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PUBLISHER'S NOTE

Dear readers,

In early July we were pleased to publish a wonderful essay by Samantha Allen on “*CounterPunch* and the War on Transgender People.” It’s a moving piece that brings to life the type of discrimination that trans* people experience on a daily basis.

In the post, Allen laments the fact that portions of the Left, including some self-described feminists, are still bullying this vulnerable population. What’s more, these reactionary voices are even finding outlets in some of our best publications, like *CounterPunch*. As Allen writes, “...pundits of both liberal and radical varieties can demonize us, ignore us, and question our legitimacy because they can get away with it.”

As is the case with many other issues — and largely due to a lack of time and resources — *Jacobin* hasn’t provided a very good counterweight to these tendencies. That’s why we were so proud to publish Allen’s piece, and it’s one of the many reasons we stand behind it without reservation.

But not everyone is so pleased with its publication. Catherine Brennan, whose views are critiqued in the essay as being transphobic, has instructed her lawyer David Diggs to prepare litigation against *Jacobin*.

Any money raised in the next few weeks will be held in escrow and reserved for a long-overdue legal defense fund. Our online payment pages are all secure and encrypted, but those who prefer can donate via PayPal to editor@jacobinmag.com or by check to Jacobin Press, PO Box 541336, Bronx NY 10454.

Your generosity is vital and appreciated. It will help safeguard our writers and our publication and enable us to continue what I believe to be valuable work.

—Bhaskar Sunkara, Editor & Publisher

Contents

- 8–13 *Erin Schell*
- 5, 78, 87 *Tiffanie Tran*
- 62, 69, 74 *Ben Sanders*
- 46, 53 *Daniel Haskett*
- COVER, 26, 39 *Kotryna Zukauskaite*
- 47 **Reading Materiel**
Scott McLemee
- 49 **From Bandung to BRICs**
Rafia Zakaria

Books



- 52 **Back to the Fragments**
Nina Power
- 57 **She Came to Riot**
Jennifer Pan

Editorial

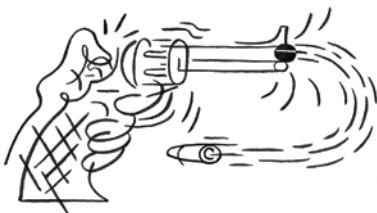
- 4 **Property and Theft**
Peter Frase



Essay

- 8 **The Myth of the Hardhat Hawk**
Penny Lewis
- 16 **Outside the New China**
Eli Friedman
- 21 **Beyond Windsor**
Claire Potter
- 90 **Edward Snowden and the American Condition**
Chase Madar

Culture



- 61 **The Fantastic Failure of The Lone Ranger**
Eileen Jones
- 68 **Silent Majority Music**
Gavin Mueller
- 73 **Against Tipping**
Ian Svenonius



- 26 **Don't Mention the War**
*Seth Ackerman
& Mike Beggs*



- 38 **A Marxist in Keynes' Court**
Timothy Shenk

Marx & Keynes

- 77 **Degendering Value**
Anne Elizabeth Moore



- 85 **Locked Out**
Sean Andrews

Intellectual Property

Property and Theft

The overthrow of all intellectual property leaves unanswered the question of how to ensure that those who create knowledge and culture are provided for, and how to control the exploitation of the cultural commons by digital capitalists.

by Peter Frase

THE STATE'S CURRENT APPROACH to intellectual property has come under scrutiny of late, as its disconnect from anything that might have once legitimated it has become more and more obvious. The activities of rent-seeking patent trolls, who accumulate patents solely for the purpose of filing lawsuits, have been highlighted by National Public Radio's "Planet Money" program. And the absurdities of strict copyright enforcement are apparent in the life-destroying legal judgments leveled against small-time downloaders — \$220,000 against Mille Lacs Band of Ojibwe employee Jammie Thomas-Rasset for twenty-four songs, \$675,000 against college student Joel Tenenbaum for thirty.

Faced with these outrages, it's tempting to demand the immediate destruction of the entire edifice of patent and copyright protection. All the more since intellectual property compounds the general socialist discomfort with private property, because the right it encodes is such an expansive one. No longer just the right to control a particular physical space or object, it abstracts the property form into the control of patterns and processes, wherever and whenever they appear. Instead of owning a book or a factory, the intellectually propertied class controls all copies of

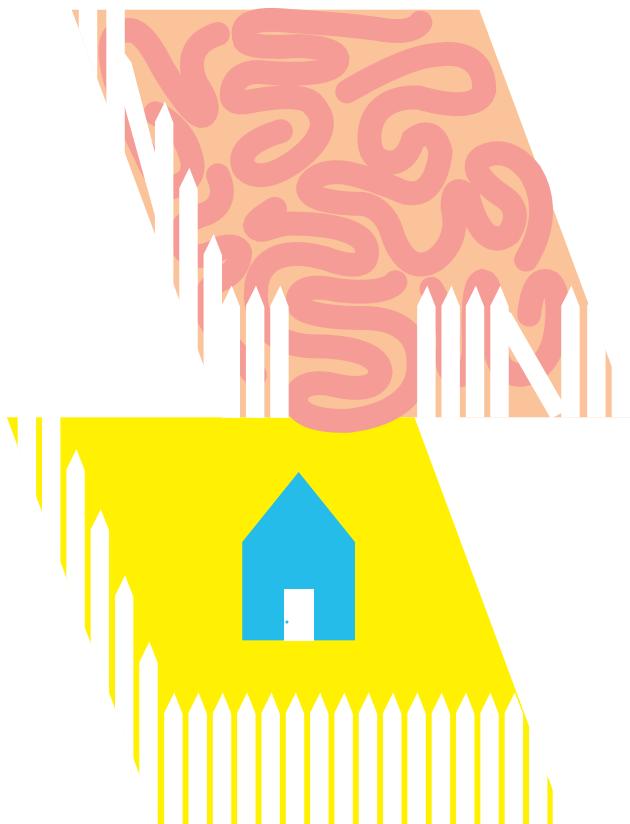
the book, and all implementations of the production process within the factory.

This issue of *Jacobin* includes a pair of essays that explain the origins and implications of this new property form. Sean Andrews traces IP to the laws of seventeenth- and eighteenth-century England and the ideas of John Locke, showing how intellectual property protections go back to the beginnings of capitalism itself. It is the scope of these laws, and their relative economic importance, that has changed in recent years.

Anne Elizabeth Moore gives a more contemporary reading, as she describes the patent and copyright regimes in detail and explores their spread around the world. She makes the point that intellectual property, no less than the material kind, supports a system of class power that is both bourgeois and patriarchal. Gendered conceptions of credit and reward are written into the structures of the property laws themselves, from the range of things that can be covered by it (novels, but not recipes) to who can claim control over it.

Both of these essays demonstrate the absurdities and injustices of a strengthening IP regime. Yet each, in a different way, shows that simply denouncing all intellectual property is inadequate, as are the political battle lines that are often drawn today. On one side, we find pirates and free-culture advocates, insisting that “information wants to be free” and that any attempt to enclose the copying of patterns within legal restrictions is an affront and an inanity. This view unites a sort of Left-Right coalition that can encompass the libertarian economist David K. Levine and the amorphous rebellion of Europe’s Pirate parties. Arrayed against them

Each, in a different way, shows that simply denouncing all intellectual property is inadequate, as are the political battle lines that are often drawn today.



are those who may acknowledge the corporate corruption of the patent and copyright systems, but who nevertheless hold up a reformed IP system as a bulwark against the depredations of a “sharing economy” that all too often amounts to a handful of Internet monopolists profiting from the uncompensated labor of creative workers. Jaron Lanier, author of the recent *Who Owns the Future?*, is one of the more strident proponents of this view.

WE HAVE HERE something a bit like the old “reform or revolution” dichotomy, which arrays the advocates of smashing the existing system against the timid meliorism of those who only want to make it more humane. But

the contrast fails here just as it did in the larger drama of twentieth-century socialism, where revolution and reform both ultimately led back to capitalist restoration and neoliberal retrenchment. We need another path – one that recognizes the necessity of reformist struggles within capitalist institutions, while still attempting to move toward a break with the system and the creation of a fundamentally new kind of economy and society. André Gorz called this the “non-reformist reform”: a project of “reforms which advance toward a radical transformation of society” by making a “modification of the relations of power” which could “serve to weaken capitalism and to shake its joints.”

What would constitute a non-reformist reform of intellectual property? The revolutionary overthrow of all intellectual property, even if it were possible, leaves unanswered the question of how to ensure that those who create knowledge and culture are provided for, and how to control the exploitation of the cultural commons by digital capitalists. The anarchist championing of online piracy only allows for some resistance around the edges, without posing a fundamental challenge to the system. And yet the idea of reforming IP into something better and more egalitarian, something that truly rewards all who participate in the work of creation, seems like another iteration of the naïve dream of a just and democratic capitalism.

Anne Elizabeth Moore and Sean Andrews approach this bundle of contradictions in different ways. For Moore, the central point is that IP is now and has always been gendered, and therefore any path toward its transformation and abolition must explicitly work toward addressing inequities that are embedded in our notions of culture, even if that sometimes means more IP rather than less. “An across-the-board loosening of IP protection,” she fears, would “lead to the increased piracy of those cultural productions already less protected, worsening the economic gender gap.” The task is to “correct for generations of cultural misogyny,” which entails fundamentally rethinking what counts as IP, beyond an isolated male inventor in his study, the image of whom forms the explicit or implicit basis of much of our current regime.

Insofar as the socialist perspective is taken to be hostile to the existence of intellectual property and private property more generally, Moore’s argument might be taken as a challenge to it. But this is to confuse a socialist approach with a libertarian one.

The libertarian absolutist case against IP is consistent with the movement’s anti-statist trappings, and depends on the inference that because intellectual property is a debased, false form of property, it therefore does not fall within the purview of the state’s property-defending mission.

A socialist, however, can recognize that law and the state are contested terrain, and that replacing the regime of capitalist private property requires erecting, at least in the interim, an alternative form of socialized property, in order to defend the commons against the persistent efforts of the capitalist class to enclose and appropriate it. The struggle over traditional physical property provides many examples of this. Land trusts that are available to the public are an alternative to private ownership. Worker cooperatives and B Corporations, which are dedicated to a social purpose rather than only maximizing profit, are being pursued as alternatives to the traditional corporate form.

This is an appealing model for a potentially non-capitalist approach to the cultural commons that isn’t simply hostile to the legal system, but attempts to use it as a mechanism for contesting the narrow capitalist definition of property. But as we attempt to forge new property forms, new contradictions and unintended consequences will arise. In embracing a superficially appealing new licensing model, we could end up accidentally imprisoning ourselves in something just as bad as or worse than what we have now.

Take, for example, a project that Andrews mentions, the Creative Commons license. This is, as he notes, a legal property form just as much as traditional copyright. However, where copyright gives an owner the right to keep knowledge closed, Creative Commons is designed to facilitate creators who want to ensure their creations remain open, while at the same time making sure that they receive credit for them. One of the more common versions is the CC BY license, which allows unlimited distribution and repurposing as long as the original creator receives credit in any new version or copy. Another, CC BY-SA, adds the provision that those who redistribute or remix something must “license their new creations under the identical terms,” a provision with the potential to virally spread Creative Commons protection to other non-covered work. Going further in a superficially anti-capitalist direction, CC BY-NC-SA also prohibits commercial use, while CC BY-NC-ND also prohibits the creation of modified and derivative works.

These licenses might seem like a promising ways to protect the rights of creators and keep work out of the hands of corporate content monopolists. But they also pose contradictions and compromises for those who would like the commons to be as open and accessible as possible, but who recognize that a short-run strategy of total IP rejectionism is susceptible to exploitation by capitalist interests. Creative Commons demonstrates this, as does the simpler GNU Public License ([GPL](#)) for software.

The attribution and share-alike components of Creative Commons are the least problematic, since they enforce an ethic of author credit and mutual sharing that is fundamental to the operation of a non-capitalist commons. The non-commercial and no-derivatives provisions, however, turn out to have some problematic unintended consequences, as explained in a set of two critiques published by the Free Culture Foundation. Marking a work for non-commercial use sounds like just a way to draw a line between capitalist exploitation and socialist sharing, and the no-derivatives clause can be defended as a way of protecting the integrity of a creator's work. But NC licenses don't distinguish between a small-time DJ sampling a song and a massive streaming service making millions from advertising. Moreover, they replicate traditional copyright's grant of a commercial monopoly to the original creator. The ban on derivative works, meanwhile, is only justified if IP law is regarded as a safeguard on the natural rights of the creator, rather than a utilitarian and pragmatic mechanism for ensuring a free and open cultural commons.

Another issue is that new licenses and property forms may not take into account all of the people who have a need for rights with respect to a given cultural object. Several years ago, a Texas family sued the Creative Commons Corporation along with Virgin Mobile Australia, charging them with libel and invasion of privacy. Virgin had found a CC-licensed image taken by a youth counselor, which included an image of the family's teenage daughter, and used it in an advertising campaign without the family's permissions. In this case, the CC license replicated a problem that Anne Elizabeth Moore identifies in traditional copyright: the rights of (disproportionately male) creators of images are protected, while the (more often female) people who become the content of the image are not.

THE TENSIONS inherent in new intellectual property forms are closely related to a tension running through all discussions of intellectual production — and indeed, production generally — between the rights of the producer and the rights of the user or consumer. In a recent essay on the tech guru Tim O'Reilly, Evgeny Morozov explains how this distinction plays out in the world of software development, in the late-nineties split between the *free software* concept developed by Richard Stallman and the Free Software Foundation and the rival notion of *open source software* promoted by the libertarian Eric Raymond. Stallman was and is preoccupied with the rights of users to examine and modify the software they use; Raymond, in contrast, was more interested in protecting the rights of developers to control the terms on which their software is distributed.

The distinction between the rights of the user and the rights of the developer resembles, but does not neatly map onto, a more traditional political distinction between the rights of consumers and the rights of producers. The analogy is not exact, because users who modify and repurpose software can also be thought of as producers, and because the category "developers of software" is ambiguous between the software engineers who actually write the code and the capitalist enterprises that frequently employ them and retain the licenses to the software they produce. A similar ambiguity exists in the contrast between the creators and consumers of cultural objects like books or songs.

In considering various "copyleft" alternatives to the existing IP regime, there is a danger of being seduced by a facile identification with the moral priority of creators over consumers. It's the same impulse that leads to the slippage between emancipatory critiques of capitalism and a more politically ambiguous producerism, which attempts to divert society's bounty away from unproductive parasites and toward those who are allegedly the direct producers.

But the point of defending the commons isn't that producers and creators are better than users and consumers — a moral economy more suited to Ayn Rand than Karl Marx. Rather, it is that we are simultaneously creators and consumers, and that we should strive for legal forms that keep us from being exploited or manipulated in either role. ■

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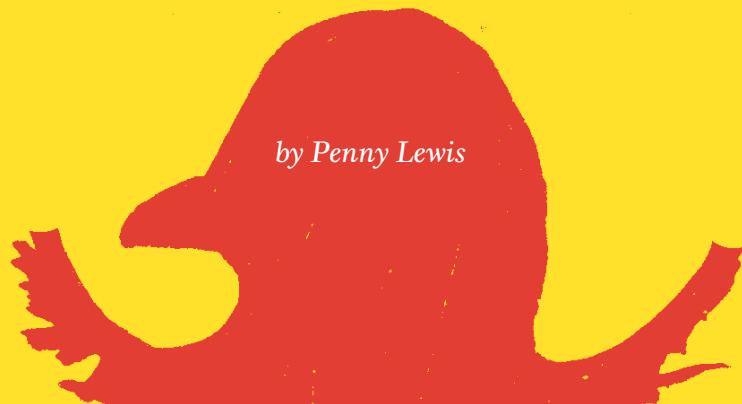
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HARDHAT

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HAWK

by Penny Lewis





In the popular imagination,
opposition to the Vietnam War
was driven largely by the privileged,
while supposedly reactionary
blue-collar workers supported the war effort.
That memory is wrong.



 **N 30 APRIL 1970**, President Nixon announced that the US had invaded Cambodia, seeking to disrupt the supply lines and strongholds of national liberation forces. After a year of promising to wind the war down, Nixon's expansion of the front was met with immediate outrage. When four college students were killed by National Guardsmen at Kent State University in Ohio on May 4, protests erupted nationwide, and hundreds of college campuses were shut down, many for the remainder of the term.

In New York City on 8 May 1970, a group of around one thousand antiwar protesters gathered at Wall Street across from the stock exchange, as part of a "day of reflection" called by Mayor John Lindsay "to reflect solemnly on the numbing events at Kent State University and their implications for the future and fate of America." At lunchtime, an even smaller group of around two hundred construction workers arrived at the antiwar rally and angrily confronted the protesters. In the next few hours, backed by more construction workers from the World Trade Center site as well as Wall Street office employees, these counter-demonstrators raged through downtown Manhattan, assaulting antiwar protesters as well as people who looked like protesters ("longhairs" got special treatment), storming City Hall and Pace University, and injuring dozens. Over the following weeks, downtown was the site of daily

lunchtime marches of workers, culminating in a rally called by the Building Trades Council named “Honor America, Honor the Flag” that drew as many as one hundred thousand people to Lower Manhattan.

A college student from Michigan watching the crowd at the final rally told the *New York Times*, “I’m scared. If this is what the class struggle is all about, there’s something wrong somewhere.”

“Hardhats” facing off against entitled “hippie” youth became a dominant image from the era, a shorthand for what became the ruling narrative about the class dynamics of antiwar sentiment. According to this memory, protest was the province of the privileged until the “Silent Majority” finally roared onto the scene, yelling “Love it or

war had deep costs, in lost lives and, over its course, in the worsening economic conditions to which it contributed. The conflict in Vietnam found its greatest support from the college-educated, especially college-educated young people (contrary to our memory of the “generation gap” as well). And by the war’s conclusion, the overwhelming consensus in the US was not just that the war had been a mistake, but that it was “fundamentally wrong and immoral.”

We should remember a different, more diverse antiwar movement than the one recounted in countless films, history textbooks, and mainstream commentaries. Unlike images of the well-off “liberated generation,” student antiwar protesters differed not at all from all typical college students

THE CONFLICT in VIETNAM



Found its GREATEST SUPPORT in the COLLEGE-EDUCATED,
ESPECIALLY COLLEGE-EDUCATED YOUNG PEOPLE.

THIS FACT CONTRADICTS OUR MEMORY of the “GENERATION GAP”
IDENTIFIED with the ANTIWAR MOVEMENT.



leave it” on downtown streets, and denouncing the “commie crapola” of movement activists from Archie Bunker’s armchair in Queens.

But the Michigan student’s observation was right: this wasn’t the class struggle; there was something wrong somewhere. Antipathy between workers and protesters existed during the era. Yet such a neat image of class polarization distorts a more complex historical reality. Workers were less supportive of the war than their more privileged compatriots, skeptical of its aims and souring on its pursuit of them.

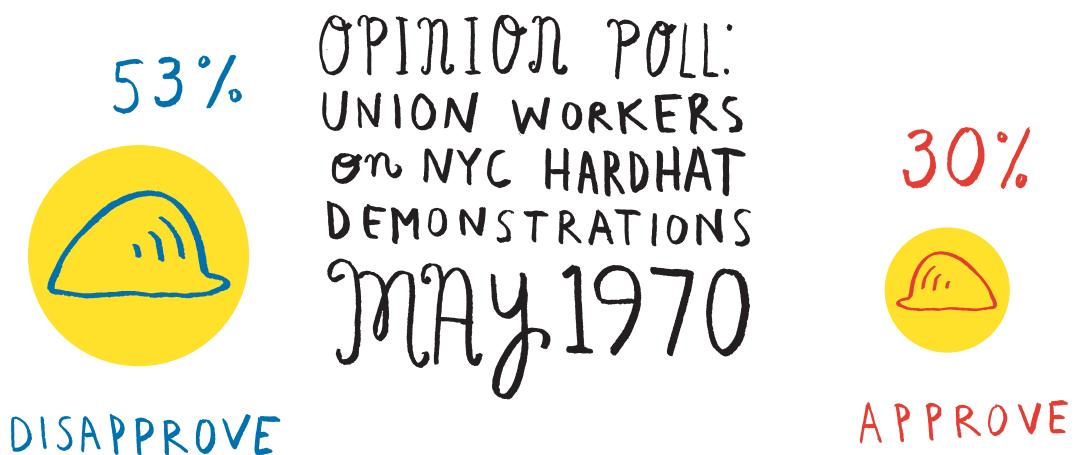
There should be little surprising in this. The

at the time: social class background played no determining role in whether or not one actively opposed the war as a student. The antiwar movement initially grew in middle-class milieus, but it expanded beyond them over time. Groups such as the Boston Draft Resistance Group, the Chicano Moratorium, and the Vietnam Veterans Against the War explicitly framed their opposition to the war in class-based experiences of the draft and the fighting itself, recruited within working-class communities, and connected their demands to end the war and dismantle its “machinery of death” with visions of social redress — towards problems of

unemployment, affordable housing, just policing, quality schools, and healthcare.

Thousands of workers came to participate in antiwar activities through their unions, a significant minority of which broke with the Cold War consensus that straitjacketed the rest of the labor movement. These antiwar unions helped to recreate a space for political action and debate in a labor movement that was also undergoing rank-and-file challenges from below and a sharp rise in wildcat strikes and other unauthorized work actions. Many more thousands of workers came to oppose the war through their direct experience fighting in Southeast Asia; the GI and Veteran movements are among the most important, and least talked about, vectors of antiwar action during

protests — some were reportedly promised a cash bonus for doing so. The other chant of the workers that day was “Impeach Lindsay,” referring to the aristocratic and socially liberal Republican mayor. In fact, all of the hardhat actions of May 1970 should be read in the context of specific fights with New York’s mayor. For one, he had called for flags in the city to be held at half-staff that day. During the final weeks of his campaign for re-election the previous fall, Lindsay had also called for flags to be lowered during the National Moratorium against the war, and in doing so had caused uproar across the city — the President was in charge of such actions, and for a mayor to interject such symbolism on the side of war protesters rather than the soldiers themselves was galling to thousands of



the era. Civil rights, Black Power, and nationalist movements for self-determination joined the antiwar cause early on, the war a central plank of their own struggles against oppression and US imperialism.

Even the events at Wall Street in May 1970 were themselves more ambiguous than the story allows. No one held a gun to their heads: these workers were clearly excited to go bash the protesters. But they were also not spontaneous. The hardhats were encouraged by their shop stewards to leave their job sites on May 8, told that they would still get paid if they went and confronted the

New Yorkers. Six months later, the construction workers on Wall Street hoisted their own flags, and reset those at City Hall to full-staff.

Race played a central role as well. Responding to federal affirmative action stipulations, the New York building trades were angling to create a “hometown solution” to the mandatory integration of the trades that wouldn’t do much integrating at all. The New York plan, proposed in March 1970 by Peter Brennan, the head of the Building Trades Council, called for an apprenticeship training program for blacks aspiring to trade union membership — in which the training would take

place in its own separate center, and offered neither union membership nor jobs to those who completed it. Lindsay was already identified with community control of the public schools (and against the bruising and racist UFT strikes in Ocean Hill and Brownsville the year before), and could be expected to oppose the plan. Brennan and the building trades sought to pressure Lindsay from every corner they could. Brennan directly orchestrated the May rallies that followed May 8, and anti-Lindsay slogans were dominant among protesters at all of them. (Six months later, the mayor signed the New York plan into law, over the objections of civil rights and black labor groups.)

Feelings about the issue purportedly at the center of this episode — the Vietnam War — were equally fraught. While they found many self-identified patriots who supported the President, the newspaper reporters who covered the final rally didn't find many people who supported the war, and in fact found many who opposed it. The majority of union workers, in opposition to the leadership of the AFL-CIO (“intemperate, jingoistic, [and] hysterical,” as Walter Reuther called George Meany), thought the war was a mistake and wanted out. A national poll found that 53 percent of unionists surveyed right after the May 8 attacks condemned the hardhats. The first antiwar demonstration called by New York unions who opposed the war was called as a response in those same weeks. Only a few thousand showed up, but it marked the beginning of an even broader labor antiwar response.

Why does it matter, today, that we misremember this? During Vietnam, attention to the class-based “war at home” served to distract attention from the antiwar consensus that had developed. Worse, the image of polarization stymied solidarity between groups whose criticisms of the war had taken different paths, but had led them to similar conclusions. The sociologist Robert Alford wrote about the role of this kind of historical inquiry as in part teasing out “alternative scenarios made plausible.” The counter-memory of a diverse, multifaceted antiwar movement points us toward other possibilities embedded in our past and the possibilities that may be open in the future.

In the decades that followed, our memory of the Vietnam era has continued to inform our expectations of working-class political attitudes, and whether we can reasonably expect any successful

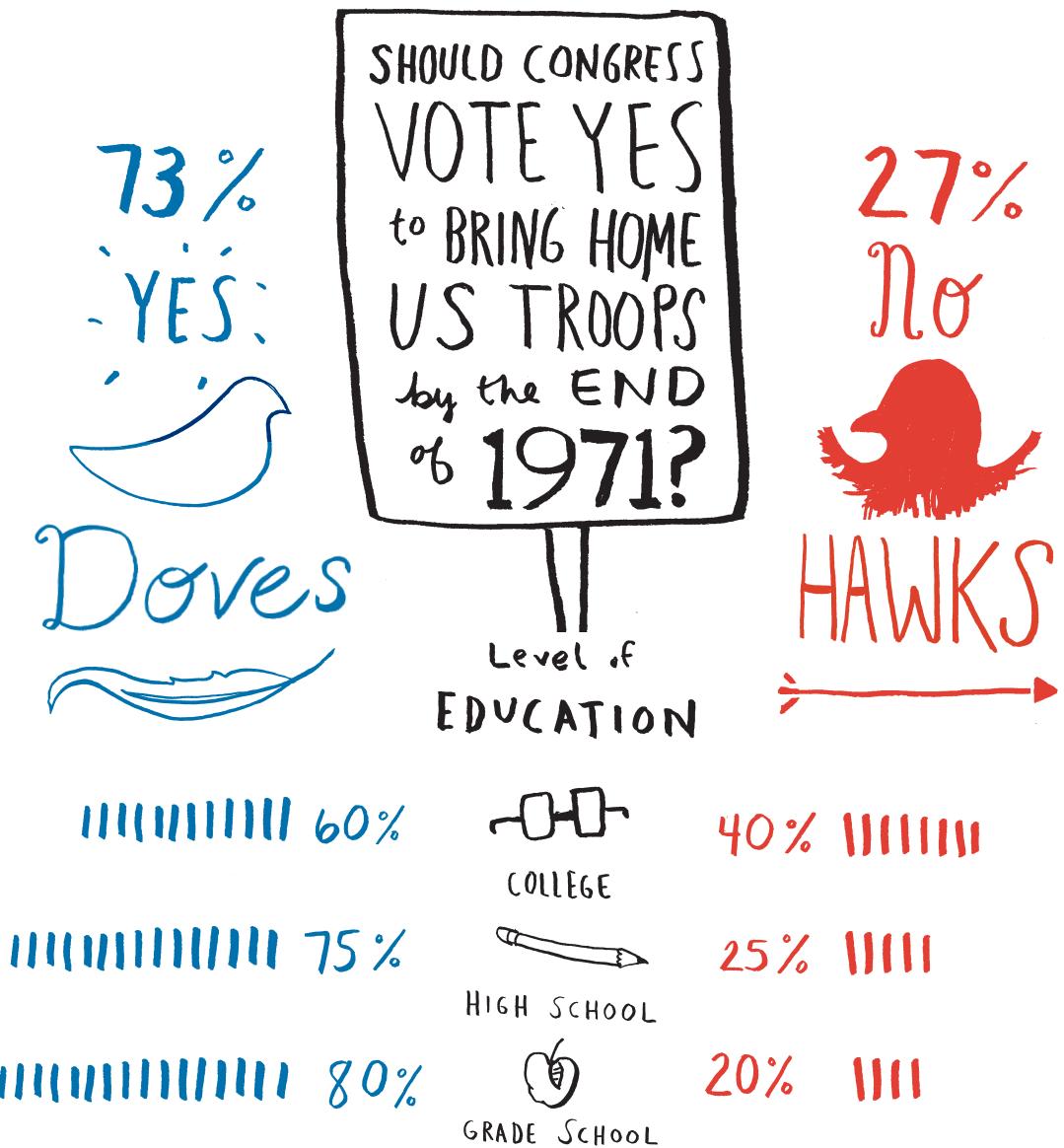
“coalitions across the class divide.” When we lose sight of the complex circumstances that encouraged the standoff between hippies and hardhats, we risk essentializing the divisions of the era, hardening into opposing camps groups who did frequently find common cause.

Among the factors that contributed to the power that this polarized image holds in our memory were narratives of working-class conservatism that had developed in the preceding decades, including theories of workers’ “embourgeoisement” and their incipient “authoritarianism.” The way in which class was conceived in the era had at its heart contradictory elements that helped efface the more nuanced political beliefs of, and actions taken by, workers reacting to Vietnam.

On the one hand, during the postwar years the distinct existence of an American working class was challenged by the pop-cultural and sociological insistence that a new era of affluence dominated by a vast middle class was upon us. This middle class owned their own homes, used new home appliances, vacationed, watched TV, saved for their kids’ college. Some worked in offices, others in factories, but the rising tide of postwar boom was lifting all boats.

Of course, this image was always largely that, a product of creative yearning: working-class living standards varied, with only a small fraction achieving anything close to the stability thus promised. Workers continued to experience cyclical unemployment and other kinds of job insecurities, and continued to struggle for greater control and power over the conditions of their work, which remained dangerous and dirty. But it was also true that many white, male, skilled, unionized goods-producing workers in manufacturing and the construction trades were getting a larger share of the economic growth they created than ever before, and inequality was significantly less than it had ever been in the industrial age. For these workers, things were better than they had been during the Depression, and by a long shot. Hence the irony in unions, the most important working-class institutions in the United States, taking credit for creating, and being the greatest defenders of, the nation’s “middle class.” Strong unions helped drive up the price of labor, and set standards in all industries in which they had significant footholds, like steel and auto.

But unions were not established in all industries. Labor laws did not cover the public sector,



the agricultural sector, or domestic work; unions had barely begun to penetrate the diverse service sector and had no meaningful presence in any kind of office or “pink collar” work. Not incidentally, these sectors were also those dominated by African Americans, Chicanos, Puerto Ricans, women. And again, not incidentally, when the working class was imagined as a distinct social group, differentiated from the vast middle mass, it was as a narrowly conceived slice of the broader class: the very same white, male, goods-producing workers who had

formed the core of the unions in the 1930s and 1940s and who, by and large, were better off than the working class as a whole.

