thus, from the vision of a utopia as a world built on satisfying desires and which removes any barriers in doing such, **no other conception of a utopia is possible**.

The most obvious counterargument one could use against Suits’s claim is that there are other activities that can be described as having no purpose beyond satisfying desires for their own sake. Suits himself does not address why a utopia would be defined by gaming instead of, for example, pornography or action movies. My argument would be that Suits’s definition with its requirement of a prelusory goal **presupposes some possibility of failure** built into the game, whereas the closest thing in other forms of entertainment is to **simply quit**. This is a **key distinction**. Because one **cannot fail at movies** and **similar pursuits**, viewers are put in the position of passively carting to the finish line and, thus, **cannot escape** consummating Baudrillard’s characterization of the masses as “**objects**.” Because, as has been claimed, “there is nothing outside the text,” art forms that are driven by passive interpretation **can only exist** as artifacts of the **grander political system** that spawned them. This is **reversed** in games. The **possibility of failure** allows for a system where not only can the gamer **restore their role as the subject** by **crafting their own active experience**, but it is a **necessity** if a gamer **desires to continue playing**. As Friedrich Nietzsche wrote, “That which is done out of love always takes place beyond good and evil” (103). This importance of **active experience** in gaming means that the political realm of textual interpretation that dominates other art forms is **forced into a secondary role** to the **apolitical realm of passion**.

This is what Baudrillard describes in the phrase, “passion for rules.” Although Bernard Suits was attempting to define the act of playing a game, it would **not be a stretch** to view his conception of constitutive rules as **comprising the game itself**. And if “**The world is a game**,” as Baudrillard claims it is, what can a reality be but **a set of rules one accepts**? Yet, whereas the writer can only describe a reality with an existence dependent on surrounding political systems (because, again, “there is nothing outside the text”), the gamer, in **directly interacting with a set of rules**, participates in a new reality **independent of the outside world**. In this sense, games are **realer than** the Platonic **real** because, instead of ending at the representations, games turn them into instruments that are used to gain a deeper interaction with the senses that make such representations possible. Thus, in its ideal form, gaming aims to **realize the passions of the real** in a form exaggerated **beyond what the rules of the real allow**. Gaming is, as Suits posits, the **antithesis to labor** in that it **not only offers liberation**, but it uses the opportunities offered by liberation to **construct a new reality built around pleasure** while minimizing any inconveniences. Herein lies the link between the **realization of a democratic utopia**, **gaming**, and **rules**. In a liberated world, immersion in gaming’s hyperreality is the likely result because it allows for the **ultimate liberation from liberation**.

Before I analyze the poem using this system, however, there is one more crucial addition to be made to Suits’s theory of gaming. Although he adequately covers both the requirements and purpose behind gaming, he is missing an additional factor that must be present to bridge the gap between theory and practice, allowing the player to extract pleasure from the game’s framework. That factor has commonly been argued as “immersion,” but to fully understand what immersion is, I feel it is appropriate to reconsider the full implications behind Baudrillard’s theory of hyperreality. Hyperreality inherently draws into question the concept of not only an objective reality, but also a single subjective reality. Rather, a world of hyperreality is one of an infinite number of equally valid realities competing to immerse the individual. With this, the distinction between fact and fiction collapses. A news story, an action movie, and even Baudrillard’s own philosophy all coalesce into competing realities. In this light, Samuel Taylor Coleridge’s **suspension-of-disbelief** must be viewed as a **crucial element** in not only art but also in **any experience possible**, because it describes the individual’s unconscious (or, possibly, conscious) effort to filter out excess information that would interfere with emotional investment in a particular reality. I will refer to this phenomenon of successful suspension-of-disbelief that makes possible the passions of gaming as “**immersion**.”

For the reasons that I have given, to **engage with the constitutive rules** of a game is not merely to engage in a **leisurely activity** but to engage with a **construction of a new reality**. As I have explained, the **possibility of failure** is an **important part** of that reality, but it should not be taken as my claiming that winning **does not matter**. Rather, **winning** and **losing** are **both equally important** because the existence of one **presupposes of the other** and the passions derived from either one are **dependent** on its **complex interactions with the other**. For **either winning** and **losing** in a game to be **possible** however, **the rules of the game must be accepted by the player**, that is to say **one must first be playing the game**. Behind **even the passions of winning** and **losing**, in **every player** there lies a deeper reason for playing in the **immersion** that **ultimately makes the aforementioned passions possible**. b Thus, the term “role-playing game” becomes a useless term, insofar as that the goal of every game is to **enjoy the passions** of playing a role **made possible by the rules**. Giving immersion a central role in gaming also puts the act of gaming in more of a sliding scale based on the gamer’s engagement with the game world, rather than the absolute of either playing a game or not as Suits seems to suggest.

