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Interest in political theory seems to be at an all-time high, at least if one judges by new journals. Three are scheduled to make their debut in 2002, *Politics, Philosophy and Economics, Contemporary Political Theory*, and *European Journal of Political Theory*. We wish them well.

2001 is the one hundredth anniversary of Michael Oakeshott’s birth. We commemorate this with a fine article by Ted Miller that engages Oakeshott’s interpretation of Hobbes. Included as well is a short, previously unpublished manuscript by Oakeshott himself on Hobbes. I thank Patrick Riley both for making the manuscript available and for writing a preface to it.

—Stephen K. White
Editor
CONSTITUTIONAL DEMOCRACY
A Paradoxical Union of Contradictory Principles?

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1.

The modern conception of democracy differs from the classical conception in virtue of its relation to a type of law that displays three characteristics: modern law is positive, compulsory, and individualistic. Such law consists of norms that are produced by a lawgiver, are sanctioned by the state, and are meant to guarantee individual liberties. According to the liberal view, the democratic self-determination of citizens can be realized only through the medium of such a law, the structural properties of which ensure liberty. Consequently, the idea of a “rule of law,” which in the past was expressed in the idea of human rights, comes on the scene alongside—and together with—that of popular sovereignty as a second source of legitimation. This duality raises the question of how the democratic principle and constitutionalism are related.¹

According to the classical conception, the laws of a republic express the unrestricted will of the united citizens. Regardless of how the laws reflect the existing ethos of the shared political life, this ethos presents no limitation insofar as it achieves its validity only through the citizens’ own process of will-formation. The principle of the constitutional exercise of power, on the other hand, appears to set limits on the people’s sovereign self-determination. The rule of law requires that democratic will-formation not violate human rights that have been positively enacted as basic rights. The two sources of legitimation also compete with each other in the history of political philosophy. Liberalism and civic republicanism disagree on whether the “liberty of the moderns” or the “liberty of the ancients” should enjoy priority in the order
of justification. Which comes first: the individual liberties of the members of the modern market society or the rights of democratic citizens to political participation?

The one side insists that in basic rights, the private autonomy of citizens assumes a form that—“unchangeable” in its essential content—guarantees the anonymous rule of law. According to the other side, the political autonomy of citizens is embodied in the self-organization of a community that freely makes its own laws. If the normative justification of constitutional democracy is to be consistent, then it seems one must rank the two principles, human rights and popular sovereignty. To be legitimate, laws, including basic rights, must either agree with human rights (however these in turn are legitimated) or issue from democratic will-formation. On the first alternative, the democratic lawgiver may decide in a sovereign manner only within the boundaries of human rights; on the second alternative, the democratic lawgiver can set up any constitution it wants and, as the case may be, violate its own basic law, thus impairing the idea of the constitutional state.

However, these alternatives contradict a strong intuition.2 The idea of human rights that is spelled out in basic rights may neither be imposed on the sovereign lawgiver as a limitation nor be merely instrumentalized as a functional requisite for legislative purposes. In a certain way, we consider both principles as equally original. One is not possible without the other, but neither sets limits on the other. The intuition of “co-originality” can also be expressed thus: private and public autonomy require each other. The two concepts are interdependent; they are related to each other by material implication. Citizens can make an appropriate use of their public autonomy, as guaranteed by political rights, only if they are sufficiently independent in virtue of an equally protected private autonomy in their life conduct. But members of society actually enjoy their equal private autonomy to an equal extent—that is, equally distributed individual liberties have “equal value” for them—only if as citizens they make an appropriate use of their political autonomy.

Rousseau and Kant both formulated this intuition in the concept of autonomy.3 The idea that the addressees of the law must also be able to understand themselves as its authors does not give the united citizens of a democratic polity a voluntaristic, carte blanche permission to make whatever decisions they like. The legal guarantee to behave as one pleases within the bounds of the law is the core of private, not public, autonomy. Rather, on the basis of this freedom of choice, citizens are accorded autonomy in the sense of a reasonable will-formation, even if this autonomy can only be enjoined [angesonnen] and not legally required of them. They should bind their wills to just those laws they give themselves after achieving a common will through discourse. Correctly understood, the idea of self-legislation engen-
ders an internal relation between will and reason in such a way that the freedom of everyone—that is, self-legislation—depends on the equal consideration of the individual freedom of each individual to take a yes/no position—that is, self-legislation. Under these conditions, only those laws that lie in the equal interest of each can meet with the reasonable agreement of all.

However, neither Rousseau nor Kant could find an unambiguous way of using the concept of autonomy for the justification of constitutional democracy. Rousseau inscribed the will of the people with reason by binding the democratic process to the abstract and universal form of laws, whereas Kant tried to accomplish this relation to reason by subordinating law to morality. As I will show, however, this internal connection between will and reason can develop only in the dimension of time—as a self-correcting historical process.

It is true, of course, that in the Conflict of the Faculties, Kant went beyond the systematic boundaries of this philosophy and raised the French Revolution to the level of a “historical sign” for the possibility of a moral progress of humanity. But in the theory itself we find no trace of the constitutional assemblies of Philadelphia and Paris—at least not the reasonable trace of a great, dual historical event that we can now see in retrospect as an entirely new beginning. With this event began a project that holds together a rational constitutional discourse across the centuries. In what follows, I take a recent study by Frank Michelman as the occasion to argue that the allegedly paradoxical relation between democracy and the rule of law resolves itself in the dimension of historical time, provided one conceives the constitution as a project that makes the founding act into an ongoing process of constitution-making that continues across generations.

2.

Political systems such as the United States and the German Federal Republic have set up an independent institution charged with scrutinizing the constitutionality of parliamentary legislation. In these settings, the function and status of this politically influential branch—the Constitutional Court or Supreme Court—spark debates over the relation between democracy and the rule of law. In the United States, a debate has been going on for some time over the legitimacy of the highest-level judicial review exercised by the Supreme Court. Again and again, civic republicans who are convinced that “all government is by the people” bristle at the elite power of legal experts to void the decisions of a democratically elected legislature, although these
experts themselves are not legitimated by a democratic majority but can only call on their technical competence in constitutional interpretation. Frank Michelman sees this problematic personified in William J. Brennan, a commanding figure in recent American constitutional jurisprudence. As Michelman describes him, Brennan is a liberal who defends individual liberties in strongly moralistic terms; a democrat who radicalizes rights of political participation and wants to give a hearing to the voiceless and marginalized as well as to the deviant and oppositional voices; a social democrat who is highly sensitive to questions of social justice; and, finally, a pluralist who, going beyond the liberal understanding of tolerance, pleads for a politics open to difference and to the recognition of cultural, racial, and religious minorities. In short, by employing the palette of American pragmatism to depict Brennan as a model of contemporary republicanism, Michelman wants to sharpen the question that interests us here: when a convinced democrat with this mentality, in the role of a highly activist Supreme Court judge, has no qualms in making extensive use of the dubious instrument of judicial oversight, then perhaps the jurisprudence he has shaped exposes the secret of how one can combine the principle of popular sovereignty with constitutionalism.

Michelman uses Brennan to exemplify the role of a “responsive judge” who qualifies as democratically above suspicion when it comes to interpreting the Constitution. Brennan qualifies for this trust because he renders his decisions as best he knows how and according to his conscience and only after he has listened as patiently as possible—with an inquisitive hermeneutic sensitivity and a desire to learn—to the tangle of views in the relevant discourses conducted in civil society and the political public sphere. Interaction with the larger public, before which legal experts are held responsible, is supposed to contribute to the democratic legitimation of the decisions of a constitutional judge who has not been democratically legitimated or at least not sufficiently legitimated.

It is a condition of the interpreter’s greater or lesser reliability and of what we can do to bolster it. And one condition that you think contributes greatly to reliability is the constant exposure of the interpreter—the moral reader—to the full blast of the sundry opinions on the questions of rightness of one or another interpretation, freely and uninhibitedly produced by assorted members of society listening to what the others have to say out of their diverse life histories, current situations, and perceptions of interest and need.

Michelman is apparently guided by the intuition that the discursive besiegement of the Court by a mobilized society gives rise to an interaction that has favorable consequences for both sides. For the Court, which as always decides independently, the perspective of the experts is broadened.
along with the base of justifications for its decision. For citizens, whose pro-
vocative public opinions exert an influence on the Court, the legitimacy of the
decision procedure is at least increased. To judge how this model can help
resolve the alleged paradox, one would have to analyze in detail, on one hand,
the cognitive role played by the discursive offensive as a means of broadening
the legal public sphere for the practice of the Court and, on the other, the func-
tional contribution such discourse is supposed to have for the social accep-
tance of the decision. However, I suspect that pragmatic reasons and histori-
cal circumstances are more decisive for determining how the task of judicial
oversight is best established in a given context. These institutional possibil-
ities should certainly be assessed in the light of the principles of popular sov-
ereignty and constitutionalism, but the constellation and interplay of these
principles do not yield pat answers.

For our main issue, I find the way Michelman arrives at his model of the
“responsive” judge more interesting than the proposal itself. For some time
now, Michelman has debated against essentially three positions (which he
sees represented by Ronald Dworkin, Robert Post, and myself). In what fol-
lows, I stylize the arguments and counterarguments in such a way that these
three positions “emerge from one another” in good dialectical fashion.

According to the liberal view, the democratic legislative process requires a
specific form of legal institutionalization if it is to lead to legitimate regul-
ations. A “basic law” is introduced as the necessary and sufficient condition
for the democratic process itself, not for its results: democracy cannot define
democracy. The relationship between democracy as the source of legiti-
matation and a constitutionalism that does not need democratic legitimation poses
no paradox, however. For constitutive rules that first make a democracy pos-
sible cannot constrain democratic practice in the manner of externally
imposed norms. By simply clarifying the concepts, the alleged paradox dis-
appears: enabling conditions should not be confused with constraining
conditions.

The conclusion that the constitution is in some sense inherent in democ-

razy is certainly plausible. But the argument put forth as justification is inade-
quate because it refers only to part of the basic law, the part immediately con-
stitutive for institutions of opinion- and will-formation—that is, it refers only
to rights of political participation and communication. But liberty rights
make up the core of basic rights—habeas corpus, freedom of religion, prop-
erty rights—in short, all those liberties that guarantee an autonomous life
conduct and the pursuit of happiness. These liberal basic rights evidently pro-
tect goods that also have an intrinsic value. They cannot be reduced to the
instrumental function they can have for the exercise of the political rights of
citizens. Because the classical liberties are not primarily intended to foster the qualification for political citizenship, liberal rights, unlike political rights, cannot be justified by the argument that they make democracy possible.

According to the republican view, the substance of the constitution will not compete with the sovereignty of the people only if the constitution itself emerges from an inclusive process of opinion- and will-formation on the part of citizens. To be sure, we must then conceive democratic self-determination as an uncoerced process of ethical-political self-understanding undertaken by a populace accustomed to freedom. Under these conditions, the rule of law remains unharmed because it gains recognition as an integral component of a democratic ethos. Rooted in the motivations and attitudes of the citizens, constitutional principles are less coercive and more permanent than formal juridical mechanisms that immunize the constitution against changes by tyrannical majorities. However, this reflection is guilty of begging the question; namely, it builds into the history of ideas and political culture of the polity precisely those liberal value orientations that make legal coercion superfluous by replacing it with custom and moral self-control.

3.

The republican conception acquires a different, namely a proceduralist sense when the expectation of reason connected with a self-limiting democratic opinion- and will-formation shifts from a basis in the resources of an existing value consensus to the formal properties of the democratic process. Neo-Aristotelians must bank on the liberal quality and tradition-building force of a democratic form of life; neo-Kantians, by contrast, radicalize the view that the idea of human rights is inherent in the very process of a reasonable will-formation: basic rights are answers that meet the demands of a political communication among strangers and ground the presumption that outcomes are rationally acceptable. The constitution thereby acquires the procedural sense of establishing forms of communication that provide for the public use of reason and a fair balance of interests in a manner consonant with the regulatory need and context-specific issue. Because this ensemble of enabling conditions must be realized in the medium of law, these rights encompass both liberal freedoms and rights of political participation, as we shall see.

It is not without sympathy that Michelman describes the basic assumptions of this conception of deliberative democracy:
first, a belief that only in the wake of democratic debate can anyone hope to arrive at a reliable approximation to true answers to questions of justice of proposed constitutional norms, understood as consisting in their universalizability of everyone’s interests or their hypothetical unanimous acceptability in a democratic discourse; and, second, that only in that way can anyone hope to gain a sufficient grasp of relevant historical conditions to produce for the country in question, in a legally workable form, an apt interpretation of whatever abstract practical norms can pass the justice tests of universalizability and democratic-discursive acceptability.\(^8\)

However, Michelman does not regard this conception of deliberative democracy as a solution to the supposedly paradoxical relation between democracy and the rule of law. The paradox seems to return when we trace matters back to the act of constitution making and ask whether discourse theory allows us to conceive the opinion- and will-formation of the constitutional convention as an unconstrained democratic process. Elsewhere, I have proposed that we understand the normative bases of constitutional democracy as the result of a deliberative decision-making process that the founders—motivated by whatever historical contingencies—undertook with the intention of creating a voluntary, self-determining association of free and equal citizens.\(^9\) The founders sought a reasonable answer to this question: what rights must we mutually accord one another if we want to legitimately regulate our common life by means of positive law?

Given this way of framing the issue and given a discursive mode of deliberation, two things follow:

1. First, only those outcomes can count as legitimate upon which equally entitled participants in the deliberation can freely agree—that is, outcomes that meet with the justified consent of all under conditions of rational discourse.
2. Second, given the specific way of framing the question, the participants commit themselves to modern law as the medium for regulating their common life. The mode of legitimation through a general consent under discursive conditions realizes the Kantian concept of political autonomy only in connection with the idea of coercive laws that grant equal individual liberties. For according to the Kantian concept of autonomy, no one is truly free until all citizens enjoy equal liberties under laws that they have given themselves after a reasonable deliberation.

Before I recall the system of rights that emerges from this discourse-theoretic approach, I must deal with the objection Michelman raises against this third, proceduralist attempt at reconciling the idea of human rights with the principle of popular sovereignty. To perceive the force of this interesting objection, one must be clear about the consequences of attempting to explain the form of constitutional democracy in terms of the legal institutionalization of a far-reaching network of discourses. Public discourses must be tempo-
rally, socially, and materially specified in relation to political opinion- and will-formation in arenas of the public sphere or in legislative bodies and in relation to legally correct and materially informed decision-making practices in courts or administrations. Michelman has in view this dimension of legal regulations, beginning with basic rights and voting rights, extending further to the specifications of the organizational part of the constitution, and finally moving to the procedural rights and rules of order of individual governmental bodies.

Depending on the matter in need of regulation and the need for a decision, sometimes the moral and legal aspects of an issue stand in the foreground; at other times the ethical aspects stand out. Sometimes empirical questions are involved that call for expert knowledge; at other times it is a matter of pragmatic questions that require a balancing of interests and, thus, fair negotiations. The legitimation processes themselves move through various levels of communication. Standing in contrast to the “wild” circles of communication in the unorganized public sphere are the formally regulated deliberative and decision-making processes of courts, parliaments, bureaucracies, and the like. The legal procedures and norms that govern institutionalized discourses should not be confused with the cognitive procedures and patterns of argumentation that guide the intrinsic course of discourse itself.

4.

It is this legal dimension of the process of establishing forms of communication that Michelman refers to when he argues that the constitution-making practice cannot be reconstructed on the basis of discourse theory. The reason is that this approach cannot avoid the circularity of legal self-constitution and thus gets trapped in an infinite regress:

A truly democratic process is itself inescapably a legally conditioned and constituted process. It is constituted, for example, by laws regarding political representation and elections, civil associations, families, freedom of speech, property, access to media, and so on. Thus, in order to confer legitimacy on a set of laws issuing from an actual set of discursive institutions and practices in a country, those institutions and practices would themselves have to be legally constituted in the right way. The laws regarding elections, representation, associations, families, speech, property, and so on, would have to be such as to constitute a process of more or less “fair” or “undistorted” democratic political communication, not only in the formal arenas of legislation and adjudication but in civil society at large. The problem is that whether they do or not may itself at any time become a matter of contentious but reasonable disagreement, according to the liberal premise of reasonable interpretative pluralism.10
The procedural legitimacy of the outcome of any given discourse depends on the legitimacy of the rules according to which that type of discourse has been specified and established from temporal, social, and material points of view. If procedural legitimacy is the standard, then the outcome of political elections, the decision of parliaments, or the content of court decisions is in principle subject to the suspicion that it came about in the wrong way, according to deficient rules, and in a deficient institutional framework. This chain of presuppositions of legitimation reaches back even beyond the constitution-making practice. For example, the constitutional assembly cannot itself vouch for the legitimacy of the rules according to which it was constituted. The chain never terminates, and the democratic process is caught in a circular self-constitution that leads to an infinite regress.

I prefer not to meet this objection by recourse to the transparent objectivity of ultimate moral insights that are supposed to bring the regress to a halt. Rather than appeal to a moral realism that would be hard to defend, I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic—not just in its content but also according to its source of legitimation—is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights laid down in the original document of the constitution. According to this dynamic understanding of the constitution, ongoing legislation carries on the system of rights by interpreting and adapting rights for current circumstances (and, to this extent, levels off the threshold between constitutional norms and ordinary law). To be sure, this fallible continuation of the founding event can break out of the circle of a polity’s groundless discursive self-constitution only if this process—which is not immune to contingent interruptions and historical regressions—can be understood in the long run as a self-correcting learning process.

In a country such as the United States, which can look back on more than two hundred years of continuous constitutional history, we find evidence that supports this dynamic interpretation. Bruce Ackerman refers to “hot” periods, such as the New Deal under Roosevelt, that were characterized by the innovative spirit of successful reforms. Such times of productive radical change make possible the rare experience of emancipation and leave behind the memory of an instructive historical example. Contemporaries can see that groups hitherto discriminated against gain their own voice and that hitherto underprivileged classes are put into a position to take their fate into their own hands. Once the interpretive battles have subsided, all parties recognize that the reforms are achievements, although they were at first sharply contested.
In retrospect they agree that with the inclusion of marginalized groups and with the empowerment of deprived classes, the hitherto poorly satisfied presuppositions for the legitimacy of existing democratic procedures are better realized.

Of course, the interpretation of constitutional history as a learning process is predicated on the nontrivial assumption that later generations will start with the same standards as did the founders. Whoever bases her judgment today on the normative expectation of complete inclusion and mutual recognition, as well as on the expectation of equal opportunities for utilizing equal rights, must assume that she can find these standards by reasonably appropriating the constitution and its history of interpretation. The descendents can learn from past mistakes only if they are “in the same boat” as their forebears. They must impute to all the previous generations the same intention of creating and expanding the bases for a voluntary association of citizens who make their own laws. All participants must be able to recognize the project as the same throughout history and to judge it from the same perspective.

Michelman seems to agree:

Constitutional framers can be our framers—their history can be our history, their word can command observance from us now on popular sovereignty grounds—only because and insofar as they, in our eyes now, were already on what we judge to be the track of true constitutional reason. . . . In the production of present-day legal authority, constitutional framers have to be figures of rightness for us before they can be figures of history.11

The unifying bond thus consists of the shared practice to which we have recourse when we endeavor to arrive at a rational understanding of the text of the constitution. It is no accident that the founding constitutional act is experienced as a decisive point in the nation’s history, because with this act the grounds for a world-historically new kind of practice have been established. The performative meaning of this practice—a practice meant to bring forth a self-determining community of free and equal citizens—is simply spelled out in the words of the constitution. This meaning remains dependent on an ongoing explication that is carried out in the course of applying, interpreting, and supplementing constitutional norms.

Thanks to this intuitively available performative meaning, each citizen of a democratic polity can at any time refer to the texts and decisions of the founders and their descendents in a critical fashion, just as one can, conversely, adopt the perspective of the founders and take a critical view of the present to test whether the existing institutions, practices, and procedures of democratic opinion- and will-formation satisfy the necessary conditions for a process that engenders legitimacy. Philosophers and other experts can in their
own way contribute explanations of what it means to pursue the project of realizing a self-determining association of free and equal consociates under law. On this premise, each founding act also creates the possibility of a process of self-correcting attempts to tap the system of rights ever more fully.

5.

Reflection on the historical dimension of realizing the constitutional project can, perhaps, defang the prima facie plausible objection to the discourse-theoretic interpretation of the democratic self-constitution of the constitutional state [Verfassungsstaat]. But one has not thereby shown how the principles of the rule of law found in the constitution are inherent in democracy itself. To demonstrate that democracy and constitutionalism are not paradoxically related, we must explain the sense in which basic rights as a whole, and not merely political rights, are constitutive for the process of self-legislation.

Similar to its social-contract predecessors, discourse theory simulates an original condition: an arbitrary number of persons freely enter into a constitution-making practice. The fiction of freedom satisfies the important condition of an original equality of the participating parties, whose “yes” and “no” count equally. The participants must satisfy three further conditions. First, they are united by a common resolution to legitimately regulate their future life together by means of positive law. Second, they are ready and able to take part in rational discourses and thus to satisfy the demanding, pragmatic presuppositions of a practice of argumentation. Unlike the tradition of modern natural law, this supposition of rationality is not limited to purposive rationality; moreover, in contrast to Rousseau and Kant, it does not just extend to morality but makes communicative reason a condition.12 Finally, entrance into the practice of constitution making is bound up with the readiness to make the meaning of this practice an explicit topic (i.e., to make the resources of the performance a topic of discussion). That is, to begin with the practice amounts to nothing more than reflecting on and conceptually explicating the specific meaning of the intended enterprise the participants have gotten themselves into with their very practice of constitution making. This reflection attends to a series of constructive tasks that must be completed before the work of constitution making can actually begin—the next stage.

The first thing the participants realize is that because they want to realize their intention through the medium of law, they must create a system of statuses to ensure that every future member of the association counts as a bearer of individual rights. A system of positive and compulsory law with such an individualistic quality can come about only if three categories of rights are
If we consider that the capacity for general consent is a requirement of legitimacy, these categories are as follows:

i. basic rights (whatever their concrete content) that result from the autonomous elaboration of the right to the greatest possible measure of equal individual freedom of action for each person;

ii. basic rights (whatever their concrete content) that result from the autonomous elaboration of the status of a member in a voluntary association of legal consociates;

iii. basic rights (whatever their concrete content) that result from the autonomous elaboration of each individual’s right to equal protection under law, that is, that result from the actionability of individual rights.

These three categories of rights are the necessary basis for an association of citizens that has definite social boundaries and whose members mutually recognize one another as bearers of actionable individual rights.

In respect to the three above categories, however, participants anticipate only that they will be future users and addressees of the law. Because they want to ground an association of citizens who make their own laws, it next occurs to them that they need a fourth category of rights so that they can mutually recognize one another also as the authors of these rights as well as of the law in general. If they want to hold fast to the most important aspect of their practice, its self-determining character, not only now but also in the future, then they must empower themselves as political lawgivers by introducing basic political rights. Without the first three categories of basic rights, something like law cannot exist; but without a political elaboration of these categories, the law could not acquire any concrete contents. For the latter, an additional (and also initially empty) category of rights is necessary:

iv. basic rights (whatever their concrete content) that emerge from the autonomous elaboration of the right to an equal opportunity to participate in political law-giving.

It is important to keep in mind that this scenario has recapitulated a thought process carried out in mente, so to speak—even if the process is supposed to have taken shape in the course of a deliberative practice. Thus far, nothing has actually happened. Nothing could happen: before the participants conclude their first act of lawmaking, they must achieve clarity regarding the enterprise they have resolved upon with their entrance into a practice of constitution making. However, after they have made explicit their intuitive knowledge of the performative meaning of this practice, they know they must create the four above categories of basic rights in a single stroke, so to speak. Of course, they cannot produce basic rights in abstracto but only particular basic rights with a concrete content. For this reason, the participants who thus
far were engaged in inward reflection, focused on a kind of philosophical
clarification, must step out from behind the veil of empirical ignorance and
perceive what in general must be regulated under the given historical circum-
stances and which rights are necessary for dealing with these matters in need
of regulation.

Only when they are confronted, we say, with the intolerable consequences
of the use of physical violence do they recognize the necessity of elementary
rights to bodily integrity or to freedom of movement. The constitutional
assembly can reach decisions only when it sees the risks that make a specific
need for security into a matter it must address. Only the introduction of new
information technologies leads to problems that make some kind of data pro-
tection necessary. Only when the relevant features of the environment shed
light on our own interests does it become clear that we need rights that protect
the conduct of our personal and political life—such familiar rights as the
right to conclude contracts and acquire property, to form associations and
publicly express our opinions, to join and practice a religion, and so on.

We must, therefore, carefully distinguish two stages. The first stage
involves the conceptual explication of the language of individual rights in
which the shared practice of a self-determining association of free and equal
citizens can express itself—rights, thus, in which alone the principle of popu-
lar sovereignty can be embodied. The second stage involves the realization of
this principle through the exercise, the actual carrying out, of this practice.
Because the practice of civic self-determination is conceived as a long-run
process of realizing and progressively elaborating the system of fundamental
rights, the principle of popular sovereignty comes into its own as part and par-
cel of the idea of government by law.

This two-stage scenario of the conceptual genesis of basic rights clearly
shows that the preparatory conceptual steps explicate necessary require-
ments for a legally established democratic self-legislation. They express this
practice itself and are not constraints to which the practice would be sub-
jected. Only together with the idea of government by law can the democratic
principle be realized. The two principles stand in a reciprocal relationship of
material implication.

6.

Because autonomy must not be confused with arbitrary freedom of
choice, the rule of law neither precedes the will of the sovereign nor issues
from that will. Rather, the rule of law is inscribed in political self-legislation,
just as the categorical imperative—the idea that only universalizable max-
ims, maxims capable of universal consent, are legitimate and reasonable in the sense of showing equal respect for each person—is inscribed in moral self-legislation. However, whereas the morally acting individual binds her will to the idea of justice, the reasonable self-binding of the political sovereign means that the latter binds itself to legitimate law. The practical reason that is articulated in the rule of law is—as legally exercised rulership—bound up with the constitutive features of modern law. This explains why the coimplication of popular sovereignty and constitutionalism is reflected in the relation between the autonomy of the citizen and the autonomy of the private individual: one cannot be realized without the other.

Like morality, so also legitimate law protects the equal autonomy of each person: no individual is free so long as all persons do not enjoy an equal freedom. But the positivity of law necessitates an interesting split in autonomy to which there is nothing analogous in the moral sphere. The binding character of legal norms stems not just from the insight into what is equally good for all but from the collectively binding decisions of authorities who make and apply the law. This results in the conceptually necessary division of roles between authors who make and apply the law, on one hand, and addressees who are subject to valid law, on the other. The autonomy that in the moral sphere springs from a single source, as it were, appears in the legal sphere in the dual form of private and public autonomy.

Modern compulsory law can demand only that its addressees behave in a legal manner: that regardless of one’s motivation, one behave in conformity with law. Because the law may not require legal obedience “out of respect for the law,” private autonomy can be guaranteed only in the form of individual liberties that entitle one to an autonomous life conduct and enable the moral consideration of others but do not obligate one to do anything beyond what is compatible with the equal freedom of everyone else. Private autonomy thus takes on the form of a legally guaranteed freedom of choice. At the same time, in the role of persons who act morally, legal persons must also be able to follow the law out of respect for the law. For this reason, valid (in the sense of existing) law must also be legitimate. And the law can satisfy this condition only if it has come about in a legitimate way, namely, according to the procedures of democratic opinion- and will-formation that justify the presumption that outcomes are rationally acceptable. The entitlement to political participation is bound up with the expectation of a public use of reason: as democratic colegislators, citizens may not ignore the informal demand [Ansinnen] to orient themselves toward the common good.

The foregoing makes it appear as if practical reason has its place only in the exercise of a political autonomy that allows the addressees of law to understand themselves at the same time as its authors. In fact, practical reason
is realized in the form of private autonomy no less than it is in that of political autonomy. That is, both are as much means for the other as they are ends in themselves. The demand to orient oneself to the common good, which is connected with political autonomy, is also a rational expectation insofar as only the democratic process guarantees that private individuals will achieve an equal enjoyment of their equal individual liberties. Conversely, only when the private autonomy of individuals is secure are citizens in a position to make correct use of their political autonomy. The interdependence of constitutionalism and democracy comes to light in this complementary relationship between private and civic autonomy: each side is fed by resources it has from the other.

—Translated by William Rehg

NOTES

1. [Habermas uses a number of terms to express the idea of the rule of law or constitutionalism (taken as equivalent for the purposes of this essay). The most literal is Herrschaft der Gesetze, which I always translate as “rule of law.” Rechtsstaat, the literal meaning of which is “law state,” may be rendered either as “constitutional state” or “rule of law.” To distinguish Rechtsstaatlichkeit, I translate it as “constitutionalism” or “government by law.” Note, by the way, that the German word for “constitution” is Verfassung.—Translator]


3. I. Maus, Zur Aufklärung der Demokratietheorie (Frankfurt am Main, Germany, 1992).


9. See Habermas, Between Facts and Norms.


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OF BOATS AND PRINCIPLES
Reflections on Habermas’s
“Constitutional Democracy”

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In “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?” Habermas tries to rescue the relation between the democratic principle and constitutionalism from the paradoxical quality that Frank Michelman, in his recent book *Brennan and Democracy*, attributes to a certain proceduralist rendition of it. In my comment, I will discuss the merits of Habermas’s response to Michelman with an eye to the impact of this specific argument on the rest of Habermas’s conception of democracy.

Let me start by briefly restating the terms of the problem. The idea of a constitutional democracy seems problematical in that it is prima facie traversed by a tension between two seemingly conflicting assumptions: (a) the only source of legitimate normativity is the self-determining will of the people and (b) there should be basic principles, usually cast in the form of rights, that set limits to what this sovereign popular will can at any time legitimately legislate; or, as Michelman has aptly put it, there should be “laws of lawmaking.”