Collective identities are created through social action. The fight to unionize the US workplace forged a strong collective class identity that unions helped institutionalize (and the state ultimately helped legitimate). And this class identity was also usually a racial one as well. Segregation on the job, in the community, in the law, in the unions: white workers and workers of color most frequently lived

in culturally and spatially separate worlds, with solidarity further undercut by structural discrimination, economic competition, and white racism. So it makes sense that at the time, the working class and the white working class were largely synonymous identities, from within and without.

Throughout the 1960s, other collective identities were being created through new social action. Workers who participated in the antiwar movement frequently did so through collective action whose primary identity roots did not necessarily foreground class. The civil rights, Black Power, and nationalist movements gave rise to strong racial and ethnic identities; feminism forged a sense of sisterhood; in the context of antiwar action, veterans and soldiers organized as according to their military roles. Even many of the unionized groups who lent their names and numbers to antiwar efforts reflected the “new working class” that was organizing in government, in health care, or as farmworkers. All of these identities were shot through with class experiences, and at times their class valences were dominant. But veterans protested the war as veterans, Chicanos as Chicanos, and no single “working-class” identity or frame held together these streams.

The class exploitation workers continued to experience, and the divergent political actions that workers as a whole were taking in the era continued to be erased or obscured by these ways of thinking about class. The labor movement might have been able to challenge these dominant ideas about who was the working class, and what it was doing. It might have thereby connected the dots and generalized these experiences in such a way that greater unity might have been achieved across these disparate groups, or so that the public might better recognize the heterogeneity of working-class politics at the time. But — for reasons impossible to detail in a short essay — it was both unwilling and unable to do so.

Forty years later, the labor movement continues to speak for the middle class, but both the movement and the relative stability it helped create have substantially eroded and remain mortally threatened. Today’s labor movement, as small as it is, is significantly more reflective of the broad, diverse working class of the United States and now includes many of the government and service workers who were excluded in the 1960s. Black workers are more likely to be unionized than whites, Latinos, or Asians. Unions are at the

forefront in the current struggle for immigrant rights, a stunning turnaround. Just as remarkably, most are on record as critical of the recent wars in Iraq and Afghanistan. The AFL-CIO meets for its convention this summer, and rather than screaming to throw the “kookies” out, as George Meany did to antiwar protesters decades ago, President Richard Trumka and AFL staff have been conducting a listening campaign among left, community, and movement activists, looking beyond the federation’s boundaries for ideas for labor’s future.

And what kind of a protest have we seen at Wall Street more recently? Another image of protest is now available to us: that of a middle-aged man who is sitting cross-legged, arms linked with other protesters whose faces are obscured by bandanas. He is wearing a yellow hardhat topped with protective goggles, and has a small placard on his lap: “Union Worker Reclaiming the Future For My Children.” For the first time in generations, a class-based collective identity was forged in the streets of New York and other cities around the country — that of the 99%.

I was finishing *Hardhats, Hippies, and Hawks: The Vietnam Antiwar Movement as Myth and Memory* when Occupy began, and it felt to me like many of the problems I raised about the previous era were both being solved and, in other respects, reproduced in the new upsurge. As Jodi Dean and others have observed, Occupy marked a political rupture in which a “we” could once again be established. The eroded, low-wage world in which college guarantees you debt and not much more; the crisis in governance created by our politicians’ slavish commitment to a neoliberal agenda: such conditions indicate the substantial basis we have for common cause.

Images of class polarization from the Vietnam period are being successfully, if tenuously, replaced with stories and experiences of greater unity. Unions lent institutional support to the new movement, in line with the feeling of support for Occupy expressed by workers, organized and not — and as a result the media has had a harder time dismissing Occupy as a rich kid’s fad (though not for lack of trying). But realizing the 99% remains a challenge. Negotiating class cultures — taking into account the deeply divergent experiences and identities that bring people to the fight — needs to be a self-conscious part of our organizing. Perhaps this time we’ll get the story right. ■



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Outside the New China

The exploitative relationship between city and countryside pervades Chinese life. Nowhere is inequality in access to public goods clearer than in the country's urban education system.

by Eli Friedman

Essay

A

KEY ELEMENT of China's generation-long economic boom has been its ability to provide employers with a flow of cheap labor that is also relatively healthy and educated. How has such a magical combination been possible?

The answer, to put it somewhat abstractly, is this: by spatially separating economic production from social reproduction, capital has been able to buy labor power at less than its value.

The labor of 250 million Chinese migrant workers, now the numerically and politically most important part of the working class, is largely deployed in the country's many metropolises. But if the production of consumer goods, skyscrapers, and high-speed railways is taking place in the cities, the production of migrant labor power itself — social reproduction — by and large takes place in the countryside. That is where the social and financial costs of providing education, healthcare, and care for the aged are borne.

This is a giant subsidy to urban capitalists, who are thus able to use massive amounts of labor without having to pay for either the worker's formation or for reproduction on a generational basis. Cities have been able to consume the best working years of migrant youth and then spit

them back into the countryside when they're no longer desirable, with no further obligations.

But after underwriting decades of growth, this blatantly exploitative relationship between city and countryside is starting to show signs of stress. Most importantly, young migrants to the city are proving increasingly unwilling to return to the farm to start families as their parents had done in the 1980s and 1990s. The problem, though, is that it is still nearly impossible for working-class migrants to make a decent life in the city, as they are legally excluded from the social services that urban residents enjoy.

Nowhere is this inequality in access to public goods clearer than in urban China's segregated education system.

THE CHINESE STATE maintains a formally tiered system of citizenship that is enforced through the household registration system known as *hukou*. This system ties the provision of public goods to place: if someone leaves their officially designated hometown, the state promises them nothing. Additionally, there is a deeply unequal distribution of social goods in terms of scope and quality that is dependent on place, with residents of cities like Beijing and Shanghai enjoying far superior and more diverse services than those of their rural compatriots.

This transparently unequal citizenship regime operates intergenerationally. A child born in Beijing to parents from rural Sichuan is guaranteed access to public services — but only in rural Sichuan. If the ideal of public goods is to serve as a bulwark against the market's inherent tendency to reproduce class inequality, in China such institutions serve just the opposite purpose. This is not the informal class- and race-based segregation of today's America, but old-fashioned, formal exclusion based on inherited characteristics. The implications for the rigidification of class structure are legion.

Migrants without urban *hukou* face immense barriers — administrative, financial, and social — in enrolling their children in urban schools. Access for “employees who have entered the city” (as they’re referred to in the official lexicon) is generally dependent on the parents’ ability to pay massive bribes, often equivalent to one year’s salary, as well as to document stable employment, stable residence, and an extended period of residence within the city. In other words, if they can

prove their usefulness to capital in the labor market, the chances of their children gaining access to public education are increased.

But even if cities are unwilling to bear the costs of migrants’ social reproduction, they still need the labor. Thus, in a half-hearted attempt to allow migrants to settle down, they have allowed a wholly private shadow education system to emerge in the institutional interstices, in the hopes that parents will continue to power their factories, construction sites, and restaurants. These decrepit migrant schools that populate the periphery of every major city are little more than holding pens, crystallizing all the violence and precarity of Chinese capitalism.

With little promise of quality education, migrant children are condemned to repeat their parents’ social existence, thus amounting to a fairly deliberate reproduction of surplus population. Despite the valiant efforts of many well-intentioned teachers and other volunteers, these institutions do not have the time or the money to give their students much hope of escaping the trap.

CHINA IS A BIG COUNTRY, and different cities have widely varying approaches to providing social services. Some, like Chongqing, are relatively inclusive of migrants, though even such cities maintain a sizeable second-class citizenry. But by all accounts the most exclusionary and repressive city for migrants is Beijing. That’s because the state is gripped by the biopolitical fear of overpopulation, and all the chaos that’s presumed to go with it, in the national capital, the symbolic core of the polity. Life must not get too comfortable for the subaltern, lest the capital be overrun with-social service-devouring undesirables.

The differences between a migrant school and even a subpar public school in Beijing are immediately apparent even before entering school grounds. The socially peripheral status of migrant schools is mirrored in their physical location on Beijing’s periphery: as land prices in the urban core have skyrocketed due to real estate speculation, schools have been continuously pushed to the margin of the city — the place where “the city meets the country.” Migrant schools are not only a waste of space from the perspective of capital, they pose a political threat to the oppressive “harmony”

that perpetually anxious Communist Party cadres are entrusted with maintaining.

So these schools are hidden from sight, far from the towering monoliths of the central business district and the solemn Stalinist facades of Tian'anmen. They are tucked into narrow alleys strewn with trash and populated by mangy street dogs, seemingly a world away from the “global” part of the city. Most schools are in dilapidated single-story brick buildings, with no indoor plumbing or central heating. While the city’s public schools are all decked out in new multi-media appliances and computer labs, migrant schools often have only a single computer for the principal. Playgrounds in these schools hardly count as such — typically there’s nothing more than a potholed concrete slab that serves as a basketball court for hundreds of students at a time. In the very first school I visited, children were playing in a mound of crushed coal, subaltern Beijing’s equivalent of a sandbox.

In some respects, Beijing’s migrant schools are even worse than typical privatized education, because although these schools are oriented towards generating profit, the state refuses to grant them recognition. There are more than one hundred migrant schools in the city that exist in a permanent legal gray zone, allowed to persist because they respond to a real need, but without official sanction. Private enterprises enjoy certain legal protections that these schools do not. In this sense, migrants’ shadow education system represents the dark side of autonomy from the state.

And the state frequently exploits this legal precarity. Migrant schools exist under constant threat

of closure. The most spectacular example came in the fall of 2011 when thirty schools were shut down and demolished under the pretext that they were unsafe and unhygienic. Whether these demolitions are driven by the economic logic of land dispossession or the political imperative to maintain an exclusionary environment for migrant labor is unclear.

The salient point, however, is that migrant children, teachers, and the physical schools themselves exist in a highly uncertain environment. This ever-present uncertainty extends to the private capital that underwrites these schools. As a result, the school “bosses” (as teachers refer to their principals) use time-tested methods to ensure profitability: they squeeze the hell out of the workers.

T

HE SOCIAL PROFILE of migrant school teachers closely resembles that of their students’ parents. Most are themselves migrants and are living in the city without urban *hukou*. Their wages are nowhere near what is necessary to live a dignified life. Many teachers in Beijing earn considerably less than the legal minimum wage, which at approximately \$200 a month is itself a far cry from a livable wage. They do not enjoy health insurance or pensions. They work illegally long hours, often exceeding seventy or eighty hours a week. Such conditions are not contractual violations, since teachers rarely have even a basic written contract. Management feels no need to abide by labor laws since the school itself is not legal.

Since the nurturing impulse is constructed as a feminine quality in China, as in many other places, most men are unwilling to exchange material rewards for the emotional ones that come with teaching. The consequence is that it is women who are disproportionately asked to toil “for the love of it.”

Either the cities pay more for labor, including the costs of reproduction, or they will not be able to get the living labor they so desperately need. How this tension gets resolved will be decisive in determining the future shape of China's urbanization and economic development, its citizenship regimes and class structures.

Although most teachers are dedicated to their work, they are not prepared for the classroom. Many have received no higher education, and almost none are licensed as teachers. Indeed, teachers who do have the credentials and the opportunity will almost inevitably move to public schools. But even the most diligent and capable teacher would be unable to handle the social chaos that emanates from the community and envelops the school.

Everything that happens in the parents' lives is immediately reflected in the teachers' work. A major complaint that teachers have is that parents are simply absent from their child's life. That is not surprising: the parents work insane hours for low pay in the desperate scramble to survive in the city. But from the teacher's perspective, this means that they have to put in extra unpaid hours tutoring students. Sometimes parents fail to pick up their children from school. This means that some teachers will have to stay late to watch them — again, unpaid overtime.

According to surveys, the most vexing problem for teachers is the uneven range of abilities among their students. And the children's studies are as precarious as their parents' lives. When parents lose their job, students often have to switch schools or return to the countryside. Student turnover is incredibly high, with some schools losing more than a quarter of their class every year. Under such conditions, teachers barely have the opportunity to familiarize themselves with the students. Add to this huge class sizes, sometimes in excess of fifty

students, and the possibilities for transformative education become increasingly dim.

Teachers around the world have to deal with their students' physical and emotional problems, but in migrant schools these issues frequently reach a crisis level. Many students are subject to domestic violence or abandonment, forced to fend for themselves at a very young age. Many come to school with severe health issues that parents were either unaware of or simply unable to respond to. Some teachers describe how they've had to rush sick children to the hospital for treatment. Being migrants, the children almost never have health insurance, and teachers are forced to front the money in order for the student to receive desperately needed medical attention. This is hardly part of the job description.

As in most places, these teachers say that they put up with wretched working conditions because they care deeply about their students. Most of them talk about the great satisfaction they get from seeing students develop, and tell of how their efforts are acknowledged with cards, songs, and poems packed with effusive praise and gratitude. Teachers often say that they have felt like a mother while at work.

Not surprisingly, women make up the overwhelming majority of workers in these schools. They point to the exceedingly low wages to explain this gender imbalance, noting that in China men are expected to be able to support a family. As in other industries that make use of affective labor, capital has fully exploited the Achilles heel of

human beings — care for others' well-being — to enhance profitability. Since the nurturing impulse is constructed as a feminine quality in China, as in many other places, most men are unwilling to exchange material rewards for the emotional ones that come with teaching. The consequence is that it is women who are disproportionately asked to toil "for the love of it."

The truth of the matter is that few teachers of any gender can bear these conditions, regardless of the gratifying aspects of the work. As a result, turnover in schools is incredibly high; in one school I visited, fully one third of the teaching staff left in a single semester. It's not unusual for teachers to leave in the middle of a semester. As a result, Beijing schools — in a move that will be familiar to Americans — have increasingly turned to volunteer labor from idealistic college students to fill the gaps. And just like their Teach for America counterparts, these volunteers are woefully unprepared for the chaos of subaltern Beijing. Migrant schools in the capital are social mayhem institutionalized: at the class level, they can only produce surplus population.

LEST THIS ALL seem too gloomy, there are signs of hope: the current model of accumulation, based on the separation between economic production in the city and social reproduction in the countryside, is showing serious signs of stress.

Indeed, the exclusionary policies pursued by cities over the past generation have been too successful, as many regions in coastal China have faced persistent labor shortages for years. Thus, a contradiction: while cities continue to be unwilling to pay full price for labor, workers are increasingly unwilling to accept the raw deal they've gotten for the last generation; they are frequently engaging in militant forms of collective resistance, or the individualized strike of staying at home in the countryside and refusing to take the jobs at all. Either the cities pay more for labor, including the costs of reproduction, or they will not be able to get the living labor they so desperately need. How this tension gets resolved will be decisive in determining the future shape of China's urbanization and economic development, its citizenship regimes and class structures.

And there are more overt signs of resistance.

Although a broad-based civil rights movement has yet to emerge, migrant parents have been increasingly active in demanding equal access to education. There has been a series of street protests and petitions to the Ministry of Education in Beijing. Parents have engaged in direct action following school demolitions to demand that their children be relocated to public schools. This has resulted in cities diverting somewhat more resources to public education and increasing the number of slots for non-resident children. As with recent labor and environmental protests, we see yet again that the Chinese state is quite vulnerable to popular mobilization.

And like their comrades in the factories, teachers in China's rapidly expanding private education sector have also been militant. Despite the many social and emotional challenges inherent in a reproductive labor strike, teachers have been walking off the job in cities around the country to demand back pay or higher wages. Just like with factory workers, however, this resistance so far is highly atomized and seemingly apolitical.

More speculatively, though, it's possible to imagine a politicized alliance between migrant teachers and parents. For, as described above, the precarity of parents' lives is directly reflected in teachers' work. If parents win less work for more money, teachers too will benefit as they will shoulder less of the burden of reproductive labor. And an end to the tiered citizenship regime would allow both teachers and parents the possibility of a somewhat more dignified existence in the city. The demand for free and equal education for all has the potential to unite a vast swath of the population currently excluded from urban public services.

Manifold social violence has been visited on the migrant working class as city governments try to maintain the spatial separation of production and reproduction, work and life. Families have been broken up, aging grandparents forced to care for grandchildren, children shuttled between countryside and city in search of decent education, schools literally bulldozed to make way for redevelopment, and teachers subjected to extreme stress and overwork. This is the social consequence of capital's insistence on paying less than full price for labor.

But while maintaining a disposable underclass may have permitted China's explosive economic growth, state and capital may yet come to regret this model. A class with nothing to lose is a dangerous class indeed. ■

Beyond Windsor

Queer theory fought the marriage equality movement and lost. What comes next will require scholars to come out of their journals and into the streets.

by Claire Potter

Essay

WHEN NEWS HAPPENS, queer academics are like anyone else: we turn on a device and open up whatever social media or blogs we follow. Imagine a nation of professors staring into computer monitors and handheld devices, expressing themselves sharply in 140 characters and sharing links a mile a minute. We used to take to the streets; now we first take to the screens to find out if anyone is in the streets.

It was on Facebook and Twitter that the initial conversations about queer politics and civil rights occurred following the final week of Supreme Court decisions in June 2013. These decisions dug deeply into the heart of the progressive politics many academics hold dear, while delivering what has come to be known as “marriage equality” to gays and lesbians. Although both sides claimed victory in this case, affirmative action in college admissions was left to hang by an ever more frayed thread in *Fisher v. University of Texas at Austin*. *Adoptive Couple v. Baby Girl* raised the historic specter of deracinated Native American children adopted out of their communities at the hands of benevolent whites. In *Shelby County v. Holder*, a crucial aspect of the Voting Rights Act was voided: several states have responded by reactivating voter identification laws to, in the words of conservative activists, “prevent voter fraud.”

And that big exhale you heard on Wednesday, the final day of the term? That was a nation of gay, lesbian, bisexual, and transgender people responding to *United States v. Windsor* and *Hollingsworth v. Perry* (formerly *Perry v. Schwarzenegger*). In a 5-4 decision, the court voided a key portion of the Defense of Marriage Act. Where they are legal, gay

marriages will now be federally recognized. Gay and lesbian Californians are once again planning to marry, some for the second or third time (same-sex marriages have been legalized and voided several times in California since 2008). Even Antonin Scalia's typically nasty dissent seems to recognize that state bans on gay marriage have become legally vulnerable. "No one should be fooled," he said, "it is just a matter of listening and waiting for the other shoe." That other shoe may involve states like North Carolina and Florida reversing bans that currently drive gay federal retirement dollars to more welcoming states.

If you were in academic networks on Facebook and Twitter in the hours after *Windsor* and *Perry*, however, joy was tempered with hostility toward an institution and a liberal LGBT goal that queer studies has defined itself against. "1 step forward for most conservative version of 'gay rts,' 2 steps back for racial equality (gutting affirmative action & voting rts act)," tweeted New York University American Studies professor Lisa Duggan. Marriage equality, she has argued throughout the decade-long struggle that culminated in *Windsor*, is consistent with neoliberal policies that convey formal equality without the civil protections and economic policies that might promote actual equality. What gay marriage promotes is not social justice, but "homonormativity." A policy like gay marriage that promotes traditional family formation, "does not contest dominant heteronormative assumptions and institutions but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption."

Other queer academics raised the question of whether gay and lesbian civil rights were stepping over the corpse of African-American civil rights on the way to the altar. Applauding the role that amicus briefs filed by historians had played in the years of litigation leading to *Windsor*, work that began in 2003 with *Lawrence v. Texas*, the Committee on LGBT History asked its members to evaluate the decision in relation to eroded racial and economic justice in the United States. "For same-sex families in the South, for example," the Committee cochairs wrote, "many of which are headed by African-American women, changes to the Voting Rights Act could have deeper ramifications than the overturning of DOMA."

The view that gay marriage is a depoliticizing step to the right disguising itself as "equality" is widespread among queer academics, whose views of monogamy reflect a long tradition of sexual liberation promoted by radicals like Victoria Woodhull, Emma Goldman, and Harry Hay. It is also no accident that marriage — a legal status that conservatives view as a panacea for social problems — was being expanded as civil rights were being retracted. In status update after status update, queer scholar-activists dismissed *Windsor* and *Perry* as unworthy of celebration when the court had gutted voting rights. Meanwhile, Republican-led Congress was slashing social welfare protections for the poor and stalling immigration reform (even after Democrats had authorized an appalling and budget-busting 40,000-person surge on the border).

Queer scholars have a problem right now, however, that reveals the difficulties of developing theoretical interventions without a social movement: the gay and lesbian people in the streets, and the majority of straight Americans who support them, don't understand why a liberal rights agenda is a bad thing. Gay rights seem like a logical extension of civil rights for other minority groups. And they are throwing their dollars and their time into organizations, like the Human Rights Campaign (HRC) and Equality Now, that are fighting for those rights.

This split between the social movement and the critique is particularly difficult because queer

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Radicals do not.
Instead, we have critique.*

theory asks important questions not just about the politics of family and sexuality, but about race and colonialism. Does activism on behalf of gay rights detract from pressing more urgent human rights issues? Under what conditions is it possible to address homophobia within social movements that do not privilege this issue?

Queer theory has recently taken on urgent international issues as well. What does it mean when a constituency — Muslims, Africans — are targeted as especially homophobic and in need of “civilizing” interventions? In *Terrorist Assemblages: Homonationalism in Queer Times*, Jasbir Puar has addressed the strategic granting of rights to sexual minorities occurring simultaneously with the increased oppression of the poor and the intensification of colonial oppression. Activists have targeted the marketing of Israel as a global destination for gays and lesbians as “pinkwashing,” in which gay inclusion presents Israel as a liberal democracy where ongoing state violence against Palestinians is justifiable because of what is portrayed as culturally embedded homophobia.

Absent a discussion aimed at and accessible to a larger public, it may seem counterintuitive to those outside the queer left that the granting of rights is part of the machinery of oppression. Queers for Economic Justice, a New York-based progressive nonprofit “committed to promoting economic justice in a context of sexual and gender liberation” imagines what that social movement might look like. As Executive Director Amber Hollibaugh, a longtime feminist and queer activist, pointed out in a 2012 interview, respecting the achievements of campaigns for inclusion “is not the same thing as it reflecting my values.... I come from a moment in time, a radical vision in time that never made marriage or the military my criteria of success. I didn’t want us to have wars; I didn’t want us to have armies and I did not want to register my relationship with the state. So, are those victories? They are. Were they discriminatory? Yes, they were. Were they my idea of what it was we were trying to build as a liberation movement for queer people? No, it wasn’t at all.”

What happened to *this* social movement, one that reflects, reinforces, and promotes not just the contemporary insights of queer theory, but also its rich radical past? Queers for Economic Justice is one place to look. The global Boycott, Divestment, and Sanction coalition that has drawn the support

of numerous queer and indigenous rights scholars in the United States in its campaign for Palestinian human rights is another. However, neither of these are powerful national organizations to the extent that HRC, Lambda Legal Defense, and the coalition that spearheaded and funded the marriage fight are. Nor are they organizations that can sustain and coordinate the difficult, day-to-day business of putting organizers in communities whose primary task is to create organic connections between theory and praxis and build political coalitions with the vast numbers of people who suffer most directly from the retraction of racial and economic rights.

As a practice, the queer academic left may need to reevaluate the question of whether any political theory can be politically meaningful outside a broad-based social movement context that values radical action. More importantly, to what extent have academics failed to put their queer shoulders to the wheel, in the words of Allan Ginsburg, to create that social movement? What is the role of the conference, the journal, the book — or even a blog and a circle of Facebook “friends” who share the same assumptions, language, and preoccupations — absent a praxis that tests and implements ideas, making real alliances with other radical activists?

This is the time for change. Queer studies’ most prominent foil over the past decade, homonormative domesticity, is acquiring a broad-based legitimacy that obscures the radical interventions queer theory stands for. Queer academics are not wrong about the retreat to home and family that a decision like *Windsor* represents. What they may need to reconsider, however, is the constituency that needs to be organized. Homonormative family formation in itself represents a cross-racial, cross-class social movement, not an absence of one, or a bait-and-switch that its participants fail to comprehend. And it is unclear that the donors, large and small, who have poured millions of dollars into the fight for marriage equality would have supported a more radically queer social agenda had it presented itself.

To put it bluntly, liberal LGBT organizations in the United States have a broadly appealing political program with objective goals that speaks clearly about the damage done to individuals by discrimination. Radicals do not. Instead, we have critique. So what do we need to do to translate the radical

*Just as we need not set activisms against each other,
we need not set theory against praxis. Every political
movement needs theory.*

vision of queer theory to the nuts-and-bolts action that, barring the demise of the state in our lifetime, will be absolutely crucial to the radical social change and international interventions it envisions?

Just as we need not set activisms against each other, we need not set theory against praxis. Every political movement needs theory. Nowhere was this better demonstrated than during the 1960s and 1970s. Collectives of radical women collaborated in consciousness-raising groups (today we would call it crowdsourcing). Sharing their stories, comparing how they inhabited their bodies and their gender, and linking what they learned to programs for action, they worked for transformation on multiple levels, drawing on texts that linked sex and gender to revolution. Feminist theory classes today often begin with selections from Friedrich Engels' *The Origin of Family, Private Property and the State*, a text that illuminates the links between sex, property, and the capitalist state. In *The Dialectic of Sex*, Shulamith Firestone connected radical feminism to this long history of radical political theory when she asked activists to overlook Karl Marx and Friedrich Engels' "literal opinions about women" and embrace dialectical materialism. Feminism, she argued, required a method that pointed the way to a women's revolution, and what better way to map that revolution than by critiquing and amending Marx and Engels' foundational text for modern use?

A politics of liberation requires testing theories about the social condition against lived experience. As the Committee on LGBT History suggests, an economically oppressed lesbian household with children, headed by an African-American woman, might find that the *Shelby* decision affected her life more than *Windsor* did — or she might not. Answering this question might force queer theory to express itself in relation to lives that, at its most

radical edge, it sometimes simply refuses. For example, in *No Future: Queer Theory and the Death Drive*, Lee Edelman proposes that queers disavow political progress, hope, and the better future that marriage, family, and childbearing implicitly imagine. Why not simply embrace death and marginality?

I am not the only observer to be simultaneously struck by the daring quality of this argument and its capitulation to a world devoid of effective social movements. But it also erases a recent history of community-activist movements that have coupled critiques of capitalism and the state with theoretical explorations of how to salvage radical activist agendas from the liberal status quo, linking academic interventions to community empowerment.

Take the welfare rights movement. In 1966, sociologists Richard Cloward and Frances Fox Piven argued that the welfare rolls could hasten the demise of a capitalist state that used relief for the poor to regulate a reserve army of labor. On this basis, college professor and veteran civil rights organizer George Wiley founded the National Welfare Rights Organization later that year to coordinate mothers who, as historian Annelise Orleck has argued, organized and "fought their own war on poverty." As part of this, organizers and mothers' groups demanded attention to invasions of and control over their sexual privacy that state workers extracted in exchange for meager allotments.

There is also a long tradition of gender and sex radicalism coming out of community activism. In 1971, Huey Newton, in a careful analysis of homophobia and sexism within the Black Panther Party, linked them to "the long conditioning process which builds insecurity in the American male." Newton advised the Revolutionary Brothers and Sisters that women should be encouraged to speak about gender oppression. In addition, "The

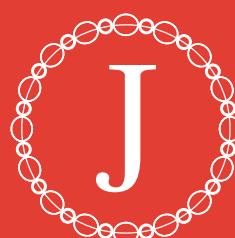
terms ‘faggot’ and ‘punk’ should be deleted from our vocabulary, and especially we should not attach names normally designed for homosexuals to enemies of the people, such as Nixon or Mitchell.” Similarly, Angela Davis pointed out that liberal feminism’s idea that men do half the housework was hardly a revolutionary solution. Instead, as she proposed in *Women, Race and Class*, domestic labor should be radically redefined as a public service performed by “teams of trained and well-paid workers,” armed with advanced equipment, that “could swiftly accomplish the work.”

Drawing on traditions of radical action and theorizing, when ACT UP took the stage between 1986 and 1992, it too became a potent cauldron for theorizing sex and gender oppression in the context of class, race, incarceration, and xenophobia. The movement’s combination of street activism, intense meetings, planning and analysis, urgency, and many participants’ roots in prior social justice movements meant that theory not translating immediately into action signaled delay and death. “In many ways,” as Deborah B. Gould writes in *Moving Politics*, “ACT UP could be credited as well with the birth and explosion of queer theory in the academy,” because bodies crossed back and forth and “learning happened across these typically more segregated worlds.” As activists fought for access to drugs, they were forced to interrupt, transform, and theorize oppression. Thus, as Paula Treichler wrote in *How to Have Theory in an Epidemic*, the act of struggle itself pushed activists to theorize capitalism and articulate the “possibility for a radical and democratic technoculture.”