However, this emphasis on immersion also reveals my major point of divergence with Baudrillard’s own views on gaming, specifically his seemingly interchangeable usage of the term with gambling. The videogame critic Alex Kierkegaard argues, “scoring in games creates a game OUTSIDE the game (the king-of-the-ladder game), while demoting the actual game to a minigame” (Web). I don’t agree with his application of his claim, in that the scoring driving the “king-of-ladder-game” mentioned exists exclusively as a summarization of actions within the actual game, but I do think the claim has merit when applied to playing for cash or other prizes with value created outside the game (gambling). Again, my view of gaming as a vehicle for immersion allows the activity to represent more of a sliding scale than an absolute, but gambling’s emphasis on prizes for their value outside of the game undeniably places it on the lower end of the scale. The reason the act of playing for something **greater than the game itself** (which I will hereafter refer to as gambling, though gambling can admittedly be a very immersive game if played as an end in itself) is **opposed to gaming** can be seen in two ways. Most clearly, if something is viewed as **being greater than the game**, the immersion is **irreparably damaged** because the game **merely becomes a currency** within some greater world rather than **a world in itself**. Secondly, and less obviously, gambling gives the game a definite endpoint. This is a less than preferable attribute of a game because, if we view gaming as aiming to create a reality more immersive and, thus, more passsionate that of the outside, it follows that it should continue to immerse the player as long as the player’s body can allow.

The ultimate game would be one that can be **replayed indefinitely**. Gawain’s apparent rejection of the elaborate pentagram to accept the simpler circular shape of the girdle serves as the perfect symbol for his wholehearted acceptance of the simple pleasures comprising the passions of gaming’s loop over the elaborate rituals of the chivalric hegemony. On one side, there is masochism, comprising the traditionally “negative” emotions of **defeat** such as anger and frustration, and on the other side is sadism, comprising the traditionally “positive” emotions of **victory** such as dominance and accomplishment. Seeking **only extreme passion**, a great player lives as the **embodiment** of Nietzsche’s concept of **amor fati**. That is to say he [they] understands that **neither state is inherently better** and **enjoys them both in themselves**, though the illusion that one might be better **serves as a motivation** for the player’s actions. The resulting **drive towards victory** and the **many inevitable defeats** that it brings merely serve as **vital illusions** to make possible the **true ecstasy of reversal** of the two extremes. As Baudrillard writes, “**The supreme orgasm is metamorphosis**” (Fatal Strategies 160).

### AT: Deliberation Excludes Affect

#### They have sequencing backwards—it’s not that we have to make deliberation affective, we have to make affect deliberative—affective redescriptions are only useful insofar as they facilitate deliberative testing based on shared understanding—this straight turns their offense

**Livingston, 12**—Assistant prof of Government @ Cornell (Alexander, “Avoiding Deliberative Democracy? Micropolitics, Manipulation, and the Public Sphere”, Philosophy & Rhetoric, Vol. 45, No. 3 (2012), pp. 269-294, dml)

To put this in the language of Deleuze, deliberative redescription can function as a war machine. The experimenting with resonating reasons in a public on the part of activists is an exercise in “plugging in” a resonance machine into the public sphere. The transformative power of the resonance machine, understood as an inventive redescription of our received practices, has the power to **transform the way citizens see their shared world**, their own interests, and the suffering of others. The work of counterpublics is to “smooth” the striated space of public political culture so as to displace old prejudices and allow new identities and claims to flourish.

But if this is so, then deliberative democracy **does not stop here**. This “weaponry” of redescription is of value only **insofar as it opens up conceptual spaces for reason giving**. It is **here**, along this destratified plane, that citizens and spectators have to make use of what Deleuze calls “**tools**” to build up **reasoned** but **revisable agreements** about **what causes to pursue**, **what practices to quash**, or **which candidates to elect** or **kick out**. Indeed, the creative work of redescription is only **the mise-en-scène** of a democratic praxis through which ordinary people **offer** and **contest** what they think to be **good arguments** and **reasons** about political issues. It is **only** through the reflective pursuit of overlapping agreement that **collective action becomes possible**. [End Page 287]

Once we see all this, that the modern public sphere is an indefinite sphere for the circulation and contestation of expansive reasons, we have grounds for questioning Connolly’s characterization of deliberative intellectualism. Recall that this claim is that deliberative democrats are captured by too narrow a vision of thought, one that makes no place for the visceral and affective registers of thinking. I want to turn this argument around and suggest that Connolly himself **focuses too closely** on the moral psychology of the individual citizen and **does not give enough credence** to the **decentered institutional registers** by which deliberative persuasion takes place. The public sphere serves as **a mediating institution** between the visceral and the conceptually articulate, the actual and the virtual.