Three facets of this problem can be discerned: (a) a conceptual facet—Is there really a paradox, or is the paradox an effect of our loose use of certain basic concepts? (b) a legitimation facet—How are we to understand the authority of a constitution framed in a historical context different from the one in which we find ourselves and thus reflective of the autonomous will of a generation of citizens different from our own? (c) an institutional facet—Who is really to enforce the laws of lawmaking and to adjudicate contested cases concerning whether a law satisfies them?

Concerning (a), Habermas maintains that “by simply clarifying the concepts, the alleged paradox disappears.” The relevant concept in need for clarification is the very notion of conditions or limits that supposedly constrain the legislative exercise of public autonomy or, in other words, the nature of
the “laws of lawmaking.” Drawing on a distinction introduced by Searle in the context of his theory of speech acts, Habermas points out that there are conditions or norms or rules that constrain, regulate, or discipline independently constituted and antecedently existing activities. Traffic laws are a good example. Then there are conditions, laws, or rules that enable or constitute activities that would not exist independently of, and prior to, them. The rules of tennis or football provide a relevant example. By definition, then, in the latter case the relation between the regulating and the regulated element cannot be understood as one of containment or control only. For the object of regulation (in our case, the democratic sovereign will) is also brought into being or created by the regulating element.

If we apply this distinction to our problem, we obtain the “co-originality” thesis: basic rights and the democratic principle stand to each other in a “reciprocal relationship of material implication.” Rights do not precede the domestic will and constrain it; nor are they a mere reflection of that will in a contingent sense. Rather, assuming those rights is a condition for making sense of the democratic quality of the popular will. In Habermas’s words, “The rule of law is inscribed in political self-legislation, just as the categorical imperative . . . is inscribed in moral self-legislation.” Just as the categorical imperative does not constrain the moral will from without but can be understood, at least under one interpretation, as a way of explicating what moral self-legislation is all about, so the idea of constitutionalism, with its central notion of rights, can be construed as a way of explicating what true political and, more specifically, democratic self-legislation is all about. I will skip Habermas’s reflections on how his own specific formulation of the nexus of private and public autonomy, of rights and democratic self-determination, of the rule of law and popular sovereignty, is designed to improve on the inadequacies of the traditional liberal and republican attempts to capture the same nexus. More directly related to my present concern is the way Habermas responds to Michelman’s criticism of his reconstruction of the relation of democracy to constitutionalism as complementary and not paradoxical.

In what looks like an ingenious application of Gödel’s theorem to political philosophy, Michelman has called into question the coherence of the notion of a democratic founding. Given that a democratic practice of legislation strictly speaking only starts when a charter of rights, usually but not necessarily reflected in a constitution, draws the boundaries of its legitimate exercise, the very notion of a democratic founding—the simultaneous and democratic coming into being of rights and democratic will that Habermas talks about—seems to require a Münchausen-like ability on the part of the demos or to be just a loose manner of speaking. It is hard for the proceduralist theo-
rist to account for the democratic quality of a process of will-formation in a context—be it a constitutional convention or any other institutional device—that still has to produce, as its outcome, the very legal (as opposed to moral) standard, namely the constitution, by which anything, including processes of will-formation, can be called democratic. The infinite regress of legitimating sources cannot be stopped, argues Michelman, except by positing an agreed and definite standard that is taken as an unanalyzable notion.

Habermas, however, in his text avoids the traditional move of providing a philosophical foundation for that standard and tries a different and innovative one. Bidding what seems a tacit, belated, but much awaited farewell (or perhaps just a “storing away until further notice”) to the political-philosophical relevance of principle “D”—a principle related to the principle of universalization, “U,” and to the universal-pragmatic analysis of the quasi-transcendental presuppositions of the communicative use of language—Habermas resorts to the (Hegelian flavored) notion of a self-reinforcing, spiral-like, historical learning process. He invites us to rethink the regress mentioned by Michelman “as the understandable expression of the future-oriented character, or openness, of the democratic constitution . . .” 6 That is, a democratic constitution should be seen as a “tradition-building project with a clearly marked beginning in time,” a project that subsequent generations endeavor to further develop by “actualizing the still-untapped normative substance of the system of rights laid down in the original document of the constitution.”7 The idea of a bringing to fruition, on the part of subsequent generations of citizens, of the normative core enshrined in the “founding event” can help us to avoid the infinite regress of the “polity’s groundless discursive self-constitution,” continues Habermas, “only if this process . . . can be understood in the long run as a self-correcting learning process.”8 These are demanding propositions that deserve a close examination.

I find the part of Habermas’s argument that draws on the distinction between regulative and constitutive norms most convincing. The co-originality thesis is one of the innovative political-philosophical ideas of the 1990s, and in my opinion it does go some way toward removing the paradoxical quality from the relation of constitutionalism and democracy. Things begin to become more complicated when the dimension of historical time is inserted into the abstract conceptual picture. For the co-originality thesis as stated by Habermas is fully successful in removing the tension between rights and popular will only with reference to the generation of the founders. When it comes to the generations that find a certain set of rights already positivized in a constitution not of their own making, the model has to account for the obvious fact that the democratic self-determination of these citizens is constrained by rights that they did not by any means reciprocally grant one another. Now,
Habermas contends that no paradox arises if the successors are able to imagine themselves “in the same boat as their forebears”—an expression that requires a careful unpacking. Let me, for the time being, interpret the metaphor as meaning that the present-generation citizens imagine themselves as involved in the project of bringing to fruition the same political ideals and, within an intergenerationally shared horizon, as coming to the same conclusions that their predecessors drew concerning rights, namely, understanding those rights as ones that they themselves would have chosen to reciprocally grant one another.

What facets of the problematic relation of constitutionalism to democracy does this move actually address? It does provide an answer to the question concerning the conceptual relation between democracy and constitutionalism, that is, facet (a), by way of addressing the nature of constitutional authority, that is, facet (b). We, the later generations, find the constitution authoritative, neither because it tracks what some context-independent principle establishes—either substantively (like Rawls’s two principles of justice) or procedurally (like “D”)—as the right terms of political association, nor because a majority of our predecessors factually believed in its authoritativeness, but because a considered judgment (indeed, an oriented reflective judgment) about who we are, politically, brings us to see ourselves as sharing with our forebears the same political project of a political community of free and equal citizens of which the actual historical constitution was meant by the framers to be a legal reflection. If we adopt the meaning provisionally attributed above to the expression “being in the same boat,” the reason we don’t find our collective autonomy curbed by the constitutional limits drawn by our predecessors is that we arrive at the judgment that we ourselves would have drawn the same limits and conceded one another the same rights. Furthermore, the argument of Habermas’s section 5 concerning the sense in which all fundamental rights, and not just political rights, are constitutive for the process of democratic self-legislation completes the analysis of the nonparadoxical relation of democracy and constitutionalism.

Yet, does Habermas’s move stop the infinite regress that Michelman signals? Not directly, not without a twist that may or may not be within—I’m truly undecided about this—the bounds of what he is willing to argue. Not directly, in the sense that even if we accept the co-originality thesis, still the adjective “democratic” strictly speaking becomes a legal, as opposed to merely moral, qualification of a certain political practice of will-formation only after, not before, a constitution is enacted. Thus, there still cannot be a “democratic enacting of the constitution,” except if we are prepared to use “democratic” merely as a vague term of moral praise.
To obtain a different result, we have to investigate more closely the nature of the boat in which the framers and their successors find themselves. Perhaps the boat must be larger than the constitution for Habermas’s argument to actually succeed in meeting Michelman’s objection. Drawing on other parts of Frank Michelman’s work, especially “Always under Law?”, we can conceive of the political identity of the people as something that preexists the constitution. Constitution framing need not count, from the standpoint of our conceptual strategy for avoiding infinite regress, as an originary act or as a kind of legal Big Bang. Rather, it can be seen as an act that takes place within a broader normative frame of reference to which it has to be responsive. As Michelman puts it, even “the People’s higher-law ministrations are always interpretive.”10 What they, including the supreme founding act of the framing of a constitution, are interpretive of is “the community’s ultimate law or proto-law”11 or, in other words, “some already present, politically grounded, idea of reason or right.”12 Substantively, for us Western moderns, the “community’s ultimate law or proto-law” means the idea of a political community of free and equals bound by equal respect. We the successors of each of our countries’ framers are then able to see the framing of the constitution as the act by which our predecessors attempted to translate this basic ideal or project into the most general legal code—the code containing the “laws of law-making.” Then we can see “democratic” as a qualification originating from a logical vantage point (this “already present” idea of reason or right understood as equal respect being owed to each and every member of a community of free and equals) prior to the differentiation of a moral and a legal code. We the People, qua collectivity endowed with a cultural and a political identity, both discover on reflection that, given our history, the idea of equal respect among free and equals is inescapable for us and at the same time rethink ourselves now as a demos unified through the ideal of equal respect adequately translated into a positively enacted constitution.

This modified picture allows us to say that democracy (and with it the applicability of the adjective democratic) does not start with the framing of the constitution but already with the relation that the intended historical constitution qua political project conceived by the framers (and not yet articulated into a legally binding document) establishes with that normative core. We obtain then a sense in which we can use the qualification “democratic” not in a fully differentiated legal sense but in a thick evaluative sense in which the moral, the ethical, and the legal aspects are still intertwined. Such qualification applies both to the normative core to which the constitution stands in an interpretive relation as well as to the act or series of acts through which our forebears objectified their interpretation and made explicit the implicit normative core of our communal identity: the actual framing of the constitution.
The Münchausen-like quality exposed by Michelman can be attributed only to our pretending to have a democratic act of founding or framing the constitution in the fully constitutional-legal sense of the word democratic, but the framing of a constitution can be democratic in this broader, but still thicker than merely “moral,” sense.

From this argument, we obtain then a slightly different sense of the metaphor of being “in the same boat” as our forebears. Is this boat still the same that Habermas originally had in mind? The nonparadoxical understanding of the nexus of democracy and constitutionalism begins to look like the gradual coming to fruition of a modern identity that hinges on the background principle of subjective freedom, articulates it politically as a notion of equal respect among free and equal citizens, enacts a constitution in the attempt to shape communal life according to it, and devises judicial review or some functional equivalent as a means for ensuring the persisting congruence of the positive laws regulating the collective’s life and the laws of lawmaking embedded in the constitution.

Before ending with a note on judicial review (facet (c), above), let me briefly touch on some areas of seeming friction between this interpretation of the boat metaphor, needed to make Habermas’s response to Michelman’s objection really work, and other aspects of Habermas’s philosophical position.

First, Habermas’s allegation that within the Rawlsian model, “the citizens cannot reignite the democratic embers of the original position in the civic life of their society,” and that the substantive as opposed to procedural nature of the Rawlsian model makes it so that “the act of founding the democratic constitution cannot be repeated under the institutional conditions of an already constituted just society”13 seems to need reconsideration in light of the fact that the “constitutional project” of which forebears and successors are equally part certainly cannot be understood in procedural terms alone. Forebears and successors must share much more than principle “D” or even its specification as a “principle of democracy” for Habermas’s model to work. “D” underlies all the modern constitutions, but different constitutions are possible within it. For today’s German citizens to feel in the same boat with their predecessors, as opposed to feeling in one and the same boat with the American framers (who, incidentally, were equally responsive to principle “D”), we have to inject much more substance into the model. Not only does the neatness of the distinction between form and content, substance and procedure, begin to fade, but furthermore it becomes difficult to see in what sense the new model would crucially differ (although many less relevant differences can certainly be found) from the one outlined by Rawls.

The idea of constitutional patriotism becomes a second area of friction. If, for the sake of construing the adjective democratic in a sense capable of really
meeting the challenge of infinite regress, we conceive of the constitution as the embodiment of a preexistent, albeit implicit, notion of equal respect among free and equals, then the true object of a postconventional, reflective patriotism returns to be different from the mere procedural consensus described by Habermas in “Struggles for Recognition in the Democratic Constitutional State.” The object of democratic patriotism cannot simply be the fact that

the unshackling of communicative liberties in the public sphere, the democratic procedure for settling conflicts and the constitutional channeling of political power together provide a reasonable presumption for checking illegitimate power and ensuring the use of administrative power in the equal interest of all.14

Were the boat of the generations of citizens made out of that material alone, again it would lack individuation. We could not distinguish the different boats that the present citizens of the United States, the United Kingdom, France, Germany, Italy, Spain, and so on feel that they share with their respective forebears. It would be odd to think that the patriotic investment of these citizens is directed to some constitutional project that is not distinctively and recognizably their own. To regain a sense of the difference between the various (implicit, in the case of the United Kingdom) constitutional projects, we have to bring constitutional substance back into the picture. This throws into serious doubt the “procedural” quality of constitutional patriotism. Constitutional patriotism begins then to look more like good old loyalty to certain political values, distinctive of one’s political community and rooted in the broader moral culture of that community, which the constitution is deemed to reflect but not to create.15

A third tension emerges around the discourse principle “D” (“Only those norms of action are valid to which all possibly affected persons could assent as participants in rational discourses”). In the context of this new essay, its role becomes unclear. Is “D” best understood as a quasi-transcendental principle, ultimately anchored in certain universal-pragmatic structures of language and therefore capable of transcending the parochialism of life forms, a principle that peoples designing their constitutions or transforming them ignore at their own peril? Or is it best understood as a way of capturing the view of normativity found at the core of the communal identity of peoples living within the modern life form, namely as the most authentic philosophical rendition of that modern ethos of equal respect that each modern people, by virtue of its own unique attempt to fulfill its own version of the modern identity, tries to institutionalize in a code of “laws of lawmaking”? Understandably, both aspects are present at different loci within Habermas’s work; and
indeed, one could build two competing interpretations of Habermas’s political philosophy (a more traditional, almost foundationalist one and a radically identity-based, but still “discursive,” one) based on the source to which one traces the cogency of principle “D” as a test of discursive generalization. The first interpretation of “D” provides the sharp distinction between ethics and morality that is one of Habermas’s priorities; but it also generates collateral problems, notably the return to the pre-“linguistic turn” pretense of having discovered and described at least one portion of uninterpreted reality (in this case, the presuppositions of communication). The second interpretation avoids this last residue of foundationalism, but at the cost of blurring the line between the ethical and the moral.17 In sum, what this specific essay by Habermas seems to indicate is that if we want to rescue the idea of a democratic founding from the curse of infinite regress, and if we want to avoid the foundational move of stopping the regress via a “recourse to the transparent objectivity of ultimate moral insights” (including insight into the unavoidable presuppositions of argumentation), then the political identities premised on equal respect for all that underpins the modern constitutions must be the ultimate source of normativity.

One question left open by this interpretation of Habermas’s essay is the following: if the politically normative, and more specifically the normative authority of the constitution, cannot be anchored in anything transcending the political identity of the people; if the normative is totally agent-relative, then by virtue of what should a situated learning process, taking place in a political community at a given time and originating from one specific constitutional project, bear any significance for any other political community differently situated? It seems to me that if we want to salvage a sense in which constitutional democracy has an inherent normative valence and is not just a mere description of “the way we do things here,” this valence cannot but rest on the force of authentic exemplarity—that is, on something similar, though by no means identical, to the capacity possessed by the exemplary work of art to exert its influence and induce an aesthetic experience beyond the bounds of its context of origin without relying on external principles or laws. But I do not want to superimpose my own philosophical agenda on the text under discussion, and so I will rather move to the last facet of our problem.

This interpretation of Habermas’s response to Michelman allows us also to see under a different light the question of who—whether a body of unelected judges or the people through its representatives or the people directly through referenda—should monitor the constitutionality of laws. The alternative between judges and elected representatives can be decided by reference to the electoral pressures bearing on politicians and to the fact that politicians, although more directly reflecting the will of the people, may not
be expected to possess the necessary training in jurisprudence; nor is it desir-
able that they be expected to, since we also want them to represent all walks of 
life. If the judgment as to the compatibility of statutes with the law of law-
making requires impartiality and independence, then that quality seems to 
speak for long-term appointment and long-term professional expertise rather 
than direct responsiveness to a fiduciary mandate and direct exposure to par-
tisan interests.18

More difficult to decide is the other alternative: why shouldn’t the people 
directly, via referendum, decide for itself about whether the First Amend-
ment should be understood as protecting flag burning and hate-speech, about 
the acceptability of quotas in college admission procedures, about whether 
states can outlaw abortion, and so on? Why should the benefit of independent 
legal expertise not be balanced with the good of a more complete form of self-
government? This is a point that obviously cannot be debated here. However, 
one sense in which the Habermasian idea of the constitution as a project to be 
fulfilled through a cross-generational learning process can be relevant to this 
discussion is the following. A distinction could be drawn between under-
standing the constitutional project and working out its implications on one 
hand and changing or redirecting the project on the other. The first practice is 
best conceived as the prerogative of a body of appointed specialists, whereas 
the second cannot but remain a prerogative of the democratic political will.19

In the case of the first practice, it is the desired fidelity to the original constitu-
tional project that legitimates, from a democratic point of view, the entrusting 
of adjudication to judicial experts not dependent on the preferences and prej-
udices of contingent political majorities. Going back to the boat metaphor, on 
a democratic boat one wants all the passengers on board to decide on the des-
tination, and on the further changes thereof, but not necessarily to decide all 
the time on the most advisable course to follow from moment to moment to 
reach that destination.

In sum, Habermas’s article provides a valuable solution to the paradox of 
democracy pointed out by Michelman, but for his argument to fully work, we 
have to interpret his solution along lines that require a realignment of several 
other aspects of the Habermasian philosophical project.

NOTES

1. Frank I. Michelman, Brennan and Democracy (Princeton, NJ: Princeton University 
Press, 1999).

2. Jürgen Habermas, “Constitutional Democracy: A Paradoxical Union of Contradictory 
Principles?” Political Theory 29 (2001 [this issue]): 770.
3. Ibid., 778.
4. Ibid., 778-79.
7. Ibid., 774.
8. Ibid., 774.
12. Ibid., 302, emphasis added.
19. This distinction has also been addressed by Michelman in connection with the related distinction between an “upper” and a “lower” layer of higher lawmakering (see Michelman, “Always Under Law?” 244-45). For a more detailed argument on the implications of Michelman’s view, see Ferrara, *Justice and Judgment*, 148-49.

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In the United States this past year, the tension between constitutionalism and democracy was not an abstract theoretical problem. In the late fall of 2000, the tension became an all-out fight over who would decide the outcome of the American presidential election: the Supreme Court or the people? Would there be a new round of voting by those in Florida who misread their ballots or were wrongly barred from casting theirs? Would ballots be recounted according to a single Court-given standard? Or would the election be called (some might say stalled) by the Court?

We all know what happened in the end. Ostensibly concerned about the risks of fracture, division, and uncertainty, the Supreme Court ended the counting in Florida, effectively deciding the election on behalf of George W. Bush. Until the Court’s decision of the case, Americans were becoming educated about the politics of elections. The curtain was pulled back for a moment and all saw how arbitrary, subjective, irrational, and political was the machinery of U.S. elections, the guarantor of one person one vote. Thus, along with the risks of fracture and division came the risks and promises of demystification, outrage, and involvement.1 These latter risks and promises, the risks and promises of democracy, were averted by the Court’s intervention.

The tense relationship between constitutionalism and democracy is built into the very heart of liberal democracies, which take as their ground and goal
both the rule of law and the rule of the people. For centuries, democratic and
liberal theorists as well as actual founders have argued about what should be
the proper terms of cohabitation for the courts and the people. As Bush v.
Gore makes clear, the stakes are high: whichever premise carries the day,
champions of its alternative may lose confidence in the regime’s legitimacy.2

Given his longstanding preoccupation with the problem of democratic
legitimation, it is unsurprising that Jürgen Habermas should seek to rescue
law and democracy from their supposedly permanent tension (which is how
liberals and republicans see it or set it up, on his account3). In an effort to end
the longstanding quarrel about how to “rank the two principles, human rights
[law] and popular sovereignty [democracy],” Habermas develops his
“co-originality thesis,” which puts the two principles into a harmonious,
non–zero sum relation and unifies them into a single “normative justification
of liberal democracy.”

Co-originality means that from the perspective of the social contract, nei-
ther set of rights depends for its justification on the other or “sets limits on the
other” because private and public rights are created simultaneously.4 But
co-originality also means that law and democracy have an internal relation.
Just as autonomy is not mere freedom, so popular sovereignty is not mere
majoritarianism. It matters whether our willing, as individuals or as a people,
meets the internal disciplining or enabling (but not constraining) require-
ments of the categorical imperative or the rule of law.5 It also matters that we
will. At his best, Habermas insists that if liberal democracy stands for any-
thing, it stands for the notion that users and addressees of law should also be
its authors.6 And conversely, law’s authors should also be its users and
addressees.7

But as it turns out, the analogy of political autonomy with moral autonomy
is incomplete or misleading on at least two counts: first, treating the rule of
law as a categorical imperative leaves untouched the named issue of democ-


cacy versus constitutionalism.8 Constitutions are not as abstract as the princi-
ple of the rule of law. They specify particular rights, procedures, and values as
the rules of a regime’s particular democratic game. These vary widely, and
different procedures have significant impacts on substantive outcomes. Thus,
democracies often revisit constitutive rules to consider alternatives such as
proportional representation, term limits, and campaign finance reform, any
of which, if adopted, could radically change substantive outcomes in the
United States.

Second, as Kant pointed out in the Metaphysical Elements of Justice, posi-
tive law is unlike moral law in that positive law is susceptible to coercive
enforcement. Thus, Habermas explains,
the positivity of law necessitates an interesting split in autonomy to which there is nothing analogous in the moral sphere. The binding character of legal norms stems not just from the insight into what is equally good for all but from the collectively binding decisions of authorities who make and apply the law. This results in the conceptually necessary division of roles between authors . . . and addressees [of law]. (CD, p. 779)

What should we make of this “necessary division,” of this split within life under law? Habermas does not remark it, but even under the best circumstances of legitimate, publicly authored law, we may lose sight of our authorship and become alienated from law once the law we pressed for (or something sort of like it; it goes through a potentially transforming set of sluices and processes; BFN, chaps. 7 and 8) is created and becomes an enforceable thing. Moreover, once enforceable, the law in question also becomes a productive, not just a regulative force, a power whereby subjects are interpellated into and by the very law they would like to be able to say they authored.9

Which is the better course for democracies? To see such perhaps necessary moments of alienation in life under law as welcome gaps that remind us of the insufficiencies of juridical efforts to institute justice or legitimacy without remainder?10 Or to seek, as Kant and Rousseau did, as Habermas often does, to overcome the moments of alienation that interrupt our would be affective or rational politics? Or both?

In his latest essay, Habermas takes on the authorship/interpellation problem, but he construes it in generational terms (the constitution was authored by historical founders, but we are ruled by it), and he responds to the problem by adding a new, third argument for co-originality. The people in the present are not just paradoxically constrained by a constitution authored by their forebears because the full development of constitutional democracy depends on the agency of the present generation, whose responsibility it is to “tap the system of rights ever more fully.” In short, the tension between constitutionalism and democracy is one that gets worked out in the future, if the present generation fulfills its political responsibilities:

The allegedly paradoxical relation between democracy and the rule of law resolves itself in the dimension of historical time, provided one conceives of the constitution as a project that makes the founding act into an ongoing process of constitution-making that continues across generations. (CD, p. 768, emphasis added)

True, the people in the present are part of a constitutional democratic project that is larger than themselves, but they have a role to play in that project nonetheless.

That role must be played in certain ways, however, if the tension between democracy and constitutionalism is to be erased in the future. Claiming the
constitution as one’s own by “tapping” it is a solution unlike the ward system recommended by Thomas Jefferson to address the same problem. Habermas’s emphasis is not on localism or on infrastructure but on influence and agenda setting from a distance. The present generation may be politically active, but their activism takes the form of agitation for the expansion of rights. They have participation rights but they must exercise them in the right way. (“The entitlement to political participation is bound up with the expectation of a public use of reason: as democratic colegislators, citizens may not ignore the informal demand to orient themselves toward the common good” [CD, p. 779].) Their medium is law and so they agitate for change by way of constitution-oriented practices that require them “to recognize the project [of constitutionalism] as the same throughout history and to judge it from the same perspective” (CD, 775) as their forebears. (But how could we know whether our perspective is the same as that of the founders?)

The problem is that these requirements merely reproduce at another level the very problem Habermas is trying to solve. In what sense can the people be said to have free authorship if they are required to approach the constitution as their forebears did, with the same standards and from the same perspective, even if also permittedly “in a critical fashion?” If they are required to inhabit their forebears to exercise their political autonomy, surely it is not autonomy they are exercising? In what sense can they be said to be politically free if they understand themselves to be bound to a progressive temporality in and out of which constitutional democracy in its full, unconflicted expression is required to unfold? In what sense is Habermas’s gesture to futurity meaningful if that future is always already known to be governed by progress? In what sense can the people be said to be learning from their experience if their learning process is said to be “self-correcting?”

But perhaps Habermas means something a bit different. Perhaps he means merely to suggest that we will not experience our constitution as an alien thing if we adopt the attitudes and perspectives he recommends here. We should act as if the constitution is the same over time, as if our perspective is the same as that of our forebears. 11 (Then it would not matter whether or how we could know if our perspective was really the same as that of our forebears. Getting it right would not be the point. Perhaps this is why Habermas stresses the “performatif” character of this project.) If we do so, we might achieve a level of identification with our constitution such that we would never experience it as a constraint but rather always as the would-have-been-willed expression of our freedom under law.

Thus, Habermas closes the gaps of alienation that afflict our sense of autonomy by developing a fable of origins (co-origins) that we are to adopt as if it were true. In so doing, he repeats the move made by Kant in “Speculative
Beginnings of Human History.” There, Kant turns to reason in the “company of the imagination” to tell an origin story that makes sense of man’s felt alienation and is meant to help heal it. But reason is also the power that created the very alienations, “the dissatisfactions,” Kant wants to heal. Reason is what disrupted the original Edenic unity of man’s existence and turned man from a happy natural animal into an appetitive, desiring, finite creature who fears death. (No such ambivalence troubles Habermas’s account of reason or, perhaps better, Habermas tries to rid himself of such ambivalence by distinguishing varieties of reason, strategic, communicative, etc., and privileging some over others.) The Janus-like character of reason means that Kant must draw on another power, as well. The power of providence supplements that of reason (already supplemented by imagination) and gives us assurance that “human things as a whole . . . do not progress from good to bad, but gradually develop from worse to better.” But providence cannot do our work for us. Kant appeals finally to a duty to hope, or rather a duty to act hopefully, an “inborn duty of influencing posterity in such a way that it will make constant progress (and I must thus assume that progress is possible)” (“Speculative Beginnings,” p. 59). Similarly, Habermas, who rejects providentialism in politics, also assures us that the gap between reason and will, law and democracy, can be closed if we take upon ourselves a (nonprovidential) duty to act hopefully in pursuit of the unfinished project of modern constitutionalism.12

Habermas means to reject providentialism, but the rejection is incomplete. In response to Frank Michelman’s worry that “the democratic process is caught in a circular self-constitution that leads to an infinite regress,” (that is, the grounds of legitimation are always themselves in need of legitimation, all the way down),13 Habermas refuses to appeal “to a moral realism that would be hard to defend.” Instead, he claims that we should “understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution.”14 Here Habermas seems to agree with Hannah Arendt’s observation that the problem of infinite regress is a foundationalist’s problem, the product of an old providential model of authority that leads us to look for authorization prior to action rather than the other way around. He seems to think that we might recast legitimation as a horizon rather than a ground. These terms are Judith Butler’s, but Habermas’s position is different from hers and from Arendt’s.15 The future to which he looks is not Arendt’s post-providentially contingent and open-ended future. Instead, it is a teleological process in which the co-originality of law and democracy emerges at last in and out of time, understood “as a self-correcting learning process.” Nietzsche’s warning comes to mind here: the fact that we have killed god does not mean we have stopped living in his old houses.
Why does this matter? It matters because when Habermas characterizes his hoped-for future in progressive terms, he turns that future into a ground. Its character as a future is undone by progress’ guarantee. The agency of the present generation, on behalf of which Habermas lays out his argument, is now in the service of a set of forces quite beyond itself, which it may only fulfill or betray, speed up or slow down. It may not author or make or inaugurate its future. It may only reposition itself in relation to its past (affirmatively or critically). (Of course, all our actions position us in relation to a past, but action’s meaning and effects also exceed such repositioning. Moreover, there is always the question of which of many possible pasts conditions our actions.) History moves on and our actions just place us on the right or wrong side of it. Thus, Habermas legitimates constitutional democracy by way of a promised future reconciliation, but what if democratic agency is the price of this particular solution to the problem?

When Habermas says that we should conceive of “the constitution as a project that makes the founding act into an ongoing process of constitution-making that continues across generations” (CD, p. 768), where we understand generational time as a self-correcting learning process, he positions himself between two established poles: against those who insist on the a-temporality of the constitution (e.g., original intentionalists) and against those who insist on its mere temporality (realists as well as critical legal theorists). Habermas is right to want to find an alternative to both positions. Original intent is overly restrictive in insulating constitutionalism from varieties of active democratic politics favored by both Habermas and agonistic political theorists. Realists and critical legal theorists too easily allow constitutionalism to sink entirely into ordinary power politics. Some alternative is needed, but the assumption of progress has its own costs.

As Hannah Arendt put it in a 1973 interview, “The law of progress holds that everything now must be better than what was before. Don’t you see, if you want something better, and better, and better, you lose the good. The good is no longer even being measured.” And neither, often enough, is the bad: when political philosophers like Rawls and Habermas celebrate the abolition of juridical slavery in the United States as progress (as opposed, say, to celebrating it as a contingent historical achievement that could have gone otherwise), they are less inclined to ask what might “be analogous to slavery [juridically tolerated or secured] in today’s advanced economies of low wages, coerced overtime, and a permanent underclass.” Faith in progress and even advocacy on its behalf tends to encourage self-satisfaction and undermine practices much needed by democracies—self-examination, genealogy, and critique.
Progress gets us into other problems as well. Habermas’s requirement that we be able to learn from past mistakes presses him to what seems to me an indefensible position. With regard to past constitutional battles such as those in the United States over the New Deal, he says,

Once the interpretive battles have subsided, *all parties recognize that the reforms are achievements, although they were at first sharply contested. In retrospect they agree that, with the inclusion of marginalized groups and with the empowerment of deprived classes, the hitherto poorly satisfied presuppositions for the legitimacy of existing democratic procedures are better realized.* (CD, p. 775, emphasis added)

In short, the wave of progress sweeps us all up. But does it? Are dissenters always persuaded? Are they never minoritized, over and over, into silence or aggression?