These examples underline the point that social movements need theory, but theory needs a social movement, and queer theory in particular needs to address its movement future. Attaching itself to neocolonial and antiracist struggles is one crucial route, but that route is also fraught with contradictions that cannot be resolved if activist queers are unwilling to privilege homophobia as destructive to a truly radical vision or to imagine building a broad-based social movement that puts activists in communities that are now being claimed by a liberal gay and lesbian establishment. More importantly, queer academics that aspire to an activist posture need to confront the fact that the majority of their work is being done in a university context that is mostly unreceptive to, and disconnected from, the difficult work of community organizing that can move us beyond Windsor. ■

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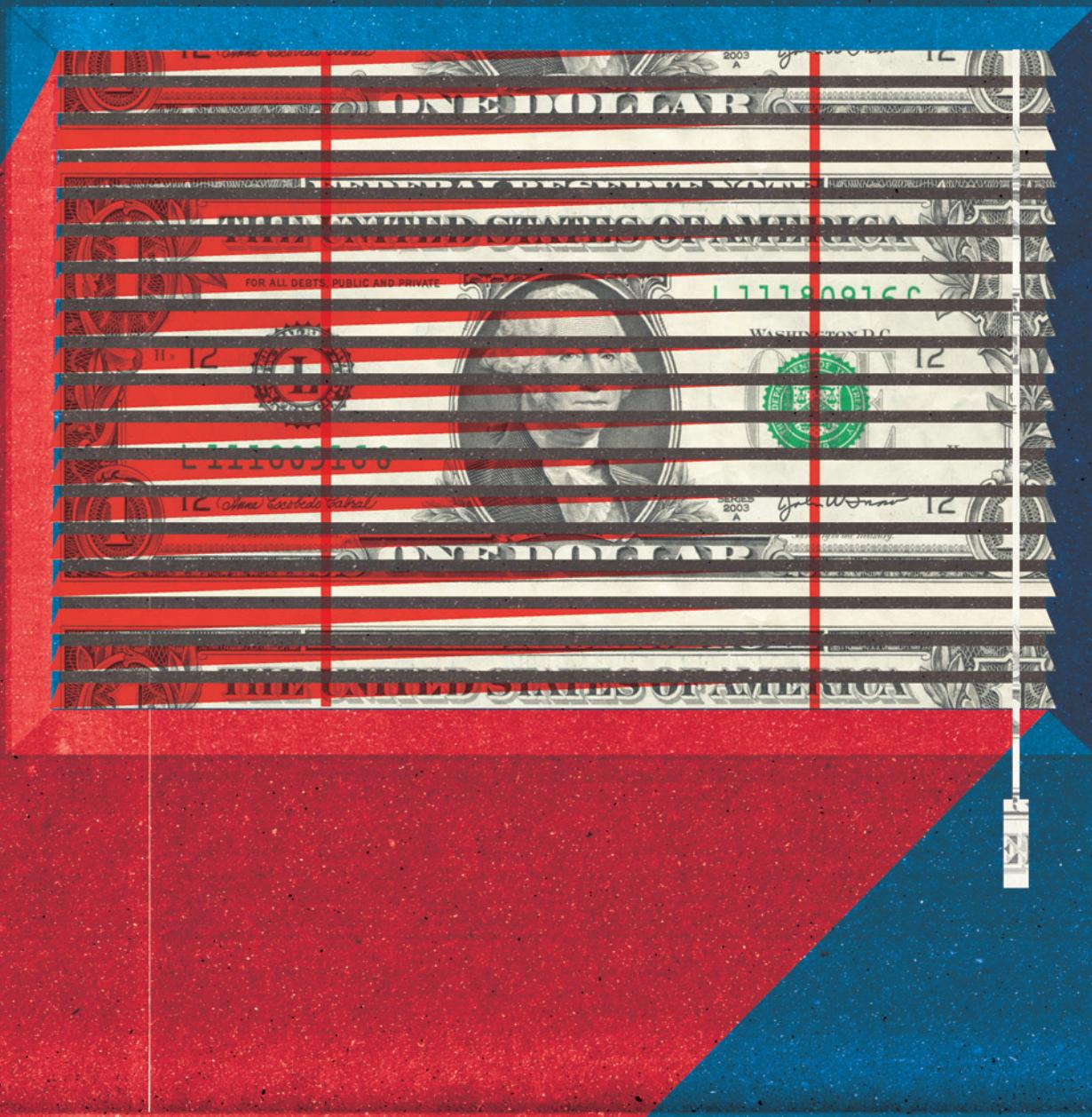


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Don't Mention the War

With a vacuous social vision, economics confronts the “return of the social question” woefully unprepared.

by Seth Ackerman
& Mike Beggs



Illustrations by Kotryna Zukauskaite

FROM THE BEGINNING, economics has been a moral philosophy — a vision of capitalist society — as much as a social science.

In classical political economy, class was central to both. In the famous line from David Ricardo's 1817 *Principles*, political economy's "principal problem" was discovering the laws that determine how wealth is divided among the "three classes of the community": laborer, capitalist, and land-owner. Marx, writing half a century later, charged that the classical paradigm had degenerated once the moral implications of Ricardo's class analysis became too uncomfortable to bear. Apologists and "vulgar" economists had come to deny any fundamental disharmony of interests: production, they claimed, involved the cooperation of different classes, and the rewards to each reflected the freely agreed market value of what they contributed.

Neoclassical economics is the heir to the moral vision of these "vulgar" economists — although marginalism put its analysis on a far more sophisticated footing. Yet while the discipline's moral-philosophical side is unavoidable, today it goes largely unacknowledged by the field. Few mainstream economists now would echo Ricardo's claim, and practically none would speak of "classes." Instead, according to a leading introductory textbook, "economics is the study of how society manages its scarce resources." Individuals are the analytical building blocks, there are no fundamental conflicts of interest, and the market coordinates their activities so that absent "distortions," everybody gains. Why the system "delivers the goods," why it sometimes "goes astray," and what causes its long-run growth and short-run "ups and downs" — these, in the words of a competing text, are its primary questions.

This preoccupation with function and dysfunction reveals the second face of economics, a role which fully emerged only in the generation after World War I. This is technocracy: the specialized use of economic knowledge in the management of the capitalist state. Classes and movements, parties and politicians struggle to control the state, to stamp it with their power and ideologies;

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technocracy specializes in the very different task of *utilizing* the state to solve whichever practical problems it is assigned. Macroeconomics, in particular, was born out of the dysfunction of the Great Depression, and provided a system of ideas that united disparate branches of the capitalist state behind a coherent managerial project. Microeconomics was also recast as a guide for policy, going beyond traditional laissez-faire to call on the state to actively target “market imperfections” and internalize “externalities.”

But what counts as an economic problem? For the technocrats, inequality becomes a problem only from the moment social disturbances erupt from below, destabilizing consensus and short-circuiting the system’s smooth operation. At that point, the task is to find “solutions” that can quiet the conflict within the existing rules, on terms that can serve the interests of very different forces, depending on whose politicians are in control. When no solution seems possible under the institutional status quo, the dysfunctions drag on, setting the stage for a turning point where political forces seek to change the rules of the game itself — as with the Keynesian revolution or with Reaganism and Thatcherism.

The technocracy’s interest in class at a given moment is one index of class politics’ intensity in that place and time. In the postwar Golden Age of capitalism, technical studies of inflation, unemployment, and labor markets were rife with the explicit language of class, even of class struggle, for that was the only way to make sense of those subjects in countries and periods where labor movements were strong and class conflict sharp. But the subsequent defeat of working classes everywhere caused the social question to fade from the field; by the mid 1980s it had almost totally disappeared from mainstream economics.

There are signs, however, that in the post-Occupy era the social question is creeping back as a bona fide problem, forcing economics, in turn, to reprise its moral-philosophical role — a role for which it is woefully unprepared.

THE LATEST SIGN can be found in the American Economics Association’s *Journal of Economic Perspectives*, one of the field’s most read publications, whose forthcoming summer issue features a symposium by leading

economists on “inequality and the top 1%.” There is little doubt that the journal’s choice of topic is, at least in part, an homage to the 2011 Occupy mobilization and its best known slogan, “We are the 99%.”

That class-defining credo, coined by anarchists and propagated in the streets, was itself drawn from the work of the Beltway technocracy: its genealogy can be traced to the mid 1980s, when Democratic Congressional staffers, working with Congressional Budget Office economists, created a computer model to calculate the distributional effects of tax changes, yielding for the first time regularly published statistics on the incomes of this tiny upper stratum. Armed with a rhetorical bludgeon against GOP tax plans, Democratic politicians — Michael Dukakis, Bill Clinton, Al Gore — went about hammering the phrase “wealthiest one percent” into public discourse. Ever since the occupation of Zuccotti Park, the concept has been used for a very different purpose: the attempt to forge a new class subjectivity.

Released online in draft form, one symposium essay has already attracted major interest, almost all of it negative: “Defending the One Percent,” by N. Gregory Mankiw. Chair of the Harvard Economics department, author of the nation’s best-selling economics textbook, former chief economist in the Bush administration, Mankiw is the Republican Party’s most prestigious academic economist. His essay can be read as an attempt at a sophisticated Republican response to the growing tendency in economics’ dominant technocratic-liberal wing — epitomized by former Obama adviser Larry Summers — to legitimize the subject of social inequality as a policy problem in its own right.

But what’s interesting about Mankiw’s argument is that this former chair of the White House Council of Economic Advisers vehemently rejects the whole premise of the technocratic approach. He insists that the subject of income distribution can be adequately addressed only as an explicitly ethical issue. In this, he confirms an observation — and candid admission — made by one of liberal journalism’s leading Republican-watchers, Jonathan Chait, who once explained in the *New Republic* that the reason conservatives so often seem to ignore conflicting empirical evidence in economics is that “conservatism, unlike liberalism, overlays a deeper set of philosophical principles.”

ADRESSING HIMSELF to fellow members of the economics fraternity, Mankiw refers throughout his article to something he calls “the economist’s standard framework.” By this he means two things: the economist’s *positive* theory of income distribution, namely the theory of marginal productivity; and the economist’s *normative* theory of distribution, that is, utilitarianism. Mankiw holds very different attitudes toward these two canons.

First comes the positive theory. “In the standard competitive labor market,” he explains, “a person’s earnings equal the value of his or her marginal productivity.” This precept becomes the basis of his whole ethical system. He admits that in the real world the assumptions of this classical model are sometimes violated. Therefore “the key issue is the extent to which the high incomes of the top 1 percent reflect high productivity rather than some market imperfection.” But Mankiw thinks these imperfections are relatively rare, at least compared to how liberals see things.

Then he turns to the dominant normative theory. This takes the form of the textbook model of “optimal taxation” formulated by James Mirrlees in 1971. In good utilitarian form, it recommends that the government redistribute income — within limits, set by taxation’s inevitable unintended consequences — from those with a lower marginal utility of money (i.e., the rich, who get little satisfaction from each extra dollar) to those with a higher marginal utility of money (the poor, who get much more satisfaction).

Mankiw’s blood absolutely rebels at the theory’s redistributionism — and he’s no more enamored of the philosopher John Rawls’ theory of justice, which mandates redistribution as the policy we all would have voluntarily agreed to, had we not known what kind of life we would be born into. Mankiw sees both of these liberal theories as morally bankrupt.

In their place, he proposes an ethical framework that he calls the Just Deserts perspective. “According to this view,” he writes, “people should receive compensation congruent with their contributions.” How do we know what those contributions are? The theory of income distribution tells us: “just deserts” are exactly what an

individual’s endowments would sell for in a free, perfect market. Now we’ve returned to economics’ more comforting positive theory, for as Mankiw reminds us, in a “classical competitive equilibrium” (that is, a perfect market system), an individual would earn “the value of his or her own marginal product” and there would be no need for redistribution.

“The role of government arises as the economy departs from this classical benchmark,” Mankiw explains. So the government should tax externalities like pollution; provide public goods like roads and bridges; transfer income to the poor (“because fighting poverty can be viewed as a public good”); and pay for it with progressive taxation, which can be justified by the greater benefits the rich derive from government. But “confiscatory tax rates are wrong, even ignoring any incentive effects.” That is because a person’s income is her *just reward*, so “using the force of government to seize such a large share of the fruits of someone else’s labor is unjust, even if the taking is sanctioned by a majority of the citizenry.”

Mankiw’s piece triggered a flood of scathing reviews from the economics blogs. Conservative wonk Josh Barro: “Not impressed.” Liberal policy writer Jonathan Chait: “An embarrassing piece of ignorant tripe.” The *Economist*’s Matt Steinglass deadpanned: “The 1 percent need better defenders.” Practically every blog had something to say about the piece, and rarely anything good.

Trying to refute Rawls and Mill to bolster his Just Deserts framework, Mankiw bumbled into the role of armchair philosopher, with embarrassing results. He rested his case on the curious grounds that the liberal normative theories justifying taxes on the rich, if taken to their ultimate conclusions, would also sanction horrors like state-mandated organ donation. (Himself a supporter of taxation if carried out for non-redistributive purposes, Mankiw doesn’t explain what would keep his own version of Leviathan from degenerating into an organ-harvesting dystopia.) And that was not the essay’s only obvious shortcoming. He brushed aside critiques of CEO pay and declining social mobility with comments so breezy they practically slid off the page.

“Greg Mankiw’s musings on moral philosophy,” wrote Matt Yglesias (hardly a dogmatic leveller himself), “are a strong argument for rigid disciplinary boundaries.”

BUT BEYOND the abstract debates over ethical systems or the narrow empirical disputes, the picture that emerged from this noisy exchange was, if you looked closely enough, one of broad agreement over certain unspoken fundamentals. Mainstream economics, despite its image of bloodless scientism — and despite its own denials — possesses what can properly be called a unified “social vision”: a coherent moral-philosophical account of how our society works, and how it ought to work. This is not an economic theory that dispenses some uniform set of policy conclusions. It’s a meta-theory. And this meta-theory is almost universally shared by both liberal and conservative economists.

Like many philosophers, economists begin their story by imagining a fictional utopia. Mankiw calls it the “classical benchmark.” But there are other names for it — “the standard competitive model,” “perfect markets,” “an Arrow-Debreu world.” The central principle of this utopia is that it’s an absolutely free market: a pure night-watchman state, with no restrictions on voluntary exchange between self-interested individuals, hence no minimum wages or rent controls, and no income taxes. It’s further assumed that in such a market, everyone earns the marginal product of their labor — or, as Mankiw puts it, “compensation congruent with their contributions.”

Now, ever since its birth more than a century ago, there’s been debate about whether the theory of marginal productivity actually constitutes an ethical theory of just deserts, as Mankiw believes. Certainly several of its late nineteenth-century architects agreed with him, seeing the doctrine’s conservative implications as one of its main attractions — most famously John Bates Clark, one of the founders of the American Economic Association. The theory holds that under perfect markets, competition will drive the market wage for a given type of worker toward that worker’s marginal productivity, which can be defined as the amount of revenue a firm would lose, due to foregone output, if one such worker were removed from production. (An analogous process involving the “marginal product of capital” is said to determine the profit rate.)

Figures like Clark and Mankiw have held that this marginal increment of revenue can be

regarded as the worker’s “contribution” to production, thus legitimating her wage. Others, such as Alfred Marshall, have seen this last step as an ethical leap of logic, since the theory itself points to a whole range of factors that will help determine a worker’s marginal product but have nothing to do with her own personal actions or attributes: fluctuations in the prices of various goods, the structure of demand, random shifts such as harvests or the weather, technological changes inside or outside the worker’s own industry. And, of course, the theory says nothing about how individuals acquired their endowment of factors (labor or capital) in the first place, or why the alleged contribution of capital should be regarded as the contribution of its *owner*.

But whether or not it actually does justify capitalist income distribution, the marginal productivity theory certainly sounds like an ethical theory — especially to impressionable freshmen in lecture halls or traveling businessmen browsing the op-ed page. As Mankiw’s textbook puts it, in answer to Ricardo’s classic question: “We can now explain how much income goes to labor, how much goes to landowners, and how much goes to the owners of capital.... Labor, land, and capital each earn the value of their marginal contribution to the production process.”

For eight decades, starting in the 1870s, many of the finest minds of economics tried to prove mathematically that if this imaginary perfect free-market economy did exist, it would be both rational and beneficent; that through the blind workings of the free market, supply and demand for every good would spontaneously match and the results would be desirable. (Or at least they tried to discover what conditions would be necessary to guarantee that outcome.) The culmination of that work, in Kenneth Arrow and Gérard Debreu’s Nobel Prize-winning 1954 proof, was long seen by many as the profession’s defining achievement. Arrow and Debreu proved that such an economy would always contain at least one potential configuration of prices and products in which supply and demand would match in every market, and that this configuration would be “optimal,” in the sense that no one could be made better off without someone else being made worse off.

This is where the neoclassicals derive their moral-philosophical vision of society: they posit a quasi-metaphysical thought experiment in which our real-life capitalist economy is held up as merely

a messy, imperfect copy of the perfect benchmark. Then they stipulate that we can never really deem anything in our own economy unsatisfactory ("sub-optimal") without first showing that it results from some specific divergence from the fictional utopia. The logic of this move is impeccable: since the pure-market model produces optimal results on paper, those who claim our own society falls short must identify the specific *impurity* at fault. The same goes for wages, which must be assumed equal to marginal productivity — "congruent to contribution" — unless a specific "distortion" or "imperfection" can be documented.

In the words of Franklin Fisher, an eminent MIT theorist, the theorems that underpin this constitute "the central set of propositions that economists have to offer the outside world—propositions that are, in a real sense, the foundations of Western capitalism.... They underlie all the looser statements about the desirability of a free-market system."

Politically, the communicants of this faith divide sharply over the question of how often "imperfections" actually occur in real life — and therefore how much human meddling in nature's plan should be allowed. For example, Professor Mark Thoma, a Paul Krugman-style liberal with an influential economics blog, strenuously disputes the idea that markets are always the best solution: "There is nothing special about markets per se — they can perform very badly in some circumstances. It is *competitive* markets that are magic." Some free-market policies could actually be harmful: they could "move the outcome further from the ideal competitive benchmark rather than closer to it."

This is where the discipline's technocratic and philosophical sides collide: any policy proposal may be advocated; but the moral-philosophical framework must be respected. We can fail the model, but the model can never fail.

And yet the model does fail. All models in social science are unrealistic. But the "ideal competitive benchmark" (the Arrow-Debreu world and its family of general equilibrium models) is not just unrealistic. It depicts a world that is neither possible nor imaginable — and yet it is also undesirable. Here are some of its assumptions: All markets must be perfectly competitive (whereas most of ours are not); but if such a world existed, the requirement of perfect competition would rule out any division of labor or long-run economic growth.

There must be an infinite number of futures markets — one for every good in existence, delivered at every future date, for the rest of time. And yet, in the model, time doesn't really exist: all economic decisions for all of human history were made in an auction at the beginning of the world.

Moreover, far from being harmonious, this theoretical world has been discovered to be chaotic — perpetually in random motion, never actually arriving at any of its "optimal" configurations except by accident. This finding alone nullifies the very meaning of the theory. That is why some of the leading theorists who developed these models — towering figures like Frank Hahn and Kenneth Arrow — use words like "sterile," "arid" and "empty" to describe them. Yet this is the benchmark — the light in the sky by which our ships are supposed to be guided.

Counterfactuals play a useful role in any science. But the model on which economists claim to base so many judgments is not a counterfactual. It describes a state of the world that could never actually exist, and would be undesirable if it could. Such judgments, and the entire intellectual framework that generates them, represent not scientific conclusions, but a *system of belief* — no more true or false than the statement "Man is born free but is everywhere in chains."

This belief system — this social vision underlying mainstream economics — is deeply flawed. Its analytical foundations are broken and its moral vision venerates as its highest ideal an impossible laissez-faire dystopia. We need to seek our vision from other sources.

KARL MARX died in London in March 1883. John Maynard Keynes was born in Cambridge less than three months later. Both were masters of a "classical" theoretical system which they simultaneously built on and transcended. For Marx, this background system was that of Ricardo and his followers; for Keynes it was the neoclassical economics of Alfred Marshall. If Marx appeared to leave behind a legacy of pure moral philosophy, arch-technocracy seems to be Keynes' bequest. And yet the truth is not so simple.

Marx was scathing on the political economy of his day. But he saw it as having degenerated from a project he respected as scientific: Ricardo's system

and its extension by the post-Ricardians of the 1820s. The heart of the classical paradigm, as Marx saw it, was to explain the distribution of a surplus — output over and above what is needed to replace inputs, including the sustenance of workers. Surplus did not of course arrive with capitalism, but capitalism gave it a new form — surplus value — and masked it behind voluntary market transactions. In Ricardo's system, the rent a landlord enjoyed had depended on the fertility of that land. But there was nothing productive about *owning* land; landowners got paid — they appropriated the surplus — simply because they controlled access to something that was useful.

Marx argued that capitalists were much like landowners in this respect, capturing surplus by virtue of monopolizing the means of production. That argument was reversed by the vulgar economists of Marx's day, and later perfected by the neoclassicals: profit was very much like rent, so rent could not be all that bad: everybody gets paid the marginal product of the productive factors they own.

What separated the classicals from the neoclassicals and their forerunners was an acknowledgment of *conflict* in distribution. Marx wanted an economic analysis that would completely restore the sense of class antagonism represented in Ricardo's system, which had been expunged from the field once it came to be dominated by vulgarizers and anti-Ricardians. But he also wanted to go deeper. The "critique" in his "critique of political economy" meant "refute," so far

as the class-harmony nostrums of the vulgar economists were concerned. But with respect to Ricardo's political economy, Marx meant the word in the Kantian sense of exposing the conditions of its existence. He set out to show that the relationships of economic variables in modern capitalist society were immovably grounded in underlying social relationships. They were not eternal or logical, but historically specific and inherently political.

This vision of social conflict — with an emphasis on both "social" and "conflict" — was the essential premise of Marx's moral-philosophical analysis of the capitalist economy.

As for economics' second face — its technocratic aspect — Marx lived mostly before it came into its own. Yet what he saw of it he viewed as inseparable from the antagonisms in the underlying economy. Marx saw deep importance in the struggle for the British Ten Hours' Bill, adopted in 1847. For him, conflict over the distribution of goods was only a part of the class struggle: the surplus was also a question of *time*. People spent more of their day working than their material standard of living required, and the whole of this day was spent under the domination of capital. He mocked the bourgeois economists — those "notorious organs of science" — who had "predicted, and to their heart's content proved, that any legal restriction of the hours of labor must sound the death knell of British industry, which, vampire-like, could but live by sucking blood."

The fight over the Ten Hours' Bill had been so fierce, Marx argued, because "it told indeed upon the great contrast between the blind rule of the supply and demand laws which form the political economy of the middle class, and social production controlled by social foresight, which forms the political economy of the working class."

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KEYNES WAS A MASTER of Alfred Marshall's marginalist economics, a system of "bourgeois political economy" far more sophisticated than any Marx had contended with in his day.

And yet Marx's "social production controlled by social foresight" is exactly what Keynes came to embrace — within limits. In politics, Keynes was a bourgeois radical, a bohemian liberal who accepted the market but rejected the values of business

civilization. Like Marx, he saw capitalism as a great historical advance, but one which, as he wrote, necessarily brought in its wake “all kinds of social customs and economic practices, affecting the distribution of wealth and of economic rewards and penalties, which we now maintain at all costs, however distasteful and unjust they may be in themselves, because they are tremendously useful in promoting the accumulation of capital.” His social philosophy expressed the hope that once capital became sufficiently abundant; once the “functionless investor” died out; once the productivity of labor became sufficiently great, and our working time contracted to three hours a day, “we shall then be free at last to discard” those capitalist customs and habits. “We shall once more value ends above means and prefer the good to the useful.”

On the surface, Keynes’ critique of neoclassical economics (which he called “classical”) was much more limited in scope than Marx’s. His fundamental innovation was the theory of effective demand: the idea that employment is set by total spending, so that the market system has no automatic tendency to settle on full employment. Keynes himself was keen to stress that the *General Theory* was radical only on that particular point, and that once the state intervened to assure full employment, “the [neo]classical theory comes into its own again.”

Yet in order to reach that conclusion, Keynes had to challenge conventional economic theory on fundamental points, which lent themselves to more radical readings – and brought them into contact with Marx. Neoclassicals had held that full employment was ensured by the workings of the market, that the wage functioned like any other price, rising and falling to align the supply and demand for labor (at least eventually, or once wage rigidities and other imperfections were swept away). But Keynes established that the wage was not like any other price – it constituted not just the employer’s cost but the bulk of society’s income, out of which spending and demand for goods was generated, so there was nothing preventing a persistent equilibrium of substantial unemployment.

Rather than depending on the wage, the level of employment depended on effective demand. This, in turn, danced to the tune of investment, so that employment today depends on firms’ expectations of profitability in the future – expectations held

more or less confidently, but always fallible. Keynes saw human beings as coping with fundamental uncertainty about the future. This could leave market outcomes wild and unpredictable, so that free-market price flexibility might lead not to harmonious equilibrium but to chaotic results. By the same logic, he rejected the neoclassical notion that workers bargain over their real wage – that is, over units of consumption. Lacking knowledge of how much goods will cost in the future, workers can evaluate only their *relative* wage; and that brings the question of income distribution into the heart of economic theory.

All of this opened the way to what neoclassical economists resist most militantly: indeterminacy, with all its radical implications.

This was indeed the road taken by a number of figures in Keynes’ circle at Cambridge, and in the broader milieu that has come to be known as “post-Keynesian,” whose influences come as much from Marx as from Keynes. Keynes’ colleague and collaborator Joan Robinson, a virtuoso theorist and perennial Nobel nominee, tried more than any other figure to develop all these ideas into a systematic alternative and radical approach.

Robinson’s Cambridge set included the Polish Marxist economist Michal Kalecki who, before Keynes, had independently worked out the theory of effective demand (a concept prefigured in Marx’s *Capital*), paying close attention to class and imperfect competition. Another member was Piero Sraffa, who revived and refined Ricardo’s approach to launch an attack on the neoclassical theory of value. All these figures saw Keynes’ concept of demand-determined employment as one key building block in a broader assault on orthodoxy.

Unlike the neoclassical vision, in which income distribution is fated by existing technologies, preferences, and endowments, in this vision it is a process of active conflict. The incomes of different groups, rather than smoothly adjusting to shifts in supply and demand, tend to be the baseline around which the rest of the economic system adjusts. The income distribution is treated as an evolutionary process, shaped by norms and institutions inherited from the past, which change as a result of extra-economic events – that is, history, politics, institutions, and struggle. As Joan Robinson liked to say, to get a full explanation of capitalist distribution you would have to go back into “the dark backward and abysm of time,” where

capital emerged from a world of serfs, peasants, lords, and artisans, and work your way forward — tracking what happened as capital accumulated, as it made and remade its workforce, as that workforce organized and fought back, and as states intervened to regulate the employment bargain in various ways.

The neoclassical vision of income distribution rests on two very shaky assumptions. First, unlike Ricardo and the other classicals, it simply assumes that firms are able to respond to changes in the prices of different factors — the different kinds of labor and capital — by freely adjusting the various proportions in which they're used. Without that assumption, labor may literally have no marginal product, and the same would go for any other factor, or any particular type of labor. In that case, the Marxian or Ricardian conclusion would hold: the wage would be whatever workers could wrest for themselves, and profit would be whatever was left over.

Of course, it's fine to build a simplified model with unrealistic assumptions and then see what happens when the assumptions are varied. But at some point, it seems, mainstream economists largely forgot that this assumption of "differentiable production functions" was a simplification — let alone one of questionable realism. As a result, in today's economics literature it's almost never questioned, and textbooks don't even alert students to the issue. Yet as a general supposition about how production works, it is, of course, unrealistic: What are you supposed to do if your labor consists of ditch-diggers and your capital consists of shovels? How exactly do you vary your proportions of labor and capital?

There were two major neoclassical attempts to address this problem. In the 1930s, the great economist John Hicks recognized its seriousness and tried to save marginal productivity theory through the back door. In the short run, firms may be unable to substitute labor and capital freely, Hicks conceded; but in the long run the same result might be obtained by letting consumers do the substituting. If labor gets relatively more expensive, so will labor-intensive goods. Consumers will switch their purchases away from such goods, indirectly pushing the price of labor back down to its equilibrium level, set by the marginal product.

But to make the math manageable for such a model, Hicks had to assume that prices for everything else stayed constant. It was not until the

Arrow-Debreu model and its more sophisticated math came along after the war that the issue could be examined without Hicks's artificial assumption of constant prices. Using the Arrow-Debreu setup, theorists in the 1970s found a possibility that marginal productivity could fail and that factor prices would be left indeterminate, but they also found it highly unlikely that the starting patterns of ownership in the economy would be arranged in just the right way so as to generate an indeterminate result. Marginal productivity theory appeared to have been saved.

But this finding, in turn, has been shown to depend on one of those hopelessly unreal assumptions of the Arrow-Debreu model: that of a timeless economy where all of history's transactions are agreed to simultaneously at the start. In a series of works over the past two decades, Michael Mandler, a University of London general-equilibrium theorist with impeccable neoclassical credentials, has shown that once economic decisions are pictured as being made sequentially, as in real life, ownership patterns turn out to evolve through time in highly specific ways — and they systematically gravitate toward precisely the kinds of patterns that generate indeterminacy of factor prices.

As a result, the central problem with marginal productivity theory that John Hicks recognized in the 1930s has never gone away: without the arbitrary assumption of freely differentiable production functions, wages and profits are not fixed by technologies and tastes. They are set by "something else" — something outside the competitive model.

THE SECOND CENTRAL FLAW in mainstream economics' distribution theory is its assumption of full employment, or something like it. In the Marx-Keynes vision, aggregate demand and the resulting unemployment level are absolutely central to income distribution. When demand is strong and unemployment low, employers are forced to call up labor from an ever-dwindling reserve army, dramatically strengthening the bargaining power of all workers, especially those who would otherwise be most powerless.

But the neoclassical school has never accepted that vision. It has always sought to cleanly sever the "micro" issue of income distribution from the

But in the long run, radicals need something more from their economics.

“macro” issues of unemployment and demand. In pre-Keynesian days, it did so by assuming that the free-market wage ensured full employment, so that any accidental rise in the wage above its “correct,” marginal-product level would immediately thwart itself by causing firms to shed workers — inducing the temporary unemployment needed to get the wage back down to its equilibrium. (The opposite would happen if the wage fell below its marginal product.) Any remaining unemployment was either “voluntary” or caused by imperfections impeding free wage adjustment.

After Keynes, the Depression, and the experience of the war, the full-employment assumption was no longer tenable. But the bulk of postwar mainstream economics was loath to give up its marginal-productivity framework. The result was a series of loosely connected ad hoc arguments with which economists were never really satisfied. In the long run, marginal productivity was still held to determine the wage, but in the short run — for reasons left mostly obscure — wages were assumed to be fixed, or “sticky.” This obstructed the “normal” free-market mechanism and created a need for government policy to ensure full employment by stimulating aggregate demand.

By the late 1950s, full employment — truly full employment — prevailed throughout much of the industrialized world, and economists began to talk about a new phenomenon: chronic or “creeping” inflation. Nowadays we’re used to continually rising prices; it seems natural. But in the postwar period it was a novelty. Previously, prices had tended to rise in booms and fall in recessions, occasionally getting out of hand during wars. An unflagging but moderate uptrend was new.

Class broke into macroeconomics at this point, because price-setting was heavily shaped by wage-setting. In a world where the majority of wages were highly politicized — determined in set-piece confrontations between flesh-and-blood representatives of their respective social classes — a technocratic debate broke out around the question of whether unions and wage-setting institutions were an independent factor: did working-class

militancy push money-wages up, or was workers’ bargaining power simply a function of excessive demand set by mistaken government policy?

In the 1970s, the simultaneous explosion of working-class militancy and inflation around the world caused this two-sided debate to fracture into a kaleidoscope of theoretical positions. Many of them, ranging from reactionary to radical, eventually came to agree on one point: at a given moment in time, an economy has some benchmark level, or range, of unemployment, below which inflation will rise and above which it will fall. This level goes by a variety of names, but in most of the literature — especially the mainstream literature — it’s called the NAIRU, or “Non-Accelerating Inflation Rate of Unemployment.”