Connolly describes the visceral register and the amygdala as inscribing cultural values and judgments directly into the “soft tissue” of thought. Connolly’s argument hinges on the claim that what the body remembers, in this visceral sense of proto-thoughts, is both distinct from and more concrete than the conceptually refined thinking of reasoned argumentation. But when this argument is refracted through a critical theory of the public sphere, the dichotomy between visceral and intellectual he introduces **falls flat**. Of course the limbic system and even the stomach can be said to learn cultural codes, discourses, and symbolic orders. Yet these codes and discourses are themselves primarily linguistic orders that circulate at the level of reasons and understandings in the public sphere. They are precisely the sorts of discourses that circulate in the public sphere and are thus subject to its **rationalizing**, **radicalizing**, and **democratizing power**. While you cannot argue with the disgust you feel in your stomach directly, the kinds of understandings that provoke that disgust are part of a lifeworld that reproduces itself through the exchange of reasons. For example, the relatively recent transformation in the popular perception of smoking from something innocuous to something disgusting over is a clear example of how the publicization of reasons to avoid smoking, combined with cultural practices that reflect and rearticulate these reasons (bans on smoking indoors, more explicit warnings about health costs, etc.), feed back into the visceral judgments about its value. It is at the level **critical publicity**, **not visceral manipulation alone**, that these discourses are **challenged** and **transformed**.

Negotiation

Tactics and techniques alone are **insufficient** for reinvigorating democracy in our late-modern world. **Cooperation**, **deliberation**, and **collective action** are needed **first** and **foremost**. But does Connolly really frame the [End Page 288] distinction between the two in such stark terms? Surely this way of putting the point must overstate the case. As I have mentioned, he issues a number of caveats that stress that he is not to be taken as suggesting that he sees no value in deliberation or public reason. As we have also seen, however, the power of dialogue and mutual understanding can have little place in his vision of politics owing his critique of intellectualism and his Deleuzian micropolitics. He foregrounds the multiple registers of thinking, an ethics of self-care, and a micropolitics of manipulation, all the while **downplaying** the issues of **the public sphere**, **publicity**, and **political dialogue**. But there is another theme lurking in the background of Connolly’s texts. Behind the celebration of ethics and micropolitics there are vague but regular appeals to another ingredient in his ethos of pluralism. It is something he refers to, all too in often in passing, as negotiation (1999, 35, 92, 143, 186; 2002, 138; 2005, 65, 123–26).21

An ethos of pluralism may come about through **tactical interventions into the visceral** but also through a **modus vivendi** negotiated between **interdependent parties** who honor different “final moral sources.” In negotiation, the parties bring their comprehensive conceptions to bear on issues of political disagreement. According to Connolly, negotiation is a conception of political dialogue that **abstains** from hiding behind a privileged Kantian account of right that magically floats above the messy world of competing conceptions of the good. Rather, it takes place between the **unavoidable conceptions of the good** that citizens bring to politics. This thick negotiation means that deeply held convictions about religion, the good, and so on are **put on the table** and are **opened up to the scrutiny** and **critique of others**. To endure the agon of opening oneself up in this way, **all** parties need to acknowledge the “**comparative contestability**” of their fundaments; that is, citizens need to acknowledge that their conception of the good is just one among others and that they have no special privilege or insight that would make it right for them to impose their understanding of the good on others (1999, 8). Trying to reach some understanding across these differences, in a situation in which the interdependence of identities and interests is not something abstracted from deliberation but the very substance of it, is the hard work of an agonistic democratic politics. Shared understandings or consensus are of course not the likely outcome of this sort of negotiation, but good negotiation will make for **revised self-understandings** and maybe even **some sort of self-transformation** of the participants involved. Good negotiation, as Connolly calls it, shares information, challenges prejudices, and produces [End Page 289] a degree of mutual respect, or rather an affirmation of “ comparative contestability,” when agreement is not possible. That is, good negotiation is good deliberation.