Until Senator Jeffords crossed over in the spring of 2001, the Republican-controlled Congress was doing everything it could to undo the New Deal. Their retrospective gaze upon that period lacks utterly the triumphalism that Habermas expects to see with regard to battles already won. In fact, most constitutional battles are never finally won. Courts change, contexts change, popular perceptions and demands change, and power shifts. We can describe such changes, as Habermas does, as “contingent interruptions and historical regressions” of an otherwise secure trajectory of progress, but doing so leaves us unprepared for the reemergence of old claims that were thought to be discredited; it leaves us unprepared for the appearance of resentment. And we become blind to our own resentment, which tends to manifest itself in a battle-fatigued triumphalism that does not want, understandably enough, to have to fight that battle yet again. We may even promote as political virtues “stability, cooperation, duration and unified system” without realizing that these are, as Sheldon Wolin memorably puts it with regard to Rawls’s liberalism, “but the yearnings of an ideology seeking repose.”

Republicans in Congress today along with their president press for the privatization of Social Security, one of the New Deal’s main legacies. Others fly the flag of the pre–Civil War South, (although even calling it the pre–Civil War South participates in a Habermasian temporality, as if the flag is archaic, not still significant in the post–Civil War South [and North]). Still others demand the end of affirmative action or declare the illegitimacy of a centralized national government and conduct war against it. How should we think of such people, people like Timothy McVeigh? A triumphalist attitude casts them as dinosaurs, curious remnants of a past age. We find it easy to see them as insane, strange, atavistic, but not agents. Do such attitudes make it easier for us to discard them, kill them, lock them up, and throw away the key? Cer-
tainly triumphalist attitudes make it more likely that we—the “we” formed around this triumphalism—will treat these others as enemies or antagonists rather than as agonistic adversaries, to borrow a useful distinction from Chantal Mouffe.¹⁹

Whig histories, by telling the stories of winners and losers, invite their adherents to treat dissenters as nonminoritized remnants of earlier battles who are, as it were, always already dead. This is what Tocqueville does to the Indians in his own triumphalist account of democracy’s emergence in Democracy in America.²⁰ How will his rendering appear if, in a couple of hundred years’ time, a resurgent Native American population reclaims the land from its white and other settlers? Our judgments about winners and losers depend completely on what we take to be the ending of the story in question, but this ending is precisely always in question.

Of the four modes of relation to a constitution—application, interpretation, amendment, and revolution—Habermas treats mostly the first two and reserves those for courts (which may, however, be influenced by episodic political action). Amendment and revolution are more obviously modes of relation to a constitution that might introduce something new, an event, a rupture, a cry.²¹ Focusing also on these other modes of relation opens up room to see the truth in Sheldon Wolin’s observation “that democracy is inherently unstable, inclined toward anarchy, and identified with revolution” (p. 37). But democracy is not just anarchic; it is not just a form of power, it is also a form of rule. When Wolin presses for a different view of democracy as, per se, “a constitutional,” he sets up a choice: between thinking of democratic constitutionalism as “a teleologically completed form” versus a representation of a “moment.”²² Habermas rightly resists the choice and tries to strike a balance between the two. His constitutional democracy is fed (through discriminating sluices) by the publics and counter-publics of a decentered and dispersed popular sovereignty that he repeatedly characterizes as “wild” and “anarchic.” But he fails to strike the right balance: on his account, democracy as constitutionalism and democracy as a constitutionalism exist side by side and worlds apart. Wild and anarchic social movement activity is on the periphery, he says (BFN, 480-81, 485-86). By implication, law, which is at the center, appears always calm, never itself wild. (By the end of his life, Jefferson, by contrast, saw local political activity as calmly democratic and worried that the national constitutional center was wild, bound to usurp popular energies.) Moreover, the calm center of Habermasian constitutional democracy is never overtaken by the wild periphery. A spatialized metaphors and a set of normative and juridical requirements guarantee that the two spheres meet but do not overcome each other: law should not overreach to normalize
its subjects (IO, 263) and civil society is self-limiting (BFN, 372). But what democracy has ever conformed to these directives? In the context of the often long-tentacled reach of law, a self-limiting civil society is either impossible or suicidal from a democratic perspective.

The promise of constitutional politics is that worthwhile gains such as newly won human rights are taken out of political play for a period of time. Activists could use the respite. But the risk is that we rest on our laurels and are overtaken by new events. Another risk is that we forget that even entrenched rights depend for their meaning and power on their vulnerability, on the fact that we (or our forebears) took them and that we must take them again and again. Rights are not dead instruments, they are live practices. But they must be kept animate. The failure to keep them alive by continuing to use them, recraft them, and fight for them even (paradoxically) after they have been entrenched undoes the very power that we give them and they give us.23 Dead rights require live futures—promisingly and dangerously unscripted futures—if they are to come back to life. I think Habermas would agree with this point, which emphasizes the importance of democracy (or a constitutionalism) to constitutionalism.24 But nonetheless, my sense is that it is not unfair to say that his impulse is to emphasize the importance of constitutionalism to democracy while neglecting to stress equally the importance of democracy—of a constitutionalism and democratic agency (and not just as a nutritional source, but also as a dangerous supplement)—to constitutionalism. That neglect is costly: a constitutionalism that is uninhabited by a constitutionalism is the dead letter of the law. A constitutionalism that seeks to secure itself against the radically risky tumult of a constitutionalism becomes its own enemy: a narcissistic, necrophilic document. Is that what all constitutions necessarily are?

In recent years, diverse democratic theorists have studied the deadening effects of rights-centered constitutionalism on spontaneous political action: Ernesto Laclau, Chantal Mouffe, William Connolly, Jill Frank, Wendy Brown, James Tully, Jane Bennett, Judith Butler, Romand Coles, Linda Zerilli, Sheldon Wolin, Jacques Derrida, Michael Warner, Jeremy Waldron, Patchen Markell, Charles Taylor, Eric Clarke, Kirstie McCrone, and Jacques Rancière investigate constitutional democracies’ tendency to paper over moments of alienation they might otherwise engage and to translate the emergence of new world-building powers and agencies into rights claims that can be adjudicated positively or negatively within an existing economy of rights and liberties. The content and significance of basic rights and liberties may change in time (for better and/or worse), but the basic economy that supports and is supported by them does not. Habermas’s effort to establish co-originality
is an admirable attempt to stem the translation tide of liberal constitutionalism and give participation its due. But he does not take up the challenge to think about how the rights-centered pressures of public reason may get in the way of a politics devoted to world building. He does not ask whether a rights-centered constitutionalism, in its effort to preserve the rule of existing constitutional norms and forms, might do unacknowledged violence to new forms of life. He does not really acknowledge clashes between constitutionalism’s promise and risks. Many of these clashes occur beneath the radar of official constitutionalism, where it is quietly suggested that a politics too focused on the realization or production of promised or implied rights cannot by itself operate as justly as Habermas would like.

Sometimes justice may require that we heighten the constitutionalism of a regime, sometimes it may lead us to defend the temporary stasis of constitutional settlement. Talk of a contradiction between constitutionalism and democracy, per se, prevents us from developing nuanced analyses of varying situations. Thinking in terms of a constitutional/democracy spectrum rather than in terms of an abstract binary might broaden our vision, permitting us to see that contexts and constitutions vary and that some are more hospitable than others to democratic agency or constitutionalism. Some constitutions are also more aware than others of their own limitations.

For example: the Canadian constitution has a “notwithstanding clause” that allows provinces to opt out of constitutionally binding decisions for five years, subject to local majority approval. The idea is that it is worth the risk of a time-limited bad majoritarianism to offset another risk: that of a legalistic constitution that has no ear for context or for its own injustices. Like any institutional measure, this one too can be used for good or ill. What is admirable about it is its self-aware declaration of the possible shortcomings of constitutionalism and the nod given by the clause to democratic agency and popular sovereignty. Five years is time to press for constitutional amendment, debate, or reform in light of a court’s particular finding. Alternatively, five years gives social movements a chance to develop new strategies of covertness or to persuade opposing majorities to yield to a controversial court decision. As Habermas knows, such exercises of popular and legislative agency may in turn affect future directions of constitutional interpretation and policy making. The clause is just one of many possible ways to entrench the inhabitation of the constitutional by the constitutional. It is a measure of which Machiavelli, who understood the importance of allowing for the venting of humors, would be proud. What if the U.S. Constitution had such a clause? . . . Who would be president of the United States right now?
NOTES


2. This not to suggest that such loss of confidence is necessarily a bad thing. It may well be that a popular loss of confidence in the regime’s legitimacy would be the best thing that could happen to American democracy.

3. “From both [liberal and republican] perspectives, human rights and popular sovereignty do not so much mutually complement as compete with each other” (Jürgen Habermas, Between Facts and Norms [hereafter, BFN] [Cambridge, MA: MIT Press, 1996], 99).

4. The claim of social contractual co-originality is belied by the fact that when Habermas turns to elucidate the basic rights of citizens, their private rights come first and their citizenship rights second. Habermas assures us that the first three categories of rights, which “anticipate only that [the parties] will be future users and addressees of the law” (Jürgen Habermas, “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?” Political Theory [2001 (this issue)] [hereafter, CD], p. 777), come first just “in mente.” Thus far, the parties have only achieved “clarity regarding the enterprise they have resolved upon with their entrance into a practice of constitution making” (CD, p. 777). They are not yet done. “Because they want to ground an association of citizens who make their own laws, it next occurs to them that they need a fourth category of rights, so they can mutually recognize one another also as the authors of these rights as well as of law in general” (CD, p. 777). Once they have clarified the full list of rights, private and public, all the rights are created simultaneously, “in a single stroke.” Until that moment of simultaneity, Habermas insists, “nothing has actually happened.” Hasn’t it? The priority of private rights is repeatedly on display in Between Facts and Norms, where Habermas claims to be working from a position of co-originality but nonetheless repeatedly puts law at the center and participation at the margins of his account. Might not the order of our thinking have implications for our future practice of politics and the operation of our political imagination? As Charles Taylor points out, the starting point of our thinking about politics reflects a set of ontological commitments or assumptions that we ignore at our peril (Taylor, “Cross Purposes,” 164 and passim).

5. Jürgen Habermas, The Inclusion of the Other (Cambridge, MA: MIT Press, 1998 [hereafter, R])], 259. Here Habermas seems to echo Stephen Holmes:

constitutions may be usefully compared to the rules of a game and even to the rules of grammar. While regulative rules (for instance “no smoking”) govern pre-existent activities, constitutive rules (for instance, “bishops move diagonally”) make a practice possible for the first time. . . . Constitutions do not merely limit power; they can create and organize power as well as give it direction. . . . When a constituent assembly establishes a decision procedure, rather than restrict a preexistent will, it actually creates a framework in which the nation can, for the first time, have a will—

hence: co-originality? (Stephen Holmes, Passions and Constraints, quoted in Jeremy Waldron, “Precommitment and Disagreement,” Constitutionalism: Philosophical Foundations, ed. Larry Alexander [Cambridge, UK: Cambridge University Press, 1998], 290). As Waldron points out, however, the view of constitutional rules as constitutive does not, as such, remove them from the purview of democratic revision and review; that is, it does not secure co-originality as Habermas conceives of it, for it leaves the priority of democracy over constitutionalism intact. Indeed, Waldron points out, democracies often revise the rules of their games, often amid disagreement, as is evidenced by majority but not unanimous decisions in referenda, parliamentary votes, or
judicial decisions (pp. 292-94). Constitutive rules require merely that a democracy not change the rules in the very middle of the game’s being played. That is, we cannot revise the rules of elections in the middle of the election, “Bush v. Gore notwithstanding,” (as Waldron said in a personal communication)—although if, as Dworkin argues in Law’s Empire (Oxford, UK: Hart, 1998), all interpretation involves innovation, even such midstream rule changes are de facto probably unavoidable.

6. True, the authorship requirement is hypothetical not actual: “a regulation may claim legitimacy only if all those possibly affected by it could consent to it after participating in rational discourses.” But sometimes the requirement has a more participatory cast, as when Habermas says in agreement with “radical feminism” that “the appropriate interpretation of needs and criteria [in gender politics] be a matter of public debate in the political public sphere” (IO, 263).

7. The problem with liberalism is that it is inadequately concerned with the authorship requirement. It is not uncomfortable with the idea of law as an external constraint on majoritarianism or, as Habermas puts it, as an “external barrier to” (IO, 259) popular sovereignty. Republicanism, by contrast, does try to satisfy the authorship requirement, but it does so by way of recourse to an ethical commonality that violates the universalist aspirations of law, properly understood. (The republican reliance on the ethical also begs the question it is trying to answer: it makes “legal coercion superfluous by replacing it with custom and moral self-control.”) Habermas’s proceduralist conception of deliberative democracy makes law and democracy compatible by replacing the republican reliance on the ethical with a discursive commitment to the processual.

8. It also leaves untouched the experience of life under actual law. In the United States, for example, legislation, even if technically universalizable and constitutionally permissible, tends to apply to particular populations, many of which are marked as governed but not governing: pregnant women, the indigent, aliens, welfare recipients, users of drugs or alcohol, homosexuals, and so on. This condition is unaddressed by invocations of the rule of law.

9. Actually, to be more precise, unenforced and unenforceable laws have certain interpellative effects, too. On the impact of seldom enforced antisodomy laws, for example, see Richard Mohr, Gays/Justice: A Study of Ethics, Society and Law (New York: Columbia University Press, 1988), 67 and passim.

10. Sometimes Habermas acknowledges this insufficiency, as when he insists on the fallibility of claims, on the permanent revisability of our settlements (as in his discussion of feminist critiques of welfare paternalism [IO, 263]), on the need for perpetual contributions to constitutional orders from the wild public spheres (BFN, chap. 9), and (in an apparently positive way) on the “permanent risk of dissensus” (BFN, 462)—(but then why is it a risk?). On the other hand, all of these acknowledgments occur within the framework of constitutionalism, and no complaint ever rises to a level where it might make us ask after the (in)justice of constitutionalism itself.

11. For a wonderful critique (which I do not take up here) of the conservative effects of Habermas’s deployment of the subjunctive as if in his work, see Eric O. Clarke, Virtuous Vice: Homoeroticism and the Public Sphere (Durham, NC: Duke University Press, 2000).

12. Kant’s faith in the future depends on an assumption. His fable of beginnings begins with a single human couple, “only a single pair” so that “war does not arise, as it would if men lived close to one another and were yet strangers.” This assumption rules out “differences in lines of descent” and so secures the possibility of a future sociability, in accord with man’s “supreme end.” Habermas’s faith in the future also depends on an assumption. He, too, turns to a single pair, to a co-original law and democracy, whose perfect union secures us against radical plurality, division, and irresolvable strife. The assumption of a single pair secures the supreme end of con-
institutional democracy, protecting it against paradox and contradiction. Why the singleness of the pair, in either case, should rule out conflict is, however, a mystery, especially given, in the case of Kant’s single pair, the rift of sexual difference.

13. Frank I. Michelman, “Constitutional Authorship,” Constitutionalism: Philosophical Foundations, ed. L. Alexander (Cambridge, UK: Cambridge University Press, 1998), 64-98. This is a problem with a history, posed also by Sieyès, Rousseau, Hannah Arendt (On Revolution, [New York: Penguin, 1970 (hereafter, OR]), 183-84), and Jacques Derrida. It is the problem of authorization in the absence of foundational grounds, the problem of how to stop the cycle of revolution and stabilize political order, the problem, as Derrida puts it, of what to put “in the place of the last instance” (Jacques Derrida, “Declarations of Independence,” New Political Science 15 [1987]: 7-15 at 10). Rousseau solved the problem by way of the lawgiver, a good man prior to good law, whose agency enables law’s inauguration. But this was no solution, since the lawgiver merely deepens rather than resolves the tension between law and democracy. How can the people be free when they need the guidance of a lawgiver? (See Alan Keenan, Democracy in Question: Rethinking Democratic Openness in a Time of Political Closure [Stanford, CA: Stanford University Press, forthcoming], chap. 1.) Michelman also responds to the law versus democracy problem by turning to a good man prior to good law: Justice Brennan (Frank I. Michelman, Brennan and Democracy, [Princeton, NJ: Princeton University Press, 1999]).

14. CD (p. 774). Of course, no modern constitution is as humble as Habermas claims. All reach for a “moral realism that is hard to defend,” filling their place of the last instance, as Derrida points out, with God, or nature’s law. Arendt has a tendency, like Habermas, to underestimate the American founding documents’ many references to natural law and divine will. Indeed, Arendt somewhat improbably insists that the good fortune of the American people was their capacity to regard as sacred something that they themselves had made: they had, she says, “an extraordinary capacity to look upon yesterday with the eyes of centuries to come” (OR, 198).


17. The wording is Sheldon Wolin’s (“The Liberal/Democratic Divide: On Rawls’ Political Liberalism,” Political Theory 24, no. 1 [1996]: 97-142 at 117). The point is not that Rawls would not object to these inequalities, he would, but he would not ask whether they might be remnants or traces of an earlier practice of slavery supposedly left behind by enlightened constitutionalism (Political Liberalism [New York: Columbia University Press, 1996], xxix).


24. Whether Habermas could agree would depend partly on whether he was willing to concede that the structure of constitutional or textual maintenance, which Jacques Derrida calls “survivance,” itself produces “new textual bodies.” Agreement might be difficult since, against Habermas’s commitment to progress, stands Derrida’s claim that he means survivance not “in the sense of posterity . . . but of ‘more living’ ” in the sense of “plus de vie and plus que vie” (Jacques Derrida, “Deconstruction in America: An Interview with Jacques Derrida,” *Critical Exchange* 17 [1985]: 24-25). See also my discussion of these issues by way of Derrida and Arendt in Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell University Press, 1993), chap. 4.

25. Building on Cohen and Arato, Habermas uses the term “dual orientation” to describe the democratic actor’s coupling of her agitation on behalf of her own agenda with a reflexive concern to “revitalize and enlarge civil society” (*BFN*, 370). It does not occur to him that the two parts of this orientation might conflict. What if care for the public sphere or the common good requires a commitment to practices of genealogy and critique that demand that we commit ourselves to forms of social upheaval that make it impossible to sustain practices of public reason? What if the rights-centered pressures of public reason get in the way of political efforts at world building? What if care for the world presses us to frame arguments in such a way that our immediate agenda may be lost (as when racial activists, seeking to enter “racism” into liberal lexicons, refuse to translate all of their claims of harm into individual wrongs, even though that translation might be efficacious in the moment)? (I have in mind here Dorothy Roberts’s argument against the current foster care system in the United States, that it not only harms individual children but also commits a racial harm, stigmatizing African Americans generally, since the vast majority of children in the system are black. See Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* [New York: Basic Books, 2001].)

26. As William Connolly points out, a politics that “suggests that the most recent identities [rights, achievements, constitutional decisions] are also the most true, natural or advanced” is one that “discourages proponents from cultivating that partial, comparative sense of contingency in their own identities from which responsiveness to new claims of difference might proceed” (*Why I Am Not a Secularist* [Minneapolis: University of Minnesota Press, 1999], 71).

27. Joseph Carens stresses the importance of contextualism to political theory and likes the Canadian “notwithstanding clause” for its apparent sensitivity to context (*Culture, Citizenship, and Community: A Contextual Exploration of Justice As Evenhandedness* [Oxford, UK: Oxford University Press, 2000]). For a more ambivalent account of the notwithstanding clause than the one presented by me here or by Carens, see my review of Carens in *Polity* 33, no. 3 (Spring 2001): 479-85.

28. And, of course, that entrenchment will have advantages and dangers of its own.

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I. INTRODUCTION

Michael Oakeshott was both an admirer of Thomas Hobbes and a critic of political rationalism. Insofar as Hobbes himself is synonymous with political rationalism, the combination should strike us as paradoxical. My approach will pursue two issues: I will consider elements of Hobbes’s political philosophy omitted in Oakeshott’s interpretation, and I will argue the relevance of these omissions for critiques of political rationalism that remain influential among political theorists today. This criticism is part of a larger project, a critique of critiques of political rationalism, that begins with some of the conservative sources of postmodernism. Oakeshott is recognized as one such source; Hans-Georg Gadamer is another.

The purpose of this project is not to reaffirm, recuperate, or redeem political rationalism on its own terms. I will not be siding with Heinz Eulau against Bernard Crick,1 with Bentham against Oakeshott,2 with old Rawls against new Rawls, with Brian Barry3 against his various opponents, and so on. Rather, this critique of critiques of political rationalism will make the case that our criticisms have often rested in an underestimation of the problems we face.

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What kind of underestimation? We have underestimated the political character of political rationalism. Scholars today tend to associate an appreciation of “the political” with precisely those thinkers who have offered the most vigorous attacks on political rationalism. Of course, not all critiques of political rationalism are identical, and they certainly do not drive identical conclusions or political programs. Nevertheless, it is fair to conclude that some themes strike a cord that resonates with multiple antipolitical rationalist arguments: one such theme is a claim asserting the inadequacies of the rationalist understanding of the political. Following Oakeshott, Arendt—and through less dignified sources such as Carl Schmitt—the critics of political rationalism have concluded that the modern world has given birth to a species of thinkers with political tin ears. They lack the political practitioner’s sensibility. They fail to understand the contingency of that which is political. They fail to follow Aristotle’s caution against applying reasoning appropriate to a domain where certainty is possible to another domain (politics) where all matters must remain inherently uncertain and ambiguous. They abandon praxis and its accompanying virtue, sophrosene, for techne. Political decision making is made subordinate to the overconfident calculations of persons Sheldon Wolin once called “methodists.”

Today the contest between methodists and political theorists is largely over. Methodism has won. It is triumphant in some quarters, but in others it remains a resident faith subject to occasional sacrilegious catcalls. These echo the complaints against methodists, but no one is holding their breath for the revolution. Is there a lesson in methodism’s victory over its critics? For the most part, the rationalist hegemony has done little more than affirm pessimistic elements that were a part of the critique of rationalism from the start. Having seen rationalism as a component of larger forces deemed ineffable—such as Weberian rationalization—one can look on the present as validation for those who accurately forecasted this future. As with Socrates before his Athenian jurors, the losses of the antirationalist partisans are themselves taken as affirmation of the insightful character of their arguments. It is confirmation of the totalitarian nature of rationalism as it developed from the early modern and enlightenment periods. Without denying the critical force of some of these claims, I want to suggest that we need to supplement this lesson. This new lesson will be available to us when we turn the suspicions concerning political tin ears back upon the political understanding implicit in the criticisms themselves.

There is something above and beyond the rationalizations of rationalism that we ought to understand as political. By making this assertion, I hope not to repeat something already obvious. We know that political rationalism produces results that count in the domains where self-consciously political polit-
ical theorists stake their claims. Defenders of the subject, or indeed of the human condition itself, have made a strong case. Their claims have resonated with the dissatisfactions of others, and this resonance has helped generate protest against what we take to be the unwitting consequences of the positivist overconfidence of our contemporaries. The issue now, however, is whether there remains an unacknowledged political sensibility that both antirationalists and rationalists may share in common. Is there, in short, a dimension of “being political” that antirationalists and perhaps rationalists have ignored? Antirationalists sometimes plead guilty to slipping back into the harmful ontologies of those they criticize, but this is not what I have in mind. I am not, therefore, gesturing toward the accidental lapses into metaphysics acknowledged by Heidegger and writers today informed by his spirit but toward the more mundane wish to impose order and neat solutions. Against this impulse, there has been only a one-sided indictment by antirationalist against rationalist. We could spread the blame a bit further. As with all sources of modern original sin, Hobbes’s thought is a good place to look first. I will argue that Hobbes exemplifies the political sentiment I refer to and Oakeshott’s Hobbes, while brilliant, tellingly banishes these sentiments in his account of Hobbes.

II. OAKESHOTT AND HOBBES: POLITICAL RATIONALISM AVERTED

Oakeshott’s philosophical alliances shifted during the course of his career. One of the last British partisans of idealism in the early twentieth century, Oakeshott introduced sceptical elements into his repertoire, especially as he began to apply himself to Thomas Hobbes. Oakeshott’s Hobbes is a rationalist, but he is not the political rationalist Oakeshott described in “Rationalism in Politics.” Even before Oakeshott began to write on Hobbes, an image of the philosopher was being crafted in his defense by those who sought to revive him as one of the first social scientists. Oakeshott resisted this image of Hobbes:

it is a false reading of his intention and his achievement which finds in his civil philosophy the beginnings of sociology or a science of politics, the beginnings of that movement of thought that came to regard “the methods of physical science as the proper models for politics.”

Hobbes, in other words, shares very little in common with Oakeshott’s Bentham or Marx. Oakeshott’s Hobbes is a philosophical rationalist rather
than a political rationalist. His rationalism is rooted in a conception of what it is to reason philosophically. Hobbes may share elements of the materialistic and mechanistic world-picture with some of the true progenitors of our social sciences (here Oakeshott fingers Descartes), but his mechanistic account of the world serves the limited end of a philosophical conception of the world and not the goal of empirical explanation itself. If these two goals occasionally appear confused in Hobbes’s work, Oakeshott asserts, it is only because Hobbes himself was not yet able to fully achieve a distinction between science and philosophy that implicitly informed his work. Oakeshott therefore assigned himself the task of clarifying and articulating this conception of philosophy, and he crafted his interpretation accordingly. It orbits about an account of Hobbes as an intellectual practitioner; it is an interpretation that claimed to discern the difference between the Hobbes grafted onto the social scientist’s family tree and the philosopher he claimed for himself:

The coherence of his philosophy, the system of it, lies . . . in a single ‘passionate thought’ that pervades its parts. The system is not the plan or key of the labyrinth of the philosophy: it is, rather, a guiding clue, like the thread of Ariadne. It is like the music that gives meaning to the movement of dancers, or the law of evidence that gives coherence to the practice of a court.

The thread or hidden thought Oakeshott refers to is itself a “doctrine about the nature of philosophy.” Specifically, this is to conceive philosophy as the world as it appears in terms of causes and effects: “cause and effect are its categories” and one may use philosophy to determine the conditional causes of effects, or conditional effects of given causes. Oakeshott claims that the application of this doctrine yields a materialist explanation neither of the world nor of politics. In spite of seeming affinities with fellow scientific revolutionaries such as Galileo, Kepler, Copernicus, and Descartes, his philosophy limits itself to rendering “the world reflected in the mirror of the philosophic eye, each image the representation of a fresh object, but each determined by the character of the mirror itself.”

A careful look at Hobbes’s philosophical conception, moreover, reveals to Oakeshott the need to look to the past, not to social scientists who claim to extend this path. He is a part of a philosophical tradition identified in Oakeshott’s introduction to Leviathan as “Will and Artifice.” Although its roots are classical, Oakeshott—not unlike his recent French predecessor and philosopher of science, Duhem (1861-1916)—found more proximal roots for this, so called, scientific revolutionary in the intellectual practices of the schools (particularly late scholasticism, especially elements of nominalist
belief attached to individuality, which emphasized a picture of humans as willful rather than reasonable creatures.¹⁸

“Will and Artifice” may be Hobbes’s tradition, but “Artifice” should not on this reading suggest something like the work of some of our most characteristic artificers, architects. The social-scientific readings of Hobbes are chided for making this mistake. Oakeshott writes,

For what is expected here is that a philosophical system should conform to an architectural analogue, and consequently what is sought in Hobbes’s system is a foundation and a superstructure planned as a single whole, with civil philosophy as the top storey. Now, it may be doubted whether any philosophical system can properly be represented in the terms of architecture, but what is certain is that the analogy does violence to the system of Hobbes.¹⁹

For Oakeshott, the “Artifice” is a work of imagination, and not a material (or materialist) construction or causal account of the world.²⁰ Oakeshott’s rejection of the architectural analogy will become a key point of departure for a criticism of Oakeshott’s interpretation. Ultimately, I wish to make the case for a selective acceptance of Oakeshott’s approach to Hobbes. Before launching this criticism in the essay’s next section, however, I will address one of the strongest elements of Oakeshott’s argument for distancing Hobbes from the social-scientific reading.

As noted above, Oakeshott associates Hobbes with the conditional knowledge of the world reflected in the philosophic mirror. Oakeshott’s Hobbes is also a skeptic. The roots of this skepticism are not merely to be found in the limited ambitions Oakeshott assigns to Hobbes’s philosophy but in the more concrete assertion that Hobbes’s cause and effect centered philosophy can (and must) only yield hypothetical knowledge. According to Oakeshott, Hobbes does not use philosophical reasoning to strive for absolute truths. Rather, reasoning in the modality of cause and effect limits what we can assert when we conclude that something is a cause:

we can mean no more than that such and such is a possible efficient cause, and not that it is the actual cause. . . . For reasoning, a cause must be ‘imaginable’, the necessity of the effect must be shown to follow from the cause, and it must be shown that nothing false . . . can be derived. And what satisfies these conditions may be described as an hypothetical efficient cause . . . . Philosophy is limited to the demonstration of such causes.²¹

From “beginning to end,” Oakeshott asserts, Hobbes never suggests that philosophy “is anything other than conditional knowledge of hypothetical generations and conclusions about the names of things, not about the nature of things.”²²
The reference to the “names of things” bespeaks Hobbes’s nominalism, and this is also a critical part of Oakeshott’s case for Hobbes’s skepticism. Nominalism, for Oakeshott, is the path by which Hobbes’s philosophy retreats from experience. Naming is an arbitrary exercise. We assign names to the sense impressions coming at us from the world. Hobbes does not allow for a prior set of natural associations between things encountered and the actual names assigned. In using language, we, at once, name and come to consciousness of the sensations we experience. Philosophy is the well-regulated practice of establishing logical relations between these names and, most important, our capacity to establish relations of cause and effect. He recollects Hobbes’s claim that reasoning is “nothing else but the addition and subtraction of names.” This “nominalist and profoundly skeptical doctrine” therefore teaches us how to produce philosophical truths, but these true propositions, he reiterates, are “not about the nature of things, but about the names of things.” Indeed, the only true thing for Hobbes is a true proposition, one in which a philosopher appropriately combines terms (“X is Y”) in a way that agrees with the way in which we have predefined these terms.