How an economist views the relationship between unemployment and income distribution will depend on how they interpret this NAIRU concept. Today, the dominant “New Consensus” version of macroeconomics — the version embraced by both Paul Krugman and Greg Mankiw — has used the NAIRU to revive the essence of the old pre-Keynesian full-employment assumption and its separation of distribution from demand — with a few notable changes.

The NAIRU, or “equilibrium unemployment,” now stands in for full employment. Its level, as in pre-Keynesian days, is still supposedly determined by the strength of obstacles to free wage adjustment, such as unions and unemployment benefits. But rather than the freely adjusting market wage of yore, it is now the freely adjusting interest rate set by a beneficent central bank that is supposed to assure continuous “full employment” — that is, unemployment roughly at the equilibrium NAIRU level.

The Marx-Keynes tradition, to the extent it accepts the concept at all, rejects the notion of the NAIRU as a technical equilibrium determined by obstacles to free-market wage flexibility. It sees history, politics, and institutions as its main determinants, and the rate itself — both the actual rate in the economy and the official rate posited by the technocratic class — as a vital and ongoing terrain of class struggle. In fact, the whole history of

the concept — from its birth in the crucible of sixties-era working-class radicalization, to its controversial working and reworking amidst the chaotic class politics of the late seventies, to its grim institutionalization, especially in Europe, as the ideological enforcement arm of capitalist power — has been a chronicle of class conflict.

Today, it's in the name of the **NAIRU** that the European Central Bank issues detailed directives to elected governments on how quickly they're expected to dismantle a century of working-class achievements in pensions, disability benefits, unemployment payments, and union rights.

In the US, the **NAIRU** has been the public rationale for what's said behind closed doors at the Fed, where transcripts show policymakers obsessed with minute shifts in workers' psychology — debating how "insecure" they feel; whether that's producing "favorable" wage settlements; and sometimes, what the effect will be on the **NAIRU**. In 1997, the Dallas Fed president worried that the Teamsters' successful **UPS** strike had done "a good deal of damage" and could "go a long way toward undermining the wage flexibility that we started to get" after Reagan broke the air-traffic controllers. Alan Greenspan agreed: "The air traffic controllers' confrontation with President Reagan set in motion a fundamental change in policy for this country more than fifteen years ago. It is conceivable that we will look back at the **UPS** strike and say that it, too, signaled a significant change." The Boston Fed president mused that the importance of strikes may be "not so much their near-term impact on economic activity or inflation but rather their longer-term impact on people's perceptions of the relative power of labor unions versus management ... in an environment in which there seems to be a great deal of concern about whether Wall Street, shareholders, and management are enriching themselves at the expense of workers' standards of living." "Even nonunion relationships between labor and management" could be affected, she fretted.

In the late 1990s, Greenspan's "traumatized worker" hypothesis convinced the Fed to let unemployment fall to its lowest level since the Golden Age of Capitalism. But by 1999, it was seen to be causing rapid wage growth and falling wage inequality. So despite no sign of inflationary pressure, interest rates were raised and the boom brought to an end. "If we continue to talk about

tight labor markets as if that is a truly evil phenomenon," the New York Fed president brooded in a 2000 meeting transcript, "we are going to convince the American people that what we believe in is not price stability, which is for the good of everybody, but a differentiation in income distribution that goes against the working people."

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REENSPAN'S "Great Moderation" ended abruptly in 2008. Five years on, much of the rich world is far below even the ersatz "full employment" of the **NAIRU** era. The mainstream macroeconomic consensus of the good times, in which New Keynesians and New Classicals disputed the foundations but agreed on the basic message, appears to have collapsed into a rancorous battle between saltwater and freshwater economists. Meanwhile, much of the technocracy seems to have concluded that policy has reached its limits: no more can be expected from monetary policy, while fiscal policy is hamstrung by debt levels. In the midst of the worst macroeconomic conditions since the Depression, we have witnessed the improbable resurgence of the once-discredited budget-balancing "Treasury View" of the pre-Keynesian era. In the battle between Austerians and Stimulators, there is no question that we side with the likes of Paul Krugman. Mass unemployment is a position of great weakness for the working class.

But in the long run, radicals need something more from their economics. Class conflict is at the heart of the capitalist economy and the capitalist state, yet neoclassical economics will not acknowledge the fact. How, then, should we think about economics as a discipline and the question of inequality as its subject? At an individual level, there are truly great economists working in the mainstream — some harboring deeply humane instincts, and some even with good politics. As a body of knowledge, economics yields a flood of invaluable empirical data and a trove of sophisticated tools for thinking through discrete analytical questions.

But as a vision of capitalist society, mainstream economics is simply hollow at its core — and the hollow place has been filled up with a distorted bourgeois ideology that does nothing but impede our understanding of the social world. ■

A Marxist in Keynes' Court

Maurice Dobb was one of John Maynard Keynes' favorite students. He was also a committed Marxist and a member of the Communist Party of Great Britain.

by Timothy Shenk

NO ECONOMIST — maybe no human — has ever been better at scorn than John Maynard Keynes. He was a masterful debater when he wanted to be. But, like the proper scion of Britain's elite that he was, Keynes preferred to laugh at his enemies. In 1925, sympathizers with the Soviet Union were treated to a world-class exhibition of this disdain. Keynes had just returned from his first trip to the USSR, and he was ready to wax polemical. "How can I accept a doctrine," he asked, "which sets up as its bible, above and beyond criticism, an obsolete economic textbook which I know to be not only scientifically erroneous but without interest or application to the modern world? How can I adopt a creed which, preferring the mud to the fish, exalts the boorish proletariat above the bourgeois and intelligentsia who, with whatever faults, are the quality of life and surely carry the seeds of all human advancement? Even if we need a religion, how can we find it in the turbid rubbish of the Red bookshops?" "It is hard," he concluded, "for an educated, decent, intelligent son of Western Europe to find his ideals here, unless he has first suffered some strange and horrid process of conversion which has changed all his values."

Keynes had never taken Marxism seriously, and for the most part he never would. But despite the rhetoric, he could treat individual Marxists with respect. In 1925, there was one Marxist, in particular, that he had in mind when he set down his thoughts on the USSR — one person he was



winking at when he shuddered at the horrid conversions, one person who would have seen the jab as the latest move in a long-running argument.

Maurice Dobb was one of Keynes' favorite students. He was also a Marxist and, after 1922, a member of the Communist Party of Great Britain (CPGB). Today, outside of a few small circles of radical academics, Dobb is almost entirely forgotten. But in his lifetime, even his critics acknowledged that he was one of the world's premier Marxist economists. From his outpost at Cambridge, where he mentored students ranging from Eric Hobsbawm to Amartya Sen, Dobb held forth with equal confidence on the history of capitalism, the practice of socialism, and the future of communism. Throughout, he displayed a creativity and intellectual dexterity that proved Marxism was a vital, living tradition. As a side project, he essentially founded the tradition of rigorous Marxist history in the English-speaking world with *Studies in the Development of Capitalism*, a sweeping account that traced the career of English capitalism from the middle ages to 1946, the book's

publication date. If anyone could have forged a union between Keynes and Marx, by all rights it should have been Dobb. And there were times — especially in the 1930s, when the British left found itself engulfed in a civil war pitting advocates of Marx and Keynes against each other — that seemed to demand he preside over a synthesis.

Yet Dobb largely watched on the sidelines while others fought this battle. He did not reach a settled position on Keynes until after World War II, and even then he was reluctant to make his views known. Dobb was not the type to keep quiet. Over the course of a career that spanned more than half a century, he wrote twelve academic books, more than twice as many pamphlets intended for general audiences, and hundreds of articles for publications ranging from the *Economic Journal* to the *Daily Worker*. On virtually every other subject, it was almost impossible to stop him from expressing himself. What was so special about Keynes?

It seems like a simple question. But answering it requires more than unraveling the mystery of the complicated relationship that united these two

men. A full explanation opens up a much broader, though largely unknown, history — a history whose ramifications we still live with today.

CAMBRIDGE IN 1919 was an unlikely home for a would-be revolutionary, but not an entirely inhospitable one. After a childhood spent bouncing around the lower edges of Britain's upper class, Dobb arrived at the university radicalized by World War I, transfixed by the revolutionary wave sweeping across Europe, and eager to do his part to save the world. He joined the University Socialist Society and helped formed a quasi-Communist clique dubbed the Spillikins. His room was a favorite meeting place for campus radicals, who knew their host's bourgeois upbringing guaranteed a steady stream of tea and éclairs for his guests. (He even taught one comrade how to tie a bowtie.) Yet Dobb was far from the ivory-tower socialist this image suggests. He was also a dedicated activist who helped coordinate rallies for striking union members and organized workers in the economically depressed region outside of Birmingham known as the Black Country.

Even as a teenager, Dobb was committed to uniting political activism with intellectual engagement. Although relatively few of Marxism's canonical texts were yet available in English, he devoured whatever he could get his hands on. He decided early that he wanted to be an economist. Philosophers had interpreted the world, but Dobb believed that in the twentieth century economists would be the ones who changed it. Cambridge was at the time arguably the world's leading center for the study of economics, and Dobb quickly distinguished himself as one of his year's most gifted students. The University's cloistered atmosphere turned out to be a gift for Dobb: to those within its walls, the revolutionary struggles thundering across Europe were just distant rumbles, and a student's Marxism could be laughed off as another delightful Cambridge eccentricity.

In 1920, Keynes plucked Dobb from undergraduate obscurity and asked him to join the Political Economy Club, an invitation-only society reserved for the best of Cambridge's aspiring economists (as judged by Keynes). Meetings were held weekly in Keynes' rooms amidst paintings he had acquired from one of his lovers of scantily clad young men picking grapes and dancing.

One person — sometimes a student, sometimes an outsider — would read a paper, then the rest of the group would comment. When Dobb's turn came to present, he delivered an ardent defense of Marx's economics. Keynes shredded him in the subsequent discussion but admired the young man's audacity. A few years later, after Dobb had finished a PhD at the London School of Economics, Keynes helped secure him a post at Cambridge. When Keynes travelled to Moscow, Dobb came along as his companion. Decades afterward, Dobb would remember with affection that even wariness of socialism and ignorance of the USSR could not stop Keynes from lecturing Soviet officials on monetary policy.

But Dobb was never entirely comfortable at Cambridge. In a letter to a fellow CPGB member, he grumbled about days spent "teaching embryo exploiters how to exploit the workers in the most up-to-date humane way." Keynes had declared "the end of laissez-faire" in 1926, but Dobb complained that whenever he raised the question of class, Keynes would "simply misunderstand you, or else say that you are introducing 'sentimental' considerations which do not concern him & do not seem to him important." What Keynes regarded as "sentimental," Dobb considered essential to any understanding of economic theory — or of the world, for that matter.

Soon not even Keynes could shrug off class conflict. In the 1920s, Keynes had insisted that all the major questions in economics had been answered, most of them by his teacher Alfred Marshall. The Great Depression ended all that, launching Keynes on what he referred to as a "struggle of escape" from his prior beliefs. The result of that struggle appeared in 1936: *The General Theory of Employment, Interest, and Money*, the most significant tract in economics since *The Wealth of Nations*.

Much of *The General Theory* was first hashed out in discussions with a small collection of young Cambridge economists. Dobb was not among them. He had still been part of the inner circle a few years earlier when he had composed a short but thoughtful review of *The General Theory*'s predecessor, Keynes' two-volume *Treatise on Money*, which Dobb judged a "milestone." But as the 1930s advanced, he drifted outside Keynes' inner circle, standing apart from the debates that swirled around *The General Theory*. In part, his voluntary exclusion was a matter of academic politics.

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Keynes' vocal repudiation of Marshall had divided Cambridge's economics department. The feud was bitter, often personal, and some of Dobb's closest allies were on the opposing side.

By then Dobb was spending less time on his academic work anyway. In 1932, CPGB higher-ups had initiated a campaign designed to punish Dobb for perceived violations of the party line. It was a strange decision, since from almost any perspective Dobb seemed a model Communist. He spent countless hours working for party organizations, cultivating young Communists as a teacher in summer schools, serving as "chairman of the faculty of economics" for the party's educational institute, and even helping to start a CPGB film company. Whatever the forum, he offered staunch defenses of the Soviet Union in general and Stalin in particular. But sometimes those forums included newspapers targeted at what hardliners dismissed as bourgeois audiences — a sin that, when combined with his academic day job, was enough to turn a sizable portion of the CPGB's hierarchy against him. Articles in the party press condemning his work proliferated under headlines like "Maurice Dobb's Distortions of Marxism." These public chastisements were coupled with a deeply personal indictment from his comrades in the CPGB's Cambridge chapter. A shaken Dobb defended himself in front of his accusers in Cambridge, but when the meeting ended, he rushed to the bathroom to vomit.

Another person might have left the party after receiving such treatment. Many, in fact, did leave for precisely that reason. Not Dobb. He still believed that only Communists united "the kind of organization, combining discussion with discipline and a tradition of political theory with realistic thinking in face of changing situations, that offered ... the practical possibility of leading society out of contemporary chaos." Dobb filled his schedule with party work that left him little time to reflect on what the CPGB had done to him. He lectured constantly, thundering against "permanent enslavement, which seems the answer of Capital to any serious attempt to improve the position and status of the mass of the population in this monopolistic age." This was activism everyone in the CPGB could approve of.

Looking back in 1965, Dobb would say that in the 1930s he dedicated himself primarily to "political activity (mainly on a local and regional basis)

and polemical writing” rather than scholarship. He attributed the shift to his recognition of the dangers posed by fascism, which was partially true. That account, however, erased the experience that catalyzed his about-face – an experience that, even decades later, Dobb resisted discussing. After his painful reminder of the importance of demonstrating his commitment to the cause, and with so many other duties agitating for his attention, it was easy to let mastering *The General Theory* fall to the side.

DOBB ALSO HAD a powerful intellectual argument for keeping his distance from Keynes. In the early days of the depression, before the CPGB assault, Dobb predicted that economists would soon be forced to choose between two paths. They could adhere to the discipline’s current conventions, producing narrow studies concerned with the behavior of prices in markets. Or they could recover a lost tradition and return to the study of deeper social forces that had occupied their greatest predecessors: Smith, Ricardo, even Marx. This was the tradition of political economy, the study of “macroscopic problems of society” rather than “microscopic phenomena” of exchange. In Dobb’s eyes, Keynes’ chest pounding about a great escape from orthodoxy was a mixture of melodrama and marketing. The truly groundbreaking work lay ahead – and he could be the one to do it.

Political Economy and Capitalism was Dobb’s attempt to fulfill this promise. From the moment of its 1937 appearance, it was obvious that the book was one of the most brilliant contributions to Marxist economic theory since *Capital*, and undoubtedly the greatest from a British author. It ranged across an intimidatingly vast array of subjects: value theory, the legacies of classical political economy, the origins of economic crises, the character of imperialism, and the laws governing a socialist economy, to name a few. The analysis of imperialism, especially, shows Dobb at his best, tying sharp history to rigorous economics and using the resulting synthesis to address a problem of enormous relevance to his moment – namely, fascism.

Yet Dobb concluded almost immediately that, whatever its partial successes, the book as a whole had failed. He revised it substantially for a 1940

edition, but even that did not satisfy him. In 1949, he toyed with rewriting the book, calling it a work that “for a number of years now I’ve disliked too much to dare to open,” but abandoned the project to save energy for new material. Reflecting in the 1960s, he complained that it was “was too hurriedly written and not based sufficiently deeply in theoretical thinking” so that “to academic economists it seemed too polemical and negative and remote from contemporary discussion; to many Marxists it seemed to make too many concessions to Marshallian language and to have too academic a form.”

These were reasonable, albeit harsh, criticisms. But the vagueness of his references to “contemporary discussion” conceals a more specific regret: when Dobb wrote the book, he still had not grappled with *The General Theory*. Dobb later told a friend that Keynes’ work “was seldom comprehensible except to specialists who had followed a particular discussion,” adding that “I couldn’t understand what it was driving at for some time; and it’s supposed to be my job to teach it.” A collection of notes from 1938 shows Dobb wrestling with the subject. He seems to have regarded Keynesianism as chiefly a theory of expectations, one whose reluctance to confront “objective” realities of production, distribution, and exploitation would lead to – and here he sounded every bit the Cambridge don – “quite a lot of nonsense” and “any sort of economic ballyhoo.” *Political Economy and Capitalism* devoted only part of a single chapter to an oblique appraisal of Keynesianism, just a fraction of the many pages Dobb gave to explication of a subject he believed would have much greater relevance to the future of economics: the labor theory of value, that guardian of objectivity and defender against economic ballyhoo (and, presumably, tomfoolery, horseplay, shenanigans, hijinks, and monkeyshines).

Dobb had more practical concerns as well. He saw countercyclical spending as a gimmick that would leave the structural problems behind capitalism’s boom-and-bust cycle unaddressed. If anything, boosting state expenditures would make a nation more prone to crisis by directing money to less productive ends than what entrepreneurs would discover without government intervention. This was a curious thesis for an exponent of planning, and to contemporary readers the family resemblance to arguments advanced by today’s

conservatives is perplexing. Yet Dobb's thesis had a lineage among Marxists that reached back at least to Engels, who observed that an active state "can do great damage to the economic development and result in the squandering of great masses of energy and material." Ultimately, Dobb's central objection to Keynes was the same as it had always been: he was a reformer in times that demanded revolution. Conveniently enough, this position excused Dobb from figuring out the details of those reforms.

THE TANGLE OF PERSONAL, political, and intellectual complications that made it so difficult for Dobb to talk about *The General Theory* gnarled through his career. In 1960, almost fifteen years after Keynes' death, Dobb agreed to give a lecture on Keynes at a CPGB summer school. But he soon had second thoughts and sloughed off the duty to Brian Pollitt, one of his students (and the son of the longtime head of the CPGB). When Pollitt objected that he was too young — he had only finished his first year as an undergraduate — Dobb told him, "That's why you can do it and I can't." In the discussion that followed Pollitt's talk, Dobb did not say a word.

Of course, he could not always be so quiet. Keynes was if anything even more prominent in death than in life, and it would have been impossible for Dobb to evade the matter altogether. Fortunately, time and further reflection gave him a better vantage on *The General Theory*. By the 1950s, the emphasis on expectations had faded, replaced by recognition of the importance of Keynes' attention to what Dobb called "the economic system as a whole" and, especially, that system's vulnerability to crisis. This was not what Dobb had envisioned in 1930 when he called for a revival of political economy, but he acknowledged that it offered a "breath of fresh air" in an otherwise stifling environment.

Yet that was not the only purpose Keynes' work had been made to serve. Here, Dobb tied his interpretation to a larger philosophy of history. "It commonly happens," he asserted, "that schools of thought and movements in a class society fulfill an objective role which is different from (sometimes contrary to) their subjective design." Keynes had declared that in a crisis the actual purposes of fiscal policy were almost irrelevant: ditch digging, ditch refilling, and ditch exploding could all be effective

stimuli so long as money was spent. But Dobb warned that capitalist states had proven far readier to devote resources to immense military buildups than to quaint public works projects, a trend that was especially pronounced in the United States. Keynes' naiveté licensed the buildup of warfare states under the guise of disinterested macroeconomic management. "Once economic theory is allowed to employ the deus ex machina of an impartial, classless state, actuated by social purposes and ironing out the conflicts of actual economic society," Dobb commented acidly, "all manner of attractive miracles can be demonstrated."

To make matters worse, in the aftermath of World War II a strange political alchemy had transformed Keynesianism — "always a 'save-capitalism,' or 'make-capitalism-work,' doctrine" — into the essence of democratic socialism. Somehow, much of the Left had signed onto a platform that required the perpetual escalation of military spending and guaranteed the entrenchment of American global hegemony. Full employment became the horizon of the Left, strangling the more ambitious programs that had flourished in the Depression. Structural contradictions within capitalism went unaddressed, robust economic planning was taken off the table, and a return to crisis was assured. Quoting Stalin with approval, Dobb insisted that "To abolish crises, capitalism must be abolished." The supposedly novel variety of democratic socialism trafficked under Keynes' name was, according to this view, another instance of utopian bourgeois fantasizing that duped its adherents into submitting to the vulnerable status quo — a political project justified by an ostensibly apolitical Keynesianism, properly misunderstood.

ECONOMISTS HAD FANCED themselves counselors to the sovereign for centuries, hence the "political" in political economy. Even Marx fit into this tradition — what else is *Capital* but a guidebook to the capitalist mode of production for the future ruling class; *The Prince* for the proletariat? By the middle of the twentieth century, however, economists had gained an influence over policymaking that their predecessors could not even have conceived. This was the dawning of the age of the wonk, and amidst

growing armies of experts — demographers, agronomists, mathematicians, anthropologists, international relations theorists, and many more each contributed their share — economists had a special value. Only they could claim to have mastered a subject that had become an obsession across the globe: economic growth.

Political leaders had long sought to achieve prosperity, but the identification of prosperity with a steadily growing economy was a recent invention. Before the twentieth century, economists simply did not have the tools — like national income accounting, or sophisticated mathematical modeling — that could allow them to claim they had made the economy as a whole governable. That had all changed by the 1950s. The grand ideological clashes of the first half of the century had dulled, and political debate increasingly revolved around what the historian Adam Tooze has called “the tiresome squabbles of discontented affluence.” Steadily rising national income had come to seem the foundation of a regime’s legitimacy, and economists emerged as the economy’s ideal technocratic managers. To be sure, the older style of economic planning — nationalization, price controls, rationing, and the other measures Dobb considered the true essence of economic governance — endured. But the character of economic debate, just like the character of economics, had changed. A new kind of planning was born,

and it was christened “Keynesianism.”

Meanwhile, a rising generation of largely American economists was remaking their discipline. *The General Theory*’s messy text was converted into a simple model that soon became a staple of introductory economics textbooks. Keynes’ emphasis on capitalism’s instability was lost among soothing assurances that growth was all but guaranteed, and that even aggressive counter-cyclical spending would only be needed in emergencies, like oxygen masks in airplanes. Economic debates between the Right and Left came to center, as Dobb saw it, “merely as to whether half a million or a million and a half unemployed will suffice to restore the capitalist mode of production to an even keel.”

Keynes’ closest associates at Cambridge furiously distanced themselves from Americanized Keynesianism. The ironies must have seemed cruel. Their work was displaced by rivals who depicted themselves as heirs of Keynes, conquered the genre of introductory textbook writing once dominated by Marshall, and did it all with seemingly no concern for the howls emanating from the rightful successors to these masters. The term “Keynesian Revolution” itself was popularized not by one of their own but by Lawrence Klein, a native of Omaha and a product of MIT’s PhD program. Joan Robinson, a former Keynes protégé and one of Cambridge’s most prominent voices after

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his death, labeled the new style “bastard Keynesianism” and wondered aloud: “Why have the Americans forgotten all that we have taught them?” The answer should have been obvious: the Americans did not care, not when there were papers to publish, growing ranks of students to teach, and desperate governments to advise.

TO DOBB, it all seemed a waste of time. He complained to friends outside Cambridge that the department was mired in an academic war of attrition between self-appointed inheritors of Keynes’ legacy and an array of skeptics. In his words, the conflict had “become altogether stultifying (if it was ever anything else in essence),” replete with battles that were “stale to watch and reeking increasingly of dead issues.” This held true not just for Cambridge but for “bourgeois economics” as a whole, which had entered “a period of intellectual sterility.” The technical innovations that his colleagues found so alluring seemed to him distractions from the world-historical facts of capitalism’s decline and socialism’s ascent. Dobb continued to place his hopes, as he had for decades, in the promise of the Soviet Union — the economic powerhouse he predicted in 1953 would soon provide its citizens with a better standard of living than that enjoyed in the United States; the beacon for socialists across the globe that presented an image of the civilization to come; the promise that had given him hope for a better world since he was a teenager.

Dobb died in 1976, before this Soviet vision had collapsed completely. But it suffered enough blows in the remaining years of his life to prompt him to reevaluate his earlier enthusiasms. He never quit the CPGB — a fractured left, he thought, was an impotent left, and he did not lose faith in the party’s ability to reform itself — but shame at what he now considered a lunatic adherence to the party line spurred him to repudiate his earlier Stalinism. In his last decade, he dedicated much of his energy to building what he called a “political economy of socialism” for a post-Stalinist age.

With so much work to do, it was natural that Dobb let Keynes recede into the background. Except for the occasional stray remark, Keynes did not surface again until Dobb’s last book, a lively survey of economic thought titled *Theories of*

Value and Distribution since Adam Smith. There, as he had in the 1950s, Dobb admitted that *The General Theory* had stripped economists of some of their most pernicious delusions, but he still insisted that Keynes had left much more of the edifice of mainstream economics intact than his incendiary rhetoric let on. Seen from Dobb’s perspective, it was a reasonable enough conclusion. He was, after all, correct that Keynes harbored no aspirations for capitalism’s overthrow. Yet Dobb’s analysis, right as far it went, was insufficient — powerful but too easy.

Though Dobb considered himself an inheritor of a noble tradition of political economy, he was a political economist who did not take the political seriously. Tactics, yes — how best to wage the struggle against capital was a question of endless fascination to him. But he never moved beyond the materialism that, despite protests to the contrary, framed his thinking about politics. He failed to grasp a truth that events in his own lifetime supplied abundant evidence for: that how people understand their world shapes what they can make out of it. His 1930 prediction that economists would either rediscover “the macroscopic problems of society” or retreat into irrelevance by maintaining an obsession with “microscopic phenomena” went unfulfilled. Instead, the discipline followed a third path by redefining macroscopic. Casting politics as a debate over the management of the economy allowed economists to address “macro” subjects without relying on the vocabulary — of capitalists, workers, and the conflict between them — that had sedimented around discussions of what earlier generations called “the social question.”

It was an extraordinary transformation, and economists were indispensable to its realization, including one of Dobb’s own mentors. But Dobb himself was too occupied with the impending revolution to bother with the details of a present he assumed would soon be consigned to history. While his eyes were fixed on the future, his critique lost purchase on its times, and he was left sparring with the shadows of his opponents. Broadsides against the status quo have their place, but the most effective indictments are usually the most precise — the sharper the blade, the deeper the wound. Too often, Dobb forgot this lesson. Those of us who still believe in the promise of universal emancipation cannot afford to make the same mistake. ■



Reading Materiel

Introducing the *Jacobin* books section.

by Scott McLemee

In a notebook he kept while imprisoned in the late 1960s, Régis Debray recorded a scene from Che Guevara's final ill-fated mission in Bolivia. The authorities had arrested the young philosopher as an accomplice to the guerrillas — something he denied, never very plausibly. That is how his oeuvre came to include a volume called *Prison Writings*.

Comandante Che, known to his troops as Ramón, carried "a whole library on his back," writes Debray, "which his comrades gradually managed to insist on sharing, to lighten his load." They probably regretted doing so soon enough. Books were "a fearful load when added to the ammunition clips, the bags of rice and sugar, the bottle of oil, and so on." Marching through the jungle day after day could only make the difference between a luxury and a necessity feel keener. No doubt the men were tempted to "lose" a few books along the way.

When the guerrillas set up camp, Debray writes, he would find Guevara "sitting on his hammock, with a book on economics in his hand, teeth clenched, fighting the heat, the mosquitoes, the torpor of mind and body, after several days with no more than his morning's black coffee, reading and re-reading words he could not take in, but refusing to admit defeat."

The image is compelling; one need not be a votary of the Cult of Che to feel its power. For one thing, it exemplifies the commitment to learning as very nearly a moral absolute. I imagine it will appeal to anyone who has had to endure a brainless misconstrual of the "Eleventh Thesis on Feuerbach" just a few times too many. But the scene does something else as well, something more challenging. It depicts something little recognized in American culture: the force of intellectual hunger.

It also reminds us of something almost impossible to conceive now in what C. Wright Mills called "the overdeveloped countries": a condition of extreme, persistent scarcity of access to information, knowledge, or aesthetic pleasure. (The guerrilla library included poetry and novels.) When Guevara had to struggle to concentrate, it was because of exhaustion, not from self-inflicted damage to the attention span.

THE INVITATION to serve as the editor of *Jacobin*'s book coverage was gratifying for the first three minutes or so, then intimidating from that point on. We are now several years into a worldwide resurgence of the Left — or, more accurately perhaps, of the Lefts. The idea that more unites than divides us is, at this point, a sentiment for inspirational posters rather than a sober assessment of forces. *Jacobin* is both a manifestation of the revival and a process of continuing reflection on it. As “a magazine of culture and polemic,” it has been dealing with books all along, of course. But now the responsibility for organizing that effort has come my way, and it is hard not to think of the standard set by another comrade’s prison writings:

Individually nobody can follow all the literature published on a group of topics or even on a single topic.... Just as those in power have a secretariat or a press office which keeps them informed daily or from time to time about everything published they need to know about, so a similar service will be provided for its public by a periodical.... Reviews should not be casual and occasional, but systematic; and they also need to be accompanied by retrospective “surveys” that “sum up” the most essential topics.

That is Antonio Gramsci, in one of numerous passages of his notebooks reflecting on journalism as a medium for radical politics. If only our radical professoriat had considered the matter half so

*Bringing readers together
with the radical books
they should know —
or, conversely, challenging
the ideological pollution
dumped in the public sphere
by our unstable, unequal,
moribund society — is part
of this magazine’s mission.*

seriously! The Left might have learned to exercise hegemony over the past few decades, instead of just having theories about it.

IN THE BACK of Gramsci’s call for reviewing that would be systematic and comprehensive, not to mention synoptic, I detect something implied by his actual work in editing newspapers and writing for them. He could assume that the journal was part of a movement — supporting it, yes, but also supported by it, financially and in the dozen other ways that follow from common solidarity. Contributors, like readers, would be drawn from that movement, and would be adding to it; helping it grow, both in numbers and in depth.

By no means did that imply “giving the public what it wants,” ever the rationale of cynics, con artists, and vendors of shoddy or contaminated merchandise. After describing his ambitious standards for radical reviewing, Gramsci stresses that it “cannot satisfy everyone to an equal degree, be equally useful to everyone, etc.” Provoking “a multiplicity of criticisms” is not a cause for worry: “indeed, the multiplicity of criticisms is the proof that one is on the right road.”