Rereading his comments on resonance machines from the perspective of his comments on negotiation gives a different impression of how Connolly thinks a transformative democratic politics ought to function. That is, **folding the politics of affective infusion** into an **agonistic** but **respectful process of negotiation** begins to look a lot more like the redescriptive politics of the public sphere proposed by deliberative democracy. The generous ethos of public engagement Connolly champions as negotiation, then, appears to be an instance of deliberative democracy, not an alternative or even a supplement to it. However, his account of negotiation is incomplete as it stands. Connolly’s negotiation captures the normative concerns of deliberative democracy but lacks the accompanying explanatory function of a critical theory of deliberative democracy. Where are the fora of this negotiation **if not in the public sphere**, and how do these moments of responsive negotiation add up to displace the stingy sensibility that has puts a strangle hold on a more civil and egalitarian public ethos? Without a revised account of how negotiation contributes to a democratic public sphere—through **participating in it**, **drawing on it** as a resource, transforming its subjectless claims, and **being transformed by them** in turn—negotiation **lacks the critical resources** to **mobilize a democratic left** today. Torn between the adversarial and manipulative politics of war machines on one side and an ethically sensitive negotiation that seeks understandings and mutual respect on the other, Connolly’s recipe for a democratic reinvigoration of the left oscillates back and forth between a worrisome politics that would subvert popular reflection and a dialogical art that would provoke it. A critical theory of the public sphere, however, closes this gap and finds room for both power and legitimacy, strategy and communication, within a sociologically complex defense of a radical alternative: deliberative democracy. [End Page 290]

### AT: Literal Meaning Impossible

#### Gut check—none of their language games or paradoxes really matter—despite all this philosophy babble, you’re still flowing this speech and processing its meaning…

#### Literal meanings are dicey, but intersubjective agreement is possible based on reasonable interpretation. Their arg just proves topicality solves their offense because we can debate about suitable definitions—hence the limits DA

**Kemerling 97** (Garth, professor of philosophy at Newberry College, http://www.philosophypages.com/lg/e05.htm)

We've seen that sloppy or misleading use of ordinary language can seriously limit our ability to create and communicate correct reasoning. As philosopher John Locke pointed out three centuries ago, the achievement of human knowledge is often hampered by the use of words without fixed signification. **Needless controversy is** sometimes **produced** and perpetuated **by** an unacknowledged **ambiguity in the application of key terms**. We can distinguish disputes of three sorts: Genuine disputes involve disagreement about whether or not some specific proposition is true. Since the people engaged in a genuine dispute agree on the meaning of the words by means of which they convey their respective positions, each of them can propose and assess logical arguments that might eventually lead to a resolution of their differences. Merely verbal disputes, on the other hand, arise entirely from ambiguities in the language used to express the positions of the disputants. A verbal dispute disappears entirely once the people involved arrive at an agreement on the meaning of their terms, since doing so reveals their underlying agreement in belief. Apparently verbal but really genuine disputes can also occur, of course. In cases of this sort, the resolution of every ambiguity only reveals an underlying genuine dispute. Once that's been discovered, it can be addressed fruitfully by appropriate methods of reasoning. We can save a lot of time, sharpen our reasoning abilities, and communicate with each other more effectively if we watch for disagreements about the meaning of words and try to resolve them whenever we can. Kinds of Definition The most common way of preventing or eliminating differences in the use of languages is by agreeing on the definition of our terms. Since these explicit accounts of the meaning of a word or phrase can be offered in distinct contexts and employed in the service of different goals, it's useful to distinguish definitions of several kinds: A lexical definition simply reports the way in which a term is already used within a language community. The goal here is to inform someone else of the accepted meaning of the term, so the definition is more or less correct depending upon the accuracy with which it captures that usage. In these pages, my definitions of technical terms of logic are lexical because they are intended to inform you about the way in which these terms are actually employed within the discipline of logic. At the other extreme, a stipulative definition freely assigns meaning to a completely new term, creating a usage that had never previously existed. Since the goal in this case is to propose the adoption of shared use of a novel term, there are no existing standards against which to compare it, and the definition is always correct (though it might fail to win acceptance if it turns out to be inapt or useless). If I now decree that we will henceforth refer to Presidential speeches delivered in French as "glorsherfs," I have made a (probably pointless) stipulative definition. Combining these two techniques is often an effective way to reduce the vagueness of a word or phrase. These precising definitions begin with the lexical definition of a term but then propose to **sharpen it by stipulating more narrow limits** on its use. Here, the lexical part must be correct and the stipulative portion should appropriately reduce the troublesome vagueness. If the USPS announces that "proper notification of a change of address" means that an official form containing the relevant information must be received by the local post office no later than four days prior to the effective date of the change, it has offered a (possibly useful) precising definition.