Oakeshott’s Hobbes, therefore, is an example of intellectual caution and reserve—a philosopher who, however confident, resisted the temptation to extend the reach of his philosophy into the domains where contemporary social sciences have now staked their claim. In light of the incautious character of Oakeshott’s political rationalist, the contrasts invite an extended comparison. In his essays on Hobbes, Oakeshott is engaged in an act of interpretative reclamation: he extracts Hobbes from interpretations that would claim him for the history of the social sciences. In his essays on political rationalism, however, we begin to discern that the reclamation was not merely a matter of a disagreement over Hobbes’s philosophical ambitions. It also allowed Oakeshott to claim Hobbes for his side in a larger battle over the proper scope of rationalist thought. In his attacks on political rationalism, Oakeshott’s invective is directed against those who would substitute social science—political rationalism—for political judgement. Only in this broader intellectual and political context can we see the full significance of what Oakeshott does by disassociating Hobbes from social science.

This Hobbes is not merely in retreat from the world of experience, he is also miles away from the anxious political rationalists Oakeshott describes in “Rationalism and Politics” or “The Voice of Poetry in the Conversation of Mankind.” Oakeshott’s political rationalist may be skeptical of authority—especially traditional political authority—but he is also an “optimist.” He is optimistic about the power of his reason to solve practical problems in the realm of experience: “the rationalist never doubts the power of his ‘reason’ (when properly applied) to determine the worth of a thing, the truth of an
opinion or the propriety of an action.”28 Lacking adequate experience, but anxious to make the force of his reason effective, the political rationalist is never held back by a suspicion that elements of human affairs may be beyond the capacity of human reason. The political rationalist lacks the “power of accepting the mysteries and uncertainties of experience without any irritable search for order and distinctness.”29 The political rationalist is a specialist in “irritable” searches for order.

Oakeshott’s political rationalist is a “self-made man,” a term Oakeshott uses derisively. Men who are “self-made” are in these arguments unfavorably compared to “some minds which give us the sense that they have passed through an elaborate education which was designed to initiate them into the traditions and achievements of their civilization.”30 The mind of the political rationalist is, according to Oakeshott, more the finely tuned instrument, a neutral, well-trained head, than one rooted in any particular historical tradition or sensibility. As such, the political rationalist’s mind is said to lack “atmosphere”; in this barren place there is no change of season or temperature. Thinking here goes on “in the void.”31

When such heads apply themselves to political affairs, they are a particularly dangerous force. Politics is, in Oakeshott’s reading, deeply permeated with tradition; moreover, it is circumstantial and transitory. Just where one would hope for the reserve of a more seasoned mind, the political rationalist is characterized by an unwillingness to stop and contemplate the complexity of political practice. The political rationalist is inclined to tear down and start from scratch. He is a self-appointed member of a political wrecking crew. Patching up, repair—something that requires a more subtle knowledge of the material at hand—is a “waste of time” in the political rationalist’s eyes.

The effective mode of political intervention for the political rationalist models itself on engineering. There is a singular task at hand. The question is whether the rational means to achieve that end will be adopted. The best way to ensure that it is, is to adopt a rational technique for discovering the nature of the problem and the solutions that might be found.32 It is the political rationalist’s unflagging faith in technique in these inherently uncertain political domains that strikes Oakeshott as distinctive. It is the “assimilation of politics to engineering” that may be called “the myth of rationalist politics.”33

Here, then, is one of the chief sources for our understanding of the tin-eared political rationalist. The complex and dynamic character of political life is such that it will never be made to conform to expectations implicit in the abstract formulations of rationalist political techniques. No matter how intricate the political technique may grow, the scientistic predispositions of its practitioners will be necessarily insufficiently sensitive to the dynamics of political life. What the political rationalist lacks is experience itself. Politics,
like any other activity, must be understood in its particular idiom. That is to say, political engagement and the making of political decisions is a practice, and it is only by gaining a practitioner’s sensibility that one can engage in politics intelligently. A set of rules or procedures designed in advance of the activity itself, or a set of goals specified and considered outside a state of political engagement, is never a substitute for the judgment of the seasoned practitioner situated in the midst of political activity itself.

Famously, Oakeshott compares those who would make political decisions by rationalist techniques to persons who possess cookbooks but lack the sensibility of an actual chef. I have described tin-eared political rationalists. Antirationalist critiques often find themselves drawing on allusions to sensory deficiencies. Like a cookbook, a list of rational political techniques can only take a would-be practitioner so far:

for what the book contains is only what it is possible to put into a book—rules of technique. And, book in hand (because, though a technique can be learned by rote, they have not always learned their lesson well), the politicians of Europe pore over the simmering banquet they are preparing for the future: but, like jumped-up kitchen-porters deputized for an absent cook, their knowledge does not extend beyond the written word which they read mechanistically—it generates ideas in their heads but no tastes in their mouths.34

By pulling Hobbes away from the political rationalist camp, therefore, Oakeshott was doing something more than defending one reading of Hobbes against another. He was attempting to rescue Hobbes from a historical movement—already long dominant—for which he harbored boundless contempt. In section III, I will argue that in spite of correctly distancing Hobbes from a social scientific reading, he elides Hobbes’s anxiousness for a politically useful and effective rationalism. Hobbes is not a social scientist, but he shares more in common with the “jumped up kitchen porters” than Oakeshott can bring himself to acknowledge—moreover, what he shares with these porters, and with all of us, emerges from within a political sensibility that may be dulled among social scientists but that still stands as an obstacle to the goals of antipolitical rationalists.

III. WHAT’S MISSING?

Oakeshott’s reading of Hobbes can be termed what some political theorists call a “strong” reading of a political philosopher. That is, not unlike other forceful interpretations of Hobbes (although not Hobbes alone), Oakeshott’s interpretation is, at once, an insightful gaze into Hobbes’s writings and a work that travels beyond the bounds of Hobbes interpretation. As noted, we
can see Oakeshott’s investment in Hobbes as a turning point in his larger philosophical career. Moreover, Oakeshott’s interpretation has inspired and helped clarify the thinking of other political theorists on matters such as authority. In light of its status as a strong reading, it would seem foolish to attempt to offer corrections, to discuss where Oakeshott seemed to have gotten Hobbes wrong. A precocious child can miss the significance of a great drama if he or she is pleased to devote all of his or her attention to attacking its verisimilitude. If the point of this essay were to show that Oakeshott misread Hobbes simply for the sake of showing that he made a mistake, then it would be the legitimate subject of similar suspicions. We can, however, use this understanding of what Oakeshott represses in his interpretation to discern what many political theorists have neglected in their critiques of political rationalism. As such, this argument can also claim to serve a larger purpose. That purpose will be served largely in the fourth section of the essay. Here, I will build a brief case that will enter into some of the finer points of Hobbes’s interpretation.

Hobbes’s critical assessments of scholastic learning are one place to look for what Oakeshott leaves out of his interpretation. Reading Hobbes as a part of a tradition, Oakeshott’s claim is that we should ignore Hobbes’s criticisms of the schools. He finds the similarities between Hobbes’s thought and tradition more fundamental. This, however, ignores the spirit in which Hobbes compares his philosophical ideals with theirs. Convinced he knew the difference between idle knowledge and its opposite, he writes in De Corpore,

For the inward glory and triumph of mind that a man may have for the mastering of some difficult and doubtful matter, or for the discovery of some hidden truth, is not worth so much pains as the study of Philosophy requires; nor need any man care much to teach another what he knows himself, if he think that will be the only benefit of his labour. The end of knowledge is power; and the use of theorems (which, among geometricians, serve for the finding out of properties) is for the construction of problems; and, lastly, the scope of all speculation is the performing of some action, or thing to be done.

His hope was to offer the world a philosophy that would yield practical results. To do so, according to Hobbes, philosophy must make us capable of action.

This concern further reveals itself where Hobbes describes the difference between prudence and science. Hobbes valued science above prudence; this is well known among political theorists, and it is often used as evidence in arguments against the hubris of today’s social science. He boasted that his was the first science of politics, and in doing so he was asserting the superiority of his political thought to that of his predecessors. This includes the doctrines of the schools, but it is also thought to include those who made history
and experience their guide. Missed in the rush to emphasize the difference are some of the fundamental equivalencies in Hobbes’s means of evaluating the accomplishments of “prudence” and his “science.” Specifically, both remain fixed within the realm of human action. It is true that Hobbes’s science distinguishes itself because it is methodical and (as Oakeshott correctly observes) centered in a concern for causes and effect. However, these aspects do not complete Hobbes’s boast on behalf of science or its favorable juxtaposition with prudence. The proof of the worthiness of science is also in the practical results that it achieves. In Leviathan, Hobbes describes the distinction this way:

And whereas sense and memory are but knowledge of fact, which is a thing past and irrevocable, Science is the knowledge of consequences, and dependence of one fact upon another, by which, out of that we can presently do, we know how to do something else when we will, or the like, another time; because when we see how anything comes about, upon what causes, and by what manner, when the like causes come into our power, we see how to make it produce the like effects.

We need to take Hobbes seriously when he speaks of causes in our power and the production of effects. In the quote above, he offers material for Oakeshott’s skeptical rebuttal to the social scientific reading but also makes assertions that should point beyond the limited scope Oakeshott allows Hobbes’s philosophy. Experience and prudence, as Hobbes notes in the passages in Leviathan just preceding the quote, are concerned with matters of fact, and as above, with “things past and irrevocable.” As Oakeshott argued, Hobbes’s concern is not with the past but with cause and effect. Hobbes’s science, however, is not merely distinguished on the basis of the subject upon which the philosopher exercises his or her mind (cause and effect) but by what this knowledge allows us to do. The consequences that Hobbes speaks of are consequences in the world itself; they are actions—things we do or can do. Following the guide of such scientific reason yields power, not merely the self-restrained philosophical knowledge Oakeshott describes. Although they involve the contemplation of different things, science and prudence share a common domain—human activity—in which the fruits of their distinct labors can be compared with one another.

The emphasis on practical consequences also emerges when Hobbes describes philosophy’s place in the context of human history. Philosophy makes a contribution to the way we live. It makes us capable of creating a world where we enjoy “commodious living.” Indeed, the things that Hobbes promises as the products of philosophical practice are also the things that distinguish life in civil society from life in the state of nature. Life in the state of
nature is famously “solitary, poor, nasty brutish and short,” but in this wretched condition there is also

no place for industry, because the fruit thereof is uncertain, and consequently, no culture of the earth, no navigation, nor the use of commodities that may be imported by sea, no commodious buildings, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society.

Important for our purposes, Hobbes credits philosophy with these contributions to our condition. In De Corpore, he writes,

But what the utility of philosophy is, especially of natural philosophy and geometry, will be best understood by reckoning up the chief commodities of which mankind is capable, and by comparing the manner of life of such as enjoy them, with that of others which want the same. Now, the greatest commodities of mankind are the arts; namely, of measuring matter and motion; of moving ponderous bodies; of architecture; of navigation; of making instruments for all uses; of calculating the celestial motions, the aspects of the stars, and the parts of time; of geography, &c. By which sciences, how great benefits men receive is more easily understood than expressed. These benefits are enjoyed by almost all the people of Europe, by most of those of Asia, and by some of Africa: but the Americans, and they that live near the Poles, do totally want them. But why? Have they sharper wits than these? Have not all men one kind of soul, and the same faculties of mind? What, then, makes this difference, except philosophy? Philosophy, therefore, is the cause of all these benefits.

Such accounts of philosophy’s gifts do not square with Oakeshott’s reading. Hobbes’s philosophy crosses the boundaries that might delimit a conception of philosophical reason; Hobbes’s philosophy reaches the practical domain.

I have suggested, however, that Oakeshott is correct in distancing Hobbes from the readings that turn him into a social scientist. In light of Hobbes’s concern to craft a useful philosophy, this might suggest the need for second thoughts. The social scientific reading may overlook key elements of Hobbes’s skepticism, but these readings possess the virtue of at least answering to Hobbes’s obviously practical intents. Indeed, among Hobbes’s critical admirers from this camp, one finds arguments chiding the philosopher for not having more fully realized the value of empirical inquiry in light of the purposes of his enterprise. This raises the question, Can one reject the social scientific reading and still find room for a Hobbes who wishes to craft a philosophy that serves his practical orientation? Can Hobbes be said to offer us a knowledge that serves his ends—power and a philosophy directed toward worldly practices—and yet not be, in some measure, devoted to the development of a predictive/descriptive account of the world? For some of Hobbes’s
recent interpreters who have explicitly addressed this question, the answer has been no.\footnote{48}

I have suggested in a different context that we can answer this question in the affirmative.\footnote{49} To see that this is so in this context, it will be useful to return to Oakeshott’s claim that we ought not to see Hobbes’s philosophy in architectural terms. Oakeshott placed Hobbes in the tradition of “Will and Artifice.” Nevertheless, to distance Hobbes from interpretations that see him offering a mechanical and/or materialist explanation of the world, Oakeshott denied that Hobbes’s philosophy is architectural. In other words, Oakeshott denied that one ought to look for a scientific foundation in Hobbes’s claims concerning matter. His assertions concerning elemental parts of material things, or even about human beings themselves, were not meant as foundational assumptions from which he could derive his civil philosophy—in short, one should not look for a continual line of development between his physics and his politics.\footnote{50}

What I wish to suggest is that Oakeshott is correct to deny this line of development, but \textit{not}, as he claims, because Hobbes’s artifice is not architectural. The “physics to politics” reading is wrong precisely because Hobbes’s philosophy is thoroughly architectural in character. Let me first build this argument in terms of an ideal type. Consider the ways in which architects, and the work of architecture, are \textit{unlike} the work of social science. Architecture may begin with a set of assumptions about its materials, but these are \textit{givens}. Architects may need to know such things, but it is not the architect’s role to discover them. Whereas the inquiring scientist (a social scientist or a prototypical physicist) is concerned with the natural motions or behavior of matter, the architect’s material is taken as essentially static and available to the will of the builder. True, poorly chosen or ill-used matter may decay or snap under excessive pressures, but the primary architectural concern with motion is not centered in the natural motions of matter itself. It is centered in the act of construction. The artificer himself or herself must decide what to combine, must put matter into motion himself or herself—that is, give instructions to those who would build the artifice. No matter how mindful an architect must be of material, the first question is, “What do I wish to build?” and not “What are the characteristics of some thing in the world?” Answers to the second question may certainly condition answers to the first, but this does not conflict with the basic distinction between construction and inquiry. This is not a division of labor between two persons engaged in the same task but a more fundamental distinction.

Good architecture does not yield a more accurate picture of the world, it yields a well-made building. To the extent that the architect knows the world well, it is because the architect has built that world himself or herself and not
because the architect devoted his or her efforts to achieving some special insight into the natural motions of the world. It is certainly true that social scientists design institutions based on observations that have yielded predictions about human behavior, but the architect’s level of intervention into the world is more direct. The social scientists design institutions in light of the motives, actions—the motions—they expect from human beings (and this is, therefore, an enterprise that naturally values the capacity to predict behavior). By contrast, the architect imparts motion to his or her matter, imposes structure on matter until it conforms with the architect’s design.

It remains now to show that Hobbes did in fact subscribe to this understanding of his philosophy as an essentially constructive, architectural enterprise. In the quote above, Hobbes associates human progress not merely with philosophy in general but with geometry and natural philosophy. Of these two, it was geometry that Hobbes most often cited as his inspiration for his philosophy. Moreover, Hobbes himself was heavily invested in a particular notion of geometry. He places geometry at the center of his account of proper philosophical practice, authored a number of works on geometry, and also fought an ongoing battle with Oxford’s Savilian Professor of Geometry, John Wallis, over the course that geometry and mathematics should take. I will not review these conflicts here. Instead, I will offer evidence that Hobbes’s conception of geometry (and geometrically inspired political philosophy) conforms to the model of construction described above and that it is not directed toward the goal of inquiry.

As the quote above illustrates, Hobbes valued geometry for the commodious things it provided. Hobbes also valued geometry because it embodied a form of intellectual caution that he thought lacking among his intellectual contemporaries. His philosophical rivals were prone to abuse words. By contrast, geometricians, following the example of Euclid, always began with definitions and built methodically from these definitions. Hobbes emphasized the exemplary role geometry played in allowing him to discern sound method from the error-prone. Geometry was a model in the careful use of definitions, and, Hobbes adds by way of emphasis, the only science God has been pleased to grant to mankind:

Seeing then that truth consisteth in the right ordering of names in our affirmations, a man that seeketh precise truth had need to remember what every name he uses stand for, and to place it accordingly, or else he will find himself entangled in words: as a bird in lime twigs, the more he struggles the more belimed. And therefore in geometry (which is the only science that it hath pleased God hitherto to bestow on mankind) men begin at settling the significations of their words; which settling of significations they call definitions, and place them in the beginning of their reckoning.
Hobbes also idealized the geometrician because he possessed “maker’s knowledge.” The geometrician knows with certainty the figures he builds on the page. Unlike the inquirer, he derives his knowledge not from some special observation of the world but because he built the structure or figure himself. Hobbes offers an example in De Corpore. Were a figure, “having, as near as may be, the figure of a circle” placed before us, we would not be able to “perceive by sense” whether it is a true circle. By contrast, “nothing is more easy to be known to him” who knows how to generate a circle on his own. The thinker who generates the circle on his own, “by the circumduction of a body whereof one end remained unmoved” (fixing the end point of a line and spinning the line about it), knows the figure he has created fits the definition of a circle (i.e., where the radius is equal on every point of the circumference).

Was geometry a useful tool for understanding the workings of nature or the cosmos? It was for Galileo and Descartes. They began with the expectation that nature itself would conform to the dictates of human reason. A mathematical explanation of the events of the natural world, therefore, could be said to count as the best explanation of what was really happening. By contrast, Hobbes took a more skeptical position. Nature was God’s handiwork. It was beyond the power of men to know how God produced the effects that he did on earth. Instead, the best we could do is produce accounts of cause and effect that reproduce the effects observed in nature. Whether these explanations actually accounted for the means by which they were produced was something we could not know. To continue from the example with the circle, our knowledge of how to produce a circle does not tell us how the circle already set before us was in fact generated:

by knowing first what figure is set before us, we may come by ratiocination to some generation of the same, though perhaps not that by which it was made, yet that by which it might have been made.

The same logic applies with regard to the proper subject of physics, the phenomena of the natural world. Like the circle already before us on the page, we cannot be certain how it was in fact created, but through an appropriate mastery of causes, we can know how it could be created:

since the causes of natural things are not in our power, but in the divine will, and since the greatest part of them, namely the ether, is invisible; we, that do not see them, cannot deduce their qualities from their causes. Of course, we can, by deducting as far as possible the consequences that we do see, demonstrate that such and such could have been their causes.
For Hobbes, the distinction between hypothetical cause and actual cause was more than a skeptical objection. It meant that there would have to be new criteria for evaluating the worth of physics itself. Instead of valuing this science as a source of explanation, Hobbes stressed the fact that physical inquiry would make us capable of re-creating natural effects. Physics is a science that begins with effects and concludes with an account of causes that merely _could_ reproduce that effect. It was the practical, “commodious” value of this capacity that Hobbes emphasized, not its standing as an account of the world.60

For Hobbes, however, there was a still more impressive way to proceed in the sciences. He called sciences such as physics that began with effects and concluded with hypothetical causal reconstructions _aposteriori_. However, one need not begin with observed effects. In some forms of reasoning, one could begin with causes and work one’s way up to the creation of wholly original effects—these he termed _apriori_.61 Geometricians themselves belonged to this class of intellectual practitioners. This class of philosophers took on the more creative task of building artifices of their own. For Hobbes, it was not merely the geometrician who fit into this class of practitioners. Any science that begins with causes and works its way to effects belonged to this class, and the most lofty of these were the practitioners of the science of politics:

Finally, politics and ethics (that is the sciences of _just_ and _unjust_, of _equity_ and _inequity_) can be demonstrated _a priori_; because we ourselves make the principles—that is, the causes of justice (namely laws and covenants)—whereby it is known what _justice_ and _equity_, and their opposites _injustice_ and _inequity_, are. For before covenants and laws were drawn up, neither justice nor injustice, neither public good nor public evil, was natural among men any more than it was among beasts.62

Political philosophy, therefore, ought to be understood as a construction project. It is not an account of how individuals actually found themselves living in civil society; it is a set of instructions on how to construct a civil society built to last. It is in this context that we should understand Hobbes’s insistence that the laws of nature do not bind without the impetus provided by a coercive sovereign. The laws of nature are the dictates of reason that tell us our rights and duties and supply us with a means of constructing a commonwealth. They are our escape from the state of nature, but, as Hobbes notes, these laws do not bind us without human intervention. Hobbes’s laws of nature are not like the laws of Newtonian physics or, to use a more contemporary example, the laws of economics. They are not an account of what will happen naturally. His
laws are a part of the construction project. Hobbes sometimes drew parallels between reasoning per se and the operations of addition and subtraction. In *Leviathan*, he notes that geometricians add and subtract lines, figures, angles, proportions, and so on; arithmeticians add and subtract numbers. Likewise, “writers of politics add together *pactions* to find men’s duties.” The bodies that form the basic elements of the leviathan (here, our human bodies) must be set in motion, made to conform to the duties stipulated in the laws of nature. It is the coercive sovereign who ensures that our motions follow the natural law’s dictates. If anything, the laws of nature that Hobbes stipulates are counternatural and must be imposed on us:

For the laws of nature (as *justice, equity, modesty, mercy*, and (in sum) *doing to others as we would be done to*) of themselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And convenants without the sword are but words, and of no strength to secure a man at all.63

Notwithstanding their identification as “laws,” we can only make the laws of nature bind by virtue of the impetus of a coercive power to ensure our obedience to them.64 Sociability may come naturally to beasts, but for human beings sociability must be the product of artifice.

**IV. THE POLITICS OF THE ARTIFICER**

I have suggested that Oakeshott has not merely missed something in his interpretation but that his elision is indicative of a more pervasive underestimation of the obstacles that face antirationalist political theory. Let me now refine this argument by suggesting that Oakeshott in fact represses two elements in his interpretation. The two are connected but should be understood as distinct. In this essay, I will deal with the first in passing and emphasize the second.

The first element can attributed to his aristocratic prejudices.65 As noted above, Hobbes credited philosophy with supplying us with “commodious living.” His dedication to the “commodious” meant that Oakeshott’s adopted philosophical hero was in spirit too close to the ambitious, upwardly mobile, bourgeois—to the expert mechanic of political affairs. Rather than acknowledge these aspects of Hobbes’s philosophical project, he read them out of the picture. Oakeshott’s Hobbes does not get his hands dirty. He is not eager to please or impress others. He is already assured of his merits, and these reside in his capacity to reason philosophically. Rather than produce commodious
effects, this Hobbes is happy to sit back in cool aristocrat detachment; secure
in his ways, he contemplates what it means to engage in philosophic thought.
Having achieved a rationally coherent conception of political affairs, he is
satisfied that he has amply fulfilled his duties as a philosopher. Oakeshott’s
Hobbes can be no “jumped up kitchen porter,” and this is because there is not
only something wrong with trying to do something with philosophy that one
ought not to do but also because there is something wrong, for Oakeshott,
with the idea of a kitchen-porter philosopher. The prejudices that animate this
reappropriation are not uncommon among the critics of political rationalism,
but it is not the flaw most representative of antirationalist political theory.

The second element concerns the elision of Hobbes’s motivation for the
imposition of mechanical order on politics. Here, Oakeshott helps clear a
path that more have followed. In this more representative flaw, he locates the
will to impose order in a particular form of epistemological overconfidence: a
sense of optimism about one’s capacity to grasp the world as it really is, com-
bined with a belief that this understanding of the world is a prelude to solving
its problems. Oakeshott denies that Hobbes has this overconfidence—and I
have agreed with him on this point—but he also makes the assumption that
being free of this kind of overconfidence implies an end to the will to impose
order on the world. This last assumption is a poor one. Even after we give full
acknowledgement to the skeptical elements of Hobbes’s philosophy, he
remains a philosopher committed to imposing order on his world. Revealing
the motive for this kind of mastery also reveals the larger but neglected chal-
lenge that antirationalist political thought has yet to fully appreciate. This is
not the motive of a political ignoramus; it is not the product of a methodol-
gist’s overconfidence or the blindness of a purely instrumental rationality. It
is, rather, a panic induced by a fear of chaos, and in neglecting this motivation
the antirationalists have illustrated that political tin ears are not exclusively
located among their opponents.

I want to return briefly to Hobbes’s claims concerning the “commodious
living” philosophy makes possible. The social scientific reading of Hobbes
links him with Galileo and with Descartes. On this reading, Hobbes, Galileo,
and Descartes were alike in their desire to use new science to offer mathemat-
ical accounts of the world.66 Hobbes’s actual boasts are of a different nature.
As noted, he does not claim a knowledge of the world. He claims instead a
useful knowledge that allows us to move “ponderous bodies,” engage in
“architecture . . . navigation . . . instruments for all uses,” and so on.

Among antirationalist political theorists, such emphasis on practical
effects raises concern. Modern political reason has been taken over by a nar-
rowly instrumental mindset. Effectiveness, in and of itself, has become the
standard against which persons evaluate political decisions. Moral reasoning has been squeezed out of the picture, and so have the requisite intellectual skills whereby such moral reasoning might be cultivated. As noted, Oakeshott’s interpretation allows him to spare Hobbes, but Oakeshott is undoubtedly a contributor to contemporary critiques of the instrumentalist mindset. In Oakeshott’s critique, the criticism is reinforced with aristocratic disdain for the inflated expectations of political upstarts. According to Oakeshott, the origins of political rationalism are to be found in Descartes and Bacon, but the circumstances that have allowed political rationalism to truly blossom in the twentieth century have been accumulating over the centuries. With the “incursion” of “new ruler[s], new ruling classes, and of a new political society” (this last being a reference to the newly politically enfranchised—Oakeshott was writing in 1947), we find ourselves with more and more persons required to lead and participate in political affairs who have no experience of their own. Persons under these circumstances, “not brought up or educated to the exercise,” find rationalist politics a godsend:

His need of it is so great that he will have no incentive to be sceptical about the possibility of a magic technique of politics which will remove the handicap of his lack of political education. The offer of such a technique will seem to him the offer of salvation itself; to be told that the necessary knowledge is to be found, complete and self-contained, in a book, and to be told that his knowledge is of the sort that can be learned quickly and applied mechanically, will seem, like salvation, something almost too good to be true.

It is precisely the character of Oakeshott’s political rationalist to make such fantastic promises and to believe in them as well. The most characteristic thing about the rationalist politics of his contemporaries, Oakeshott remarked, was “the prevailing belief that politics are easy.” Such a belief is merely a correlate of the core “rationalist faith in the sovereignty of technique” and presuppositions sustaining “the notion that some over-all scheme of mechanized control is possible.” The American Founders are an example of an earlier instance of this faith. They were convinced that they did not have to consult the “old parchments and musty records” of civilization. Instead, their new and accurate grasp of human nature and their superior techniques would ensure their success. With such hopeful feelings, modern political rationalism converts politics in all its complexity into an “easy” matter of administration.

Against Oakeshott’s diagnosis, we might ask whether an anxious desire for an effective, well-ordered political sphere always emerges in these contexts. Is it the case that the politically inexperienced are the only ones who find solace in the provision of a rationalist political philosophy? Today’s Oakeshottian antirationalists tend to overlook his distasteful class biases, for
it would seem that his critique of the hubris of political rationalism is a criticism that might be made from a number of perspectives. This brings us the second element repressed in Oakeshott’s interpretation, the one most pertinent to contemporary antirationalist political theory.

Even if one could extract Oakeshott’s critique from its aristocratic trappings, his focus on the overconfidence of the political rationalist remains misleading. This is not because there have not been overconfident political rationalists but because the circumstances that lead us to wish for a form of politics that asserts a rational mastery over our circumstances are not limited to those Oakeshott—and many other antirationalists—describe. Hobbes, moreover, illustrates this very characteristic. Hobbes may have been confident of his own rationality, but he was famously nervous about politics. Hobbes did not wish to impose order on the political world because he thought he could penetrate the mysteries of human political conduct. Hobbes certainly made a point of disagreeing with Aristotle. Man was not, by nature, a *polis* animal; but Hobbes hardly counted it a great accomplishment to see the error of Aristotle’s assumption.

Put another way, Montesquieu and Rousseau were correct when they said they suspected Hobbes of transferring his impressions of his fellow citizens onto the ‘nature’ of man in the state of nature. Life in Hobbes’s state of nature was solitary, poor, nasty, brutish, and short, because life in Hobbes’s Britain was threatening to become—and for some it was—solitary, poor, nasty, brutish, and short. Having acknowledged the transfer, however, we need not follow the lead of these Enlightenment philosophers and look for man’s true nature to substitute for Hobbes’s account. Instead, we can reasonably draw the conclusion that a will to impose a rational order on political life does not always stem from a primary desire to know political (or natural) phenomena or from the overconfidence of those who claim to have such knowledge. It was not out of confidence, but out of desperation, that Hobbes adopts his political rationalism. With Montesquieu and Rousseau, we should acknowledge that Hobbes’s political philosophy was a reaction to his contexts, and one that was at least discerning of the flaws and pitfalls of his own society.