That last point does not seem to me entirely persuasive (a multiplicity of criticisms could mean you’re doing it all wrong). And, in any case, *Jacobin* does not yet have tens of thousands of supporters reading it as they occupy factories — which, among other consequences, means that many titles deserving reviews here won’t get them.

That hardly counts as one of the world’s more pressing injustices. But I must admit that that it bothers me even so, because bringing readers together with the radical books they should know — or, conversely, challenging the ideological pollution dumped in the public sphere by our unstable, unequal, moribund society — is part of this magazine’s mission.

“I have been waiting for the last six months to study a book you can find in any local bookshop in a big town,” Guevara tells Debray in the jungle. “I want ten years of peace and quiet after this war is over so as to work out and set down what matters.” ■

Review of
The Poorer
Nations:
A Possible
History of the
Global South
by Vijay
Prashad

From Bandung to BRICs

Vijay Prashad's *Poorer Nations* asks whether the Global South can pose a credible alternative to neoliberal development.

by Rafia Zakaria

F

ACTORY FIRES that kill hundreds of workers toiling over t-shirts. Government-imposed austerity programs that make fuel and food unaffordable for the barely alive.

International trade regulations that render small farmers in tiny nations unable to compete. Innumerable, desperate vagaries of an international system dominated by the rich and powerful nations. Amid these tales of haplessness, in contexts as diverse as Dhaka and Delhi and São Paolo, finding hope, let alone common ground, is no easy task.

It is refreshing, then, that Vijay Prashad's *The Poorer Nations: A Possible History of the Global South* begins with a moment of global alliance of a different kind. It took place in 1955 in Bandung, Indonesia, when the world's poorer nations, galvanized by "the failures of capitalist mal-development" and led by the world's wealthy nations, got together and "looked for the first time to each other for another agenda." It was through this gathering that what Prashad calls the "Third World Project" was born.

Its agenda was centered around a loose set of goals crucial to the progress of what were becoming known as underdeveloped countries. The first was peace, specifically cooperation against the arms races of Western nations that imposed crippling defense demands on poor countries, stymieing their development. The second was bread, which implied that the way forward for developing countries would be to confront "the legacy of colonial economy with the advantages seized by Atlantic powers" as well as the "trade rules drawn up to benefit those historical

and not comparative advantages.” The third and final demand was justice, based on the idea that the leaders of the Non-Aligned Movement — Nehru of India, Nasser of Egypt, and Sukarno of Indonesia — all realized that none of their interests could be forwarded without a more democratic international order.

So successful was this show of force from the globally undermined nations that the Atlantic powers, at whom it was directed, began to squirm. In subsequent chapters, Prashad outlines just how concertedly Atlantic powers resisted the Third World Project. At the height of the Project’s momentum, the Atlantic powers formed the G-7, and so began a systematic undermining. One instance was the response to the results of the Brandt Report, an investigation commissioned by countries of the Global North and South to tackle the failure of development dialogues between the world’s haves and have-nots. At a meeting in Cancún, President Reagan hit hard against any overtures to equalize the international economic arena. He warned developing countries not to “mistake compassion for development,” and described the agenda of equalization as a myth, operating on the premise that “massive transfers of wealth will somehow produce new well-being.” Together, Reagan and Thatcher eviscerated the Brandt Report’s equalizing objectives as “unrealistic,” and reiterated a world order in which the mechanisms of global trade and conflict would continue to be controlled by the Global North. Interventions in the Global South would not occur from a place of equality but would be packaged henceforth as the benevolent overtures of the strong helping the weak. In the opinion of German statesman Willy Brandt, who wrote the report, “the North-South summit in Cancún led nowhere,” but Prashad identifies its failure as containing the seeds of a new dispensation that we now call neoliberalism.

Thankfully, the story does not end at this despondent moment of Reagan-Thatcher dominance. Prashad unearths the intellectual origins of resistance to neoliberalism, beginning with the South Commission Report prepared by former Tanzanian president Julius Nyerere in August 1990. Neoliberalism appealed to the Global North, Prashad explains, because it “appears to be a discourse of equal opportunity (innovation and enterprise by anyone against the regimented authority of the state) but which of course has very

divergent effects since it has to operate in social conditions that are highly unequal.”

Unsurprisingly, the South Commission’s exposé of neoliberalism was again met with hostility from the countries of the North, which criticized it as a dirge by poor countries uninterested in taking responsibility for the state of their internal economies and for “wrong domestic policies.” The UK pushed for even further trade liberalization, saying that it would invest more in the South only if the South promised to “respect intellectual property and streamline its inefficient economies.” On the other end, Cuban president Fidel Castro also criticized the report as promoting the idea that the market, not powerful institutions, made choices.

Criticized for going either too far or not far enough, the South Commission nevertheless did manage to resurrect the idea of South-South cooperation. The result, in a very loose sense, was the emergence of the BRIC conglomeration. It was not the end of neoliberalism but rather the beginning of a “neoliberalism with Southern characteristics.” For those who believe that all transnational alignments, including those created in opposition to the existing dominance of the Atlantic nations, it was not much cause for victory. For those like Prashad, who believe in more qualified, circumscribed progress led by even the barest form of South unification against the North, there was some cause for hope.

In recent years, transnational human rights organizations such as Amnesty International have recognized the increasing irrelevance of the New York-London-Geneva triangle of global policy-making on human rights, focusing instead on “moving closer to the ground.” The inability of North-led initiatives to gain global currency thus extends beyond the ambit of economic inequalities to the notion that transnational cooperation requires new leaders less tainted by the agendas and legacies of colonialism.

The BRIC countries, for all their promise, do not yet possess an institutional framework; while challenging existing North-led transnational alignments, they also continue to mimic them. The lack of a military platform in the literal sense of an operating base or a mutual defense pact undercuts their challenge to US-NATO dominance. Finally, they do not have a stated ideology other than the shared detestation of Northern dominance.

Any and all of these shortcomings could doom any potential that the BRICS may be seen to

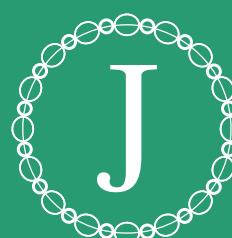
possess. Can a repackaged neoliberalism with Southern characteristics ignore the duplicities and inequities of the original? Furthermore, can the reticent bare-bones economic basis of cooperation that currently binds BRIC countries together on the basis of collective misgivings against North countries really be the basis of meaningful resistance against North policies? There are many questions and few answers. Perhaps acknowledging this, Prashad sees the future of the BRICS as nuanced and vacillating, “sometimes motivated by a desire to retreat to the past, sometimes by a desire to seek a future social order moored in human history but not imprisoned by it.”

In connecting the emergence of the BRICS to the failure of the Third World Project, Prashad takes a crucial intellectual leap, delineating in detail just how cooperation among wealthy countries mixes with the attractive duplicity of neoliberalism to keep poorer countries indebted and unable to compete globally. Histories, as we know, are often penned by the dominant and the victorious, and the task of creating one for the poorer nations provided a recognition of the reality of their struggles that is hard to find in the literature of economic history. In this sense, Prashad’s history of the BRICS can be viewed as a genealogical endeavor, outlining the dynamics of power that have created and also threaten an alliance based on resistance to the powerful and yet ultimately defined by its rules. The BRICS, so much in opposition to the policies of the World Bank and the International Monetary Fund, still seek to control those very institutions. No guarantees exist that if such a rout were ever accomplished, the BRICS would not be easily transformed into a new and just as toxic sub-imperialism, just as or even more domineering to smaller states than the existing imperialist core.

Alternative histories, or possible ones, as Prashad calls his, also accomplish the ideological turns of making real in record what seems amorphous or elusive in reality. Always an interpretive endeavor, any telling of history presents one of many ways of looking at the past, and in acknowledging this explicitly in the title of his book Prashad underscores this inherent malleability of any historical project. *The History of Poorer Nations* is no exception, and while BRICS may not be the magical antidote that overturns the global order, rooting them in a past defines it as something with a presence in the future. ■

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Review of
Beyond the
Fragments
by Sheila
Rowbotham,
Lynne Segal,
and Hilary
Wainwright

Back to the Fragments

A socialist-feminist classic appeared just as Thatcherism began pulverizing the Left. Today, should it be read as historical document or a blueprint for action?

by Nina Power

BEYOND THE FRAGMENTS began life in 1979, as a pamphlet, and soon became the classic statement of socialist feminism in the form it took in Britain following the political explosion of May 1968. Its three authors — Sheila Rowbotham, Lynne Segal, and Hilary Wainwright — had spent much of the decade as members of organizations of the “libertarian” left such as the International Socialists, which in 1977 became the Socialist Workers Party. They were also centrally involved in the women’s liberation movement, and grew utterly frustrated by the male-dominated politics of both the Labour Party and Leninist groups.

They were not alone in such feelings. The pamphlet edition of 2000 copies sold out. A huge conference devoted to *Beyond the Fragments* was held in Leeds in 1980, by which time the authors had revised and expanded it into a book. They took pains to unpack the failings of leftist political groups, especially in Rowbotham’s mammoth central text “The Women’s Movement and Organising for Socialism.” But the essays were forward-looking as well, and posed several pivotal and interlocking questions:



The urgency of going “beyond the fragments” of scattered and uncoordinated struggles has renewed with the economic and political crises.

How can both the Leninist and Labour left learn from the women’s movement? What forms of political organizing can adequately reflect the personal experiences of marginalized and oppressed groups without dismissing these experiences as secondary to class struggle, or as something to be sorted out “afterwards”? How is it possible to link up local organizing with national campaigns and movements? What’s the relationship between unions and smaller initiatives? Between feminism and the state? How to link up participatory forms with representative forms, and representative

The everyday practice of mutual support cannot take the place of social security, no matter how much successive governments try to spin the issue into one of “deserving” and “dependency.” And it remains true that women and men have often quite different relations to the state at the level of the everyday.

democracy with direct participation?

Now returning in its third edition, *Beyond the Fragments* may elicit a certain wistfulness in the reader as she imagines what it was like to be amid so much political enthusiasm. But the intense discussion of the book in recent months (conferences have been held on it in London and Manchester, and another is scheduled for September in Leeds, site of the 1980 event) is not driven by nostalgia alone. The urgency of going “beyond the fragments” of scattered and uncoordinated struggles has renewed with the economic and political crises. There is a yearning to pursue the unicorn of left unity — something perhaps mythical and certainly elusive.

At the same time, developments in the Socialist Workers Party make the book timely in another way. Since January, hundreds of members have abandoned the SWP following the revelation that rape charges against a senior party member were covered up by the leadership. His internal exoneration rather horrifically underscores many points that Rowbotham made in her lengthy critique of IS/SWP Leninism thirty-four years ago.

Her essay was also a loose set of descriptions and proposals for the kind of political organizing now often called prefigurative. “The attack against capitalist society should carry the future within the present,” in other words. “Thus there should be no

hierarchy, no elites, no chair, no committees, no speakers and even no meetings in some cases. Or the meeting merged into and became life. Life thus became meetings!”

Certainly this vision has been criticized, then as now. *Beyond the Fragments* proved too wishy-washy for Leninists. The authors “retain all the tendencies toward reformism, integration, and retreat into lifestyle, which we attribute to them,” wrote Pete Goodwin in *International Socialism* in 1980. It is not focused enough on capitalism for some. As Elizabeth Wilson put it: “Although the dinosaur of capitalism lurks menacingly in the background throughout *Beyond The Fragments* to read the pamphlet is on the whole to enter a world in which the enemy is the democratic centralist party.”

Radical feminists consider it insufficiently feminist. “I fear,” wrote Cynthia Cockburn in a recent article for *Open Democracy*, “that in an important attempt to heal the divisions of the left it may marginalize those feminists who feel themselves to be not only anticapitalist but also antipatriarchal.” Besides, “why is a systematic analysis admissible for the mode of production but not for the sex-gender order?” At the same time, the authors seem too focused on daily political struggle for those who wonder how it relates to revolution. The difficulty with *Beyond the Fragments*, as Karen

Margolis sees it, is that it elides the difference between the ongoing fight to change our present conditions of daily existence and the making of socialism.

That the book can stimulate so many objections, on so many points, is a tribute to the difficulty and the awkwardness of the questions it raises, and a sign of their continuing relevance. The problems in question have barely been faced, let alone resolved.

RELEVANCE does not mean unmediated accessibility: there are gaps across the decades that require leaps, or bridging. In the new edition, Rowbotham begins her introduction by noting the puzzlement she felt at learning that young women at Occupy Wall Street found her original essay hard to understand.

Given the clarity of the piece, what might have changed in the interim that would introduce such difficulties? Rowbotham notes that references to the history of the Left that were once “part of a broadly shared radical culture” have now “faded from view.” While Rowbotham’s critique of Leninist organizing will be recognizable to many who have been members of such groups over the years, it may not necessarily resonate immediately with those who came to Occupy and other movements from non-Leninist places.

In many ways the deeper issue is an enormous change in historical context that might be summed up in a single name: Margaret Thatcher. Her rise to power hovers like an ominous cloud over the original essays. Their publication coincided, more or less, with her election as Prime Minister in May 1979; in a happier coincidence, her death earlier this year came just two weeks before the conference to celebrate the relaunch of *Beyond the Fragments*.

It was not only Thatcher herself that weighed like a nightmare on the progressive aspirations expressed in the book. There was also the Thatcherism of every Prime Minister that came after her. In the new edition, Lynne Segal explains that the 1990s were “largely a decade of gloom and mourning across a fragmented left and a dwindling labour movement.... In a sense...it was back to the *fragments* for most activists who remained politically engaged from the late 1980s.” Radicals could and did struggle to build coalitions. But “things

fall apart for many reasons: sectarian squabbling, marginalisation, exhaustion, most often however, simply through defeat, through defeat after defeat which happened during the long years of Tory rule.”

Demoralization has not been the only effect. The socialist feminism espoused in various ways by the three authors has itself suffered at the hands of history and political fashion. *Fragments* offered extremely important reflections on the nature and role of the state for women — for as Segal put it in 1979, “women developed new theories of the welfare state because they came into contact with it more directly than men, in the form of welfare, nursery provision, education and health services.” But a radical critique of the welfare state cannot be pursued in the same way amid extreme ongoing privatization, the elimination of public-sector jobs (where women dominate the workforce), the slashing of benefits, and so on.

“The old anti-statism of some of the left,” said Segal at the book’s relaunch this spring, “is far too closely attuned to the dominant refrains of neo-liberalism promising to get government off our backs to be useful.”

A clear tension existed between the desire for autonomy and the need for state support. Wainwright tells of using “the local state against the national government” when she and Rowbotham worked at Greater London Council from 1982 to 1986, creating women’s refuges, self-run nurseries, and other resources. They were precisely the combination of institutional autonomy and progressive causes that have been destroyed by successive governments in the UK, Conservative and Labour alike. Even at the time, the possibility that such autonomy might be turned against their intentions was in the air. There seemed to be a contradiction, as Segal puts it, “between our emphasis on self-help and collective activity and the idea of self-funding.”

Now we live in a period when little or no public funding exists, and notions of the “Big Society” lead people to volunteer their labor for free, under the guise of “self-help” and “collective activity.” Apart from the grotesque spectacle of people volunteering to “clean up the streets” after the London riots of August 2011, another recent example saw one Brighton resident attempting to arrange a volunteer trash collection when sanitation workers were on strike — a proposal shouted down by some who carefully explained what scabbing meant.

The everyday practice of mutual support cannot take the place of social security, no matter how much successive governments try to spin the issue into one of “deserving” and “dependency.” And it remains true that women and men have often quite different relations to the state at the level of the everyday.

Reflecting precisely on this everyday practice — after all, “the ideas and politics of women’s liberation emerged out of precisely ... small everyday moments of dismissive encounter” — Rowbotham identifies points of tension between the politics she believes in and the broader Left. If socialism (the non-feminist kind) failed to address “authoritarian social relationships, sexuality, daily life in the family and the conditions of reproduction,” that was, in part, because of its focus on work. As Rowbotham puts it, “it is still possible to find among Trotskyists an assumption that class consciousness comes solely from the experience of work.”

Segal’s 1979 piece “A Local Experience” briefly addresses her complaint against Wages for Housework, various iterations of which were springing up around this time (and have once again become popular). “We thought that this whole debate was perhaps not important,” she writes, “because whether or not housewives and other domestic workers produced surplus value, we were equally concerned to challenge the division of labor which consigned women to the home.” The primary concern for the *Fragments* project was the division of labor and the ideology that pushed an image of women linked to domesticity. But this left work as such largely undertheorized and the workplace as a site for organizing neglected. Peter Goodwin’s review in 1980 put it sharply: “What comes out again and again in *Beyond the Fragments* is the emphasis against politics at the point of production.”

One of the strengths of *Beyond the Fragments*, then and now, is that it captures so much of the significance and organizational self-reflection not only of Women’s Liberation groups and activity, but of black groups and LGBTQI groups, while highlighting an understanding of the need and difficulty of bringing these “fragments” together. As Wainwright wrote in her 1979 introduction, “If workers were simply up against bosses, women up against the sexual division of labour and sexist culture, blacks against racial oppression and discrimination, with no significant connection between these forms of oppression, no state power

linking and overseeing the institutions concerned, then strong independent movements would be enough.”

At a recent event, Wainwright spoke about the next step. “Going beyond fragmentation now,” she argued, “would involve touching a diffuse but widespread distress which has arisen in response to the recurring short-termism which contemporary capitalism displays towards nature and the environment, human life, work, values, culture, and relationships.” In 1979, she had pointed out that “when the reactionary rhetoric of Tory ‘freedom’ can evoke such a groundswell of working-class support, socialists need to ask a few questions about our inability to translate the awareness of a vanguard of socialist activists into any lasting change in mass consciousness.”

The situation, it is clear, is not much different today. Contemporary attempts to go beyond the fragments in the UK (Coalition of Resistance, Left Unity, the People’s Assembly, and so on) are confronted not only with the right-wing government’s media-backed cruelty and imposed social division, but also the rise of parties from the anti-immigration UK Independence Party to the fascist English Defence League. For anyone wanting to unite in a way that goes beyond small groups and residual vanguardism, the situation is as tricky now as it was in 1979 — perhaps even trickier, as it becomes impossible to hold on to the notion that the Labour Party has any concern for humanity as such. Wainwright put her finger on the vicious circle long at work: “To turn the Labour Party into a socialist party there needs already to be a socialist party.”

If *Beyond the Fragments* made the Left look on itself from the standpoint of feminist criticism, it did so in a friendly and humble way: it was an exercise in reaching out, not only beyond the fragments, and not only to other left groups, whether Leninist or Labour, but into wider concerns that the Left had overlooked. Today there are indeed many people who desperately want a feminist, anti-racist, socialist party, and many who prefigure these politics in their daily lives just as the authors did several decades ago. The politics of austerity may smash the social order into something ever thinner and more brittle, but the fragments remain sharp and extremely dangerous. ■

She Came to Riot

The memory of riot grrrl deepens the divide between cultural and material feminism, hobbling critiques of inequality by mistaking self-improvement for revolution.

by Jennifer Pan

W

HAT, EXACTLY, constitutes a girl riot? An examination of the historical precedents for female-fronted uprisings reveals, to name a few: women's bread riots during the French Revolution; the 1917 general strikes on International

Women's Day in Russia, in which women workers threw rocks through factory windows and dragged their male colleagues into the streets; and the 1929 "Women's War" staged by thousands of Igbo women in Nigeria against tax collection by British-appointed colonial administrators.

History has also more recently recorded scores of college-age women in the UK rioting against rising tuitions in 2011, and, just this year, the predominantly female garment workers of Bangladesh who, following the horrific Rana Plaza factory collapse that killed over one thousand workers, took to the streets in a wave of fury and unprecedented popular resistance, effectively bringing both the industry and the government to a standstill.

These are all powerful instances of women — and in many cases, girls — rioting. But it's a specific cultural moment that never quite materialized into a full-scale storming of the streets that today holds the designation "riot grrrl." A youth subculture that bloomed in the nineties and is remembered for its vibrant DIY ethos, riot grrrl employed the language of militancy, calling for a revolution in gender inequality through a punk arsenal of music, zines, and activist meetings. This cultural insurrection, built around the demand for "revolution girl style now" was a much-needed spark in a moment of mainstream feminist malaise and a catalyst for the feminist organizing that would come to be known as the

third wave. In addition to providing a model for young women's consciousness-raising around issues such as rape culture and slut-shaming, riot grrrl left an indelible mark on indie music — members of Bikini Kill and Heavens to Betsy, for example, would go on to form the critically acclaimed but still explicitly feminist bands Le Tigre and Sleater-Kinney. But more than twenty years after the zine *Riot Grrrl #1* protested the "general lack of girl power in society as a whole," the social and political conditions that necessitated the movement feel largely unaltered, and the riot curiously sanitized.

Though riot grrrl as a nineties phenomenon was relatively ephemeral, its specter has taken on a mythic quality. Over the last few years, a steady stream of riot grrrl histories, documentaries, archives, and online effluvia has emerged to enthusiastically compile and comment on the artifacts of the movement. Riot grrrl's high-profile apostles range from the incarcerated members of Russian dissident group Pussy Riot to Tavi Gevinson, the fashion-blog wunderkind and editor-in-chief of *Rookie* magazine. Documentaries like *Don't Need You: The Herstory of Riot Grrrl and The Punk Singer*, and books like Marisa Meltzer's *Girl Power: The Nineties Revolution in Music*, Sara Marcus's *Girls to the Front: The True Story of the Riot Grrrl Revolution*, and *The Riot Grrrl Collection* — a new compilation of reproductions of the riot grrrl zines housed at the NYU Fales Library — attempt to chart the genesis, trajectory, and lifespan of this singular feminist subculture. The resurgence of interest in the nineties in general has helped to fuel a riot grrrl revival. So has the coming-of-age of young *Rookie*-generation feminists in a world where sexual assault and legislative threats to reproductive rights loom as ominously as they did twenty years ago.

The June publication of the new *Riot Grrrl Collection* was heralded by a bevy of glowing reviews, *New York Times* slideshows, and book signings — most notably at Bookmarc, the high-end, fashion-centric bookstore of the Marc Jacobs label. It's good to see mainstream outlets embracing the opportunity to highlight explicitly feminist materials for a wider audience. But as we celebrate expanded access, it's also crucial to understand exactly how our nostalgia for riot grrrl's aesthetics operates within contemporary feminism, especially in this particular moment of capitalist crisis, rapidly disintegrating social safety

nets, and vicious austerity measures. Mainstream feminism today, ostensibly organized in response to the theoretical gaps of the second wave that ignored the subjectivities of women of color, working-class women, and queer women, continues to reproduce a key structural deficiency of its predecessor: inadvertent collusion with neoliberalism.

Though the third wave purports to aspire to radical inclusion, this effort usually goes no further than encouraging as many women as possible to identify as feminists. Twenty-first century feminism has devoted significant energy to destigmatizing the word "feminist" and cataloguing public figures' self-identification (or lack thereof) as feminists. In her 2011 bestseller, *How to Be a Woman*, Caitlin Moran blithely instructed, "So here is the quick way of working out if you're a feminist. Put your hand in your underpants. A. Do you have a vagina? and B. Do you want to be in charge of it? If you said 'yes' to both, then congratulations! You're a feminist." Outlets like Jezebel, Slate's Double X, and xoJane make a habit of praising celebrities who call themselves feminists (Tina Fey), chastising those who don't (Katy Perry), and wringing their hands over the significance of both for young female fans. Though this impulse, which we might interpret as a kind of low-stakes, large-scale consciousness-raising, is undeniably well-intentioned, the result has been an overly wide umbrella that shades both Audre Lorde and Margaret Thatcher, and runs the risk of diluting feminism to bumper-sticker banalities, rather than constituting a serious political force, let alone revolution.

The third-wave fixation on tallying the numbers of self-identified feminists is symptomatic of a larger historical shift in the feminist movement. In her 2009 *New Left Review* essay "Feminism, Capitalism, and the Cunning of History," Nancy Fraser elaborates upon this sea change, documenting the cooptation of the once-radical movement by post-Fordist capitalism. According to Fraser, under state-organized capitalism, the core of the second wave was an intersectional, emancipatory movement that "extended the purview of justice to take in such previously private matters as sexuality, housework, reproduction, and violence against women," advocating for a three-dimensional understanding of equality that encompassed economy, culture, and politics. The transition from state-organized capitalism to neoliberalism in the

It's inevitable: riot grrrl itself was characterized by intimate social networks; an elision of life, art, and politics; and an embrace of the confessional through zines and music exploring the most verboten details of sexual violence, misogyny, and girl love. But as revelatory and compelling as personal stories are, they have the result of narrowing the scope of feminist critique.

seventies, Fraser argues, resignified many feminist ideals and truncated feminism's goals. "In this period," Fraser writes, "claims for justice were increasingly couched as claims for the recognition of identity and difference. With this shift 'from redistribution to recognition' came powerful pressures to transform second-wave feminism into a variant of identity politics. A progressive variant, to be sure, but one that tended nevertheless to extend the critique of culture, while downplaying the critique of political economy."

The tendency to value visibility over livability

has extended to contemporary feminism, sealed into place alongside the neoliberal policies of the Thatcher and Reagan administrations. Though socialist feminists have always attempted to bridge demands for redistribution and representation, the mainstream movement has placed a disproportionate amount of focus on media images, glass ceilings, Bechdel tests, and a numbers game in which organizations like VIDA and prominent feminist commentators like Jessica Valenti meticulously track the underrepresentation of women in politics, arts, and corporate boardrooms. While these projects highlight and provide valuable insight into still-egregious gender imbalances in specific fields, they should not be mistaken for a broad social critique. In fact, the prioritization of representation overlooks and even perpetuates several areas of gender inequity that can only be addressed by a call for radical redistribution. For instance, mainstream feminism glosses the proliferation of unpaid internships on which an alarming majority of cultural institutions depend for cheap labor — including hundreds of organizations ostensibly working in the interest of women. Though an estimated 75 percent of unpaid interns are women, feminist projects from VIDA to *Bitch* to Jezebel to WAM! routinely enable the troubling (and more often than not illegal) exploitation of interns, a practice that prevents those financially unable to work for free from joining their ranks while simultaneously exerting downward pressure on wages for all workers. Writing recently for *Dissent*, Madeleine Schwartz traced the connection between this relatively new form of exploitation and the historically undervalued labor performed by women, such as domestic and care work, and in particular, unwaged housework. "Compliant, silent, and mostly female," Schwartz wrote, "interns have become the happy housewives of the working world."

It's in this current state of affairs that the nostalgia for riot grrrl has arisen. Although the original nineties movement contained anticapitalist gestures, the commodification of punk ("From chaos to couture!") and the focus on individual rather than social freedoms have rendered the present revival of riot grrrl a form of feminism that neatly dovetails with neoliberalism. Contemporary riot grrrl projects like the Le Tigre documentary *Who Took the Bomp?* and *The Punk Singer*, a new biopic about riot grrrl's breakout star,

Kathleen Hanna, have enlisted unpaid interns without a hint of criticism. In 2010, when Le Tigre called for an intern to help with “internet research, web maintenance and odd jobs,” Flavorwire declared they were “bouncing up and down in [their] seats” about the prospect of working uncompensated for a band they liked, enthusing, “Where were these opportunities when we were in college? (Honestly, if we didn’t love our job, we might quit to do this for free).” To borrow from Schwartz again, the eager exchange of one’s labor for nothing but passion eerily echoes the long-held societal assumption that housewives perform domestic labor out of love.

The way that riot grrrl histories are packaged and produced also tends to sanitize their feminist politics even as it presents them to a new audience. Retrospectives of riot grrrl, for example, are nearly always introduced with a personal story: a narrative of an author’s intimate connections to the movement, whether that connection happens to be one of direct participation or of distant admiration. It’s inevitable: riot grrrl itself was characterized by intimate social networks; an elision of life, art, and politics; and an embrace of the confessional through zines and music exploring the most verboten details of sexual violence, misogyny, and girl love. But as revelatory and compelling as personal stories are, they have the result of narrowing the scope of feminist critique.

In a recent piece on riot grrrl and race for the journal *Women and Performance*, Mimi Thi Nguyen investigated the pitfalls of the intimacy that shaped the movement, pointing out that situating one’s politics within the story of self-transformation leads to neglect of structural critiques of inequality and oppression. “Working on” one’s own racism and privilege via written confessionals became a primary mode of antiracist activism for many riot grrrls, and often configured racism as one big miscommunication rather than institutional violence. As Nguyen points out, this sort of personal revolution comprised of “everyday work on the conscious self, especially through therapeutic techniques of self-examination, confession, and dialogue” is an aesthetic form very much in line with “neoliberalism and its emphases on the entrepreneurial subject.”

If contemporary feminism is to pose the kind of threat to the status quo that riot grrrl attempted to evoke, it desperately needs to recoup the demand for redistribution of wealth alongside the ongoing

battles for expanded representation and personal evolution. Though a book of riot grrrl zines or even a summer spent at a Rock ‘n’ Roll Camp for Girls might inspire young women to pick up guitars and pens, without the financial resources to sustain these creative pursuits, fewer and fewer women will be afforded the opportunity to make art. In 2011, Le Tigre’s JD Samson published a widely-circulated article detailing her precarious financial situation despite her status as a well-known musician. Describing her lack of steady income, health insurance, and guaranteed work, she concluded by imploring, “Another reason to occupy Wall Street.” Similarly, earlier this year, Kathleen Hanna spoke out in support of Guitar Center employees’ efforts to unionize, noting that without access to a living wage, “Only the trust-fund kids, who don’t have to pound the pavement all day, end up being the ones in bands. This makes for a scene that isn’t diverse or interesting.” As austerity tightens and public funding for arts programs vanish, the possibility of a punk, DIY, arts-based girl riot diminishes, even as new books and films herald its legacy and continuation.

The launch of the *Riot Grrrl Collection* was accompanied by a capsule collaboration between Bikini Kill and VFiles, a New York City-based social media platform and clothier. Among the objects produced to celebrate the book, the band, and the revamping of riot grrrl were Bikini Kill-branded Chapstick, framed posters of punk rock cheerleaders, and a black shirt-dress proclaiming “KILL ME”—a reproduction of a dress that Kathleen Hanna had worn to shows during her Bikini Kill days. “The point of the KILL ME dress,” Hanna explained, “is to raise questions about violence against women and, specifically, what constitutes a woman ‘asking for it?’ If she gets drunk at a party? Calls a guy a jerk? Wears a dress that says ‘KILL ME’ on it? It also states the obvious, whether you wear a dress that says ‘KILL ME’ on it or not, as a woman you always have a bullseye on your chest.” A conceptually admirable provocation, to be sure. Outlets like Refinery 29 and *New York* magazine celebrated the limited-edition paraphernalia as the potential birth of a neo-riot grrrl revolution. Meanwhile, the feminist blogosphere remained silent on whether the women garment workers rioting for increased wages and safer working conditions in the streets of Dhaka were “feminists.” ■

The Fantastic Failure of *The Lone Ranger*

Say what you want about the results, but at least Verbinski tries to bring intelligent, politically savvy revisionist Westerns back into style.

by Eileen Jones

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ORE VERBINSKI'S new film *The Lone Ranger* is an immense failure, reviled by critics and avoided by audiences who were tipped off early about what an incoherent mess it is.