A view of political society that declares a constant danger of devolving into a state of war is not a confident view. In fact, Hobbes shared this pessimistic assumption not with the new, self-made men among his contemporaries but with weary and disappointed aristocrats who served as his patrons. Importantly, the desire for a rational mastery of political affairs emerges with a different mindset from the one described by Oakeshott and other anti–political rationalists. The motivation for the imposition of a rational scheme is not an overconfident claim to know the world, or human nature,
as it really is. The motivation, rather, was a fear of life-threatening political contexts. Hobbes’s problem was not an unawareness of the contingency of the political—he was more than happy to show his political rivals that the knowledge of the world they claimed was built on sand. Rather, it was an intense fear that the contingency of political life was not survivable. Hobbes did not need to—and did not claim to—know the world as it really is with scientific certainty. His was a science at once skeptical and impatient. Not only was he dubious as to the claims of those who asserted a definitive knowledge of the world we observe, he hadn’t the time to engage in such speculations. Hobbes’s first priority was to merely impose an order on the chaotic world—to lift humanity out of the disastrous state of nature—and that is why he was not looking for relief in sciences that offer us an accurate picture of nature itself. Geometry was Hobbes’s science of choice, and of inspiration, because it puts aside questions of natural motion and (like an architect) gets about the business of directly manipulating matter to suit our needs. That need—rather than expectation—was the desperate desire for peace, as the first law of nature dictates. Thus, it was misery and fear that drove Hobbes to a rationalist politics, not fascination with a new and exciting way to describe the workings of the universe or human nature.73

Important for our purposes, the will to impose order out of misery and fear cannot as easily be dismissed as “apolitical.” Hobbes’s impulse is rooted in a reaction to his political contexts. Unlike the politically obtuse rationalist now subject to antirationalist critique, Hobbes’s plea for the imposition of a rational order emerges out of life in the thick of political affairs. Hobbes maintained very close connections with the politically prominent Cavendish family throughout most of the seventeenth century. He was employed as mathematics tutor to Charles II in the exiled court, and he continued contact with Charles II following the Stuart Restoration. This meant that Hobbes was closer to the political life of his nation than most contemporary political theorists ever will be. Moreover, the desire of the panicked to impose order, to create order out of chaos, is hardly something we can rule out as a likely reaction among politically engaged persons.74 Even the most committed postmodernist—anxious to avoid the language of metaphysics and a subsequent unwitting imposition of rationality—might find himself or herself under circumstances wherein the deliberate choice to impose order becomes a possibility.

What ramifications does this have for contemporary antirationalist politics? In a recent review of James Scott’s anti-political rationalist *Seeing Like a State*, Shannon Stimpson makes the point that there are ironies in presenting such an antagonistic thesis at this time.75 Scott’s book, an expansive survey and critique of grand modernist-rationalist projects such as Brasilia, may be less than timely in the twenty-first century:
If this is his message, Scott may be preaching to the converted. It is interesting to see a critique of state-inspired planning, even one so admittedly elegant, appear at this time. Without prognosticating the future, ours would seem to be an era in which the end of “big-government” solutions has been declared. . . . Even the most meager government intervention in the economy now meets with organized political resistance.76

Stimpson makes a valid point. The intellectual sources of political rationalism no longer have the clout they once did during their heydays in the twentieth century. Present political contexts are clearly different. The intellectual machinery that developed to accompany the growth of the modern welfare state, however, has not changed with these contexts. That is, even as the legitimacy of “scientific” perspectives on political affairs has diminished in recent years—although one might note that every opponent of “big government” is happy to cite scientific studies when it suits his or her purposes—its place within the academy has not. Why has there not been a parallel diminution?

In light of what Oakeshott’s antirationalism misses, we can venture an explanation. A part of the decline in the public legitimacy of political rationalism is surely a less trusting attitude toward scientific authority. Perhaps made weary by the contradictions between scientific authorities, perhaps infused with a new postmodern ethos, the Western public questions whether authoritative descriptions of political realities can exist. The authority of rationalist contemporaries against which Oakeshott or Marcuse chafed is now not quite so great. However, the need for a scientific legitimation once we elect to impose order on society remains as strong as ever. This suggests that the intellectual machinery of modern political rationalism may survive even as faith in its capacity to describe or explain political behavior disappears. If that is the case, then anti–political rationalism will experience diminishing marginal returns insofar as it directs its efforts toward skeptical attacks on the epistemology of political rationalism. Showing the political rationalist that his or her confidence is misplaced because it rests on a fundamental misunderstanding of the political may be missing the mark. The mere capacity to satisfy the desire, when it arises, to impose order may be what accounts for political rationalism’s longevity. Whether the political rationalists themselves are true believers in their capacity to know politics may be beside the point.

NOTES


7. Most recently, the controversy started with the “Mr. Perestroika” e-mail. See *PS: Political Science & Politics* 4 (December 2000): 735-41.

8. See, for example, Marcuse’s observations on the status of philosophy and social science in Herbert Marcuse, *One Dimensional Man* (Boston: Beacon, 1964).


13. “Introduction,” 235-39. Thus, Hobbes’s enthusiasm for Kepler, Galileo, and Harvey should not outweigh his antipathy toward the Royal Society. When we see “what Hobbes was about” we realize that this confusion, this “internal tension” in his thought arose from an attempted but imperfectly achieved distinction between science and philosophy. The distinction, well known to us now, is that between knowledge of things as they appear and enquiry into the fact of their appearing, between a knowledge (with all the necessary assumptions) of the phenomenal world and a theory of knowledge itself... his concern as a philosopher was with the second and not the first. (Ibid., 239)

14. Ibid., 236.

15. Ibid., 236-37.

16. Ibid., 236.

18. "Introduction," 227-28, 233, 276-78, 280. The important distinction for Oakeshott is that Hobbes is a part of—indeed the fruition of—a break from an earlier tradition of "Reason and Nature," which rooted obedience in natural law, and natural law in the obligatory force of reason's dictates.

19. Ibid., 236.

20. Ibid., 246-47.

21. Ibid., 244.

22. Ibid., 244-45.

23. It is also, notably, a part of an argument that stresses a picture of the individual that stresses willfulness over reason, but I will not be addressing this part of Oakeshott's interpretation here. See, for example, ibid., 280.

24. Ibid., 242.

25. Ibid., 243.

26. Thomas Hobbes, De Corpore, bk. I, chap. 3, sections 1-2, 7, Opera Philosophica (vol. 2), ed. Sir William Molesworth (London: John Bohn, 1839) [hereafter, De Corpore, book, chapter, section]. See also Thomas Hobbes, Leviathan, chap. 4, sections 11-12, ed. Edwin Curley (Indianapolis, IN: Hackett, 1994) [hereafter, Leviathan, chapter, section]; Thomas Hobbes, Elements of Law, bk. I, chap. 5, section 10, ed. Ferdinand Tönnies (Cambridge, UK: Cambridge University Press, 1889). In De Corpore, I, 3, 10, he writes, "truth adheres not to things, but to speech only, for some truths are eternal; for it will be eternally true, if man, then living creature; but that any man, or living creature, should exist eternally, is not necessary." This assertion is explained by the fact that Hobbes defines "living creature" as one of the accidents that are necessary to "man"; in his terminology, a cause of man. Thus, it is true that "man" entails the notion of "living creature," but it could be that men, and all living creatures, will one day be gone. Nonetheless, the formal truth that "man" is a "living creature" will nonetheless remain true. In Leviathan, 4, 11, Hobbes writes, "For True and False are attributes of Speech, not of Things. And where Speech is not, there is neither Truth nor Falsehood."

27. Reprinted in Oakeshott, Rationalism and Politics.


29. Ibid.

30. Ibid., 7.

31. Ibid.


34. Ibid., 27. Oakeshott makes this point in the context of a more specific critique of "the politics of the book." Here, one imagines that he is not merely speaking of political rationalism generally but the political rationalist ideologies that generated books. None too specific, Oakeshott may be thinking of manuals such as Mao's little red book. In any case, this argument is an extension of his more general point about the inherent inadequacies of technique in the realm of politics.


37. See the preceding discussion. See also “Introduction” 232-33, 237, 276 ff.

38. _De Corpore_, I, 1, 6.


40. These boasts are made in _De Corpore_, Epistle Dedicatory; see also the Dedicatory and the Preface to Readers of _De Cive_, Opera Philosophica.

41. Habermas, _Theory and Practice_; Strauss, _Political Philosophy of Hobbes_.

42. _Leviathan_, 5, 5.

43. Hobbes’s illustration of the difference between prudence and science in terms of the distinction between the merely prudent fencer and the scientific fencer (_Leviathan_, 5, 21) reinforces this point. He is not merely concerned with the knowledge of the scientific fencer but with the fact that he is “infallible” in his capacity as a fencer.

44. _Leviathan_, 13, 9.

45. Ibid.

46. _De Corpore_, I, 1, 7. See also _De Cive_, Dedicatory.


48. Two contributors to the recent _Cambridge Companion to Hobbes_, ed. Tom Sorell (Cambridge, UK: Cambridge University Press, 1996) confront this question (and also answer no). See Alan Ryan, “Hobbes’s Political Philosophy,” in ibid., 208-45, esp. 212-14, for the analogy between Hobbes’s science and normative aspects of modern economics. See also Douglas Jesseph, “Hobbes and the Method of Natural Science” in ibid., 86-107, esp. 100-101, where it is claimed that Hobbes had a commitment to “uncover the mechanical causes of natural phenomena”; this commitment is said to mitigate the force of his claims concerning the restriction of philosophic truths to true propositions (and therewith a conventionalist theory of natural science). These very recent interpreters are hardly alone. Even among earlier interpreters, who have been mindful of the distinction between Hobbes’s work and contemporary social scientific enterprises, there is recognition that his science is concerned with describing the world. See, for example, David Johnston, _The Rhetoric of Leviathan_ (Princeton, NJ: Princeton University Press, 1986), 22-24, 52-54; J.W.N. Watkins, _Hobbes’s System of Ideas_ (London: Hutchinson, 1965) esp. 8-11, 47-81, 121-25.


51. I discuss this at length in Miller, “Thomas Hobbes and the Constraints.” Some of the most sustained claims along these lines occur in _De Cive_, Dedicatory and Preface to the Readers. Some of the more important works on mathematics pertinent to Hobbes’s own include Peter Dear, _Discipline and Experience: The Mathematical Way in the Scientific Revolution_ (Chicago: University of Chicago Press, 1995); Peter Dear, _Mersenne and the Learning of the Schools

53. Leviathan, 1, 5; 4, 5; 5-16; 8, 27; 12, 31, throughout; De Corpore I, 5, 1-9.

54. Leviathan, 4, 12.


56. De Corpore, I, 1, 5.

57. Ibid.

58. Ibid.


60.

The doctrine of natural causes hath not in infallible and evident principles. For there is no effect which the power of God cannot produce by many several ways. But seeing all effects are produced by motion, he that supposing someone or more motions, can derive from them the necessity of that effect whose cause is required, has done all that is to be expected from natural reason. And though he prove not that the thing was thus produced, yet he proves that thus it may be produced when the materials and the power of moving
are in our hands: which is as useful as if the causes themselves were known. (Thomas Hobbes, Seven Philosophical Problems, Dedicatory, in English Works [vol. 7])

61. I discuss this distinction at length in Miller, “Thomas Hobbes and the Constraints.”
62. De Homine, 10, 5. In the Latin, Hobbes writes of these things, “ipsi fecimus” (i.e., from “facere,”) to make), Opera Latina (vol. 1), 94.
63. Leviathan, 17, 2.
64. Oakeshott in fact argued this characteristic of Hobbes’s laws of nature. See “Introduction,” 256-57. He only does so, however, after having neutralized the practical implications of this reading—note that in civil philosophy, “the generation [of effects] is rational and not physical” (ibid., 248).
65. This assertion may seem to cut against Oakeshott’s professed liberalism. Oakeshott was in fact a liberal. He was particularly concerned with protecting the individual and with cultivating circumstances that allowed the virtues of individuality to flourish. See, for example, Michael Oakeshott, “The Masses in Representative Democracy,” reprinted in Oakeshott, Rationalism in Politics, and Michael Oakeshott, On Human Conduct (Oxford, UK: Oxford University Press, 1991). See also Flathman, Skepticism, Individuality and Chastened Politics. One need not deny his liberalism to acknowledge that this liberalism, and his other stands, were defended with the tools of a rather aristocratic habit of mind. In fact, it is the preference for trading in critiques that emphasize habits of mind, of character revealed through practice (habitus), that make Oakeshott’s intellectual tools so aristocratic in nature. Cf. Pierre Bourdieu, Distinction: A Social Critique of the Judgement of Taste, and Michael Oakeshott, On Human Conduct (Oxford, UK: Oxford University Press, 1984), a more distanced, scientific study of habitus in the pursuit of a fundamentally different political goal.
68. One finds, for example, citations to Oakeshott’s arguments in the recent work of James Scott, Seeing Like a State (New Haven, CT: Yale University Press, 1998); Chantal Mouffe, The Return of the Political (London: Verso, 1993); Richard Rorty, Contingency, Irony, and Solidarity (Cambridge, UK: Cambridge University Press, 1989); Ronald Beiner, Political Judgment (Chicago: University of Chicago Press, 1983).
70. Ibid., 28, 32-33. The reference to old parchment is Alexander Hamilton’s, here cited by Oakeshott.
72. I discuss this in Making Certain: Thomas Hobbes and the Fashioning of States, Citizens, and Mathematicians (book manuscript in preparation), particularly the common feelings of political disillusionment and stoicism among the British political elite in the late sixteenth and early seventeenth centuries.
73. To suggest that it is nothing but misery and fear that animates the politics of an artificer, however, is too one-sided. Hobbes also wrote to tempt and/or appease those likely to become sovereign over the order that he would found. He did so by appealing to their desire for glory. It
was not the glory of scientific discovery, but a glory that would allow them to see themselves as imitators of God. See Ted H. Miller, "Thomas Hobbes and the Constraints." Hobbes promises to make those who follow his philosophical advice concerning the a priori sciences imitators of God as a creator. Hobbes’s creators do not create out of nothing, but, still like the divine, they create order where there was once none.

74. Carl Schmitt’s temporary, but influential, admiration for Hobbes also bespeaks his credentials as a theorist familiar with ‘the political’. A discussion of Schmitt, however, is outside the scope of this essay.


76. Stimpson, “Rethinking the State,” 826.

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A PREFACE TO AN UNPUBLISHED MS
BY MICHAEL OAKESHOTT ON
HOBBES'S LEVIATHAN

PATRICK RILEY
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To mark the centenary of the birth of Michael Oakeshott (1901-90), we now publish for the first time a small manuscript on Hobbes’s Leviathan that Oakeshott wrote in 1963.

In that year, Professor John Watkins (who was to bring out Hobbes’s System of Ideas in 1965) wrote to Oakeshott with several queries about “The Moral Life in the Writings of Thomas Hobbes,” which had recently been published in Rationalism in Politics and Other Essays (London, 1962). Oakeshott responded with the present manuscript, which is interesting for its interpretation of Hobbes’s notions of death and honor through the Hegelian idea of “struggle for recognition” in the Phenomenology of Mind, thereby linking the “idealistic” Oakeshott of the twenties and thirties with the postwar Oakeshott who became the most notable interpreter of Leviathan in the twentieth century. Since Oakeshott viewed Leviathan as “the greatest, perhaps the sole masterpiece of political philosophy in the English language,” it is splendid to have a “new” Hobbes essay by him—even a miniature one.

At my last meeting with Oakeshott in May of 1990—he died six months later—he kindly gave me a copy of his letter to Watkins and said that I could make whatever use of it I wanted. I cannot think of a better use than celebrating the centenary of a remarkable man who was at once an original philosopher and a brilliant historian of political and moral thought.

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Dear John [Watkins],

I am sorry I have been so long about it, but I haven’t had a moment to spare since I had your letter about Hobbes.

These are the reflections it provokes in me. You refer to p. 292 of my essay, but I think the main point is argued on p. 254 [The reference here is to Rationalism in Politics and other Essays (London, 1962)].

1. **Death**
   
   (a) I take it that we agree that death itself is not the significant thing in Hobbes’s argument. Every man has certain expectations about remaining alive and an untimely death (i.e., one before the normal span of life is complete) is one that human beings are naturally averse from, but that is not the real point.

   The point is being killed: or at any rate that’s where we begin.

   But it is not being killed in any manner (e.g., struck by lightning or buried in an earthquake); it is only being killed by another man. Why is it this and not other ways of being killed that are relevant? What does being killed by another man signify?

   It signified failure in the ‘race’ for precedence which constitutes human life—failure, not in competition with the natural world, but in competition with other human beings. And this I take to be the central point; and this is what is meant by shameful death. To be killed by another man is eo ipso shameful or dishonourable because it signified that inferiority vis-à-vis other men which is the centre of all human aversion.

   In other words, desire is directed, not towards survival, but towards being first (and thus being ‘honoured’ and meriting ‘honour’); and aversion is
directed towards being dishonoured. This is what it is to be a man and not an animal.

Thus, being killed by another man is the limiting case. There are many conditions short of this to which a man may be averse—indeed, all conditions in which one’s inferiority is demonstrated and one suffers the dishonour which is the consequence of inferiority—but death is, so to speak, the paradigm case.

(b) But all this needs modification. For what a man wishes to avoid is not merely being killed by another man, or being in some lesser way dishonoured or shamed in human intercourse, but fear of this condition. What he wishes to reach is a condition in which he no longer has even to fear being dishonoured. And this is a very large demand; it is the demand for a settled condition of life in which dishonour is unlikely, so unlikely that it may cease to be a disturbing consideration. On my reading of it, this entails a condition of life in which the characteristic of being a ‘race’ for precedence is, if not abolished, then very greatly reduced. The civitas is this condition.

2. Fear

Fear is a passion. And so long as it remains a passion may be the cause of all sorts of conduct which may or may not promote peace. If, in competition with other men, I am fearful of being worsted I may retreat into a world of ‘vain glory’ in which I have wonderful dreams of being top-dog which satisfy me so long as they last. And these, no doubt, will contribute to ‘peace’, though they won’t give me any notable protection. On the other hand, fear of being worsted may lead me to murder.

As I see it, fear (that is fear of being worsted, and perhaps killed) becomes a notable contributor to peace when, by some subtle transformation which Hobbes does not explain in detail it becomes ‘rational fear’, or becomes the cause of rational behaviour of being invaded by ‘reason’. At all events fear, as a passion, is common to men and to animals; in men it is (unavoidably) informed by imagination, forecast of the future etc.; and in man, by being informed by imagination may become rational, or the motive force of rational conduct. And, of course, rational conduct is always an endeavour for peace.

Perhaps the point is that, in Hobbes, ‘Peace’—the absence of war of all against all—i.e., the absence of unrelieved competition for the first place.

The war of all against all is a condition of fear—instinctive fears which may lead to all sorts of erratic conduct, and of rational fear which leads to the conclusion that the civitas is a necessity if fear is to be abolished.
Hobbes identifies at least some sorts of fear with ‘humility’ and I suppose ‘humility’ is a kind of instinctive aversion from strife; but it is not the sort of fear which could generate the *civitas*.

*Very best wishes to you*

*From*

*Michael Oakeshott*
BAD CIVIL SOCIETY

SIMONE CHAMBERS
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On July 4, 1999, Benjamin Smith, a member of the World Church of the Creator, went on a shooting rampage targeting Jews, African Americans, and Asian Americans. Despite the Church’s disavowal of any connection or support for his actions, one look at the Web site of the World Church of the Creator makes it quite clear where Mr. Smith nurtured his hatred and fear. The World Church of the Creator promotes and fosters many of the “goods” associated with civil society, however. Participants learn cooperation and trust. They acquire a sense of belonging and perhaps meaning in their lives. They develop the virtues of civility and sacrifice, at least among themselves. They are asked to rise above narrow self-interest and take on a perspective of the group. But the World Church of the Creator, even without the mad acts of one deranged individual who merely brought this group to our attention, is an example of bad civil society. Its existence and the existence of many other similar groups asks us to rethink and perhaps take a different perspective on the “civil society argument.”

The gist of the civil society argument, which has received a great deal of attention of late, goes something like this: a robust, strong, and vibrant civil society strengthens and enhances liberal democracy. But a civil society full of World Churches of the Creator clearly would not perform this function. Is this a serious worry? Although it is not likely that American civic life is going to be overrun by such organizations, we do feel that not enough attention has been paid to the theoretical and empirical dilemmas that the existence of such

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groups raise. One possible reason for the lack of interest and concern about bad groups in the civil society literature can be found in the genesis of the civil society argument.

There are many versions of the civil society argument, often diverging on the issue of exactly how civil society and associational participation enhance liberal democracy. Defenders of many versions of the argument are in agreement, however, concerning the negative hypothesis: the destruction or disappearance of associational life signals the demise of democracy. The negative thesis arose out of two opposite but eerily similar pathologies facing democratic orders (or potential democratic orders) in the late twentieth century: atomistic individualism, on one hand, and isolating totalitarianism, on the other. The former is thought to undermine democracy by denuding citizens of any of the skills, interests, and dispositions necessary to make liberal democracy work. The latter destroys the potential for democracy by forcing citizens to retreat into isolation from fear of the state.

In both cases, we see civil society addressing the debilitating affects of depoliticization and withdrawal that are potentially devastating for democracy. If the question is, Which is better for democracy, self-absorbed individualism or associational participation? the answer seems to be clear: associational participation holds more promise for democracy. The answer is not just clear but glaringly obvious in the case of totalitarianism. We must choose autonomous self-organization over frightened isolation as the friend of democracy every time. But what if this is no longer the question? Certainly in Eastern Europe it is no longer the obvious question. In America, it is not clear if it was ever the right question, as Americans have always been joiners and it is now hotly contested whether that pattern of participation is in decline. The more important question facing us is what type of civil society promotes democracy. In other words, the choice is not really between isolation and participation but rather between different types of participation. But in this debate, few are talking about types of participation that undermine democracy. Although many acknowledge that participation is no panacea, the debate often proceeds as if it were. We want to talk about civic participation that weakens liberal democracy. We want to talk about bad civil society.

In this essay, then, we make three claims. (1) The problem of bad civil society is more serious for the civil society argument than is usually acknowledged even in stable democracies like the United States. (2) The problem of bad civil society requires the introduction of a comparative analysis to get the right angle on the problem. We will argue that the right angle involves asking the question, Why do people join “bad” organizations? and this is partially answered by looking at places where a lot of people do join such organizations. (3) We will argue that socioeconomic factors are very important in
understanding why people join “bad” organizations, and this in turn means that we need to put civil society theory back into contact with some traditional issues of social justice.

We begin with a section (I) outlining some examples of civil association that appear to undermine the civil society argument. We then very briefly introduce a comparative perspective on civil society that highlights socio-economic factors influencing group membership choice (II). The four sections that follow discuss possible responses to bad civil society including arguments that see bad civil society as an issue of containment (III), as a freedom of association issue (IV), as a moral education issue (V), and finally as an issue of democratic efficacy (VI). We argue that although all these approaches offer interesting insights into the role and significance of associations, they often fail to acknowledge and address the problem either by way of a discussion of the causes of bad civil society or the solutions to bad civil society. We conclude with a call for theorists in their discussion of civil society to reengage economics and questions of basic welfare and material security that were once core elements of political philosophy (VII).

A final word about what we mean by bad civil society. For the purposes of this essay, we understand bad civil society to refer to something narrower than general illiberal and antidemocratic tendencies. In the first place, we do not want to deny that a legitimate and indeed positive role of associations sometimes involves resisting and contesting the liberal state. We do not want to insist on what Nancy Rosenblum has called “congruence”—the idea that only groups that actively and directly promote liberal values are valuable. Indeed, we do not want to enter the debate about what promotes liberal democracy at all. Thus, we do not offer a full theory of civil society that would, among other things, catalogue all the ways that associational life in all its guises can support and strengthen a political culture or be valuable to individuals or offer some good. We will leave this to others. Furthermore, we do not offer a full definition of civil society beyond saying that whatever else it includes, it includes voluntary associations. Again, many others have taken the lead in this.

We have chosen a minimal and negative approach to the question of bad civil society. It is minimal because we only investigate one value that we argue is a necessary but far from sufficient condition for the long-term viability of liberalism. We call this value the value of reciprocity. Reciprocity involves the recognition of other citizens, even those with whom one has deep disagreement, as moral agents deserving civility. Our approach is negative because we do not investigate all the ways to promote this value so much as look at associations that actively and publicly challenge this value through the promotion of hate, bigotry, racism, anti-Semitism, and aggressive xen-
phobia. The question here is not whether groups discriminate in their membership, although it is hard to imagine a group that publicly advocated some form of hate that did not discriminate. The question is about whether their stated values, beliefs, creed, agenda, ideology, or platform is clearly incompatible with a belief in equal moral consideration. We are investigating the causes of one particular pathology of civil society: groups that advocate hate and bigotry. We are justified in taking this narrow case because, although many things may undermine liberal democracy, nothing destroys it (or makes it impossible to build) faster than hate.

I. BOWLING WITH FARRAKHAN

In 1995, Robert Putnam published a now famous article titled “Bowling Alone: America’s Declining Social Capital,” which has been recently expanded into a book under the same title. In both studies, he defends a Tocquevillian view that stresses the “importance of a strong and active civil society to the consolidation of democracy.” Whereas many scholars had accepted Tocqueville’s assessment that American democracy had experienced a successful consolidation precisely because of its strong and active civil society, Putnam argues that “there is striking evidence . . . that the vibrancy of American civil society has notably declined over the past several decades.” He cites much evidence in defense of this claim, but the example that furnished the title of the article and book has become the poster child of civic decline: “Between 1980 and 1993 the total number of bowlers in America increased by 10 percent, while league bowling decreased by 40 percent.” The social significance of the rise of solo bowling “lies in the social interaction and occasional civic conversations over beer and pizza that solo bowlers forgo.” Bowling alone does not produce “social capital”; that is, it does not produce the “networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit.”

We have no quarrel with this argument. It probably is the case that the rise of solo bowling signals a social shift that has implications for the character of civil society. Our problem with Putnam is on the other side of the argument. It is the assumption that bowling in a league will produce the sort of social capital that will strengthen rather than undermine democracy. As the title of this section implies, that depends on who makes up one’s league and what sort of substantive beliefs are being reinforced in the “occasional civic conversations” that go on while one bowls. In his earlier work, Putnam argued that as long as associations are not vertically organized, they foster the right sort of social capital. He now admits that he failed to acknowledge that a “whites
only” bowling league would not create the same kind of social capital as an integrated one. The lessons of trust and solidarity, of developing an “I” into a “we,” do not strengthen democracy when the trust, solidarity, and the “we” are such that they do not go beyond the group in question. As Amy Gutmann has succinctly put it,

Among its members, the Ku Klux Klan may cultivate solidarity and trust, reduce the incentives for opportunism, and develop some “I’s” into a “we”... (but) ... the associational premises of these solidaristic ties are hatred, degradation, and denigration of fellow citizens and fellow human beings.14

We need to recognize the difference between particularist civility and a more democratic civility. Particularist civility contains all the goods that are associated with participation (trust, public spiritedness, self-sacrifice), but only between members of a particular group, and it often encourages the opposite sort of attitude to members outside of the group. Democratic civility, in contrast, extends the goods learned in participation to all citizens regardless of group membership.

Putnam has since revised his theory of social capital in an attempt to address some of these problems. We do not feel the revisions are completely satisfactory, however. In the introductory chapter of Bowling Alone, Putnam admits that “Social Capital, in short, can be directed toward malevolent, antisocial purposes, just like any other form of capital. . . . Therefore it is important to ask how the positive consequences of social capital . . . can be maximized and the negative manifestations . . . minimized.”15 Putnam then notes a number of distinctions that are helpful in this regard, the most important being between social capital that stresses bridging and social capital that emphasizes bonding. Bonding involves looking inward and tends to reinforce exclusive identities and homogeneous groups. Bridging, by contrast, involves making connections across social, ethnic, and political cleavages.

This is, as Putnam notes, an important distinction; it is not able, however, to distinguish bad from good social capital any more than his original undifferentiated model could. Bonding includes such diverse groups as “church-based women’s reading groups, ethnic fraternal organizations, and fashionable country clubs.”16 While admitting that bonding and bridging may be in tension, Putnam insists that bonding is as important as bridging, and many of his examples of good social capital are heavy on the bonding function, for example, neighborhood or church ties. To deal with the problem of “malevolent” social capital, one would have to look more deeply into bonding and ask which bonding actively discourages what we have called democratic civility. We believe that this cannot be assessed without taking up the
ideological content and substantive messages that members receive. Knowing that a church-based women’s reading group is an essentially bonding experience does not tell you whether they are reading *The Turner Diaries* or *The Color Purple*. In any case, Putnam never takes up these sorts of questions or even the general theme of bonding versus bridging, because, finding “no reliable, comprehensive, nationwide measures of social capital that neatly distinguish ‘bridgingness’ and ‘bondingness’ . . . this distinction will be less prominent [in the book] than I would prefer.”17 And indeed, it is not discussed in any analytic or sociologically rigorous way.18

While more and more scholars, like Putnam, are recognizing that a vibrant civil society can contain elements that are an anathema to democracy, there remains a lingering, neo-Tocquevillian enthusiasm for participation as such, especially when it is conceived, as Putnam conceives it, as a choice between civic engagement and individual apathy. Even Nancy Rosenblum, who is skeptical of a general political effect of associational membership, nevertheless notes a general moral significance: “the chief and constant contribution of associations to moral development is cultivating the disposition to cooperate.”19 But the moral significance of cooperation must be tied to the question, Cooperation with whom? Cultivating the disposition to cooperate with members of one’s own race might be better described as moral decline than as development. Rosenblum, like so many others, including those she criticizes for their Tocquevillian excesses, sees civil society through traditional liberal/communitarian categories: civil society is an antidote to anomie, apathy, and isolation. What we argue is that this perspective fails to see that sometimes the cure is worse than the disease. In addition to looking at associations from the point of view of participation versus nonparticipation, we suggest that the political and moral significance of associations also requires that we look at associations from the point of view of the substantive values that are promoted within associations. From this perspective, the political value of civil society for democracy clearly becomes a contingent affair. As two critics of civil society literature put it, “if civil society is a beachhead secure enough to be of use in thwarting tyrannical regimes, what prevents it from being used to undermine democratic governments?”20

The Weimar Republic had a vibrant and well-organized civil society that gave birth to and nurtured the Nazi movement.21 High levels of associational participation in post-1918 Italy correlate very nicely with support for Mussolini.22 The new civil societies of Russia and Eastern Europe are home to groups like the Russian National Unity and the Romanian National Union that organize large numbers of citizens around proto-fascist ideologies. During the Communist era, the former Yugoslavia arguably had the most developed civil society of any Eastern European country. Yet this did little to pre-
vent the post-Communist era being inaugurated with ethnic cleansing, civil war, and the worst massacres in Europe since World War II. Conversely, some have argued that one of the factors protecting Russia from an antiliberal takeover is the relative weakness of its civil society, making it difficult to organize a large-scale social movement.

One response to what has already been said is to suggest that perhaps the problem of bad civil society is only a problem for nations such as post–World War II Germany or post-Soviet Russia that lack stable democratic traditions. It is not likely that illiberal forces will triumph within the American context in any near future. Nevertheless, the United States is full of groups that advocate illiberal and antidemocratic causes. Should we be worried? We argue that the smaller scale of illiberalism in the United States compared to, say, Russia, is not a reason to dismiss the dangers of bad civil society in the American context. Nor is it a reason to dismiss the relevance of comparison. Clearer cases of bad civil society can shed light on less clear cases.

A great deal of the debate about civil society assumes a type of American exceptionalism that makes comparison seem irrelevant. This is sometimes warranted. The constitutional tradition of the United States does point to an idiosyncratic set of arguments and considerations in the American case. But it also sometimes leads to complacency. The complacency goes like this: illiberal forces are small, marginalized, and contained within a strong rights tradition. It is inconceivable, given our strong constitutional tradition, that the liberal state should fall to such forces. Thus, we do not need to learn any lessons from nations where the state does appear to be jeopardized, or where there are no strong liberal traditions.

This view is shortsighted for two reasons. First, even if it is the case that illiberal forces are small in number today, it is not a waste of time to try to understand the phenomena of bad civil society. This might allow us to identify warning signs of the growth of bad civil society in the future. But second and more important, the danger contained in bad civil society is not exclusively about the ability to directly destabilize the state through the mobilization of large numbers of people. Illiberal forces need not set their cap on the state to undermine liberalism. Because illiberal forces cannot destabilize the state does not mean that they cannot contribute to an insidious erosion of values that leaves liberalism vulnerable to all sorts of threats.

The most important of these threats is the potential spillover of extremist rhetoric into the mainstream of political discourse. Hate groups not only feed off of divisions in a given society, they also nurture them. One need only read the Web sites of extremist groups such as the Freemen or the Hammerskin movements or listen to the talk radio of G. Gordon Liddy and then read the speeches of Pat Buchanan with his references to the Congress as “Israeli
Occupied Territory” or Pat Robertson with his cabals of “international bankers” to understand how hate rhetoric can be repackaged by clever mainstream politicians and how it filters its way into popular discourse. Hate groups are the ideological nurseries of ideas that can form the core of much more pernicious larger associations. It is not unreasonable to say that the Freemen and the Christian Identity movement provide the theory and that people like Timothy McVeigh provide the practice. But even when this does not occur, even when hate groups do not grow in size or carry out violent acts, their ideas often infect the political mainstream and diminish the reservoir of good will between citizens that is essential to any healthy democracy.

The Nation of Islam is a good example of this. What is worrisome about the Nation of Islam is not simply, or even mainly, the number of recruits and converts it gathers into the organization. What is worrisome is the number of African Americans outside the Nation of Islam who find Louis Farrakhan an inspirational and positive figure. Louis Farrakhan and the leaders of the Nation of Islam, it is safe to say, are purveyors of hate. Although they have attempted of late to moderate their message and head toward the political “center,” they continue to propagate paranoid anti-Semitism (that in tone and content is ironically similar to Robertson’s) and insulting views of Catholics, gays, and white people. We do not deny, indeed it is important to our argument that we acknowledge, that in addition to racist messages, the Nation of Islam provides some very important goods to its members as well as African Americans in general. These goods appear to outweigh the fact that Louis Farrakhan stands for all the things that liberal democracy abhors. “Ordinary” African Americans can ignore, overlook, or just not care about the fact that Farrakhan fans the flames of bigotry. This general support is evidence that the necessity of supporting democratic reciprocity fails as a trump card for a significant sector of the population. One must ask oneself why this is this case. Why is the value of reciprocity not strong enough among a significant number of African Americans to induce a majority of them to repudiate Louis Farrakhan? The answer must be found in a general weakness, perhaps failure, on the part of liberal democracy. Liberal democracy has failed to find a strong enough place within the hearts and minds of a sector of African Americans because liberal democracy has failed many African Americans. This is a serious problem that we should care about and that is manifest in many examples of bad civil society.

The Nation of Islam is a troubling case, a hard case, and a case that it is not impossible to imagine replicated in other sectors of society. It is a troubling case for the reasons we just sketched. It is a hard case partly because it is not a case of freedom of association. There is no question here about whether the state should limit or even prohibit this group. Such an interference would vio-
late the very values of toleration and respect (not to mention religious freedom) we wish to defend. This is not a case in which the group has no or very few redeeming qualities. The Nation of Islam has many such qualities. It imparts a sense of discipline, self-worth, and trust among its followers. It carries out important local functions of crime fighting and security in areas where the government has repeatedly failed. The Nation of Islam performs many of the functions and roles for which we value associational life. But nevertheless, we want to say that its growing popularity and strength would be a bad thing for democracy, for it promotes particularist civility at the expense of democratic civility. It would be better if recruits and supporters alike could find all the “goods” offered by the Nation in other organizations that did everything the Nation did but without the hate.

II. THE ECONOMICS OF HATE

We are not alone in recognizing that civil society often stands in a much more complex relationship to democracy than supporters of the civil society argument tend to acknowledge. Most notable in this regard is Nancy Rosenblum’s thorough study of American civil society and her call to scale back the political claims made on behalf of civil society and look at the “personal uses of pluralism in America,” to quote her subtitle. Furthermore, many students of civil society acknowledge that civil society can be the home of dangerous illiberal elements and develop strategies to deal with these groups. In the remainder of this essay, we evaluate these strategies. We come to two conclusions. The first is that in acknowledging that not all associational life supports (or ought to support) democracy, many theorists, but especially Nancy Rosenblum, undervalue the danger posed by hate groups. Second, strategies to deal with hate groups often fail to take into consideration socio-economic factors that contribute to the attractiveness of such groups. It is not so much the existence of bad groups that worries us. It is the existence of (sometimes good) reasons to join bad groups that worries us. In contrast to political theory, empirical scholars in the past two decades have turned away from the emotional and toward the social and economic conditions that foster hate groups and political extremism.

One way to get a grasp on this problem is to look comparatively at places where people are joining bad groups and ask, Who joins? Let us start with the most famous case: the Nazis in Germany. Although inferring political behavior from economic position is always a hazardous endeavor, the evidence from the Nazi case is quite convincing. Recent scholarship on who became Nazis after 1925, based on thousands of individual-level membership
records, indicate that the decision to become a Nazi was tied to concrete material deprivations of the people who joined and the specific proposals for their amelioration put forward in the Nazi program. This is not to say that material deprivation was the only cause of, or even a sufficient condition for, the rise of Nazism; but we can say with some assurance that the core of the Nazi membership (those who joined before 1932) came from regions and occupations most severely affected by economic hardships. It can be assumed that not all joiners adhered to Nazi racial ideology. Like the Nation of Islam, however, supporters could overlook the party’s failure to support principles of reciprocity in the pursuit of more concrete goods.

In contemporary Russia and in much of post-Communist Eastern Europe, right-wing skin heads and other extremist groups, as well as supporters of right-wing parties such as Barkashov’s Russian National Unity, tend to be drawn disproportionately from the downsized industrial suburban regions. Zyuganov’s national communists are drawn disproportionately from downwardly mobile elderly voters, impoverished rural voters, and unpaid industrial workers. In short, post-Communism’s globalization crisis has provided the fuel for its antiliberal movements. The point here is that it is not growing inequality alone that has fueled the support for antiliberal movements in the post-Communist world. Significant inequality always existed in the Soviet Union. What is new, however, is the upheaval associated with the prospect of unemployment and the potential for radical downward mobility, something that was virtually unknown in the Communist era.

Evidence of the relevance of this lesson in the American context is not hard to find. According to a recent report of the Southern Poverty Law Center (SPLC), in the 1990s, extremists succeeded best in recruiting among the young in “edge cities,” where parents worked long hours, faced the prospects of downsizing, and did not have the time to build the integrative structure that would provide alternatives for young people. Although Donald Green and his collaborators have recently argued that macroeconomic performance does not correlate very well with anomic hate crimes, the same is not true, they admit, for organized group behavior, precisely the kind of behavior that should interest students of bad civil society. As Robert Wuthnow has shown in a recent study, to the extent that “good” social capital has declined in the United States over the past two decades, “this decline has occurred among marginalized groups whose living situations have become more difficult during this period.” International relations scholars have long maintained that there is an intimate relationship between international inequality and antiliberalism between societies at the level of the international system. It is not unreasonable to argue that such a relationship also exists within national societies.
The most extensive and systematic research on participation and political support for extremist parties, movements, and groups, however, has been carried out on Western Europe. Multiple studies of Western European countries have convincingly and repeatedly demonstrated the close link between high unemployment (as well as a host of other institutional, demographic, and nonsocioeconomic causes) and support for extremist groups and political parties. Of course, this simple statistical association is not easily interpreted. For one thing, most research does not show that it is only the unemployed who are joining these groups or voting for extremist parties. Nor does it show that people with low incomes incline to extremism any more than those with higher incomes. Most important, even if unemployment is a necessary cause of support for extremist movements, it is clearly not a sufficient cause (indeed, for any important political phenomenon there is unlikely to be a single sufficient cause). What it does suggest, however, is that in societies where people define their self-worth in terms of their ability to obtain work and secure a living wage, the very threat of downward mobility is often enough to move a growing segment of the population toward extremist views and entice them to follow extremist leaders. Unemployment is but one indicator—to be sure an important one—of social dislocation or threatened dislocation, especially the kind of dislocation that is generated in advanced capitalist societies, even those that are experiencing long-term aggregate growth.

We believe that rather than dismiss a search for the socioeconomic roots of bad civil society as inherently unknowable or indeterminate, and therefore retreat into a fuzzy explanation of “anomie,” theorists could contribute a great deal to unpacking the etiology of group membership and reconnecting the analysis of good versus bad social capital to traditional issues of social justice. It is important to note here that the empirical research that establishes the connection between unemployment and bad civil society is not purely materialist in its implications. Nor do we raise it to “refute” the anomie thesis as put forward by Nancy Rosenblum and the long tradition in social psychology that informs her analysis. Both processes, socioeconomic dislocation and anomie, may be at work simultaneously. In the industrialized West, deprivation and the threat of downward mobility is most frequently experienced over long periods of time, and within families, as a profoundly cultural matter. Instead, contemporary cross-national studies of extremist groups suggest that political theory could help clarify the complex connections between the cultural valence of material life and the sources of anomie in modern society. This suggests that, rather than setting off analyses that emphasize anomie against those that stress threats to material security as
mutually exclusive explanations, the two modes of analysis need to be reintegrated.

Persistent material insecurity makes it difficult to take the promise of liberal democracy seriously. Inequality, if defined not in a static manner as social stratification but, rather, dynamically as the result of changes or threatened changes in life chances, cannot but contribute to the creation of bad social capital. We need to understand the forces that play off the cultural reserves of hate in a society to try to effect change at the level of cause. To repeat: we are not putting forward a hardcore materialist argument to the effect that all ideas are produced by material conditions, but we are arguing that discussions about how to promote and inculcate the values necessary to maintain a healthy liberal democracy need to take more heed of the relationship between material conditions and ideas. Such a discussion should also consider the relationship between material conditions and the kind of social capital that is created and destroyed.

Essentially the lesson of East Europe, Russia, and other democratizing areas is that the cogency of the civil society argument is much more dependent on material factors such as economic prospects and changing class position of members of civil society than the theoretical debate would seem to acknowledge. There is no reason to doubt—indeed, there is a great deal of evidence to support—the proposition that this is also true for the West European and American case. Thus, the general thrust of our argument goes something like this: although we applaud the “moral turn” in liberal and democratic theory that concerns itself with the cultural and dispositional requirements of a stable liberal democracy, we argue that this turn should not distract us from some of the material conditions relevant to the production of ideas. Citizens’ beliefs and values, including the beliefs and values that support or undermine liberal democracy, are shaped through a very complex web of factors. Communication, deliberation, education, civic involvement, and so on are surely important components of this web. But also important, and often overlooked in our postmaterial frame of mind, are basic material interests and needs. Poverty, downward social mobility, diminished economic expectations, and even basic inequality as we have defined it here can create illiberal citizens that no amount of deliberation will convince otherwise. This is the lesson of democratizing countries, and we need to take note.

III. CONCEIVED AS A PROBLEM OF CONTAINMENT

Nancy Rosenblum suggests that hate groups, paramilitary organizations, and militias can serve an important function in a liberal society:
None of these associations are schools of civic virtue, even potentially. But they may serve the purpose of containment. They can provide safety valves. Associations can circumscribe exhibitions of hate and hostile outbreaks of envy. Loathsome groups can be lifelines.41

Rosenblum quotes Minutemen leader Robert DePugh, who notes that it is better to have nuts and kooks inside organizations than on their own and as unpredictable as loose canons.

If they decide to blow somebody up, Okay they go blow somebody up. But if they are part of a group . . . well, then there’s a good chance someone in the organization will know about it and they’re going to take steps to bring this person under control.42

This is no doubt sometimes true, but it is not clear how often it is true or even how important such a fact would be. If the containment argument is supposed to ease our mind concerning the presence of bad elements in civil society, then there are three considerations worth keeping in mind. First, and the most obvious observation, is that the containment argument is a contingent argument that only works so long as it works. That is, groups contain violence only so long as they contain violence. They sometimes promote, organize, and execute violence. We should try and find out when they are likely to contain it and when they are not. The United States has had its own taste of terrorism that has made many people wake up to the possibility that our society contains wells of potential violence of which we were unaware. If it were the case that today groups do, to some extent, contain violence, will they always? Rosenblum’s predominantly psychological approach is not always helpful in answering this question.

A second concern is that it is not always clear from Rosenblum’s argument what is being contained. The quote from DePugh implies that it is violence that is being contained, but at other times Rosenblum implies that the hate itself is being contained. Is the argument that as free-floating individuals, angry and envious citizens will engage in exhibitions of hate, the expression of which would be contained within the group if they only joined up? This view of containment seems less plausible than the one about violence. The very existence of these groups, with their Web sites, literature, and activities, broadcasts their views. The organization of hate into groups can perhaps “circumscribe exhibitions of hate” within the limits of the legal, but they do not circumscribe exhibitions of hate within the limits of the hurtful.

Finally, although the containment argument is sometimes true, it is not always true. It is not clear how one would test it in any empirical way. The World Church of the Creator, although repudiating Benjamin Smith’s actions, speaks quite fondly of “Brother Smith” on their Web site and regrets
only his death, nothing else. Is this group containing other potential Benjamin Smiths? Or did it give Smith the reinforcement and confidence he needed to act on his paranoia? Hard to tell. Even though it would be difficult to test the containment hypothesis, it is important to get some kind of a handle on the conditions under which it might or might not be true. Indeed, Rosenblum herself sometimes supports an opposite hypothesis to the effect that, rather than gathering in preexisting extremism into a somewhat moderating environment, many of these groups gather in individuals, particularly youth, who have no particular ideology and “make” them into racists. This is the story that Raphael Ezekiel tells in *The Racist Mind.* It is also the story found in the SPLC study, “Youth at the Edge.” Here a picture emerges of talented and enterprising recruiters who are “having a field day” recruiting disaffected white youth. These are individuals who become seduced by the simplistic messages of hate and blame. They are looking for villains and scapegoats. As we noted earlier, the causes are often tied to economic factors. A spokesperson for the SPLC noted, “With the development of a two tiered economy, we’re seeing the rise of a new underclass susceptible to the lure of hate groups.” It is true that the current economic “boom” has increased wealth at the aggregate level. But it is also true that inequality between the richest and the poorest has been growing for the past decade not only between rich and poor countries but also within the industrialized nations of the West, especially the United States. This cannot but contribute to the insecurity of perceived life chances.

Of course, racists are never completely made. One needs a historic and cultural reservoir to dig up familiar stories and narratives. We are not claiming that economic and social circumstances create hate out of nothing. This is obviously not true in Eastern Europe, where ethnic divisions have a strong hold independent of economic factors. The American context also has its own tradition of hate, racism, and anti-Semitism that was not simply produced by economic injustice or insecurity. Economic insecurities exploit racial and ethnic divisions. They make it difficult if not impossible to overcome historic divisions and differences. They offer fertile ground for stereotypes and scapegoats to blame.

Rosenblum, although willing to acknowledge that economic factors may play a role in the popularity of hate groups, notes that the empirical results are inconclusive. And even if they were conclusive, she is skeptical that we could do anything about it, because addressing such problems “would involve nothing less than eliminating economic insecurity, relieving status anxiety, and configuring policies to legitimize traditional values and communities (without depreciating contemporary liberal one’s).” She assumes that
this is an outrageous agenda, but why? Isn’t this what liberal social equality is supposed to strive for?

Rather than social causes, Rosenblum prefers the psychological language of isolation and anomie. Again we see an image, so familiar in contemporary theory, of the unattached individual cast adrift by modernity, seeking meaning and belonging in her life. Sometimes when the causes of anomie are extreme, the sought-after solace is equally extreme. Rosenblum often implies that if the choice is between individual isolation and group membership, who are we to deny the proto-racist or diehard anti-Semite a home? But these are not necessarily the options. Rosenblum herself notes that associational life is very varied and diverse. The choices are sometimes between different types of belonging. Again, we need to work on the causes that give people reasons to join bad groups. The psychologizing approach is often fascinating and insightful. We do not want to deny that anomie is a large part of the story. Our quarrel with Rosenblum is really twofold. First, she does not take the threat of bad civil society seriously enough. She dismisses the threat because (a) if anything, hate groups contain hate; (b) even if they do not, they are small and marginalized anyway; and (c) given American traditions and institutions, they are likely to stay that way. We have argued that (a) the containment thesis is far from proven; (b) even small and marginalized, they can do damage to public trust; and (c) assuming that, say, some version of ethnic cleansing could never happen in America assumes a deep analytical bias in favor of continuity, something we believe it is not prudent to assume. Second, she is too quick to dismiss the role of socioeconomic factors in the story about why people might be attracted to organized hate groups. The evidence does not support her dismissal.

IV. CONCEIVED AS A PROBLEM OF FREEDOM OF ASSOCIATION

One of the natural and obvious questions to ask with regard to bad civil society is, When is the state justified in limiting an association for the sake of promoting liberal democratic values? In the American context, this is most often discussed as a constitutional question for the courts, and ultimately the Supreme Court, to decide. For this reason, much of the interest in bad groups, militias, Nazi groups, and so on is an interest in the legal and moral issue of freedom of association versus state interests and where the line should be drawn. In this context, there is much discussion of Supreme Court rulings and hard or controversial cases establishing precedent. Often the issue at
hand is discrimination, as with the much discussed Roberts v. United States Jaycees or Bob Jones University v. United States cases. Sometimes the issue is free speech, as with many Nazi cases or the separation of church and state. These cases often raise very important moral questions involving how we balance the good of freedom of association and other goods like equal opportunity. To answer them, theorists must spell out what is so good about freedom of association and what other concerns could possibly trump such a good. Answers to these questions can push us forward in untangling thorny ethical dilemmas associated with a liberal way of life. But these sorts of questions can also distract us from other sorts of questions.

With its strong focus on legal challenges and constitutional cases, the academic literature often gives the impression that once we solve the interference versus noninterference question, we will have solved the problems of bad civil society.48 Sometimes, however, we want to say that although the state is not justified in limiting a certain association, the activities of that association are worrisome nonetheless and we want to do something about it. Amy Gutmann brings up an interesting counterfactual that speaks to this worry. In talking about Bob Jones University v. United States, she argues that the state was within its legitimate right in denying tax exempt status to Bob Jones University on the grounds that the university’s policy forbidding interracial dating was a case of racial discrimination that the state could not support. She is not so sure that the same argument would hold if Bob Jones University were a church that forbade miscegenation (the Nation of Islam prohibits miscegenation). Gutmann writes,

Liberal democracies legitimately depend on universities for providing fair educational opportunity in a way that they do not (and should not) depend on churches. . . . In the case of the church, the state could not as clearly claim to have a compelling interest in regulating as a direct means of securing educational and economic opportunity that is free from racial discrimination.49

This seems right. Many liberals end the discussion here, however. That is, many theorists end the discussion after justifying the distinction between a university and a church and the role that that distinction ought to play in our reasoning about state action. This is where we want to start the discussion. Just because there are compelling reasons why the state ought not to regulate a church because of its beliefs does not mean we should not care and worry if a church that preaches against miscegenation experiences growing membership.50 This would still be a problem for liberal democracy even if we were in agreement that the solution was not to place limits on the association. Solving
the where-to-draw-the-line problem does not solve the bad civil society problem.

Some argue that freedom of association itself might combat bad civil society. Bad civil society can be mitigated by ensuring pluralism. We need to promote a civil society that is diverse and varied. In this way, citizens can form attachments that cross-cut the social, ethnic, and racial divisions that feed hate and racism. Although strong freedom of association is a necessary condition of associational pluralism, we want to suggest that it does not by itself necessarily combat bad civil society. As Rosenblum notes, it is not the existence of plural organization that is important; it is the experience of pluralism.51 Stephen Macedo echoes this by noting “the crucial thing is to foster memberships that are not tribalistic but pluralistic.”52 But Rosenblum and sometimes Macedo imply that the existence of a market in associations will in and of itself “foster” the “experience” of pluralism. We do not see why this must follow. Just because there is a relatively open market in associations does not mean that citizens will choose cross-cutting memberships. There are other forces at work, including organizations’ own interest in monopolizing their members’ attention.53 Free markets offer consumers many options, but in and of themselves they do not guarantee that consumers will break out of well-established patterns. What more needs to be done to promote cross-cutting memberships in addition to safeguarding a free market in associations? Or, the question that interests us more: how does one discourage membership in bad organizations without violating basic principles of freedom of association? This question is obliquely addressed by theories interested in the opportunities for civic education offered by a vibrant civil society. However, we argue below that there are nevertheless important shortcomings to this perspective as well.

V. CONCEIVED AS A PROBLEM
INTERNAL TO CIVIL SOCIETY

A great deal has been written on the ways associational membership can shape citizens’ dispositions, attitudes, and character. Of particular interest are the ways in which associational membership can shape and inculcate the dispositions necessary to maintain a healthy liberal democracy. Although Tocqueville is often the inspiration in these arguments, there is a striking range and variety of democratic effects attributed to associations.54 Tolerance, respect (both for self and other), cooperation, an interest in the common good, autonomy, communicative and deliberative competence, knowledge,
industriousness, public spiritedness, even governmental effectiveness are just some of the goods said to be attainable through civil engagement.

The variety of goods that can be found in associational life attests to the richness and diversity of civil society. But this should send a warning signal. If we can find liberal, deliberative, and republican goods in civil society, then this must mean, among other things, that civil society is somewhat neutral with regard to the type of political order that it could promote. It is not completely neutral. We know that it is incompatible with totalitarianism. But is it compatible with authoritarianism? The soft-authoritarianism of Wilhelmine Germany, the interwar regimes of east-central and southeastern Europe, and cold war Latin America indicate that the answer is yes. Something similar could be said about parts of Asia where a vibrant and active civil society is developing minus the central value of pluralism. The Islamic tradition is also developing its own conception of civil society that differs significantly from a liberal conception although still stressing voluntary associations.

Civil society, it would appear, can be many things to many people and take many shapes in many cultures. This implies that we should consciously choose the type of civil society we want. And, indeed, we now see an active debate about the ways in which the state should be shaping civil society. Interestingly enough, much of this debate is not spawned by the recognition that civil society is variable and can serve as a home for a vast array of political ideals including illiberal ones. Instead, the debate comes out of the argument that civil society is on the decline in many Western democracies, especially in the United States. The relevant contrast in the literature is not between an associational life that promotes liberal democracy and one that might promote, say, nativism. Rather, it is between an associational life that promotes liberalism and democracy and no associational life at all, or one that is moribund and minimal. Galston is much quoted as saying that “the greatest threat to children in modern liberal society is not that they will believe in something too deeply, but that they will believe in nothing very deeply at all.” This does not seem completely right. Certainly, from a political point of view, it would be better for citizens to believe in nothing very strongly than to be swept by a wave of xenophobia or ethnic hate. Which is the more serious threat in liberal democracies? Apathy or hate? Apathy is surely more widespread, but hate is more devastating and can grow to levels that perhaps do not threaten the state’s existence but that do threaten the legitimacy and the quality of liberal democracy for those who are the targets of that hate. This is not to say that we should not be combating apathy. It is to say we should not be too confident that hate becomes politically relevant only in places like Kosovo. In any case, the “shaping of civil society” literature can
be helpful with regard to the problem of groups that actively disparage and undermine reciprocity.

The idea here is that states can promote good civil society through policies explicitly designed to strengthen organizations that produce the right sort of moral effects. Such policies would include a vast array of subsidies, tax exception, preferential treatment, partnerships, and the like. We think that the reshaping strategy has promise up to a point. By itself, the tinkering and nudging of civil society in “good” directions will not succeed in keeping bad civil society at bay unless other conditions are met. But is reshaping even possible?

More and more people are taking note of Nancy Rosenblum’s observation that there is no evidence that positive lessons learned in associational life will always have spillover effect in the political realm. This is surely correct, and our example at the beginning of the essay bears witness to this. Members of the Church of the World Creator learn cooperation and trust, but this does not mean that they then become cooperative and trusting democratic citizens. This general observation should not lead us to conclude, however, that we can never come to conclusions about the democratic effects of participation. First of all, we can come to some very clear conclusions about the types of associational membership that do not promote democracy. Rosenblum herself says “social scientists have had more success in demonstrating the moral (typically ill) effect of incongruence between associational life and liberal democracy in particular instances than the logic of incongruence.” If we can identify groups that have clear negative spillover effect, then this does seem to offer targets of indirect policy. In the case of the Nation of Islam, for example, this might involve subsidizing groups that effectively combat drug use and crime in residential areas as well as offer other services provided by the Nation. Furthermore, although spillover does not take place in all cases, it does take place in some cases. Thus, a reshaping agenda calls for studies like Rosenblum’s and Mark Warren’s that can chart the variety of associations out there and the types of things they do and how much they are likely to have a spillover effect. It does call for something like what Macedo talks about—“a science of group life.” It is unlikely ever to be a very precise science, however. We cannot always predict with certainty what the effects of a reshaping policy will be.

In Russia, for example, since 1991 there have been many creative, externally funded programs designed to promote associational life. Dubbed “civil society for export” by one scholar, programs run by such philanthropic organizations as the Ford Foundation, the Eurasia Fund, and the Soros Foundation have altered the organizational landscape in unexpected ways. In addition to
some very positive effects for participants, however, donors have, in some cases, undercut the social bases and support for good organizations through their largesse. In particular, heavily funded groups tend to hew closely to the donors’ concerns and lose contact with their constituencies in their own society. The outcome is a patron/client relationship between outside foundations and domestic groups that would otherwise be associating with each other. Groups that do not receive outside funding, by contrast, tend to be less democratic and often are even “bad,” but they frequently have a closer connection to society. Creating civic groups with external funding is extraordinarily difficult and, at best, a partial solution to the problem of bad civil society.60

Although only suggestive, this illustration of the unintended consequences of shaping indicates that we are far from having a “science of group life.” We should be conscious of the ways public policy can affect civil society and, indeed, actively pursue those policies that appear to promote good associations. But our power to predict and control civil society, especially if we adhere to even minimal liberal standards of freedom of association, is tenuous at best. Scholars like Yael Tamir worry that the shaping strategy allows the government to remake civil society in its own image, thus destroying the autonomy of self-organization.61 Our worry is the opposite (not that we would like to see government remake civil society in its own image). The state has limited power to bring about desired effects. The state is neither neutral nor omnipotent. Civil society is shaped and determined by state policy but not in a very predictable and reliable way. We have a responsibility to try to nudge civil society away from devastating paths, but this should not be our only strategy. Subsidizing “good” groups will not work if individuals are disaffected, and, as the case of Russia shows, in resource-poor environments such a strategy will tend to create small, isolated islands of liberalism and tolerance. The uncertainties of the reshaping approach again indicate that we should also be looking at larger socioeconomic factors that contribute to the rise of bad civil society.

VI. CONCEIVED AS A PROBLEM OF DEMOCRACY

So far we have argued that bad civil society is, among other things, a problem of social justice. Certain economic insecurities weaken commitment to core liberal democratic values by giving people reasons to distrust the promises of liberal democracy and to seek out scapegoats and targeted groups. Some would regard this as a problem to be addressed by deliberative democracy. The argument might go something like this: joiners are angry not just about their life chances but about their inability to do anything about their life
chances. Bad civil society is really a problem of democracy. It is a problem having to do with political efficacy and voice. Like the moral education argument, there is something to this view. However, it again tends to slide exclusively into an institutional design argument avoiding hard problems of life chances.