And it's an incoherent mess, all right. But it's a fantastically ambitious incoherent mess, which is typical of films directed by Verbinski. He is perhaps the most crazily exuberant filmmaker working in Hollywood's upper echelon of reliable blockbuster-makers, and after getting away with his excesses for years and earning Walt Disney Studios billions in profits doing it, Disney has finally given him enough rope to hang himself.

For a lot of people professing to truly love film, the spectacular fiasco of a movie like *The Lone Ranger* becomes proof of the essential evil and idiocy of Hollywood cinema. I've never been able to accede to this view. Loving film plus hating the entirety of Hollywood's output is an equation I could never work out — Hollywood has simply produced too many great films over the decades, even if it also seems to produce fewer and fewer as the years go on. Even Gore Verbinski agrees to that, and puts himself in the company of those participating in the death throes of Hollywood, laughing as he says, "We seem to be on some crazy road to extinction."

And there you have the Verbinski Experience in a nutshell: laughing on the crazy road to extinction. He loves that, and can't find enough ways

to reenact it in film. A more cheerful end-of-the-world enthusiast you'll never find. If you want to see the death drive in action, celebrated for the way it compels us toward both ludicrous slapstick escape strategies and attempts at glorious theatrical star turns, look no further than *Rango* and the *Pirates of the Caribbean* trilogy. Sure, we're all going to die, but just think of the opportunities to show off!

Mark Twain would've appreciated the impulse behind Verbinski's film deaths, both the fatal pratfalls and the gorgeous flourishes. Consider Jack Sparrow's death scene: facing down the Kraken's roar, getting comically doused in a ton of Kraken sputum and muttering, "Not so bad," then recovering enough to perform his own mighty self-mythologizing death, leaping directly into the Kraken's fearsome maw in slo-mo, sword drawn, as if to illogically fight the beast from the inside.

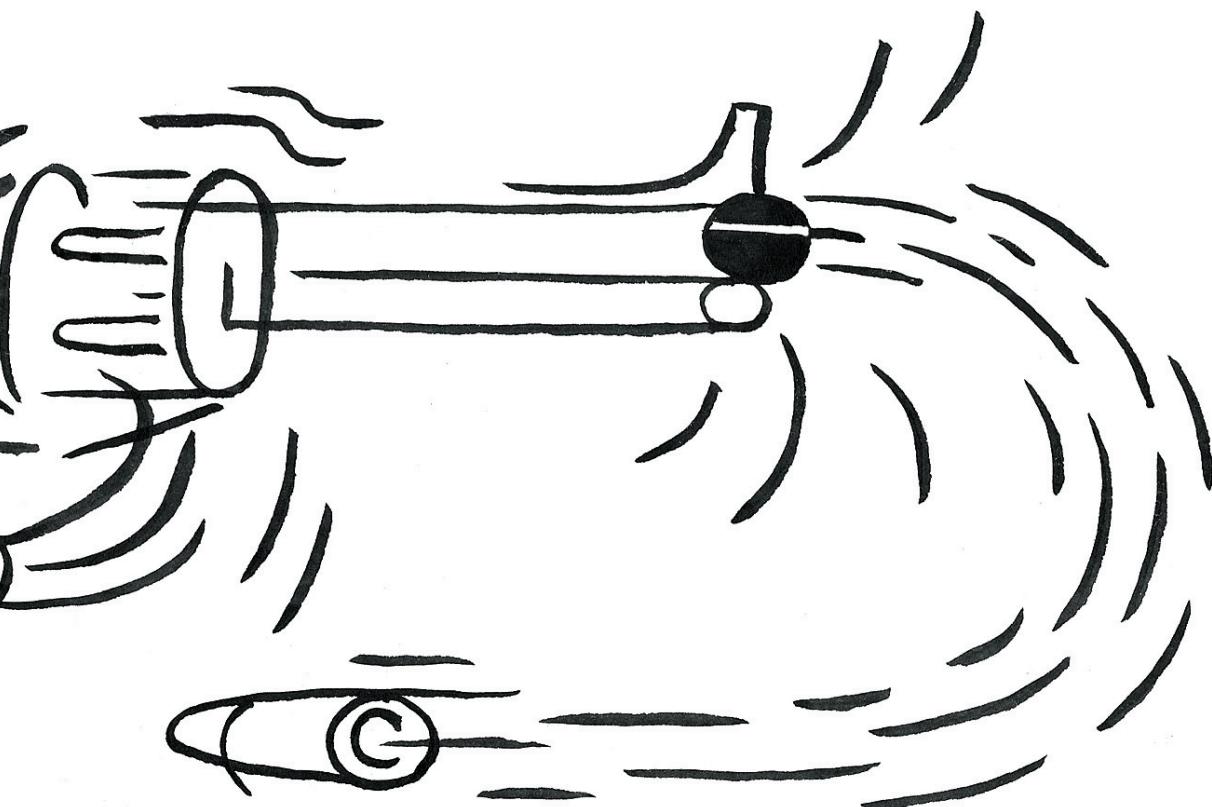
He's a very American filmmaker, Verbinski, and it's no wonder he keeps getting drawn to the Western, trying to find a way to revive it. It's got the focus on a world going extinct that he likes, as well as the show-off theatrics in the face of death — though they're often tamped down in Westerns and not recognized as such.

But the classic Western is a genre inclined to insist on its own seriousness, overwhelming any cornball humor that's mixed in to lighten the tone. And of course it tends toward melancholy, enshrining something already lost: the unspoiled grandeur of the land, the freedom of movement on the frontier, the necessary self-sufficiency of life there, the reliance on violence that can be seen as meaningful and honorable, and the heroic men we imagine suited to such a world. The revisionist Western builds in even more self-seriousness. The post-World War II Western, like most of the genres of the 1940s and 1950s, is infused with "social problem" concerns such as racism, vigilantism, and disturbed psychology (*Broken Arrow*, *The Ox-Bow Incident*, late John Ford and Anthony Mann Westerns). In the 1960s and 1970s, this questioning of the basic premises of the Western, and the increasing impulse toward something resembling historical accuracy, reached a peak of psychotic violence and politically critical fury with Sam Peckinpah and Sergio Leone.

Extended self-seriousness is not Verbinski's bag at all. He can do lost-world melancholy in particular scenes, but it's always overshadowed by chipper slapstick action and his characters' energetic self-mythologizing.



Extended self-seriousness is not Verbinski's bag at all. He can do lost-world melancholy in particular scenes, but it's always overshadowed by chipper slapstick action and his characters' energetic self-mythologizing.



energetic self-mythologizing. His “politics” in film appear to be of the Chaplin-Keaton school — small marginalized oddballs against big oppressive forces. He likes little collectives versus large proto-capitalists: the mixed-race, gender-inclusive, animals-and-undead-welcome pirate band against the East India Tea Company that increasingly owns and runs the world in *Pirates of the Caribbean*; the community of desert prey animals trying to preserve a trickle of water against the vile predators hogging it all in *Rango*.

Nevertheless, *The Lone Ranger* clearly intends to inherit the revisionist Western mantle, with the massacres and the psychosis and the politicized rage, while keeping the laughs and slapstick action. Typical of Verbinski’s more-is-more attitude, he doesn’t seem to see the problem with putting wildly clashing elements together and stirring vigorously. This is most critics’ central complaint: the unevenness, the collision of genre elements, as if Verbinski meant to do something smooth and unified and polished but accidentally tripped and fell

with an immense crash, and the resulting jagged pile of breakage is the film. But there’s no indication that he ever meant to create a tightly controlled genre narrative. He almost never does. It’s clear, in fact, that in his recent films Verbinski is monkeying around with narrative structure, testing the limits of how sprawling and loose and convoluted and overpopulated he can make them. With *The Lone Ranger*, he’s found the limit, at least the limit of the American general public, and sped past it to utter box-office catastrophe.

Verbinski begins his revisionist Western with the highly publicized move to cast Tonto as the leading man instead of the Lone Ranger. The switch has been dismissed as merely an expedient necessity — Johnny Depp is the star of the film, and his desire to play Tonto is what started this whole rigmarole — but Verbinski doubles down by refusing to take the Lone Ranger seriously at all, except as a creation of Tonto’s. Though we get a version of the familiar superhero backstory for the Lone Ranger, the same kind we’ve seen with

Batman, Spiderman, and Superman — how he got his outfit, his catchphrases, his special powers, his motivation to fight for justice — the whole process is in terms of the Lone Ranger's manifest silliness and wrongness and inadequacy that somehow have to be overcome. The absurdly named Armie Hammer plays the Lone Ranger as a mugging Dudley Do-Right, handsome and earnest and thick as two planks. It is the young Tonto's unenviable job to mold this nitwit into something resembling a "great warrior" for justice. And in the frame story, it is the old Tonto's unenviable job to try to mold this nitwit into the hero of a great story, for obscure purposes of his own.

The frame story is the clearest indication of how Verbinski wants to place his film in the tradition of revisionist Westerns, but it has either been ignored by critics or dismissed as meaningless. For example, here's Richard Corliss, the film critic at *Time* for the past hundred years or so, explaining the basic setup of *The Lone Ranger*:

Narrated (for no particular reason except to make a long movie even longer) by an aged Tonto to a kid in a Lone Ranger mask, the movie proposes that its leading man [the Lone Ranger] is a well-meaning oaf with no sense of hero couture. When at Tonto's insistence he dons the mask, he asks, like a self-conscious actor forced to wear jester's garb, "You sure this works?" He also seems not to know that the Lone Ranger is supposed to have a partner...

Corliss is flummoxed by the whole approach, but especially by the John Reid AKA Lone Ranger character's lack of awareness of his own story, that he's supposed to be the masked hero with a Comanche partner and all the rest of the old-timey lore culled from *The Lone Ranger* as a pop cultural phenomenon on the radio, in pulp novels and comics and, most famously and influentially, on TV. It's a remarkable belief: that we all already know the story, and the characters should also know the story and act accordingly.

But the question of what is the story of the Lone Ranger is central to Verbinski's film. And it's a sensible question for most of us to ask, because who among us now remembers the details of that story as inherited from all those pop-culture sources, beyond some vague recollection that "Hi-ho, Silver!" figures into it? Once you actually know more, you realize there's no way to revive it in anything resembling its once-popular form, unless you're a racist moron.

So here's a brief recap. The television Lone

Verbinski goes so far in making this counter-narrative messy that it's impossible in a reasonable amount of time to summarize all the storylines or describe all the characters or acknowledge all the genre film references that inform the proceedings. The film seems deliberately overstuffed and unsummarizable.

Ranger (played by Clayton Moore) is so called because he's the last surviving member of a group of Texas Rangers killed in a massacre. He's a god-like man riding a white horse named Silver and wearing a white hat and an immaculate outfit that never gets soiled no matter how much sagebrush he's dragged through. He's also masked so he can elude pursuit and strike superstitious fear into the hearts of evildoers, and when he rides away after tamping down community conflict, some grateful townsperson always asks, "Who was that masked man?" As Michael Ray Fitzgerald argues in "The White Savior and his Junior Partner: The Lone Ranger and Tonto on Cold War Television (1949–1957)," the Lone Ranger roams around the West defending law and order and seeing that manifest destiny is realized without any hitches. His

Comanche sidekick, Tonto, “becomes an apprentice white man and a junior partner in the enterprise of Manifest Destiny.”

Television Tonto (played by Jay Silverheels) is so earnestly subservient that his pidgin English reply to any instruction from the Lone Ranger is “Me do!” This line was so often repeated that it became a behind-the-scenes joke between Silverheels and Moore. Tonto acts as a mediator between Native Americans and whites, explaining to whichever tribe is thinking of attacking the settlers that white law is best for them as well. “Me want law here too — for all.”

Tonto’s Uncle Tomism became a favorite bitter joke in the later 1950s and 1960s, the period when revisionist Westerns really began taking over the film genre, especially with John Ford’s conversion in the form of *The Searchers*, *Sergeant Rutledge*, and *The Man Who Shot Liberty Valance*. As Fitzgerald tells it:

In 1958, *Mad* magazine presented a two-page panel by cartoonist Joe Orlando:

RANGER: Indians! Indians all around us! Well, Tonto, ol’ Kimo Sabe, it looks like we’re finished.

TONTO: What do you mean, “we”?

Later versions of this joke substituted, “What do you mean ‘we,’ white man?”

...*The Lone Ranger* became a target for comedians, especially Lenny Bruce, who even made jokes about Tonto’s being sodomized by the Ranger. Bill Cosby also satirized the absurdity of Tonto’s subservience, noting that the last time Tonto went into town, he was brutally attacked by settlers....

RANGER: Tonto, you go to town.

TONTO: You go to hell, Kimo Sabe!

RANGER: I want you to get that information.

TONTO: Information say Tonto not go to town. That what information say.

Given that pop culture inheritance, it’s clear that there’s no non-despicable way to present *The Lone Ranger* as a straightforward, light-hearted revival of the ol’ radio and TV shows, though many critics and social media commentators call for it and are outraged by the way Verbinski has slandered their hero. As Devin Faraci contends in a pan of Verbinski’s film called “Who Ruined That Masked Man?>:

This isn’t the work of people who love the character — it’s the work of people who are ashamed of what they are doing, who snark at and pick at the mythos with every possible opportunity. At the end of the film The Lone Ranger sits atop Silver (this is 2013, so we even get an explanation for why he’s named that, by the way) and the mighty beast rears up on his hind legs, rider and steed briefly consumed by the glory of the Western sun and the Ranger cries out, “Hi ho Silver, away!”

And then Tonto looks at him all bug-eyed and says, “Never say that again.”

That’s the last bit of the movie featuring The Lone Ranger — a direct leg sweep at one of the character’s iconic moments. I hate *The Lone Ranger* as much as *The Lone Ranger* hates The Lone Ranger.

He’s right. It’s safe to say that Verbinski’s not interested — never was remotely interested — in an admiring, nostalgic revival of the 1950s iteration of the Lone Ranger, a wholly appalling character. He begins his film in the spirit of the reimagined Tonto’s “You go to hell, Kimo Sabe!” and tries to find his way from there, wandering among the touchstones of Western genre revisionism.

Of course, that revisionism makes Tonto himself a problem, especially with his terrible pidgin English, his most recognizable trait. Verbinski’s film grapples with that, too. Unlike Tonto, the other Comanches in the film are bilingual and speak fluent English, and they reject Tonto as a “broken” figure, probably mad. Tonto is even more “lone” than the Lone Ranger, and his broken English seems to be part of what ails him. As always in recent Verbinski films, the convoluted plot rests on the erratic actions of an addled figure (invariably played by Johnny Depp) who’s so deeply immersed in performance and roleplay that his identity remains in question — Jack Sparrow in the *Pirates* films, the lizard who takes on the Western hero persona of Rango in *Rango*, and now Tonto.

The clearest indication of Verbinski’s approach to the ridiculous and troubling Tonto character is in the frame story. The movie begins in the 1930s with a kid in a Lone Ranger outfit going to see an American history exhibit in a cheesy carnival setting. Behind display windows, amidst taxidermied buffalo, is a “Noble Savage,” a stooped elderly Native American with a slight potbelly who is also apparently stuffed. He’s represented as one with the animals slaughtered in order to make the West safe and comfortable for

white settlers, immobilized and ennobled in a museum-like setting arranged to convey history as a romantic adventure narrative. Suddenly the Noble Savage's rheumy eyes shift slightly to the left, startling the kid and the audience. We know then that we've found Tonto, still alive, but in an uncanny way that makes him a figure with uncertain status in the film's reality, at the very least an "unreliable narrator."

Having Tonto break out of his historic immobility and minimal expressiveness to provide a verbose, overcomplicated counter-narrative to the traditional Lone Ranger is a great idea. But its execution is another question.

The kid attending the exhibit is looking to have his favorite hero-saga of the West confirmed, but Tonto tells him a version of the Lone Ranger Story that he finds highly unsatisfactory. Throughout the film, the kid repeatedly chimes in with objections ("But aren't you supposed to be the good guys?" "You mean they all DIED?!"), and Tonto generally agrees that the story isn't advancing in an ideal way.

The kid stands in for the audience, so you're warned early on that you're not going to get your grandaddy's Lone Ranger. Tonto's erratic attempt to narrate a Western is no audience-pleaser, even with a few laughs here and some big action there. Verbinski goes so far in making this counter-narrative messy that it's impossible in a reasonable amount of time to summarize all the storylines or describe all the characters or acknowledge all the genre film references that inform the proceedings. The film seems deliberately overstuffed and unsummarizable.

As Tonto, Johnny Depp is hardly recognizable under a mound of facial wrinkles meant to evoke Dustin Hoffman in the Arthur Penn film adaptation of Thomas Berger's *Little Big Man*. This evocation is a sensible choice, because *Little Big Man* (the book more successfully than the film) combines hilarity with tragedy, tall-tale-telling with an insistence on eyewitness historical accuracy, all involving an unlikely cast of thousands including some of the most famous figures of the West, such as Wild Bill Hickok, Calamity Jane, and General Custer.

Tonto's a rootless wanderer in the West, not so much by choice as by cataclysmic circumstances that shoved him across racial lines. He's a Comanche without a tribe, seeking revenge on the white man who oversaw his tribe's massacre. This is a break from the Tonto backstory on TV, in

which his tribe is massacred by a different, more warlike Indian tribe. In both cases, however, Tonto is tormented by guilt over their fate. Tonto crosses the color line to partner with a white man he can use as a tool to exact revenge.

And the Lone Ranger is a tool, all right.

John Reid comes from the East, duded up in a fancy suit with Locke's *Second Treatise of Government* under one arm, a clear reference to the naïve Eastern lawyer played by Jimmy Stewart in *The Man Who Shot Liberty Valence* — a character who, as an advocate of the "progress" that will prove to be tragic for all, upsets the balance of the still-wild Western community. Reid is a hapless fool, and his fanatic dedication to the *Second Treatise*, one of the Founding Fathers' favorite texts, is a startling symptom of the film's tendency to represent the American experiment as a disastrous failure from its inception. *The Second Treatise*, you will recall, is the Enlightenment work arguing that man exists in the state of nature and enters into a social contract to better protect his property, which includes himself, his liberty, and his labor, as well as his material possessions. This conceptualization of human existence in terms of property rights led Marxist scholars to contend that Locke laid the groundwork for bourgeois capitalism, and that his *Second Treatise* can be read as buttressing the view that all relations are transactional relations.

Lest you think I'm reading too much into a foolish character and the book he happens to be carrying, Verbinski insists on its importance throughout the film. Latham Cole (Tom Wilkinson), the arch-villain railroad baron, quotes chapter and verse from the *Second Treatise* as well. Tonto spends most of the movie trying to figuratively pry the *Second Treatise* out of John Reid's hands. And in the end, the Lone Ranger and Tonto ride off proudly as justice-seeking outlaws.

Reid and Tonto meet while riding on the same train, the train owned by Mr Cole, whose steady takeover of the Western territory is measured by the progress of the railroad building we see in the course of the film. Whereas Reid is a respectable passenger, Tonto is a prisoner in custody of the sheriff. ("What's your crime?" "Indian.") Tonto's chained to the very man who led the massacre against his tribe, and he's just seizing the opportunity to kill his enemy when who should come blundering in demanding respect for law and order but John Reid, the incipient Lone Ranger himself.

What I am convinced of is Gore Verbinski's consistently wild, imaginative, and ambitious authorship, which appears so strange in its contemporary Hollywood blockbuster form that it goes virtually unrecognized.

Considerable confusion follows, leading to the escape of the villain and his gang and the first runaway-train sequence of the film, during which everything goes wrong for Tonto. A second runaway-train sequence serves as the movie's climax, following the logic of Buster Keaton's *The General* in that everything goes right for the protagonist. Or rather, protagonists, for Tonto and Lone Ranger are finally united in purpose. All the forces of nature, of physics, of magical synchronicity seem to align in cooperation with them. Bullets unerringly find their mark, and the utter destruction of the train obliterates the evildoers while leaving our heroes miraculously unscathed.

In between those train sequences is a maddeningly complex narrative featuring a preternaturally intelligent horse, a spunky widow, a fatuous General Custer type, an ivory-legged brothel madam, and herds of cannibal rabbits.

That these narrative elements "don't hold together" is an understatement. The film is a strain to watch, the editing rhythms jarring, the humor awkward, the violence lovingly extended and dwelt upon. A lot of mental work is spent forcing the pieces to fit.

It becomes a major irritant, the way the film's frame story provides a running commentary on the unsatisfying flashback narrative. Tonto finally gives up his story by simply handing it over to the perplexed kid to finish. Then he puts on a rusty old "dude" suit and walks off into the magnificent Western desert, slowly shuffling away from the camera like an ancient Charlie Chaplin, until he's a small dark blot in the background. But before you can say, "Oh, Tonto is trying to return to un-Lockean nature again," you have to recall that you're looking at Monument Valley, the legendary location of John Ford's great Westerns. So,

goddammit, Tonto is walking back into the Western genre film, and he's giving the narrative to us, the filmmakers and viewers, to interpret and sustain as we wish.

If I wanted to get fancy, I could account for Verbinski's narrative approach by applying Andrew Dix's argument from "Escape Stories: Narratives and Native Americans in Sherman Alexie's *The Lone Ranger and Tonto Fistfight in Heaven*." Dix claims that Alexie uses various strategies to resist the type of monolithic and authoritarian account characteristic of US histories regarding Native Americans. These strategies include multiple narrators, dialogic storytelling strategies, dispersed identities, parody, open-ended constructions, and many little narratives that don't add up to a unified whole:

The paradox of Alexie's texts is that, even as they initiate narration, they are liable to leave it incomplete, unfulfilled, or encountering its material limits.... Rather than ending in some significant revelation ... they just exhaust the chronological sequences with which they have been concerned.

But I don't want to get that fancy, because I'm not convinced myself. What I am convinced of is Gore Verbinski's consistently wild, imaginative, and ambitious authorship, which appears so strange in its contemporary Hollywood blockbuster form that it goes virtually unrecognized. If you see *The Lone Ranger* and actually pay attention to all the maddening elements that resist fitting together, you might find it's a more enjoyable film to think and talk about than it is to watch. I am reminded of the wonderful Mark Twain quote about Wagner's music: "It's better than it sounds."

The Lone Ranger is better than it screens. ■

Silent Majority Music

To put it most unkindly, trap music is adult contemporary for the prosumer age.

by Gavin Mueller

BACK IN APRIL, one of my favorite minor internet celebrities, Hennessy Youngman, announced his foray into deejaying. Excited, I downloaded the mix and put it on my iPod to enjoy on my commute. As I cued it up, Hennessy's trademark "What up, Internet?" popped into my headphones amid an air raid siren, hyping me up for ... a Foreigner power ballad? What was going on here? I should have been more prepared: after all, this was Hennessy, AKA Hen-rock Obama, a master of irreverence, and his mix was entitled *CVS Bangers*.

Hennessy's work has long used hip-hop-style provocations to highlight the pretensions of the art world. His Art Thoughtz video lectures mix street slang with High Theory jargon, outfitted with blunt (and possibly blunted) detachment and cartoon-character baseball caps. A sample from one of my favorites, "Post-structuralism, what the fuck is that?" illustrates his technique nicely: "You be like, 'This painting is truly transcendental,' and poststructuralism be like, 'Motherfucker, you can't stand outside of history, the fuck you smoking on?'" I have to admit, it's a better lecture on poststructuralism than I've ever managed to put together.

CVS Bangers extends Hennessy's incisive détournement techniques into popular music. Hennessy draws from the eighties soft rock ubiquitous in checkout lines nationwide: the gentle synths, gated drums, and grim yet innocuous bleating that passed for singing during the Reagan years. Hennessy's joke is to stuff the oversized shoulder pads of adult contemporary into the youthful structure of a hip-hop mixtape. Airhorns resound over the climactic key change in Steve Perry's "Oh Sherrie"; hockey-hair-gone-comb-over fist-pumpers like Glass Tiger's "Don't Forget



Me" are punched up with squelched samples of *More Fire* like we're popping molly instead of stuffed jalapeños.

Hennessy's first *CVS Bangers* mix hit the concept, but the sequel holds together much better in execution. I don't know if Hennessey did his research, or if he merely relied, as many DJs do, on a carefully cultivated ear, but he's nailed his object of inquiry here. Every song in *CVS Bangers 2*, with a couple exceptions, came off the assembly line and into the checkout aisle in the period from 1984 to 1987, with the majority released in 1986. Adult

Contemporary — a format that combined easy listening with gracelessly aging Boomer rockers and New Wavers moving into more lucrative slow-dance territory — came into its own as a format at exactly this time. What was it that made 1986 such a golden age for middle-of-the-road parental jams?

The economic restructuring of the 1980s was the business in front of Kenny Loggins' party in the back. The music industries were undergoing dramatic changes that would continue for decades. Most importantly for our story, the deregulation of radio ownership, which would reach a crescendo

in the 1996 Telecommunications Act, kicked off in 1981. According to a report by the Future of Music Coalition,

Until 1981, the FCC required stations to vary [their] programming each week, including establishing time for community affairs programs and opposing voices. After a rule change in 1981, however, diversity was defined merely by the number of stations.... True diversity, it was argued, was achieved through a multiplicity of sources, rather than within each source.

In other words, the FCC removed diversity requirements, presuming that if one company owned many different stations, market mechanisms would kick in. Station owners would naturally want to diversify their assets, giving listeners a range of options the way God and Reagan intended: through the pursuit of self-interest, not through state interference.

Of course, it didn't work out that way, mostly because that was never really the intention. Local stations, a crucial part of any regional music scene, were gobbled up by large media conglomerates, and programming increasingly centered around big-budget major label stars. Pop scholar Will Straw characterizes the sea change in radio as reaching "unprecedented homogeneity by 1984."

The consolidation of radio ownership accompanied other forms of restructuring. In 1982, Billboard, the company charged with tracking music popularity, altered the way they calculated the Adult Contemporary chart. Instead of using a formula derived from record sales and airplay, the AC charts would only factor airplay into popularity. This gave the record industry a much tighter grip over what charted: with only a handful of corporate radio station owners to influence (or bribe), executives could cultivate a carefully controlled niche, immune to the unpredictable tastes of the record-buying public. Severing record buyers from the Adult Contemporary charts had demographic implications as well. Record buyers were predominantly young and predominantly male. An airplay-only chart would, according to industry theory, reflect the tastes of an older demographic that skewed female.

Such an audience would be a marketing sweet spot. Since the early twentieth century, marketers understood that women were responsible for the vast majority of purchases of consumer goods. Adult Contemporary, which had already absorbed Easy Listening, was thus poised to take over the

playlists of grocery stores and pharmacies everywhere. In doing so, it supplanted the long-reviled Muzak (originally conceived not only as part of the architecture of shopping but also as a balm for unhappy workers), imbuing the soundtrack of mass-market consumption with that bit of edge that baby boomers, now pushing shopping carts and strollers, had long been accustomed to associating with authentic emotion.

The idea that radio reflects audience taste is largely bullshit; instead, radio playlists are, like much of the music industry, a bunch of middle-aged men constructing an idealized fantasy listener whose tastes they then must appeal to. In this way, Adult Contemporary became the musical equivalent of the Silent Majority, those magical white middle-class millions whose supposed interests, though never vocalized, must always be appealed to. Echoing this, Billboard Magazine triumphantly claimed the mantle of "Vanilla" for the format, noting that ice cream's least exciting flavor is also (according to industry research) the perennial favorite. At least they weren't so obvious as to point to the popularity of white bread!

Hennessy makes this racial coding explicit in his mix: while he draws from instantly recognizable mid-eighties hits from white artists like The Moody Blues and Steve Winwood, he doesn't include anything from the leading lights of Adult Contemporary, Whitney Houston and Lionel Ritchie, black artists whose successful crossovers to the mainstream (i.e. that Silent Majority of white listeners) were predicated on polishing off anything too recognizably black in their music. Instead, Hennessy, as he so often does, dramatizes the racism at the heart of the Adult Contemporary genre, which, just like whiteness itself, accepted members only to the extent that they could assimilate to its values — values, as the cult YouTube series "Yacht Rock" hammered home, like smoothness and inoffensiveness.

MAKING FUN of big-hair corporate pop from a generation ago is hardly a challenge for a critic as incisive as Hennessy. But *CVS Bangers* is not really a skewering of Adult Contemporary; indeed, there is a lot of gentle, even begrudging affection for this cheese, from listeners and Hennessy himself. "Racism — but so good!" he booms over

Baltimore's "Tarzan Boy." In *CVS Bangers*, the major target of satire is the form, not the content: the current trends in club deejaying. And 1986 — an alternate 1986, if you will — provides another key to interpreting Hennessy's mix.

In 1986, a hip-hop album went to number one on the charts for the first time. The Beastie Boys' *License to Ill* proved that hip-hop had seeped into American youth culture, even into the suburbs. Of course, it helped that the Beastie Boys looked a lot like those suburban kids, and had songs about throwing ragers in your parents' house. This was the obverse of Lionel Ritchie's achievement: the Beasties crossed over by presenting the rebellious aesthetics of hip-hop shorn of its race- and class-based defiance. This success was replicated by Vanilla Ice, and arguably Eminem as well — after all, Em's biggest hits were mostly about MTV celebrities and spousal abuse; his working-class backstory was something pushed by his management more than by his music. These three acts have four of the top ten best-selling hip-hop albums of all time; Eminem holds the top two spots.

This switching of black faces for white ones (which, I want to stress, should be blamed on the industry, not the artists) has only intensified. From Macklemore's NPR-liberal wish-fulfillment rap to Mac Miller's dorm-ready stoner anthems to Lil Debbie's staging of postmodern minstrel shows, the past few years validate Eminem's prediction in "Without Me" of an army of white rappers following in his footsteps (his prediction that popular culture would feel empty without him was far less accurate). Appropriation ("love and theft," as Eric Lott puts it) is a story as old as American popular music itself, and it's affected the other elements of hip-hop as well, including DJ culture. Here's where Hennessy's biggest barbs find their mark: the trendy club subgenre known as trap music.