Like many civic republicans, deliberative democrats are interested in what Sandel has called the “formative project,” that is, the ways institutions, social structures, and economic forces shape identity, affect interest-formation, and influence value orientation. Theories of deliberative democracy differ from civic republicanism, however, in that they usually take a procedural rather than perfectionist approach to interest formation. For example, in distinguishing deliberative from communitarian approaches to modernity, Seyla Benhabib acknowledges that both approaches identify a pervasive discontent on the part of social actors. Communitarians attribute that discontent to a loss of a sense of belonging, which results in a loss of civic virtue. The cure they prescribe is active associational life. In contrast, Benhabib attributes discontent to a lack of political efficacy. The “malaise” of modernity can be traced to a loss of control over one’s life and the conditions that determine one’s chances. The cure is an accessible and efficacious public sphere.

Where do people turn when their frustration is not addressed? Benhabib, along with many other theorists of deliberative democracy, is primarily concerned with the retreat into apathy and passivity. There are other options, however. Dissatisfied citizens may turn to groups that appear to offer answers to their frustrations but in fact offer only scapegoats. In these situations, the political efficacy argument does speak to the problem of bad civil society. Indeed, there is some empirical research that connects a lack of efficacy in the public sphere with gravitation toward antidemocratic groups. This is Sheri Berman’s conclusion, for example, about the Weimar Republic:

Instead of responding to the demands of an increasingly mobilized population, the country’s political structures obstructed meaningful participation in public life. As a result, citizens’ energies and interests were deflected into private associational activities, which were generally organized within rather than across group boundaries.

Our argument is not that a vibrant and effective public sphere will magically transform racists into liberal democrats. It is not about civic reeducation. Nor are we saying that the public expression of antidemocratic sentiment should be encouraged so that it does not infect private associations. The argument goes more like this: there will always be a certain number of people who reject the core principles of liberal democracy. There is nothing much we can do about this hard core. It is the “swing-vote,” if you will, that should
interest us. These are the people who come to be persuaded that Jews, immigrants, African Americans, or Croats are to blame, or that liberal democracy as a whole is to blame, for their predicament. An effective and democratic public sphere will not make any difference to people like the Communist Deputy Albert Makashov, who in 1998 stood up in the Russian Parliament and lamented that

life in our country is getting worse and worse. Never before has it been this bad in Russia. . . . Who is to blame? The executive branch, the bankers, and the mass media are to blame. Usury, deceit, corruption, and thievery are flourishing in the country. That is why I call the reformers yids. Who are these Jews?64

What is worth investigating is, How many will find Makashov’s explanation convincing, and why?

Although the causes of the frustration and discontent that Makashov hopes to exploit are economic, his “explanation” targets a group as the villainous force behind all the bad things that are happening. Although often tapping into deep reservoirs of bias and prejudice, this type of explanation is more likely to persuade the “swing vote” if they have no other reasonable alternative, that is, if all efforts to understand and get a hold of the economic and social circumstances of their life fail. Powerlessness makes people susceptible to solutions that, at the very least, offer the satisfaction of venting one’s anger and frustration on a clearly identified villain. Focused hate can be empowering. This conclusion is supported by some research on social movements. For example, Foley and Edwards argue that

where the state is unresponsive, its institutions are undemocratic, or its democracy is ill designed to recognize and respond to citizens demands, the character of collective action will be decidedly different than under a strong and democratic system. Citizens will find their efforts to organize for civil ends frustrated by state policy—at some times actively repressed, at others simply ignored. Increasingly aggressive forms of civil association will spring up, and more and more ordinary citizens will be driven into active militancy against the state or self-protective apathy.65

Deliberative democracy has an important contribution to make to this debate because it focuses on empowerment and the forces that block empowerment. But, as with the moral education argument, the risk is that in focusing too narrowly on institutional design, proponents will fail to tackle hard questions of economic insecurity that cause the frustration in the first place. The Habermasian version of deliberative democracy is prone to this problem for two reasons. The first can be tied to the important distinction between system and lifeworld while the second can be found in a stringent proceduralism.
The system/lifeworld distinction spills over into a state/civil society distinction that contributes to a blind spot with regard to the possibility of bad civil society. Although Habermasians acknowledge that the state creates the conditions for a healthy civil society and public sphere, especially in the form of rights guarantees, they mistrust state power. States are “system.” They do important and worthwhile things, but ultimately they operate on the logic of power and must be kept within the control of a popular will autonomously developed out of the self-organization of the lifeworld, that is, out of civil society. The system/lifeworld distinction is very useful in identifying and explaining certain pathologies that plague liberal capitalist democracies. It can, however, lead to the impression that the autonomous self-organization of citizens is always good. Failure to discuss the cases when citizens organize for bad causes strengthens this impression. The tendency is to see threats to democracy exclusively in the form of impediments to self-organization.

The second and thornier reason why Habermas emphasizes institutional reform of democratic practices over distributional reform is that he favors a highly procedural model of liberal democracy. Unlike Rawls, who put forward a theory of justice, Habermas claims that it is up to participants to work out the details of a fair system of justice. This leads to a familiar circle. How do you democratically bring about the conditions of a healthy and authentic democracy? What happens when resentment due to unequal life chances severely undermines the quality of democracy but there is no popular democratic will to address those inequalities, partly because those inequalities distort participation? We have no magic solution to this problem, but we are convinced that it is not a reason to stop talking about the politics of economic insecurity or give up on states as effective actors in the battle against social injustice.

VII. CONCLUSION

In this essay, we have argued that rights, civic education, promotion of good associations, and an expanded public sphere will not be enough to build liberal democracies (or maintain the quality of established liberal democracies) if failure in social justice leads to disillusionment with the promise of liberalism. The rights approach to bad civil society is important but insufficient because it only works as long as bad civic groups remain marginal. In general, rights arguments have a laissez passer view of the problem, and interest only “kicks in” once the problem is threatening to the order as a whole. Not only may this be too late to save democracy in extreme cases, but it may be insufficient to prevent the quality of democracy from being under-
mined in not so extreme cases. The civic education argument is also laudable but insufficient because there is very little evidence that it can work in situations of scarcity. Even under conditions of relative abundance, the power to shape associational life from the outside is tenuous at best. Finally, the expanded public sphere argument lies closest to our own normative preferences. But even here it is, like the rights and civic education solutions, essentially an institutional fix, the efficacy of which presupposes a level of social justice that may not exist. The shortcomings we have just discussed pose more serious problems for transitional democracies than well-established ones. Nevertheless, this should not make us complacent about the dangers.

The preceding discussion also provides the justification for shifting and broadening the focus of civil society studies back to issues of socioeconomic justice, equality, and the social prerequisites of civic development. From Aristotle to Rousseau to Lipset, the history of political thought time and again suggests that society does not remain very civil and democracies do not do very well under conditions of deep and persistent material and status inequalities. Tocqueville himself worried that in the modern world, material and status inequalities remain just as deep as under the ancien régime but are more keenly felt than ever. Addressing the problems of bad civil society will mean returning to the issues of social justice that have been at the core of political theory since its inception.

The point may sound banal but it is not. In the past two decades, political theory has gradually ceded the ground on themes of material life, equality, and the possibility of realizing one’s life plan to the economists. Increasingly, questions that go to the heart of political membership have become the exclusive territory of technocratic and mathematical thinking. There may be good reasons for this. Economics enjoys more prestige than at any time in its history. Yet, social science has also shown that the gains associated with the rapidly changing division of labor are also associated with social upheaval, dislocation, and even growing inequalities not only between rich and poor nations but also within wealthy ones, all of which suggests that it may be time to redefine the standards by which we measure economic success and failure. Such a redefinition of the terms and meaning of material life should concern us as political theorists.

NOTES


4. In comparative politics there is a vast literature on extremism and radicalism. This literature does not often cross paths with the civil society discourse.


9. Although extreme forms of hate like that represented by the World Church of the Creator are easy to identify, we acknowledge that the category “bad civil society,” like all social typologies, will slide into some gray areas around its edges. We discuss some of these below.


11. Ibid., 65. See also Putnam, *Bowling Alone*, 27.

15. Putnam, Bowling Alone, 22.
16. Ibid., 22.
18. See ibid., where, in a chapter titled “The Dark Side of Social Capital,” Putnam answers the charge that toleration was on the rise precisely at the same time as, according to his argument, civic engagement was on the wane. Thus the question arises, Does associational engagement encourage narrowness and hinder toleration? Putnam denies the general correlation but admits “some kinds of bonding social capital may discourage the formation of bridging social capital and vice versa” (p. 362). He never takes it further than this general observation. He never asks which forms of bonding hinder bridging or why some people are more likely to be attracted to those forms rather than more democracy-friendly (or at least democracy-neutral) forms of bonding. (See also p. 400.)
26. Nancy Rosenblum makes this argument in Membership and Morals, 35.
27. Is America experiencing an “insidious erosion of values”? On one hand, there is overwhelming evidence that at the aggregate level, Americans are more tolerant than ever of difference. On the other hand, the Southern Poverty Law Center (SPLC) warns us that the number of Web sites devoted to hate has exploded and more and more youth are being lured into hate groups. On one hand, civil rights are firmly entrenched in America; on the other, thinly veiled nativism is on the initiative agendas of many states. Our point is not to resolve this debate one way or another. All we are saying is hate (any amount of it) is bad, particularly for those who are its targets. The American public sphere has no special exemption or protection from the insidious effects of hate beyond our vigilance and understanding of the phenomenon.
28. Was George W. Bush’s much criticized visit to Bob Jones University evidence of our strong defenses against bigotry or a sad reminder that such “slips” do not really cost public figures much? It says much for the American public that there was an immediate outcry against the visit. But there are also many Americans, not just African Americans, who are devastated that we elected a man who, in the year 2000, still could not see for himself any problem with such a visit or, worse, calculated that such a visit would help his political chances.
29. The support for Farrakhan among the non-Muslim black population in the United States in the 1990s varied according to how the question was asked and the immediate context in which it was asked. In two opinion surveys conducted for Time and Newsweek between February 1994 (directly after the controversy surrounding Khalid Muhammad’s inflammatory Kean College Speech) and October 1995, the results remained remarkably consistent. Forty-eight percent of
black respondents held that Farrakhan was not a bigot and a racist. More than half (59 percent) thought that he spoke truthfully, and half considered him a positive role model of black youth and as a positive influence in the community. For a summary of these and other surveys, see Robert Singh, *The Farrakhan Phenomenon: Race, Reaction, and the Paranoid Style in American Politics* (Washington, DC: Georgetown University Press 1997), 205-10.


35. Clearly, economic conditions shape the tactics and vitality of political organizations, whether it be the Nazi Party in Germany during the 1930s or the Ku Klux Klan in the United States during the 1970s. The question is whether similar group dynamics shape the patterns of unorganized mass action carried out sporadically by small groups. Our empirical findings may suggest the importance of distinguishing between coordinated and uncoordinated forms of collective action. (Donald P. Green, Dara Z. Strolovitch, and Janelle S. Wong, “Defended Neighborhoods, Integration, and Racially Motivated Crime,” *American Journal of Sociology* 104, no. 2 [September 1998], 372)


41. Rosenblum, Membership and Morals, 22.
42. Quoted in Rosenblum, Membership and Morals, 9, 272.
45. The data she cites, however, are almost entirely concerned with isolated hate crimes rather than group membership or strength. See Rosenblum, Membership and Morals, 278-79.
46. Rosenblum, Membership and Morals, 278.
48. This impression is sometimes intentional, as with theorists who think we should leave civil society alone as much as possible. See, for example, Kateb, “Value of Association.” For others, the impression is unintentional, as with theorists who simply concentrate on constitutional cases in their writings, not meaning by that that we should not also publicly criticize groups even they are afforded protection under the constitution. See, for example, Gutmann, “Freedom of Association: An Introductory Essay.”
50. Intermarriage is a hard case for our category “bad civil society.” Are orthodox Jewish groups that forbid marrying non-Jews as “bad” as a hypothetical Bob Jones Church that forbids marrying blacks? As with all typologies, one must deal with gray areas on a case-by-case basis. Here we would say that both the intent of the rule as well as the effect must be looked at in context. For example, that the Bob Jones Church is preaching to a majority and empowered group and has specifically targeted a minority disempowered group, while orthodox Jewish groups, in the United States anyway, are in the opposite situation, is not irrelevant in evaluating the social message being sent by any given rule. Ultimately, however, one must ask if a rule or policy is accompanied by hate and malevolence toward others. Would this rule, for example, hinder group members’ interacting with, say, non-Jews or African Americans in other contexts? Taking these sorts of questions into consideration, it is possible to make distinctions, although they might be somewhat messy.
53. For an interesting argument along these lines, see Nadia Urbanati, “A Phenomenology of Associational Life,” The Good Society 9, no. 1 (1999): 58-60.
54. For a survey of the variety, see Warren, Democracy and the Terrain of Association, chaps. 2, 4.
60. Sarah Henderson, “Exporting Civil Society: Foreign Funding and Women’s Groups in Post-Soviet Russia” (Ph.D. diss., Department of Political Science, University of Colorado at Boulder, 2000).
61. Yael Tamir, “Revisiting the Civic Sphere,” 224.

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John McCormick’s essay “Derrida on Law; Or, Poststructuralism Gets Serious”\(^1\) is a dense, challenging, and gratifyingly careful reading of Derrida’s “Force of Law,”\(^2\) a reading from which I am still learning. Because of my admiration for McCormick’s essay, my response will be less critical than supplementary, more a collaborative search for clarification than a polemical assault. The focus of my response is what McCormick writes about Derrida’s account of violence. For good reason, especially in the context of an article, McCormick confines his reading of Derrida to the four corners of “Force of Law.” He is disciplined in not straying into other texts in which Derrida elaborates terms and themes central to “Force of Law.” My response is supplemental, then, in part because it brings a few of Derrida’s other texts to bear on the theme of violence. Since I am responding to McCormick, I begin by sketching what I take to be the source of my confusion over his reading of violence and move from there to a slightly wider consideration of Derrida’s writings on the subject.

As McCormick makes clear, Derrida distinguishes two types of violence in “Force of Law”: the mythic, Greek, Christian, enlightenment, bloodletting, coercive, representational, purposive, strategic, manipulative, corporeal, concrete past and present type of violence; and the mystical, Jewish, messianic, divine, performative, nonrepresentational, uncalculating, excessive, showing, arriving, deferring, spectral, wholly different future immanent to concrete past and future type of violence. In part because of the roughly oppositional or comparative arrangement of Derrida’s presentation of these types, McCormick comes to view mystical violence and the diffuse justice/law complex generally correlated with it, to the extent such a complex...
either exists or could exist, as “an alternative”\textsuperscript{3} to mythic violence and the relatively determinate justice/law complex generally correlated with it. In this context, however, while it is clearly necessary for Derrida to develop an alternative to mythic violence, the logic of the alternative, insofar as it suggests something like a clear-cut or unequivocal replacement, as opposed to, say, a supplement, risks leading us astray. Combine this with Derrida’s occasional references, in “Force of Law” and elsewhere, to the “possibility” or the “perhaps” of nonviolence, and we have a trap into which McCormick may fall on occasion, although never all the way. The trap, to put matters too simply, involves conflating mythic and mystical violence in one’s idealization of and hope for ultimate and eventual nonviolence. Nonviolence thus becomes the alternative to violence taken somehow as a whole instead of to mythic violence taken in some sense “alone.”\textsuperscript{4} I hear this occurring in McCormick’s concern over whether his reading may “merely ‘displace’ violence rather than genuinely open the possibility of overcoming it,”\textsuperscript{5} and in his recurring references to “the future . . . possibility of transcending violence,”\textsuperscript{6} to “Derrida’s essay . . . [as] never rul[ing] out the possibility that we may do without violence altogether tomorrow,”\textsuperscript{7} to Derrida’s “adher[ence] to the elimination of violence as an historical possibility.”\textsuperscript{8} What these statements and a few others risk, it seems to me, is a slide from the admittedly minuscule possibility of fully transcending mythic violence, a possibility grounded in the fact that mythic violence is ultimately contingent, to the possibility of transcending or eliminating violence altogether. The alternative to mythic violence, which is never simply an alternative for Derrida, scales into the alternative of pure nonviolence in what might be construed as an excessively Kantian moment of regulative idealization.\textsuperscript{9}

By failing to more overtly exclude mystical violence from what would be transcended altogether, McCormick risks leaving the impression that Derrida believes it possible to transcend the mystical violence inherent quite literally in all events of relational interplay, movements of differential synthesis, constitutive processes of inscription, undecidability, iterability, and so on. What Derrida in fact affirms, I want to argue, indeed, what he must affirm, as necessary, or rather, as itself “quasi-transcendental,”\textsuperscript{10} is precisely the untranscendability of mystical violence. This affirmation is especially critical if Derrida is to hold out hope for deconstruction’s actually making inroads against violence as we normally understand it. I will attempt to make this argument as quickly as possible using resources largely available in “Force of Law.” I will then attempt to sharpen what Derrida may mean by violence through recourse to discussions in *Of Grammatology*, “Violence and Metaphysics,” and a few other texts.
If we are to affirm the possibility of transcending violence altogether, it makes sense that we would have to affirm at some point the transcendence of mystical, messianic violence. Before undertaking this facially alluring affirmation, we need a better sense of what we would be transcending. We need to revisit how Derrida describes mystical violence, the functions he attributes to it, and the matrix of operations, associations, and substitutions in which he finds it intricated. We can begin with the possibility that to transcend mystical violence as Derrida describes it, we would also have to transcend force. Violence and the interplay of forces are ultimately indissociable for Derrida. But how is force characterized in “Force of Law?” Derrida describes it as “differential force, . . . force as differance,”\(^\text{10}\) and differance as force. If we recur to the essay “Differance,” we find not only that “there would be no force in general without the difference between forces”\(^\text{11}\) but that “differance is the name we might give to the ‘active,’ moving discord of different forces, and of differences of forces.”\(^\text{12}\) These passages suggest that transcending the violence inherent in the play of forces would require “eluding the play of differance”\(^\text{13}\) and “the general system of this economy.”\(^\text{14}\)

Along the same lines, to transcend violence altogether would be to transcend the “performative power itself,” which Derrida “here propose[s] to call the mystical.”\(^\text{15}\) This mystical foundation is where he tells us “a silence is walled up in the violent structure of the founding act.”\(^\text{16}\) When we think of the founding of law, this founding and its violence are inscribed in and infused by “(t)he structure,” and it is this curious structure (or, as Rodolphe Gasche would have it, this “infrastructure”\(^\text{17}\)) that makes “law (droit) . . . essentially deconstructible.”\(^\text{18}\) The structure in question is that of mystical violence. Derrida then goes on to expressly bind the structure of mystical violence, enfolding and infusing as it does the founding of law, authority, and so on, to the very possibility of deconstruction and justice:

If the structure in question is the mystical, and so violent in the mystical sense, then to transcend mystical violence would be to transcend the possibility of deconstruction and so of justice. When Derrida later describes how deconstruction “hyperbolically raises the stakes of exacting justice,” we discover that it does so through its “sensitivity to a sort of essential disproportion that must inscribe excess and inadequation in itself.”\(^\text{20}\) This essential disproportion, which he also renders in “Force of Law” as undecidability, repeti-
tion, promise, iterability, and contamination, is the violence in question, a violence (and a justice), he seems to be saying, that we cannot transcend, and which, I hazard to add, we should not wish to transcend. Rather, this untranscendability, this quasi-transcendental necessity, is precisely what must be affirmed if “we” are to struggle against the mythic violence of those who wish for, idealize, assume, and otherwise wield the idea of this very transcendence to secure its myths of nonviolent law, state power, good conscience, and so on. As McCormick points out most effectively, the struggle of this affirming “we” must often be against dimensions of its own activity.

Derrida assembles the complex tissue of relationships between mystical violence, differance, repetition, promising, iterability, and contamination in a few key passages during his reading of Walter Benjamin on the relationship between founding and conserving. He writes, for example, that it belongs to the structure of fundamental violence that it calls for the repetition of itself and founds what ought to be conserved. . . . Every position (Setzung) permits and promises (permet et promettant), every position en mettant et en promettant. And even if a promise is not kept in fact, iterability inscribes the promise as guard in the most irruptive instant of foundation. Thus it inscribes the possibility of repetition at the heart of the originary. With this, there is no more a pure foundation or pure position of law, and so a pure founding violence, than there is a purely conservative violence. Position is already iterability, a call for self-conserving iteration. Conservation in its turn refounds, so that it can conserve what it claims to found. Thus there can be no rigorous opposition between positioning and conservation, only what I will call . . . a differantielle contamination between the two, with all the paradoxes that this may lead to.21

Derrida adds a few lines later that “deconstruction is the idea of—and the idea adopted by necessity of—this differantielle contamination . . . [T]his differantielle contamination . . . [is] the contamination at the very heart of law.”22 To even begin to bear down on these passages would take more space than I have, so the following will have to suffice: Derrida is explicit. It belongs to the structure of fundamental violence so that it bears repetition, iterability, and differantielle contamination at its heart. The movement in question, moreover, is deconstruction and, as we learned above, justice, in all their undeconstructibility. To do without this violent movement of becoming-other altogether, or to idealize and strive for the moment of its transcendence, would be to either arrest or idealize the arrest of the play of differance, repetition, iterability, deconstruction, and justice. This, I submit, is not something Derrida is likely to affirm.

In fairness, and there is a real risk that I am not being entirely fair here, McCormick touches on a few occasions, at times by way of implication, on Derrida’s thought of the untranscendable violence of the mystical structure of
justice. The most forceful of these encounters takes place when he points out that the project of Nazism and the Holocaust in this register was “to wipe out divine or messianic violence,” the mystical violence of the Jew, which is to say, to transcend, overcome, eliminate, and otherwise do without it altogether. If this was in part the project of Nazism and the Holocaust, it is obvious that McCormick would not want to include it in his ideal of violence transcended. Still, the apparent assumption of mystical violence into McCormick’s ideal of nonviolence, and the tension this raises between elements of his reading and much of what Derrida has written on the subject, is persistent enough to justify pointing out the ambiguity and attempting to clarify the stakes (which do not include anyone involved in this discussion being a proto-fascist).

Two of Derrida’s earlier texts are particularly helpful when it comes to clarifying the nature of mystical violence and its interplay with the mythic. The first is *Of Grammatology*. In this text, in a passage barely a page in length, Derrida lays out a conception of violence that, in my opinion, ought to condition all subsequent discussions of violence in his work. Derrida’s basic contention is that “the structure of violence is complex and its possibility . . . no less so.” Within this complex structure, violence has at least three levels. The first violence issues from the a/symmetrical rending that opens the differential spacing of becoming itself. According to Derrida, the first “violence . . . consists in inscribing within a difference, in classifying, in suspending the . . . absolute.” This suspending, as the suspending of the absolute, and so of any absolute transcendence or doing without, is the ab-absolute, the undeconstructible stuttering, doubling, iteration, repetition, and contamination of the absolute that makes its deconstruction possible, and in a certain sense, keeps it always already under way. The ineliminable movement of inscribing or suspending “within” differential contamination is called violent because of what it does to absolutes, plenitudes, unities, and identities in general, in and as the very event of their emergence. The violence in question at this level necessitates the “loss of the proper, of absolute proximity, of a self-presence which has never been given but only dreamed of and always already split, repeated, incapable of appearing to itself except in its own disappearance.” This type of primary, originary, mystical, messianic, or differential violence is said to be violent because it breaches all plenitudes, fissures all identities, transgresses wholeness, contaminates purity, temporalizes fixity. Primary mystical violence is said to be violent because “at the origin comes ruin; ruin comes to the origin, it is what comes and happens to the origin, in the beginning. With no promise of restoration.” Derrida tells us of the violence of this ruin when he writes, for example, that “differance is the non-full, non-simple, structured and differentiating origin
of differences. Thus, the name ‘origin’ no longer suits it.”29 Primary mystical violence is the always prior becoming-other of becoming in general, the open matrix of identity/difference relations as such, the fissuring of the fissured system of existence. Mystical violence is thus both very close to and very far from the negative. Its movement articulates positivity itself. It is the source of differentiation, and so of identity, complexity, diversity, vitality, abundance, energy, force, and life. Its movement mobilizes becoming in all its protean involutions. Mystical violence is, therefore, both affirmative in what it enables and that which calls for affirmation in every moment, the double yes of the event of becoming. To understand Derrida’s ethicopolitical writings, the affirmative dimension of mystical violence and the unimaginable richness of the overflowing it mobilizes must be borne in mind throughout. The loss of the proper, the rupturing of absolute proximity and self-presence, is the interval from which all things flow and overflow. Self-presence is lost, therefore, and violently so, because it is ruptured; but we must recall that it is also exceeded, overwhelmed, and so, in a sense, overcome, not only by a lack, but by an abundance. The violence of this rupturing abundance mobilizes deconstruction. It is justice. It is the mystical foundation. And it cannot be transcended, eliminated, overcome, or done without altogether.

The second level of complex violence is the occlusion of the first, the hiding of its hiding, the concealment of its withdrawal, the occlusion of its unprogrammable differentiation. This hiding is said to be violent in part because it enables the ontotheological strategies of wrapping differential processes in absolute identities and sealing constitutive contaminations in projections of ultimate purification, in particular here the purification of mystical violence. Secondary violence is “reparatory, protective, instituting the ‘moral,’ ”30 but in violation of the ethical. It violates the ethical relation of primary violence by occluding it: enforcing horizons of regulative idealization that either deny or tend to forget the originary curvature and becoming-other that articulates spacing in general, and social spacing in particular, as necessarily ruptured and excessive.31 Secondary violence allows dominant identities and the moral orders that support them, whether Greek, Christian, Islamic, English, French, fascist, communist, or democratic, to appear unscathed by concealing the constitutive injuries and injustices, reductions and blind spots, accidents and contingencies of their favored patterns of inclusion and exclusion, for and against.

The third level of violence, Derrida tells us,

can possibly emerge or not (an empirical possibility) within . . . evil, war, indiscretion, rape . . . . It is on this tertiary level, that of the empirical consciousness, that the common concept of violence . . . should . . . be situated.32
Although it is common, the “concept” of tertiary or mythic violence is in fact the most complex:

It refers at the same time to the two inferior levels. . . . In effect, it reveals the first . . . which was already an expropriation, but it denudes also that which since then . . . [has been] perceived by the social and moral consciousness as the proper, the reassuring seal of self-identity.33

When Derrida deconstructs apparatuses of tertiary mythic violence—racism, sexism, religious fundamentalism, global capitalism, communism, the media, techno-science—he binds them to the secondary concealments of ostensibly unscathed self-identity and to the primary mystical violence that has ruptured and exceeded these concealments and purported closures from the beginning. Tertiary violence thus “reveal[s] by effraction . . . the originary violence which has severed the proper from . . . its self-sameness.”34 Pace Nietzsche in the Genealogy of Morals and elsewhere, tertiary violence is often motivated by a desire to take revenge against the transient nature of the abyssal abundance of becoming and the primary violence of differential spacing and contamination. The same effraction that binds tertiary to primary violence, however, also makes possible the struggle to minimize tertiary violence. As McCormick stresses to good effect, the inevitably contaminated nature of this possibility calls upon us to be vigilant about the concealed exclusions and marginal remainders inherent even in struggles to minimize overt tertiary violences. Central to the tragic nature of human existence is that all good conscience, well-intentioned action, mutual recognition, and so on, issues from the same violent structure of origination as tertiary violence. This structure in “Force of Law” is called, among other things, mystical violence, and it cannot be transcended.

Finally, Derrida makes the same basic point about the untranscendable, quasi-transcendental nature of mystical violence when he specifies the purpose of deconstruction’s ethicopolitical operation in the essay “Violence and Metaphysics.” This purpose derives from the fact that action “can only indefinitely tend toward justice by acknowledging and practicing the violence within it. Violence against violence.” What “we” should strive for as we configure our actions is thus “a violence chosen as the least violence” within an “economy of violence.”35 While the economy of primary mystical violence cannot be transcended, “within” this economy, which has no absolute or pure inside or outside, tertiary mythic violence, in all its empirical contingency, can be identified, evaluated, decided against, and actively and urgently resisted. Despite the ambiguity about which I am complaining, McCormick successfully demonstrates that part of what deconstruction does in its
ethicopolitical deployment is pierce the veil of secondary violence thrown up by the myths used to portray tertiary violence as unambiguously just, legitimate, proper, purifying, self-present, divinely sanctioned, natural, necessary, for the good of the many, and so on, by articulating the untranscendable implication of all tertiary events (whether violent or not) in the fissuring synthesis of mystical violence and its “interminable list” of co-operators. To take the necessity of primary mystical violence into account when we act, to take responsibility for our life-giving implication in the tragic folds of its aporias, enigmas, and contaminations, and to temper our engagements with others accordingly, is a central imperative of the Derridian ethicopolitical project. McCormick’s essay succeeds in furthering this project in part by enacting its imperative in relation to Derrida himself. McCormick’s reading is at once about Derrida’s politics and an exemplar of how such an ethicopolitical orientation can work when undertaken with care for the implication of self and other in the inescapable matrix of mystical violence.

NOTES

4. The possibility and impossibility of taking mythic violence (or anything else) alone, apart from mystical violence, is, in a sense, the heart of the problem. I hope to make this clearer as we go.
6. Ibid., 399.
7. Ibid., 416.
8. Ibid.
mately differential nature of their interplay. This articulates a tension in Derrida’s thinking between the ideal of eliminating mythic violence and the seemingly constitutive interplay between mythic and mystical, Kantian and messianic, deconstructible and undeconstructible, and so on.