"Trap" comes from southern street slang, a wry way drug dealers refer to their workplace. T.I. named his breakthrough 2003 album *Trap Muzik*; on hustler anthems like "Doing My Job" and "Rubber Band Man" he makes a virtue of the necessities of street life. Young Jeezy is a bit more overt about hustlers' stark choices in his "Trap or Die" mixtapes, and Gucci Mane crafted the term into a badge of honor with such mixtape series as "Trap House," "Trap Back," and "Trap God."

As a genre — or to be specific, as a sound — trap crystallized in two ways. First was the ascension of

producer Lex Luger, who reached mainstream attention by sending Southern hip-hop's tricked-out bass drums and skittering hi-hats into Wagnerian levels of bombast. Second was the mix-tape mavens Trap-a-Holics, who curated their mixes with "drops" (small vocal samples that serve to brand DJs' mixes) of a booming white-guy voice thundering "Real trap shit!" and the now-legendary "Damn, son, where'd you find this?"

Music styles that, like hip-hop, are connected to some kind of grass roots, are fluid, with constant incremental changes building into epochal ones. When they move from their base audience, it's often because a particular conjuncture of sounds resonates with a new crowd. But here is where a kind of misrecognition occurs: for the neophytes, the style is *this one way*, frozen in time. The give and take between music makers and their core followings, the push and pull, ebb and flow that built disco, hip-hop, house, reggaeton, and so on, is interrupted by listeners who in their enthusiasm don't always understand the history or sociology of their genres. They don't have to: when music becomes a commodity, it can travel worldwide, as all commodities do, severed from any knowledge of the conditions of its production. Genres cease to be grassroots social worlds, and instead become something more like brands: mere sonic surfaces rather than deep historical processes.

When a genre develops a signature sound, it's ripe for the plucking by interlopers. Instead of having any real connection to the communities that develop musical styles through the dialectical movement between music makers and their core audiences, an outside producer just has to have a decent set of ears and a computer, and can start cranking out reasonable facsimiles, like factories in China churning out fake Coach purses indistinguishable to everyone but connoisseurs. Even if you can tell the difference, the functional parts are close enough. Today's Chinese pirate manufacturers pride themselves on their quality goods, just as today's kings of musical appropriation do.

This is how a new definition of trap arose, one tied to EDM, or Electronic Dance Music, a term whose anodyne unwieldiness belies its coinage by academics — dance music fans ignored the name for years. EDM is now the branding initiative accompanying the latest wave of the mainstreaming of electronic music in the US (remember electronica in the late nineties?).

As you might guess, **EDM** trap has little to do with the off-the-books hustles of the urban poor. Rather, it's a largely middle-class affair, slapped together by suburban teens and college sophomores; using dubstep as your *Call of Duty* soundtrack is so 2009. Today's trap retains most of the sounds of underground hip-hop: the booming 808 bass drums, the hi-hats, and of course, the drops, now deployed in that irritatingly knowing way that characterizes so much digital culture. The answer to "Damn, son, where'd you find this?" is always the same: you downloaded it off the internet.

But there's one important sound that has been removed in this refurbishing process: **EDM** trap is mostly instrumental. By dispensing with the rapping, **EDM** trap effectively silences the black voices that kept the style connected to the stories of the American lumpenproletariat. It's the auditory equivalent of kicking out a poor family so you can live in their classic brownstone. In the words of one of the dance underground's sharpest figures, Rizzla DJ: "Damn, son, put that back where you found it!"

Hennessy is hip to the easy appropriation that characterizes **EDM** trap: after all, the genre's biggest hit, Baauer's "The Harlem Shake," sampled his voice without attribution for its hook and title, and eventually landed on *The Ellen DeGeneres Show*. In *CVS Bangers*, Hennessy gets his revenge, connecting trap's empty dudebro swagger to the schmaltz of Sad White Guys like Take That and Rod Stewart. He drops a "Damn, Hen, where'd you find this?" over Don Henley's "Boys of Summer," one of the most overplayed songs of the late eighties. What's underground or obscure about a genre as enthusiastically new-economy commercial as trap?

So, to put it most unkindly, trap is the adult contemporary for the prosumer age: instead of a top-down strategy of gentrifying the airwaves, now the structures are in place so that such appropriation appears as spontaneous and driven by fans, even though the commercial internet runs on corporation-cultivated virality. While AC continues to do the vital work of soundtracking our shampoo purchases, viral video crazes like the *Harlem Shake* become an important part of austerity-era work discipline: every middle manager's "great idea" for a morale booster is to corral the office into ironically flailing around in front of a webcam.

That trap is as safe and gentrified as eighties

adult contemporary probably isn't that much of a leap for your average jaded music fan or skeptical leftist. But let's take Hennessy's mix where he wants us to go: the store. Here's the manifesto that accompanied the first mix, a sort of rough draft for the opus that is *CVS Bangers* 2:

CVS BANGERS IS THE AUDIOSCAPE FOR WHEN YOU'RE BUYING TAMPONS OR A [12-PACK] OF CONDOMS, A SAMPLING OF THOSE MAGIC TUNES THAT PLAY WHEN YOU'RE CONTEMPLATING HOW RIDICULOUS YOU WOULD LOOK CARRYING 24 ROLLS OF [TOILET] PAPER ON THE TRAIN, THOSE BITTERSWEET TUNES OF YESTER-YEAR THAT SKIP THROUGH YOUR MIND AS YOU READ THE NUTRITIONAL INFORMATION ON THE BACK OF A BOX OF FROZEN PIZZA AND OPT FOR A PINT OF ICE CREAM INSTEAD, THOSE SPECIAL DITTIES THAT ACCOMPANY YOUR SMASHING THE BAR CODE OF A CAN OF RED BULL AGAINST THE SCANNER OF [A] BROKEN SELF-CHECKOUT MACHINE. CVS BANGERS IS COMMERCE ITSELF, AND COMMERCE, MY FACELESS INTERNET FRIENDS, IS BEAUTIFUL.

The "you" in this, as in so much of Hennessy's work, is that art-school hipster type, the type of person who would go to a club where they might hear a few Baauer tracks — or better yet, the kind of person who would snicker at the middlebrow bro who actually likes Baauer. But Hennessy's right: even if you're too much of an aesthete for trap, and no matter what subculture you identify with, you're probably getting your prophylactics and empty calories from somewhere that plays "Back For Good" by Take That a dozen times a day.

For me, this raises an interesting problem: how sub- or counter- are our cultures? Sure, we can develop our tastes and social networks in any number of directions, espouse any number of subversive political positions, make radical art. But when it comes time to meet necessities, we all rely on lowest-common-denominator mass production and mass consumption. Whatever show you went to, however face-meltingly avant-garde the club's tracks, you're going to end up rehydrating and caffeinating with mass-market goods. Subcultural capitalism seems less like an alternative to corporate capitalism, and more like its arts district. What Hennessy's mixes suggest is that at the level of social reproduction, as with so much else, we haven't really left the Reagan years. ■

Against Tipping

So long as the karmic tip jar clouds our perceptions, the insane injustice of an underpaid labor force reimbursed through only the guilty feelings of their coworkers will persist.

by Ian Svenonius

WHEN YOU'RE TRAVELING, it's easy to see the origins of modern tipping. A tipped service in a foreign land is typically performed by someone who is not an employee of an establishment but works either as an adjunct or as a free agent — a shoeshine boy, for instance. In a "third-world" city, a self-styled tour guide might be tipped in return for leading a group of sightseers. In Italy, a Neapolitan street urchin might offer to protect a parked car in return for a gratuity.

In both cases, the inference is clear: if you don't employ me, I will hurt you. This thinly veiled extortion is the subtext to much tipping: if the propertied individual doesn't comply with the demands of the semi-employed, something terrible might happen to them or their things. So tipping began essentially as a way to stave off violence by the indigent, forgotten people; it is a social contract adhered to by the privileged class who fear and disdain the less fortunate and are aware of the failure of their own class to create equity.

But tipping in the United States is something more nuanced. The people who are tipped in the US comprise an ever-expanding number of employed professions. Employers recognize the tipped individual as a great boon to the business: someone who needn't be given benefits, a living wage, or employment security. They are essentially a guest at the company who must comport themselves appropriately for monetary reward, courtesy of the customer. And this reward can be large. The tip,



though it is a ghost fee, is actually a fairly strict amount — 15 to 20 percent of a tab, \$1 per drink — and is essentially mandatory; a failure to pay will result in public shaming or even fisticuffs. The tipping scale varies wildly and is determined by race and class factors. Cute young white people are often given the desirable, highly visible jobs that tip well at restaurants and bars, while Central American immigrants work for trickle-down tips in the back.

In the United States, one is required to tip one's waiter, bartender, taxi driver, bellhop, barista, sandwich artist, valet parker, coat-check, hairdresser, barber, driver, masseuse, pedicurist, strip-tease artist, dogwalker, hotel maid, concierge, and so on. A tipped job is typically one that is tied to a very quantifiable service done for a particular person or group. It is often linked to the idea of a "luxury" service as well (an espresso could be made at home, so you must tip if you are buying it while out). In this sense, it is maintained by the consumer as a guilt fee.

Meanwhile, a bus driver on a daily route will not be tipped, for example, though he or she is working hard to serve the public. Policemen are not tipped except in the form of donations by ass-kissers to the "fraternal order" in exchange for a sticker that is supposed to confer preferential treatment by officers. Public servants are not tipped. The tipped individual is providing a personal, private service.

Luxury service is therefore the crux. Tipping is the onus of the purchaser who pays the wage of the worker on top of the cost of whatever service provided, which goes to the business itself.

If one ever tries to discuss tipping in America, one is immediately met with a dismissive and lofty: "Well, I tip really well because I was/am part of the service industry." Like veterans of the armed forces, the "service people" are bound together in a cult whose members have experienced the true nature of work servitude and the demeaning, harrowing experience it represents. The fellow warrior conspicuously tips well in a great display of homage and respect. Service implies a subservience but also a noble sacrifice. The service industry workers prepare our sandwiches nobly, submitting to our personalized mayonnaise requests. Almost all Americans have worked in the service industry at some point and many will only ever work in it.

Tipping for these service-industry comrades is outside of money. It is an alm or genuflection; a

gesture of humility to the tippee designed to recognize and rehabilitate the degrading nature of their work, and also to connect with them spiritually. The camaraderie and smile dispensed by the wait-staff on receiving a generous tip after a suspenseful meal service brings the light of spiritual nourishment to the tipper, who can rest well that night. The Neapolitan street urchin's implied violence still hovers over the interaction, but now the justice and retribution feels more karmic.

Just as oblations to the poor will puff up one's sense of self, "tipping well" — 20 percent or more — is a measure of one's personal decency. People often boast of their tipping. The least attractive thing one could do in the US is tip stingily. That is for old, religious people or clueless foreigners. Conversely, if one leaves a tip at a coffee bar in parts of Europe, the barista looks insulted and confused, as if you were treating him or her as a beggar; are you some kind of playboy show-off who throws his money around? Obviously, these people have never seen the Scorsese film *Goodfellas*, which portrays mafiosi in the sixties tipping wildly in a display of rampant virility.

People fall over themselves to brag of their tipping prowess and, despite the inherent and obvious injustice of a massive, scarcely-paid workforce scraping and begging for a wage, there has yet to be a true revolt of tipped employees. In a

lottery-minded, *American Idol* culture, workers are loath to give up the chance for a Saudi Sheik to tip them a million dollars as reward for preparing a great smoothie. And there are palpable dividends; tattooed bartenders are bad-boy sex symbols that determine who gets served and when. Their management gives them an allotment of courtesy drinks which they can hand out to high-tipping customers or prospective lovemaking partners. Their favor is therefore highly sought by bar-goers due to their high-handed, undemocratic authority.

Tipping therefore has many purposes besides being an exploitative business model. It either shows affinity for comrades in the service industry, or is a duty done reluctantly by the bourgeoisie to stave off insurrection. It absolves sins and wrongdoing, so it's religious. It is a guilt fee paid by the ill-consciened for the immoral act of indulging in luxury. It is an act of dominance as it displays power through capital, and also an act of submission — a paid tribute offered to the service person. All of this is erotic and exciting, which accounts for the huge popularity of tipping.

Tipping makes us into slaves and masters simultaneously in a confused, kinetic, and highly kinky social model. The service industry model carries over into the bedroom with the modern emphasis on oral sex and "servicing" one's partner. And it is cross-cultural; the service industry accounts for



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most jobs in the post-industrial West — up to 80 percent in the US, a country that has exported most of its industry to cheaper places and mechanized its farms. In fact, the United States, more than most nations, is almost entirely dualistic; on one hand there is the bourgeoisie or “middle class,” and on the other, the service industry.

But even this binary is blurry. Middle-class is a designation worn by all Americans, except possibly some rappers who claim to be rich. Warren Buffett, for example, likely calls himself middle-class. Politicians pander to a mythic middle class in their stump speeches. In the United States, middle-class has been stripped of its old meaning (owners of capital, wealthy, propertied non-aristocrats) and come to mean someone who is positioned in the middle, between the very richest person and the very poorest person. All but two people in America are middle-class.

Of course, the defining idea of a middle class is not really one’s bank balance but instead a set of values. It is a social group with concern for the results of their actions. “Middle-class” was an insult during a more class-conscious era, grumbled in France with proletarian disdain at those who bartered the present for an imagined future.

Middle-class behavior included investing in stocks, buying insurance, having real estate, worshipping work, loving science, and practicing austerity despite having wealth. Irreligious protestantism, in short. Healthy eating, temperance, decorum, and sensible behavior are all bourgeois to a proletariat that revels in the moment, unfettered by concerns about interest rates and the “slow dime.”

To the middle class, both the lower and upper classes (titled aristocrats who have inherited their wealth) are despicable, due to their disdain for work and the Protestant ethic, and for the guiltless joy they derive in sensual pleasures such as drunkenness and fornication. Nations or communities which are poor or never had a bourgeois revolution are marked by orgies of revelry quite unknown in more economically prosperous places. These places are incomprehensible to the American sensibility, which views them as savage, brutal, and insane. The United States’ foreign policy is essentially to make people American through capitalism or kill them. They are better off dead than living any other way.

The American Revolution was, of course, along with the French Revolution and the English Civil War, a Protestant, masonic, capitalist revolution. It

was, as much as the American-Israeli-propagated Middle East violence, a clash of socio-religious sensibilities. On one hand, the Calvinist capitalists who worshipped industry, and on the other, the clergy-allied landed gentry who saw work as man’s curse. When the masonic forces prevailed, it meant that a growth-oriented, work ideology would also prevail.

Though American capitalists were slave owners who derived much of their wealth from forced, unpaid labor, they revered the concept of work. They presented themselves as personally industrious, and from Jefferson’s and Washington’s achievements, we can see that some of them were. Their revolution laid the groundwork for a nation which, in many respects, is still a work camp.

Immigrants come to the United States, called the “land of opportunity,” typically for the promise of making money, and not for the enlightened social values or the quality of life. When one goes to Brooklyn, the housing blocks and the trains remind one that, in the industrial era, New York City was essentially a concentration camp of foreign textile workers who, like many of the less visible employees in the service industry, were barely paid.

They, too, were placated by the idea of chance. The chance wages of the tip jar are mystical, undefined, practically psychedelic; therefore they are more attractive than the cold hard reality of the paycheck. The tip jar is therefore a symbol of worker passivity. This modern condition of a giant, impoverished “middle class” of service industry workers conspicuously trading generous tips with one another in a prolonged orgy of self-congratulation and simulated affluence must end. As long as the dream world of nebulous “karma jar” income pollutes the atmosphere, no one can reconcile the insane injustice of an unpaid labor force reimbursed through the guilty feelings of their coworkers.

Can you imagine 1920s’ steelworkers in Pittsburgh, their faces stained with soot and grime, paying each other’s wages while their mill bosses pleaded poverty? That’s essentially what’s happening now in a merry-go-round circle-jerk of dream economics. When the first barista refuses the enforced gesture of happy-go-lucky largesse by their off-work co-worker, then the whole stinking system will collapse in a mound of idiocy and be revealed for the indentured servitude that it is. ■

Degendering Value

Gendered conceptions of credit and reward are written into the structures of intellectual property law.

by Anne Elizabeth Moore

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OR AT LEAST A DECADE, legal scholarship on gender bias in intellectual property rights has acknowledged the engagement of almost no one. Every academic paper published notes how small the field is; each researcher cites the two or three others they can; conferences feature the same key figures annually. Intellectual property rights is not a policy area to which women have paid much attention; nor have their cheerleaders, feminists.

Widespread feminine disinterest in this particular form of law is matched nearly equally by its disinterest in women. Current and historic protection under intellectual property legislation has restricted access to economic and cultural viability along gender lines. In recent decades, similar bias has been found and corrected in civil rights, family and employment law, and domestic violence legislation. IP laws sit at the crux of several debates raging right now: concerns regarding women in the literary arts, for example, and the wage gap. The paucity of strong female roles in TV and film. Gender bias in post-recession job hiring. The skimpy costumes of female characters in comic books. The global economic condition of women.

As women, we can no longer pretend that certain laws, because they do not adequately protect us, do not affect us. Under neoliberalism, poverty has grown more severe for women, as well as for trans* and non-binary gender folk worldwide. IP laws don't just quaintly reflect traditional gender roles, they reinforce them, valuing certain forms of cultural production but devaluing others. These values are then spread



around the world through US media exports.

There is no body of legislation more vital to the spread of capital worldwide than intellectual property rights laws. According to the US Congress, they accounted for 19 million jobs in the US in 2012 – 30% of all American jobs, according to the Office of Management and Budget. Protecting the IP industries, then, has become ever more vital to the logic of neoliberalism. Indeed, the logic seems to multiply, allotting ownership not only of products produced and of the means of production, but of the notion of producing in the first place. Note that the Berne Convention demands US copyright law follow US cultural production wherever it is distributed. Signing Berne is a prerequisite to membership in the World Trade Organization,

which boasts 159 member states and governs overseas international trade throughout most of the world. Older, more hidden, and more intrinsic to the mechanics of global trade are patent laws, covered by the 1883 Paris Convention and the more recent WTO Agreement on Trade-Related International Property Rights, which dictate, conform to, and otherwise predetermine the bulk of the world economy.

IP laws – copyright, in particular – are presently under scrutiny, and new legislation will soon be drafted. Arguably necessitated by the globalized digital age, our primary order of business in updating IP rights should be eradicating barriers – all gender barriers, as well as those of race, nationality, and physical ability – in access to

The Copyright Act of 1976 betrays, like its predecessors, a perceptible bias for traditionally masculine modes of production, fostering an environment where masculine producers are reinscribed in the cultural imaginary, and feminine figures presented as commodity when presented at all.

opportunity. Even for those who would resist globalization. Even for those who plot its demise.

COPYRIGHTS, the most visible form of IP law, are the easiest place to start. They don't actually protect ideas; they cover only ideas expressed in certain forms and intended for public consumption. These aspects are key and we'll get back to them in a moment. Protected works must be made by an identifiable creator or set of creators, and indeed the length of time that protection was guaranteed was originally established around creators' imagined lifespans. New eligible works are protected without registration,

although registration is available and makes disputes easier to resolve. Finally, to the surprise of my art-school students, the Copyright Act of 1976 does not mention commerce at all. It only grants authors the right to distribute their work — meaning, the right to decide whether to do so for money or not. The copy *right*.

That's the theory, at least. In practice, many aspects of the law have been weakened, diluted, or effectively trammelled into disuse by an onslaught of contradictory rulings and new legislation.

Terms of protection are the most ridiculous of these updates. An original intention of copyright was to limit the period during which an author retained exclusive control of a work, so that a healthy and active public domain would always be available, a free storehouse of ideas for artists who wanted to work more closely with influential materials. Yet whereas original term limits were 14 years total — reasonable to my mind, as an author — protection currently extends 70 years past the death of the author. That's for mere humans: works of so-called corporate authorship — an awkward, recently established fiction that skirts the original sense under which creations would be eligible — are protected for 120 years after creation or 95 years after publication, whichever comes first.

These term-limit extensions have led to the preposterous situation where the public domain admitted no new works in 2013, and no more will be admitted until 2019. Last year, a new law even allowed certain entities the right to snatch works out of the public domain once they had been admitted to it.

Falling into disuse of late has been the fair use provision — common law before 1976, then included in the new act — intended to allow for the reuse of copyrighted materials for purposes of criticism, comment, news reporting, education, scholarship, or research. Unfortunately, fewer understand the range it covers than understand copyright itself, and it's largely been forgotten about and is rarely upheld in the courts. This spring's *Cariou v. Prince*, in which photographer Richard Prince was affirmed the right to re-shoot images as commentary, may be an early indication of the revitalization of fair use; Thomas Forsythe's 2004 victory in a Mattel lawsuit offered another early glimmer.

In disputes over the ownership of cultural products, the courts in recent decades have most frequently come down on the side of corporate

producers and owners — until the 1998 Digital Millennium Copyright Act (DMCA) incentivized gatekeepers to respond to accusations of potential copyright violation with immediate content removal, or face a lawsuit. This clear bias toward corporate producers — most able and willing to police reuse of their products — certainly privatized the silencing of speech, but it may not appear gendered. Unless you have ever been in a boardroom.

Structural economic inequity in the US is well documented — women earn 77% of what men earn on average, make up 57% of the population living in poverty, and constitute only 4% of Fortune 500 CEOs. The benefits of corporate favoritism clearly favor men, and in specific industries where copyright plays a role, the benefits of IP protection are also awarded disproportionately. The USC Annenberg School for Communication & Journalism noted earlier this year that in 2012, only 16.7% of key directing, writing, or producing positions on the top hundred box-office hits went to women. In the field of cultural production I track, comics — where copyright is not always guaranteed to a creator — things are bleaker: no more than 12% of paid content-producing work went to female artists in 2011. (That's in the work-for-hire-heavy corporate world, too: in independent comics, women got 10% of paid gigs or less.) Hiring factors are, of course, a contributing factor to our findings that, despite making up around 46% of the industry in 2012, female artists earned on average 29% of what male artists did, while trans* and non-binary artists earned less than 4%.

Such statistics barely hint at the economic reflections of gender bias in copyright law, but they do allow us to see why it matters that the law divides protectable cultural production along gendered lines. Forms eligible for copyright protection are listed in the text of the law itself: literature, music, dramatic works, pictures, graphics, sculptures, films, and architecture are all protected. The justification for these is that they are works intended for extrinsic use and dissemination. Yet historically feminine practices such as quilting, sewing, and food preparation are not protected.

Defenders of the law argue that these forms of cultural production are process-based — processes not being eligible for copyright protection. (Processes can be eligible for patent protection, although most are not.) These forms are often created through group participation — in violation of

the identifiable creator or group-of-creators tenet. Perhaps most telling, they are also arguably intended for intrinsic, domestic use. So it is not, IP defenders might say, that the drafters of the law were sexist, it is just that traditionally feminine work was often collaborative, usually process-based, and less frequently intended for public view — falling, nearly accidentally, outside the scope of the necessarily strict definition of copy-rightable material.

Yet whether it is the law that is sexist or merely the people who wrote it no longer matters. The world has changed since 1976 in three significant ways. One, collaborative work is clearly protectable now when corporate. Two, more and more folks are working in cultural production against traditional gender type, severing the slippage between femininity and domesticity. And three, technology has blurred the distinction between the public and private spheres. This has drawbacks, certainly. But inarguably, a quilt is now just as likely to go on public display as a sculpture, if the former is owned by a kid who does a viral-ready video series out of a bedroom covering pop songs in a frog mask and the sculptor, well, lives in a small town and sucks. Or consider fashion, which is almost by definition the creative mode through which we display ourselves publicly. The current framework simply doesn't hold.

The gender bias in the delineation of protectable works, however, is also reflected in the cultural acceptance of media created for feminine consumption. IP lawyer Ann Bartow notes how frequently chick lit, chick flicks, girl groups, and boy bands are called “derivative,” “repetitive,” and “unoriginal” — each a small prod at copyright eligibility. Glance through news stories about illegal music downloaders or freedom-of-speech defenders and see men represented as pirates, saviors, artists, geniuses, or activists, while female media “consumers” are portrayed as innocent or witless victims, if present at all.

In truth, studies show that women illegally download music just as frequently as men, if not more frequently, a finding that questions the traditionally feminine role of “consumer” in this context entirely. Contrast this with the most famous feminine figures from the great copyights of the last few decades: Roy Orbison’s (or 2 Live Crew’s) “Pretty Woman,” or Dan DeCarlo’s character Josie (of “and the Pussycats” fame). Even in the Forsythe case, victory guaranteed the artist’s

right to use Barbies with impunity.

While feminine production is devalued, consumable images of women are overvalued, in an eerily consistent outcome of IP policy. The Copyright Act of 1976 betrays, like its predecessors, a perceptible bias for traditionally masculine modes of production, fostering an environment where masculine producers are reinscribed in the cultural imaginary, and feminine figures presented as commodity when presented at all. This legal distinction has had the effect of making more of the work that more men do more eligible for protection — valued — under US law. Yet these laws define and foster further conditions for cultural production, and therefore culture, giving shape and form and color to the material we use to create our very values system.

IP law seeps. Present biases do not remain exclusively inscribed in our national legal code and value system, because copyright bucks state borders by design. Experts in the field — no data is officially tallied, a fact that should itself cause alarm — place the US media and entertainment industries as among the top two American exporters. Take into account content illegally downloaded or pirated around the world, figures that couldn't be tracked even if we did have data on US media and entertainment exports, and the US is certainly the largest producer of media content in the world.

In other words, what is valued under US law doesn't, you know, stay in Vegas. Sheldon Pressor, the Senior Vice President of Warner Brothers, in testimony to support the Central American Free Trade Agreement to the House Ways and Means Committee in 2005, testified that "the entertainment industries are one of the US economy's greatest assets." Calling it "the copyright industry," and praising its ability to create a "surplus balance" with other nations, he went on to claim it accounted for over 6% of the nation's GDP.

It may not seem much, but even at 6%, Pressor's field today pulls in nearly *nine times* that of the entire region with which he was advocating a trade agreement. Such "surplus balances" are currently being maintained by Pressor's company Warner Brothers through the export of films like *The Hangover III* and *Man of Steel*; television productions like *Two and a Half Men* and *The Carrie Diaries*; and DC Comics, whose 2011 reboot of fifty-two titles — despite a stated desire to better highlight character and creator diversity — hired

only 8% female creators, featured nearly four times as many nude or underdressed gal as guy characters, and could claim only ten titles that passed the Bechdel test (six on technicalities).

N TERMS OF ECONOMIC and cultural

impact, copyrights have little on patents.

The latter are intended to protect products of a scientific nature, elements of processes, or technological solutions — covering "science and the useful arts," as the US Constitution explains, in clear contrast to useless arts like literature and architecture, and in complete neglect of cooking and sewing. Unlike copyrights, patents are only guaranteed on successful application, and are protected for a significantly shorter period of time — twenty years from date of application, in most cases.

Patents are expensive and costly. The application process can take a few years, and requires a lawyer or two — more, if you're sued for infringement. They offer an explicitly commercial form of protection, guaranteeing only "the right to exclude others from making, using, offering for sale, or selling" an invention in the US, or importing an invention into the US. Yet a patent does not guarantee a patent-holder's right to produce or to profit from an invention, and monitoring patent misuse is the patent-holder's responsibility — a further implied financial investment, mostly of legal fees.

There are three types of patents: utility patents, which apply to processes, machines, products, material, or a significant improvement to previous versions of any of these; design patents, which cover the ornamentation or decoration of a manufactured good; and plant patents, granted for distinct varieties of asexually produced vegetation.

The addition of living things to the realm of patenting is recent and hotly debated, not least because House Committee Reports accompanying the Patent Act of 1952 state overtly that the law protects "anything under the sun that is made by man." Granted, all laws until recently used masculine pronouns, presumed masculine actors, and protected masculine activities in the presumed-to-be-masculine public sphere. Many have since been updated. Yet the distinction carries a whiff of sex-specificity beyond the standard of the day, for plenty of things exist under the sun that were "made by" woman — including man. And life

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forms — vegetable or animal — were not at the time eligible for patent protection. (In mid-June the Supreme Court revisited this precedent, ruling against Myriad Genetics that human genes could not be patented, legal protection the company had been using to charge stiff fees for breast cancer screenings, which dropped to a third of the original the day after the ruling was announced.)

Even after laws were recast in gender-neutral language, patents continued to vex advocates for equality. The National Bureau of Economic Research found last year that patent holders are only 7.5% female. Commercial patents are held by an even smaller percentage of women, 5.5%.

In recent decades, these numbers have shifted slightly. Annette Kahler notes in “Examining Exclusion in Woman-Inventor Patenting” in a 2011 *Journal of Gender, Social Policy, and the Law* that a massive push before the turn of the century convinced more women to enter the fields of science, technology, engineering, and math, where the majority of patenting takes place. Women subsequently increased their degree earnings twenty- or thirty-fold or more. This corresponded to a change in patent holdings, although not at similar rates:

1.4% of all patents issued in the US in the 1990s named at least one female inventor. By 2002, this number had grown to 10.4%. Yet women’s participation across all patent-earning fields then dropped by approximately 2 percentage points between 2000 and 2008, and an accompanying decline in patents awarded to women during this time can be assumed.

It is not all bad news. The National Women’s Business Council found the US Patent and Trademark Office (USPTO) in 2010 had record-high numbers of successful female applicants. But it is not really good news, either: “The ratio of successful women patent applicants to successful men patent applicants varies from a low 73.36% in 1986 to a high of 93.57% in 2002,” the report states. It does not go on to explain what that means: that in the best of years, only 6.43% more women than men are denied patents.

This would seem to be our smoking gun, proving that the matter doesn’t rest on women failing to apply themselves. This oft-heard charge is known as the ambition gap, and it’s the same one to which Bryce Covert refers in the *Atlantic* — citing studies from Catalyst and the National Bureau of Economic Research — when she writes: “It’s not there. Women do ask for more. They just aren’t rewarded for it.” The unvarnished truth is that male inventors are granted patents more often than female inventors.

There remain questions about how best to address this inequity, partially due to the USPTO itself — whose staff is three-quarters male — which neither requests nor tracks applicant gender. These data can only be found by assessing applicant names, a process fraught with presumptions.

The specific causes of discrimination are also complicated, and elucidated only slightly by the case of Marlo Brown, who identified certain health issues in cats at a shelter she ran and asked a local lab for help. The lab isolated a virus and patented a diagnosis technique, on which she was not listed. She sued. The 1994 ruling (*Regents of the University of California v. Synbiotics Corp.*) concluded that “Brown was not present and did not participate in any way in the events of the ‘simultaneous conception and reduction to practice’ of the FIV virus,” but merely “brought her sick cats, along with her written observations of the cats’ symptoms, to UC Davis with a suspicion that the cats may have a virus similar to the human AIDS virus.” Her suspicions — and her suggestion of the FIV virus — were

the exact ones scientists later confirmed. That this translates into “did not participate in any way” in the process of identifying a virus is confusing, but legally sound. It points to the specific actions prized under patent law, and the narrow, and gendered, set of behaviors it values.

Legal scholar Dan Burke’s “Do Patents Have Gender?” in the *Journal of Gender, Social Policy, and the Law* finds a similar narrow standard in a description of 1966’s *In re Winslow*. In this precedent-setting case, Judge Giles Rich composed a rubric for determining patentability that is still in place today. Under scrutiny was how to determine obviousness, a quality that precludes patentability. The judge envisioned a scenario in which the applicant, Winslow, was “surrounded by the prior art references that entail pertinent aspects or features of the claimed invention.” This “Winslow tableau” casts an imagined world in which all inventors would be placed; it describes a creator as holed up in a room in which visual evidence of all previous knowledge on a subject is laid bare for him, pencil behind his ear and hair disheveled, as he ponders a creation — perhaps casting a half-eaten sandwich aside when he tires of it so the maid can come and dispose of it later.

Fellow legal scholar Allison Tait, writing on the IP blog Written Description, remarks that this scene establishes “a sense of a scientific community — one that happens to be historically masculine. The inventor is not alone in his shop; rather the ghosts of inventors-past surround him, male colleagues on whose shoulders he stands as he heroically summons invention.”

Any imagined scenario on which legislative rulings rest must, by nature, be restrictive. Yet while any human body could conceivably be switched out with Winslow’s, the scenario remains perniciously gendered. This isn’t the way women in the cultural imaginary work; it’s not likely that men in the real world work that way, either. Many claim to, sure: it is the stuff of which both the nutty professor and the myth of genius are concocted. But the imagined objectivity and omniscience that the Winslow tableau presumes is not known to exist in the world of the human — nor, for that matter, in the messy, material world of scientific experimentation.

In patent law, in other words, a masculine epistemology is presumed, described, and ultimately rewarded. Feminist legal analyst Leslie Bender has posed similar concerns about the “reasonably

prudent person,” a legal fiction around whom American tort law establishes the rights of people *not* to offer assistance to others in distress. Similar to the Winslow tableau’s depiction of the inventor, this imagined scenario reflects the rights of individuals over their responsibilities to an interconnected community. It smacks of the same dehumanizing objectivity we sense in the case of Marlo Brown.

Yet our concerns thus far have only applied to the patent application process, one that seems to revel in a synthetic reflection of masculine epistemologies. The process also materializes those epistemologies — objectifies, in a literal way — rewarding those that exhibit novelty, utility, and non-obviousness. Patent applicability also reflects a bias along gender lines, then, not unlike that seen in copyright law. Imagine, for a moment, a system of laws that protected the material results of arguably more feminine epistemologies, and you will begin to perceive it. Community resourcefulness, material reuse, ecological safety, or social equality, for example. For example: a stipulation that demanded an inventor name the maid on a patent for contributing to the conditions that allow for solitary work.

Such alternative frameworks, Burke points out, may not enter debates over patent law reform in the near future. They are, however, helpful in the apprehension of the profound impact patent law has over notions of invention, science, progress, and trade, as well as the policies that have — through almost no deliberately oppressive actions whatsoever — limited the field of participants to a marked degree.

Now, set this against recent hubbub over “patent trolls” emanating from the Obama Administration. The White House claims that patent holders who secure rights to unused innovations, then extract licensing fees or sue others for infringement — non-practicing entities, patent assertion entities, or patent trolls — have tripled infringement litigation in the last two years, running up annual costs to the tens of billions of dollars. (Accounting for indirect damages places cost estimates even higher.) Yet the same report acknowledges that it’s hard to discern the trolls from the useful non-practicing entities, who sit on patents not to extract charges from users for no reason, but to extract them in the course of legitimate business practices like offering licensing fees.

Some aren’t buying the difference. “Trolls are

just a symptom of the patent system's problems," writes Timothy Lee in the *Washington Post*. He characterizes these problems not as gendered, exactly, but as part of the same pro-corporate drive we've seen in copyright policy and rulings, which we know to be gendered. In the 1980s and 1990s, Lee writes, far too many questionable patents were granted, with consequences "made worse by rules that give patent holders too much bargaining power against accused infringers."

Forget for a moment the economic argument — for even the tens of billions of dollars lost every year is out of the reach of most women inventors and, as we saw, will primarily benefit the boys in the boardroom — and let's look instead at the impact on the basic notion of a functioning democracy.

The Electronic Frontier Foundation launched a campaign last year called Defend Innovation that aims to invigorate debate around patent reform (although for our purposes, the scope is quite narrow). By June 12, 2013, this campaign had collected 15,553 signatures. A back-of-the-envelope count got me an average of 3–5 women's names per page (gender-neutral and clearly fake names split evenly into M and F camps, for the hell of it), getting us a very loose estimate of about 1250 women's names — or only about 8% female participation in this particular debate over the future of patent law. It's about the same percentage of women among all patent-holders in the US, so regardless of accuracy, it's useful to wonder what, beyond the non-existent ambition gap, might be keeping women from participating, even in discussions about IP law reform.

Or did we cover that already?

MY HISTORY working around and against them will indicate that I do not support too much increased vigilance regarding intellectual property rights protections. Alongside many of my more pirate-y pals, I would prefer a world where there is less need for protection of valuable assets, wider access to culturally produced goods, and indeed, fewer laws. Legislation is always confusing and often boring, even when it refers to exciting things. But the slackening of such controls now over an incredibly entrenched and deeply biased system would do nothing to shift the underlying values that decades of discriminatory legislation have fostered. An across-the-board loosening

of IP protection at this stage would, I believe, lead to the increased piracy of those cultural productions already less protected, worsening the economic gender gap beyond its current unacceptable state.

I have come to believe that, in addition to the other, more standard amendments to IP laws forwarded by many in the activist, artistic, and IP community — destruction of corporate authorship, implementation of reasonable term limits, reinforcement of fair use, the cessation of protection for unused inventions, revitalization of the public domain, and abandonment of the stupid DMCA — we must also call for a general recasting of what is and isn't protected as intellectual property. These considerations should not be subject to intended use, such as for public or private appreciation, and should reconsider the form of protected work — not only to eradicate gender bias but to adapt to the digital age and allow for the now-inevitable global spread of both resulting works and the laws themselves.

I'm not concerned about the effects IP law has on women or on men in particular. I am, however, aghast that a body of legislation polices along gender lines at all, however historically they may have become embedded in our way of thinking about the world. That this same body of legislation is possibly the most influential in the global economy deepens my resolve to reconsider it, spreading as it does the need to assess and attribute merit along out-of-date sensibilities as regards biology, ability, and appropriateness.

Over my last year of research, I have come to believe two things: one, that we cannot wait for capitalism to self-destruct before we implement strategies to improve people's lives right now, and two, that capitalism will not, and cannot, exist in an environment of gender parity. This last will not be achieved until all cultural producers, across the range of media they choose to work in, have equal access to the valuation currently inscribed in intellectual property rights laws.

There may, I concede, be more radical solutions to IP reform that will implement gender parity but restrict corporate influence, and I am eager to hear them. But until they also correct for generations of cultural misogyny — forging, perhaps, a path to also correct for the ableisms, nationalisms, and racisms equally embedded in our legal code — they should be dismissed as tainted by a values system fostered under biased IP laws. ■

Locked Out

With roots in the laws of seventeenth- and eighteenth-century England, intellectual property protections go back to the beginnings of capitalism itself.

by Sean Andrews

IN LATE JUNE, soul musician Stevie Wonder flew to Morocco to perform at a diplomatic conference for the World Intellectual Property Organization. Conference delegates were signing a treaty granting small exceptions to international copyright protections, improving access for blind and visually impaired persons. Wonder said the treaty was important because it helped “information to be accessible forever,” and it demonstrated “that it is possible to do business and do good at the same time.”

Business leaders disagreed with this “Ebony and Ivory” vision of harmony and social justice. For months, organizations like the Intellectual Property Owners Association had urged American trade representatives to reject the treaty because, “despite substantial differences between copyrights and patent protection,” allowing this exception might open the door to needy countries or people pleading exceptions for clean energy technology or pharmaceuticals. It would “threaten to upset the fundamental balance on which our US and global IP system is based.”

The reference to “balance” here demonstrates that while piracy may occasionally be radical (see Gavin Mueller’s “Gimme the Loot,” from *Jacobin*, 7-8), copyright as a system is largely reactionary. Though “balance” can refer to the more utilitarian emphasis copyright is given in the US Constitution — a limited-term monopoly to “promote the useful arts and sciences” — in the mouths of the propertied elite, “balance” generally means that while they are willing to consider marginal tweaks to these arbitrary protections, they basically want to maintain the status quo in terms of property and power.

This reactionary position can be traced back to John Locke, whose ideas about labor, property, and inequality serve as the uncited moral

inspiration for many of today's maximalist copyright advocates. While Locke felt that labor was the source of all improvement and the fundamental justification of property rights, he thought laborers themselves were best kept in a state of "bare subsistence" lest they "forget respect" for the owners of the property on which they labored. Locke was referring to agricultural laborers, but the analogy to the contemporary precariat is far from accidental. In the end, private property and intellectual property are born of the same womb.

Many recent scholars of copyright trace its origins to the Statute of Anne, a mandate passed by the English Parliament in 1710. With this statute, copyright was vested in authors rather than publishers, privileging the "creative individual" purported to be the font of all innovation.

Beginning the history of copyright here makes a certain amount of sense, especially if your goal is to hearken back to a time when copyright could be seen as a just, pragmatic alternative to its feudal predecessor. Lawrence Lessig, in *Free Culture*, says the statute was written to curb the power of "monopolists of the worst kind — tools of the Crown's repression, selling the liberty of England to guarantee themselves a monopoly profit."

As with the free-floating ideas of "culture" or "balance," Lessig and others have no interest in clarifying the exact terms of the "repression" enabled by previous licensing acts, in part because it helped set up the system of private property they must rhetorically defend as they nibble around the edges of modern IP law. All we need to know is: Culture good, repression bad. In this light, the Statute of Anne almost seems reasonable. But the bulk of the repression had already taken place before it was enacted.

England's separation from Rome in the sixteenth century was not a clean break. Henry VIII opened a serious can of worms when he decided to split with the Catholic Church. After all, without the Pope, the only endogenous narrative legitimating royal power involved — in the words of Dennis the peasant — strange women lying in ponds distributing swords. Breaking with Rome had its advantages: it facilitated the king's divorce, suggested royal instead of papal supremacy, and allowed the expropriation of the common lands and monasteries owned by the church. But upending the medieval political order led to widespread insurrection.

Henry VIII's son, Edward VI, continued the Reformation, but his rule was short: when Edward's sister, the Catholic queen "Bloody Mary," issued the first licensing acts in 1556, she was clearly motivated by what we would call the repression of political dissent. She authorized a single company to manage all the legitimate printing in England. The royal issue of monopolies (for a price) quickly became an economic means of supporting the English state. In the recent coda to the SSRC's "Media Piracy in Emerging Economies" report, Bodó Balázs points out that this had the now-predictable effect of creating a massive black market in pirate publishing.

By the time the licensing acts were renewed again in 1662, they were reactionary in the modern sense. They served to protect the semi-revolutionary project of the English Civil War from radical fringes like the Levellers and Diggers who threatened the system of property, primitive accumulation, and wage-labor the state had spent the previous decades engineering.

During the war, pirate publishers like John Lilburne and Richard Overton promoted the Leveller cause in religious terms that posed a direct threat to the fragile Anglican legitimacy of the English state. Saying, "God is no respecter of persons," the Levellers insisted that everyone, regardless of whether they owned property, be allowed to elect members of Parliament. The Diggers, calling themselves the True Levellers, went beyond constitutional mechanisms, simply occupying a swath of land, St George's Hill, outside London and declaring the earth a "common treasury for all."

These ideas were in stark contrast to the nascent capitalist civilization the United Kingdom was becoming. They were a radical response to the dramatic project of nation-building and primitive accumulation that had taken place before the war. In *The World Turned Upside Down*, Christopher Hill describes the threats of state terror (execution, colonial servitude, or the workhouse — Locke's personal favorite) targeting so-called "masterless men": people able to subsist on their own by hunting, fishing, or raising animals or crops on common lands. Forced to work on infrastructure projects, they effectively produced themselves as wage laborers — enclosing the commons, draining swamps, cutting down forests, and otherwise eliminating areas where they could have existed outside the wage system.



Our contemporary culture is infused with Locke's basic reactionary premises, particularly when it comes to intellectual property. In mainstream discourse, the current owner of a copyright or patent is presumed to be the agent of the labor, the "creative individual" behind any invention or cultural product.

As *Jacobin* editor Peter Frase put it last year, “constructing a world of private property entails both state violence and ideological propagandizing.” Locke, Hobbes, and most other political theorists of the era agreed that religion was one of the best ways to keep the teeming masses in line. Pirate publishers threatened not only the power of the crown and the profits of monopoly publishers, but the emergent political economic system itself. Hill maintains that after the resistance had been thoroughly crushed and the spirit of capitalism infused in the culture, “the Licensing Act could be allowed to lapse in 1695 — not on the radicals’ libertarian principles, but because censorship was no longer necessary. [The] opinion formers of this society censored themselves.”

At this point the Statute of Anne was window dressing on an already-established bourgeois order. As Balázs mentions, John Locke was an ardent supporter of eliminating the licensing act because as a scholar and book collector, he was appalled by the expensive and badly printed books legally published in England. He preferred the illicit good stuff they were making in Amsterdam.

But despite this brief flirtation with utilitarianism, Locke’s is a philosophy of natural law. As Frase points out, this makes his arguments perfectly suited for the moralizing copyright reactionaries of our time. His anonymously published (and rampantly pirated) *Two Treatises of Government* laid out the germinal philosophy of

today's neoliberals. Locke's unique justification for the capitalist-democratic state, at once radical and reactionary, was founded on a version of the labor theory of value. Property rights were "natural rights," preceding any political arrangement. These rights were justified by the fact that people used their labor to improve the property they were taking out of the common treasury. Contrary to the "divine right of kings" or other religious foundations, Locke said the state's legitimacy was to be found in its unequivocal defense of property rights.

However, not all labor is equal: in Locke's explicitly class-oriented argument, large landowners were justified in owning the rights to property that had been improved by laborers they had paid. This increased the amount of land any one individual could hold and mirrored the practice of contemporary corporations — like movie studios — that contract "works for hire," thus owning the copyright to the works created. For Locke, the only moral downside of this would be that the increased yields of improved land might produce more than the landowner could use, creating waste. Locke contended that large landowners were still justified because they sold the increased yield and were able to store it in gold, which never spoils!

Our contemporary culture is infused with Locke's basic reactionary premises, particularly when it comes to intellectual property. In mainstream discourse, the current owner of a copyright or patent is presumed to be the agent of the labor, the "creative individual" behind any invention or cultural product. In reality, movie and music collections, journals of scholarly societies, trademarked properties, and patent libraries are often acquired, traded, and licensed by organizations who had no connection to the labor involved in their creation other than the ability to buy it. Our current discourse defends copyright as if it were the vital protection of the creative endeavor itself, rather than a bulwark of primitive accumulation in an age of cognitive capitalism.

There are certainly cultural workers who enjoy a lavish lifestyle: you can find many actors, musicians, and songwriters among the current and former residents of St George's Hill. It is now a private estate, with home prices averaging £3 million. But most artists, programmers, and scholars scramble to patch together a living. The industries themselves, on the other hand, enjoy record profits

By focusing solely on IP, piracy avoids tackling the messier material political economy that makes IP a profit center in the first place — namely, entrenched interests holding the dominant means of production and distribution. Most of us still have to work in order to eat.

and unprecedented protections. Jonathan Band's recently updated report on the profitability of copyright-intensive industries found them more profitable than construction, transportation, and mining and metals industries. Copyright profit margins grew substantially over the past decade while those of the other industries declined, meaning the current level of protection is more than adequate.

This conclusion is lost on the Obama administration, as it has been on all that preceded it. While the judicial branch has issued some recent rulings in favor of fair use and the public domain, the executive has become even more vigilant. The relentless pursuit of Aaron Swartz is only the most visible and upsetting case. In February, the Department of Justice asked the Supreme Court to ignore a petition from Jammie Thomas-Rasset, who claims that the arbitrary \$220,000 penalty she received for sharing twenty-four songs on a peer-to-peer network is excessive to the point of being unconstitutional. The DOJ has remained consistent, saying the original award of nearly \$2 million was legitimate at the time. For good measure, Obama hired one of the prosecuting attorneys in the case as Associate Deputy Attorney General.

Even with their current profitability, tax benefits, and taxpayer-subsidized protection, holders of intellectual property continue to press for an even more reactionary copyright regime,

particularly on the global stage. In addition to resisting the World Intellectual Property Organization treaty over exceptions for the blind and vision-disabled, trade representatives of major industrialized nations fought for months at the World Trade Organization against an extension of intellectual property waivers to less developed countries.

Here, the contemporary defense of copyright emerges as what it really is: a defense of property rights more generally. Intellectual property rights help corporations maintain a social division of labor and power on an international scale, relying on profits derived from complex commodity chains. Make it abroad; repatriate the product to be sold at a higher price, safe in the knowledge that foreign contractors (and their low-paid, rights-free employees) will transmit all the trademarked, copyrighted, or patented items they produce to legitimate markets; all profits back to the home office.

It also helps them shuffle those profits into offshore tax havens, using the façade of transfer pricing and cost-sharing arrangements. As in Locke's time, transnational capitalists need the state to protect their property rights, but they have little interest in paying for it. Tax scholar David Cay Johnston argues that one of the key mechanisms for tax avoidance on the global scale is to move a piece of corporate IPR to an offshore haven, and then pay it significant royalties. Apple has used this mechanism to avoid billions in taxes, as a recent US congressional hearing revealed. Apple products are "Designed in Cupertino, Made in China," and taxed nowhere — all thanks to intellectual property rights.

Copyright, like property rights in general, is most often used by those in positions of economic or political power to maintain their place in the hierarchy. But with few exceptions, piracy is a marginal answer to this overarching system. It is also largely concerned with distribution, rather than production. By focusing solely on IP, piracy avoids tackling the messier material political economy that makes IP a profit center in the first place — namely, entrenched interests holding the dominant means of production and distribution. Most of us still have to work in order to eat. This creates a web of conflicting interests among workers that can't be undone by simply making information free.

For instance, Cary Nelson, the former head of the American Association of University Professors,

recently recommended that faculty secure their copyrights in order to prevent course content from being appropriated by their university for Massive Open Online Courses or other online ventures. Yet this relies on individual contracts between faculty and universities — contracts which may already specify that anything produced by faculty is a "work-for-hire." Without some form of collective bargaining at the university or national level, it is unlikely that individual faculty will have the power to make this demand. And with three quarters of US college courses taught by precariously employed adjuncts who often have little to no power in contract negotiations, it is hard to see copyright as anything other than conservative — even if we believe, overall, in the institutions being preserved and the work being done.

But even content producers aided by collective bargaining can support reactionary copyright trends. During the 2007 Hollywood writers' strike, union activism, public appeals, and collective bargaining helped the writers (who, like faculty, produce their content as works-for-hire) secure a bigger piece of the digital royalty pie in their contract negotiations. But in the Stop Online Piracy Act protests, many Hollywood unions — including the wga West — were on what we might think of as the other side, claiming copyright as a force that protects the lives and careers of their workers. Since they rely on copyright-intensive industries for their employment, any laws or practices which threaten the idea of commodity culture (or commodity culture specifically) have the potential to threaten their livelihood.

These conflicts will remain until we target the broader system of property, commodity culture, and wage labor. In the hands of the current global elite, copyright is used as a reactionary cudgel most of the time. But only the most extreme pirates will claim that this is always the case. For instance, while it is imperfect, the Creative Commons project relies on copyright and the above enforcement mechanisms. At its root, many of us still believe the idea that a creator should have some say over how his or her product is exploited, particularly if there is money being made from it.

Would we recover from this Lockean hangover if we lived in a society where all resources flowed more freely and our life was less reliant on being paid for our work? There seems to be a growing interest in finding out, and in that we might find some hope. ■

Edward Snowden and the American Condition

Law and lawyers can't save us from the creeping police state — but politics might.

by Chase Madar

THE LAW IS THE LAW! A 54-percent majority of Americans may approve of Edward Snowden's sensational leak about the National Security Agency's indiscriminate surveillance, but just as many think the whistleblower should be prosecuted. The penalty is not light: the three (so far) charges against Snowden carry a sentence of up to thirty years. But rules are rules, and despite our national self-image as rebels who buck systems and distrust government, we are, as one recent study bears out, the most obedient people in the industrialized world. And the most legalistic. The law is the law!

This tautology ought to be unquestionable, axiomatic, airtight. Instead, it carries a whiff of desperation, as we see increasingly often that the law is not the law at all, especially in the broad realm of national security. Will James Clapper, National Intelligence Director, be prosecuted for perjuring himself before Congress when he lied about the surveillance program? (Clapper answered elected officials' questions in the "least untruthful manner" available to him, he cutely said.) How often does rape get prosecuted in the military, and when it does, how often does a conviction stick? Did the US Marines unit that slaughtered twenty-four civilians execution-style in Haditha, Iraq face any real penalty?

When it comes to leaking classified material, we have plenty of statutes but no uniform rule applied impartially. Not a week goes by without some top-secret material being leaked by a high official to the *New York Times* or the *Washington Post*; Obama's own former chief of staff William Daley bragged about his leaking prowess, while noting he is nothing compared to his predecessor, the "leaker-in-chief" Rahm Emanuel.

And yet the law will put on a stern face for Edward Snowden, just as it is has for Pfc. Bradley Manning, whose court-martial is currently underway after a three-year lag that included a spell of unlawful (as the court itself ruled) punitive isolation. The purely hypothetical damage to "national interests" in both of these cases apparently counts for more than the real, flesh-and-blood victims of unprosecuted and unpunished crimes like torture, rape, and the killing of civilians.

National security law can come down like a ton of bricks, but just as often it is evanescent. "Capability but not the authority" was the leitmotif of testimony at Bradley Manning's court-martial in Fort Meade two weeks ago: on base in Iraq, Army Intelligence analysts flouted any number of security protocols with the full knowledge of the chain of command: installing proscribed executable files and applications; accessing unauthorized zones of the server without any threat of discipline.

In 2008, we learned that NSA staffers were listening in on phone sex between US Army officers in Iraq and folks back home. This was, of course, against the law, but legal barriers were hardly enough to stop officials from using the surveillance tech as they liked. Why on earth should we expect NSA employees now to respect legal fences in surveillance that are so easy to step over and so unlikely to be enforced? From both Manning and Snowden we have learned how national security was actually practiced, abroad and at home, and the vivid accounts of these two twenty-somethings, neck-deep in war and surveillance, contrasts starkly with the official statements spun by PR flacks and heavily processed by lawyers.

Yet law remains our litmus test. Very often the mightiest anathema we can muster for something we oppose is that it's "illegal" or, even worse, "unconstitutional." One of the first reasons given for the Iraq War's wrongness, if not the first reason, is its illegality; today, the mass surveillance is denounced by progressives (and even a few conservatives) as "unconstitutional."

These condemnations pack all the fierce visceral impact of Ned Flanders trying to curse. Would the Iraq War have been redeemed by a permission slip from the UN Security Council? Were the sanctions against Iraq, which killed hundreds of thousands, okay because they were in conformance with the UN charter? And even if the NSA surveillance is ruled unconstitutional, is that really the problem with it? And what if the courts determine, as is entirely possible, that the NSA surveillance is legally permissible? (Fourth Amendment jurisprudence is marvelously elastic, based as it is on circular reasoning that the "reasonable expectation of privacy" is every day diminished by new technologies and practices.) If the surveillance is legal, as Geoffrey Stone, former dean of University of Chicago Law School and an ACLU board member, asserts, does that mean we have to like it?

No, and we urgently need to remind ourselves that "lawfulness" is never an indicator of wisdom, efficacy, prudence, or even justice. Ninety-nine percent of what led to the 2008 financial crash was perfectly legal, transactions working within the law according to legal incentives (and progressive calls to fix the financial system with more criminal prosecutions both misdiagnose and underestimate a systemic problem). Most of the horrors disclosed by WikiLeaks — like the slaughter in the Apache helicopter video — are also legally permissible according to the laws of war as they actually exist. In fact, WikiLeaks exposed precious few war crimes, strictly speaking, but a great many atrocities. It's an ugly tribute to the power of law and lawyers how many atrocities are legal.

Given the inadequacies of the legalist outlook, why is our critical discourse so overrun with law talk? De Tocqueville noted the intense legalism of the United States, a nation founded on legal documents, as well as the role of the bar as an American clerisy. Philosophy is not taught in high schools, and as a religiously heterogeneous nation we lack a shared theological language that might address our problems in moral terms. An expressly political vernacular, one that discusses policy in terms of interests and values more than law, is out of the question in a country as depoliticized as ours. How else could we talk but in legalese?

And today, most of what little resistance there is against imperial violence and domestic repression (always in the name of security) comes from lawyerly nonprofit groups. Staffed by the cream of

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elite law schools, rights groups like the ACLU, Human Rights Watch, Human Rights First, and, a bit edgier, the Center for Constitutional Rights do a great deal of valuable, often brave work. But these organizations are no substitute for a political opposition, groups with political muscle and expressly political arguments.

This isn't to blame these lawyerly rights groups for doing what they do: impact litigation, lobbying, report-writing — what else are they supposed to do? It is unfair to expect Human Rights First to act like an antiwar group or the ACLU to fight directly for social democracy when that is not what these outfits are equipped to do. Ideally, these NGOs would serve as consigliere to expressly political groups, groups that don't have to worry about maintaining their 501(c)(3) tax exemption by staying mostly out of politics; groups that don't have to worry about upsetting the liberal-minded gazillionaires who provide the bulk of any rights NGO's budget.

But such political groups do not exist today, and our legally-minded nonprofits cannot fill the gap. (Not that they would necessarily want to: many of our human rights law grandes are content to be instruments of Washington.) Politics exerts a gravitational pull on the law; back when there was a strong antiwar movement, the ACLU raised money for Daniel Ellsberg's criminal defense. Today the group's former president, Norman Dorsen, thunderously condemns Bradley Manning, though there is not much in the way of legal distinction between the two megaleaks.

Our laws are not the miraculous embodiment of a transcendent morality. Legal philosopher Ronald Dworkin, who died earlier this year, was a giant and a genius, but we would do well to take a long sabbatical from his high-minded work in favor of his positivist opponent, H. L. A. Hart, for whom laws are the rules of the state, nothing more and nothing less — an opinion that turns out to be widespread among non-lawyers. (As Martin Luther

King said, "We should never forget that everything Adolf Hitler did in Germany was 'legal' and everything the [1956] Hungarian freedom fighters did in Hungary was 'illegal.'") The escape route from legalese is already well charted by Evgeny Pashukanis, by China Miéville, even by Carl Schmitt — though his challenges are no longer the exclusive province of radicals critiquing liberalism and are fast being swallowed whole by the academic hard right. Anti-legalism is as old as law (with which is it subtly entwined), a rich tradition from Sophocles to St Paul to moderns like Martti Koskeniemi, David Kennedy, and Danilo Zolo. The solutions to most of our problems lie beyond the legal sphere.

Is there any legal hope for Snowden or Manning? Of course not: no courtroom miracle will save them. What they are up against are not so much abuses of the laws as the laws themselves. All legal systems have some form of pardoning mechanism, which recognize implicitly that law makes mistakes and can lag behind justice. For various reasons, conservative politicians are much more glad-handed with pardons than their center-left peers. (For an example, see former Mississippi governor Haley Barbour's commutation of nearly two hundred sentences in his last week of office to the horror of both local and metropolitan opinion; see also Vaclav Klaus's radically un-Kafkaesque amnesty for nearly one third of the Czech Republic's prisoners.) Obama, however, has been remarkably stingy with commutations, and it is impossible to envision him or any other Democrat (or, for that matter, Republican) granting clemency in a national security case.

The law is not nothing, but it sure as hell isn't everything. The NSA scandal shows that freedoms are far more than legal phenomena, and that any successful pushback against the creeping police state will have to be based more in politics than in law. ■

Kids Who Die by Langston Hughes

This is for the kids who die,
Black and white,
For kids will die certainly.
The old and rich will live on awhile,
As always,
Eating blood and gold,
Letting kids die.

Kids will die in the swamps of Mississippi
Organizing sharecroppers
Kids will die in the streets of Chicago
Organizing workers
Kids will die in the orange groves of California
Telling others to get together
Whites and Filipinos,
Negroes and Mexicans,
All kinds of kids will die
Who don't believe in lies, and bribes, and contentment
And a lousy peace.

Of course, the wise and the learned
Who pen editorials in the papers,
And the gentlemen with Dr. in front of their names
White and black,
Who make surveys and write books
Will live on weaving words to smother the kids who die,
And the sleazy courts,
And the bribe-reaching police,
And the blood-loving generals,
And the money-loving preachers
Will all raise their hands against the kids who die,
Beating them with laws and clubs and bayonets and bullets
To frighten the people—
For the kids who die are like iron in the blood of the people—
And the old and rich don't want the people
To taste the iron of the kids who die,
Don't want the people to get wise to their own power,
To believe an Angelo Herndon, or even get together.

Listen, kids who die—
Maybe, now, there will be no monument for you
Except in our hearts
Maybe your bodies'll be lost in a swamp
Or a prison grave, or the potter's field,
Or the rivers where you're drowned like Leibknecht
But the day will come—
You are sure yourselves that it is coming—
When the marching feet of the masses
Will raise for you a living monument of love,
And joy, and laughter,
And black hands and white hands clasped as one,
And a song that reaches the sky—
The song of the life triumphant
Through the kids who die.

TRAYVON BENJAMIN MARTIN
(5 February 1995 – 26 February 2012)

REST IN PEACE

**"A sure sign of a crisis
is the prevalence of cranks."**

—Joan Robinson