12. Ibid., 18.
13. Ibid., 11.
16. Ibid., 14.
18. Ibid., 14.
20. Ibid., 20.
21. Ibid., 38.
22. Ibid., 39.
23. McCormick refers, for example, to “the basic violence that makes justice possible.” However, to me at least, it is not obvious from the context whether he is referring to the untranscendable play of mystical violence or to the paradoxical role of mythic violence in acts of founding like those envisioned by Hobbes and Schmitt, as well as those that impose “the form of dialogue or discussion” (p. 401). Again, while mythic and mystical violence are both in play in such foundings—the physical combat of the preinstitutional state of nature and the violence of becoming as such—to such an extent that the mystical can be viewed as a necessary condition of the mythic, the relationship seems confusing enough to warrant some additional articulation beyond what McCormick gives us.
26. Ibid.
27. Ibid.
30. Derrida, Of Grammatology, 112.
31. Derrida discusses secondary violence without labeling it as such in the following passage from “Force of Law”:

The violence that founds or positions droit need not be immediately present in the contract... But without being immediately present, it is replaced... by the supplement of a substitute. And it is in this differance, in the movement that replaces presence (the immediate presence of violence identifiable as such in its traits and its spirit), it is in this differantielle representativity that originary violence is consigned to oblivion. This
amnesic loss of consciousness does not happen by accident. It is the very passage from presence to representation. Such a passage forms the trajectory of decline, of institutional “degeneracy.” (P. 47)

McCormick also does an excellent job calling attention to Derrida’s subtle engagements with secondary violence, especially in his discussion of Derrida’s performative invocation of the trial of Socrates in the context of a conference on justice held entirely in English.

32. Ibid., 112.
33. Ibid.
34. Ibid.

Ben Corson recently completed his Ph.D. in philosophy at Johns Hopkins University. He is currently finishing a book on the relationship between Derrida’s ethicopolitical writings and his conceptions of speed and technicity.
I thank Ben Corson for his response to my essay on “Force of Law.”2 His comments are gentle, serious, constructive, and certainly exhibit greater expertise in matters-Derrida than I possess. Much more than merely “supplemental,” Corson’s criticisms raise issues that go to the heart of Derrida’s essay and my own reading of it. I take the following to be Corson’s main point: I read Derrida to be offering mystical violence as an eventual or ultimate alternative to mythic violence in a way that forecloses the very possibility of deconstruction and justice as Derridean concerns. My narrow reading purportedly overlooks the fact that deconstruction and justice require some aspects of the kind of force associated with mythic violence and in fact would need to eschew certain characteristics associated with mystical violence. I believe that Corson is more or less correct at a certain hermeneutic level: both Derrida’s essay and my interpretation of it do indeed point in this direction, one that hypostatizes mythical and mystical violence. Ironically, this exaggerated antinomy becomes so extreme in my overdetermined account of “Force of Law” that I am forced to conflate the two forms of violence in my effort to raise mystical violence to a status that approximates a quasi-Kantian regulative ideal.

But while Corson acknowledges the significance of Derrida’s gestures that eventually break down the strict dichotomy between mythical and mystical violence, both within and without the “Force of Law” essay, he seems somewhat less attuned to my own indications or intimations along these same lines. For instance, I would redirect Ben and the readers to the crucial place in Derrida’s essay where I suggested that he commits a kind of “violence”
against Benjamin by mischaracterizing the latter’s theoretical positions and
then by rather abruptly abandoning or turning away from Benjamin as a trust-
worthy guide on this intellectual journey (FL, 62). I suggested that this con-
stitutes a performance on Derrida’s part, one that encourages readers to pon-
der what an enlightened form of criticism might be and what such criticism
may derive from, or have in common with, both mythical and mystical forms
of violence (DL, 414-16). Of course, it is a guiding principle of at least a few
schools of hermeneutics in political and social theory that one consider the
following when reading a commentary on a particular text: when an inter-
preter points out a certain writing strategy in the text in question, the reader
should consider whether the interpreter is adopting such a strategy them-
selves in what is otherwise ostensibly straightforward exegesis. In this light,
Corson might have considered whether at this juncture in my essay I engage
in a kind of performative violence against Derrida (as well as or especially
against Straussians and poststructuralists) that is similar to that which
Derrida perpetrates against Benjamin; and whether I attempt to push the
questions raised by Derrida even further through such tactics.

On the one hand, these “forced” interpretations imitate mythical violence
in their “founding” characteristics (as I note on DL, 416), and yet, on the
other, in the spirit of mystical force they are, so to speak, “bloodless.” Corson
tends to subordinate these instances in my analysis that potentially
problematicize the hypostatization of mythical and mystical violence to excep-
tional moments rather than engage them as essential parts of my argument or
significant turning points in my essay. I agree with him that such moments
run the risk of making the exposition of a critique of violence—whether
Benjamin’s, Derrida’s, or my own—“confusing.” But I also think that, again,
in the spirit of Derrida’s essay and given the nature of the issues and texts at
hand, these performative moments serve to raise questions in a more substan-
tive way than might traditional analytic exposition. They raise the possibility
of conducting a critique of violence that does not enlist something similar to
the violence that the critic wishes to overcome. Corson’s remarks seem to call
for a kind of uncompromisingly explicit clarification that for its part would
make it difficult or impossible to think beyond mythical violence, bloodlet-
ting violence, as a practice, and would also foreclose deconstructive analysis
as I present Derrida to be conducting it in “Force of Law” and as I understand
Corson to be pursuing it in his learned and spirited comments.

Clearly, my essay does not proceed without the kind of sharp analytical
interrogations associated in both Derrida’s and my pieces with mythical vio-
ence. Indeed, I hope that my essay demonstrates the necessity of forms of
analysis affiliated with both kinds of violence in a contemporary critique of
violence and by extension a contemporary consideration of justice—at least
at this point in time. It is important to note that temporal invocations like this last phrase, admittedly more prevalent in my own essay than Derrida’s, point to the importance of history—absolutely central to Benjamin’s work—to the issues of violence and justice. This is something to which I will return below. Here I would like to emphasize that these moments of recourse to mythical violence in my essay are not accidental or the result of confusion; neither do they reflect an attempt to confuse. I intentionally resort to them with the purpose of demonstrating precisely what Corson claims: that something akin to mythical violence is indispensable in an effective critique of violence. However, I am unsure about the historical permanence of this reliance, a permanence, in fact, I find presupposed in the thrust of Corson’s comments and in most of the poststructuralist literature with which I am familiar.

The problematization of the supposed permanence of mythical violence and its representations is the resource that Benjamin’s “Messianico-Marxist” theory of history offers to poststructuralist critique despite Derrida’s ostensible dismissal of it late in “Force of Law.” If Derrida had truly forsaken or ruled out the possibility that violence can be substantially ameliorated or even overcome along the lines of mystical violence, this would have been an ultimate—that is, irreparable—act of violence against Benjamin. It would mean in effect that deconstruction and poststructuralism had capitulated to, or collapsed into, the most cynical form of Straussianism. It would mean that deconstruction had decided in advance the exact extent or limit of justice: the dilemmatic, the incommensurable, the eternally agonistic would merely replace the rule of the strong, the privilege of the few, and the ultimate lack of moral justification for political action as the “timeless truths” of political philosophy and political reality. Following Benjamin, Derrida’s essay opens up the possibility that history might portend emancipation in its Enlightenment and reconstructed-Enlightenment forms, only to close that possibility in an all too obviously crude way that—for reasons I lay out in my essay—renders the option more vibrant than would a dogmatic, coercive, uncriticized, etc. assertion of it.

Corson is right to remind us that clarity has its place, and on the following point I would like to be especially clear: despite conceding that mythical violence is not the unequivocal regulative ideal that it appears to be on a superficial reading of both Derrida’s and my text, I stand fast by the claim that bloodless violence is something of a goal or ideal after which Derrida aspires in his essay. In short, it is a part of mystical violence that is morally superior to mythical violence. To this end, I consider a canard what Corson seems to take at face value in his reading of “Force of Law”: Derrida’s invocation of the Holocaust as an example of bloodless violence that cannot be reconciled with
justice and therefore leads us to seriously reconsider and perhaps dismiss mystical violence. As I indicate in my essay (DL, 414 and n. 34) but will elaborate here, the Holocaust should not be undifferentiatedly interpreted in terms of “bloodlessness.” On an historically factual level, the Nazi Einsatzgruppen, the Waffen SS, and even regular soldiers in the Wehrmacht who initiated the extermination of Jews, Gypsies, and Communists on the Eastern Front in 1941 did so by rounding up persons and executing them in mass numbers by firing squad. The supposedly “bloodless” aspect of the Holocaust, that is, the eventual asphyxiation of victims with carbon monoxide and then Zyklon-B gas, was subsequently instituted for the benefit of the executioners who were increasingly traumatized by the quite bloody nature of their horrible duties—in other words, these “bloodless” methods were largely secondary to the intentions of the criminals.

I believe that Derrida is aware of these facts but conveys important aspects of their meaning in a less than direct manner and, indeed, in a manner that renders Benjamin’s mystical-violence-privileged analysis complicit in the circumstances of his own death: namely, by initially associating the Shoah with the bloodless quality of mystical violence only to subsequently reject both of them so conjoined in a forced association. Derrida leads us to the conclusion that an interpretation of the Holocaust as a “bloodless” phenomenon—an interpretation focused on the mass-death mechanically produced in murder factories—is simply too Heideggerian and, most important, unjust because it runs the risk of attributing the causes of the Shoah to some “spirit of technology” rather than what it was: genocidal hatred of the other. But Derrida does not draw this conclusion for us. For my part, by initially seeming to champion mystical violence over mythical violence, only to blur the distinction between the two (DL, 414-16), I was adopting a similar strategy and hoping to make the point that the elimination of blood violence was indeed a worthy political goal, while other aspects of mythic violence might still be necessary components of the critical thought necessary to get us to that juncture.

After all, even the “abstract,” “anonymous” violence of nineteenth-century capitalism—the least “physical” form of domination that the world has ever known—was secured by the bloody practices of company thugs, co-opted police officials, and unaccountable Pinkerton agents. The bloodless aspects of laissez faire capitalism would have been more endurable, criticizable, and readily transcendable had it not been for these brutal accoutrements of its reign. This is not to say that murder by suffocation is more just than murder by gunfire, or that the human deprivation generated by wage slavery is more just than physical abuse and killing at the hands of company goons, corrupt
sheriffs, and so on. But in most cases, bloodless and bloodletting violence are less easily distinguishable than one might suppose, and the elimination of the latter would actually offer a great step forward toward the overcoming of the more unjust versions of the former. A world characterized by bloodless violence would be a provisionally better—that is, decidedly more just—world than the one in which we presently live. But it would by no means be definitively so, and thus, despite Corson’s anxieties, a critique of violence—in which deconstruction would be engaged—would necessarily persist.

Finally, as stated above, I am no expert on Derrida, and so I am in a somewhat disadvantageous position to judge Corson’s use of Derrida’s other works to explicate the latter’s conception of violence. However, it seems to me that this effort potentially sidesteps one of the main assertions of my essay: that “Force of Law” amounts to a reconstructed “Socratic” response to explicit charges of nihilism leveled against poststructuralism, a response that signals a drastic break in Derrida’s oeuvre. In my essay, I point out the hints in this specific text that indicate this status, and I am sufficiently familiar with Derrida’s career on a superficial level to stand by the point. In light of my essay, Derrida’s subsequent works, many of which are cited by Corson, become more “serious”—that is, in these works, Derrida takes more overt responsibility for the full implications of his writings that touch on violence and justice than he did in the earlier works that Corson cites. To offer a reading—necessitated by space limitations, I fully understand—whereby Derrida’s understanding of force or violence remain more or less constant throughout his career is to risk taking Derrida and deconstruction out of history in a manner that is just the opposite of what I suggest are Derrida’s intentions in “Force of Law.” On the contrary, given its subject and mode of exposition, and on the basis of what I have stated above, I am convinced that my essay correctly suggests that “Force of Law” signals a dramatic reentry into history. The charge of de-historicization, frequently leveled against deconstruction, does not, I think, justly apply to Derrida’s essay.

In any case, I thank Corson for engaging my essay so sincerely and—in keeping with one of the themes of the essay—for treating a foreigner in the land of French poststructuralist thought with such warm hospitality. Corson’s remarks have drawn me out and compelled me to make explicit much more of my own rhetorical and performative strategies than I perhaps would have liked to offer. But such a gracious and intelligent critique deserves to be met with a frank response, even one that runs the risk of rendering its author vulnerable in more than one regard.
NOTES


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In the guise of being beyond metaphysics, dominant strands of contemporary political philosophy have relied on rational justification, the exchange of reasons, and the unmasking of illusions. Foreswearing the evocation of emotion and the stimulation of images and stories as necessarily unfree, indeed, as suspiciously fascistic or totalitarian, these strands of critical political theory have construed their task in terms of abstract reconstructions beyond politics (feminist theory is an important exception here). The Right might distribute films of flinching, bloody, fetuses; evoke a nostalgia for mother-love in the safe split-levels of lily-white suburbs; and call for the beheading of murderers and drug dealers, but we on the Left are going to give reasons. In contrast to such a theoretical division of the world, the two books reviewed here take the position that critical democratic theory should reclaim the territory of fantasy, drive, and intensity ceded to the Right over the course of the twentieth century.

William Connolly and Slavoj Žižek both reject the widely believed rumor regarding the death of metaphysics. Drawing from different theoretical resources (Nietzsche and Deleuze for Connolly and Hegel and Lacan for Žižek), these authors confront the continued force and value of the spiritual in an ostensibly secular, superficial world of screens. Connolly presents a theory of radical pluralism. Appreciative of the differing beliefs and values people bring to their common endeavors, he rejects liberalism’s claim that profound disagreement on matters of faith necessitates a secular political foundation as well as liberalism’s claim to provide such a foundation. Connolly argues instead that generosity toward the abundance of ways of becoming in the world will foster a democracy in which people are more able to
adjust to uncertainty and come to tolerate those different from themselves. In a project that initially appears at odds with the awareness of contingency that animates Connolly’s generous, multidimensional pluralism, Žižek argues for a recoupling of the utopian, revolutionary core of Marxism with messianic Christianity. He argues that the Christian legacy is far too important to be left to “fundamentalist freaks” (p. 2). Perhaps surprisingly, this effort to recapture terrain from the “fundamentalist freaks” is precisely that insight these books share, that element of a new political imaginary that political theorists should, if not adopt, then at least take seriously. This, at any rate, is my point of inquiry into these two fine books. Connolly’s rethinking of democracy and Žižek’s rethinking of the (revolutionary) act both reclaim for the Left that intensity and fantasy that has been sucked out of democratic politics.

Connolly’s rich and nuanced account of secularism relies on ideas of contingency, abundance, and the visceral. First, in contrast with foundational, tree-like theories, Connolly takes a rhizomatic approach to politics. He proposes a regulative ideal wherein diverse constituencies acknowledge the contestability and contingency of their own deeply held convictions and cultivate a respectful engagement with those different from themselves. Such a conception, he argues, benefits contemporary multicultural societies because it enables affiliations among those who no longer try to remake others in their image but instead acknowledge the traces of doubt, uncertainty, and possibilities for change within their own identities.

Second, Connolly details the continued impact of metaphysics on thinking and politics. His excellent genealogy of the will, for example, recovers the intrusions of circumstance and grace in notions of the will from Jesus through Nietzsche that are awkwardly reasoned out of Kant and viciously ignored in contemporary arguments for the death penalty. This provides Connolly with a foothold that lets him, one, engage theistic proponents of state-sanctioned murder (rather than dismiss them as simply outmoded or irrational), and two, confront the theistic presuppositions that continue to inform even the most resolutely secular appeals to the free and responsible will. There is a positive dimension to Connolly’s appreciation of metaphysics as well—the benefits that multiple sources of spiritualization offer a democratic culture. In contrast to the “stingy” resources of liberalism (a doctrine that sacrifices belief and faith to service the demands of a “neutral” state), Connolly’s multidimensional pluralism emphasizes abundance as a way of reimagining a more appreciative and inspired relation to life.

Third, unlike cognitivist approaches to political rationality, Connolly develops an account of the visceral level of subjectivity and intersubjectivity. He draws from recent neuroscientific work on the amygdala—as well as from Nietzsche’s emphasis on the stomach. “The amygdala,” Connolly tells us, “is
a site of thought-imbued intensities that do not in themselves take the form of either conscious feelings or representations” (p. 29). We might think of these intensities as inscriptions on the brain (in the neural network) of cultural practices and previous experiences. Because they operate below conscious thought, they can’t be addressed directly but instead are more likely to be influenced by rituals and arts such as those in religion.

Connolly uses the amygdala to draw out the “infrasensible” level of politics, locating here the feelings that animate and intensify politics and suggesting that this is where they might best be identified and worked on. Our senses of attraction and repulsion, for example, often resist or are even at odds with what we think. Racist, sexist, and homophobic belief systems exploit this directly, working at the visceral level as they (re)inscribe the foreignness of the Other. It makes sense, then, that progressive efforts should fight on this terrain, advocating micropolitical practices that work on the self and seek to reshape its visceral reactions.

Connolly’s move to the visceral is valuable. But there are repercussions of this move that make me, well, a bit queasy. Even though I am pro-choice, I recently found myself repulsed by the decision of British scientists to clone human fetal cells. This sense of repulsion, according to Connolly, may be rooted in the amygdala. If it is, it won’t be susceptible to “reasoned” arguments but will have to be worked on micropolitically. Is this kind of reworking necessary? Should it happen? Does the amygdalic turn enable us to ask these questions? Part of the difficulty may stem from the way Connolly presents the “politics of becoming” on the model of identity politics. He doesn’t take up the question of becoming a neo-Nazi. And, he doesn’t consider the continued political value of disgust. Perhaps a visceral response to suffering, corruption, hatred, and injustice should be cultivated rather than worked through.

I have one final concern about a politicized amygdala: does it inscribe biology or medical science at the basis of political theory? When Connolly emphasizes the similarity between rhizomatic neural networks and rhizomatic politics (p. 175), I start to worry that all the agonistic energy that might be invested in politics will be isolated in the brain in keeping with the larger cultural tendency to biologize everything. Antagonism is biochemical. The obscene supplement of power that underpins politics becomes something in our heads that has to be worked out by being worked on. The centralizing of the brain (a re-heading?) may explain why Connolly repeats the same quote from conservative freelancer William Bennett in two different chapters: the quote involves decapitation, Bennett’s suggested way to deal with drug dealers.
As I mentioned, the gap between Connolly and Žižek initially seems quite large. It is most dramatic in Žižek’s call for more hatred. Rejecting respect for the Other as an appropriate response to ethnic hatred, Žižek argues that “what we need is even more hatred, but proper political hatred: hatred directed at the common political enemy” (p. 11). But the difference from Connolly here has less to do with the absence of generosity than with the focus on a common enemy. That is to say, Žižek anchors hate in “true love”—“to hate out of true love is to hate the dimension of one’s inscription into the socio-symbolic structure” (p. 126). True love is hard work, a way of working on oneself such that one neither idealizes the Other as dignified in her suffering, say, nor presumes that the Other is who and what the ideological structure defines her as. It involves the arduous activity of ridding oneself of the inertia that locks one into the order in which one is born, uncoupling the Other from the frames in which she is inscribed, and seeing her as a subject. Yes, Žižek anchors “true love” in Christianity (or, more precisely, “Pauline materialism”). But this should not obscure its affinities with the micropolitics of the self Connolly connects with respect for the politics of becoming.

The issue of the common political enemy, however, is more difficult. It’s difficult in part because Žižek’s account of Capital in terms of the “Real of spectrality” makes the global capitalist system itself the enemy. In this vein, Žižek criticizes American accounts of “the Balkans” (as well as American accounts of racism) for failing to understand how these forms of “irrational” violence are the other side (“necessary obverse”) of generalized forms of reflexivization. As reactions to political and economic changes, racism, nationalism, and ethnic terrorism emerge as violent disruptions of globalization that not only resist reasoned argument (insofar as they are violent disruptions) but also employ reasoned argument in their own defense—yes, we are responding to increases in unemployment, fear, and desperation. Pointing out the irrationality, the feelings and reactions that drive the violence, only restates what those resorting to ethnic terror already know. What is necessary, then, is to fight the problem at another level. For Žižek, this level is the Real of Capital.

What does it mean for Capital to be Real? “Real” here has nothing to do with materiality or even with relations between actual people. No, for Žižek the “Real-ness” of Capital is linked to its inexorable, abstract, “spectral” logic. Thus, his analysis takes up three aspects of the Lacanian Real—the Real as excess or incremental remainder, as pre-ontological grounding event, and as fundamental antagonism. Since much of Žižek’s discussion uses a language of haunting and ghosts (in keeping with his theorization of Capital in terms of “undead” drive), I’ll present these elements of the Real in terms of ghosts from the present, past, and future.
First, the Real of Capital haunts the present in the form of obsolescence, trash, and that unnameable “thing” that makes Coke “it” (the Lacanian objet petit a). Everything, it seems, is caught up in the never-ending circulation of Capital such that what was once shocking excess is now a necessary part of the system (think about pornography and gambling on the Web). These ghostly remainders fill up the world as part of a perverse logic in which the more you have, the more you want.

The spectrality of the Real of Capital can be understood, second, as a ghost from the past. Žižek explains this point with reference to the fantasmatic histories that sustain the present but can’t be acknowledged: “This foreclosed (‘primordially repressed’) myth that grounds the rule of logos is... not simply a past event but a permanent spectral presence, an undead ghost that has to persist all the time if the present symbolic frame is to remain operative” (p. 65). This myth is not factually real; rather, it is the fantasy that covers over/resolves the fundamental antagonism or deadlock at the heart of the social order. Political theorists might think here of Carol Pateman’s sexual contract: the subordination of women occluded in modernist accounts of the social contract didn’t really occur, but the fantasy of one persists in an unacknowledged justification of women’s oppression that explains or resolves the antagonism of sexual difference.

This leads to the Real as fundamental antagonism. One of the ways that Žižek discusses this third aspect of spectrality is in terms of the relation between eternity and time, a discussion that informs his theorization of the “act.” Eternity isn’t beyond time; rather, it is that antagonism, cut, or event that opens up the possibility of time insofar as historical time emerges as an attempt to grasp or understand it. This cut is traumatic, persisting in and through time as it gives time its structure. The authentic act, then, is between time and eternity: the chain of causes (time) is put out of joint by something unpredictable, inexplicable in terms of the chain, or inversely, a specific dimension of temporality/historicity breaks through the deadlock of eternity.

Christian conversion (“a temporal event which changes eternity itself” [p. 97]) is Žižek’s example of the latter. He exemplifies the former in terms of Christian charity, that radical suspension of or “unplugging” from the hierarchic social order. The authentic act, then, breaks through (“traverses”) the fantasy covering over the fundamental antagonism and sustaining the social order and the perverse cycle of drive that circulates through it.

Further examples of the act involve gaining freedom by sacrificing what one most loves, renouncing what is most precious (he reads Toni Morrison’s Beloved in this context), on one hand, and “taking the system at its word,” using temporality or the very terms of the system itself to disrupt the system on the other. (This might be thought of as the opposite of an ironic gesture. I
think of it in terms of my Southern Baptist upbringing. When the preacher called on us to seek forgiveness from those we’d wronged, my friends and I assumed this entailed returning every swiped paperclip, apologizing to strangers for making fun of their shoes, quitting school and helping at home, etc. In short, if we took his injunction seriously, the entire social order would collapse!

Where, then, is the third ghost, the ghost of the future? For Žižek, it can be found in the “brief apparition of a future utopian Otherness to which every authentic revolutionary stance should cling.” It’s the Holy Ghost as the “community of believers qua ‘uncoupled’ outcasts from the social order” (p. 160). The main forms of its appearance are not, as the “fundamentalist freaks” might have us believe, the Promise Keepers, but, in Žižek’s view, psychoanalytical and revolutionary political collectives.

This last idea, like others in the book (for example, the odd discussion of the fantasmatic supplement in terms of a male ape copulating with a female cyborg), is difficult to get around. But maybe this is part of the point, to try to imagine the unimaginable, to reclaim imaginary possibilities, to work through visceral reactions. After all, conservative “therapists” like Dr. Laura Schlesinger use radio to spread their message. Why not counter their politics with something radical or impossible?

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As the two books under review here show, theorists and theories travel, and some even travel well. *Beyond Rights Talk and Culture Talk* is a collection of essays perhaps best characterized as an attempt to map the complex and often paradoxical invocations, deployments, and outcomes of both ‘rights talk’ and ‘culture talk’ in a variety of historically and culturally specific contexts. *Political Theory and Feminist Social Criticism* is animated by two interrelated purposes. The first is to observe in the everyday lives of women far outside the walls of the ‘Western’ academy resources for both resistance to and reform of exclusionary institutions and practices. The second is to draw on such resources to provide an account of how models of deliberative democracy can be realized by way of genuinely democratic practice even under conditions of radical inequality. While one book is more successful in executing its purpose than the other, both serve as a welcome antidote to essentializing notions of culture, as well as to those ghostly abstractions that can either derail the best-intentioned debates about rights or obscure the constraints under which aspiring participants in democratic contest labor.

Framed by Mahmood Mamdani’s judicious introduction, the essays in *Beyond Rights Talk and Culture Talk* resist easy summary, as they traverse a vast amount of cultural, geographical, historical, and philosophical ground. Yet, the volume coheres by dint of a shared and valuable comparative focus in which Africa, rather than Europe, the United States, or ‘the West’ is the point of both departure and return. Although somewhat uneven, the book as a whole is largely successful in conveying knotty intersections of forces past and present, local and global, material and discursive, that implicate both discourses of rights and culture in emancipatory aims and disciplinary purposes. In so doing, the volume seeks not a final verdict on the adequacy of either dis-
course but instead seeks to take seriously the challenge of delineating, to borrow from Wendy Brown, what kinds of subjects, produced by what kinds of powers, are led to seek what kinds of rights or to embrace what vectors of culture, in the context of what kind of discourses, and with what kinds of effects.1

The best chapters are those skeptical of an easy embrace of claims to cultural authenticity on one hand and the moral supremacy of rights discourse on the other, advancing instead nuanced and complex snapshots of the ways such symbolic currencies are almost inexhaustibly mutable and interpenetrating. Several essays, for example, underscore how anti-imperialist claims to cultural authenticity have been deployed by predatory colonial and postcolonial leaders as a mechanism of control over internal dissent—as in Martin Chanock’s analysis of the marketing of various brands of “cultural patriotism” to immunize elites from demands for reform from below (p. 21). Other cases show how certain cultural practices and institutions have been and continue to be an invaluable source of transformation (as in the chapter on South Africa), yet most allude to the ways culture may serve both ends simultaneously, as exemplified in Hussaina J. Abdullah’s analysis of those Nigerian women’s groups that seek to “employ the medium of Islam to advance women’s rights without fighting for gender equality” (p. 113). By the same token, many of the chapters detail the ways in which rights discourses, in Kimberle Crenshaw’s words, can both “facilitate transformative processes and insulate and legitimise power” (p. 63). Her cogent reassessment of the Civil Rights movement in the United States shows, moreover, that such processes often occur simultaneously and are “mutually reinforcing” (p. 63). This particular dynamic knows no cultural bounds, as evidenced by a later chapter on the Uniform Civil Code in India.

Deeply attuned to the textured histories, peoples, and occasions they survey, the authors in this volume do not once mistake the discourse of rights for culturally neutral moral principles beyond power, politics, and human interests; nor do they confuse justice with the simple effort to narrow the gap between principle and practice. They do, however, occasionally fall prey to the valorization of culture on one hand and the caricature of rights discourse as abstract, radically individualistic, and without internal fissures on the other. There is, for example, Issa Shivji’s contrast between the “fetish of the abstract individual” and an idealized conception of customary law and practices as expressions of the “evolved wisdom of the people” (p. 58) in his discussion of Tanzanian land reform. This undifferentiated understanding of ‘rights discourse’ reduces the complex and polyvalent debates within the so-called West about the reach and limits of certain conceptualizations of rights to a single register. This at once ignores the proliferation of arguments for and about cultural as well as socioeconomic and ‘traditional’ rights and
ocludes from view the relative elasticity even of a discourse so thoroughly implicated in the historical entitlements of white male European property holders. Moreover, the equation of one particular customary arrangement—the elected wazee, or elders—with the “struggles of the people” and custom *writ large* sidesteps the extent to which certain vectors of culture are sacralized only at the expense of others, denies the implication of culture in local authoritarian practices, and naturalizes culture over other modalities such as class and gender.

Similarly, Thandabantu Nhlapo’s otherwise persuasive critique of the parochialism of certain universalizing assumptions in ‘Western’ rights discourse founders on an initially promising attempt to advance a “distinctively African” conception of human dignity. It founders in part because the concept is invoked rather than developed but also because Nhlapo’s insistence that courts must protect, on the basis of human dignity, unusual cultural practices provided they cause no “demonstrable harm” (p. 148) begs the question of what counts as harm and who determines it. This becomes particularly pressing in contexts where women already enjoy less power than men. Indeed, a series of examples drawn from family law in the essay inadvertently demonstrate the susceptibility of such arguments to defense of practices that instantiate the inequality of gender in particular and exemplify what Crenshaw aptly refers to as the “almost effortless stigmatisation of gender equity” (p. 73). At the same time, it illustrates the difficulty of asserting ‘distinctive tradition’ in the face of what Nhlapo acknowledges is a pervasive, powerful, and transportable ‘Western discourse of modernity.’ From the colonialist role in securing the preeminence of caste cleavages in India (what Nicholas Dirks refers to as the “invention of caste”) to the insistence that the relatively recent unfurling of the Confederate flag atop the South Carolina statehouse represented timeless southern heritage, what is taken to be tradition is often just one among many possible constellations of practices reconstructed by way of contest. Defenses of particular constellations are most shrill, moreover, when the cultural worlds they are said to embody are in greatest flux.

Both ‘rights’ and ‘culture’ are moving targets in these arguments, and rightly so, for the essays cumulatively suggest that the content, applications, and outcomes of ‘rights talk’ in the context of struggle is, like ‘culture talk’, often unpredictable, mercurial, and unstable. There is, as Crenshaw puts it, a certain measure of “discursive ambiguity” to rights that makes it impossible to “guarantee or articulate in advance how a right will be applied in context” (p. 69). By the same token, as cultures are “very complex conversations within any social formation” (Chanock, p. 18), they are equally susceptible to discursive deployment for a variety of ends. As Mamdani points out, such
indeterminacy points less to an indictment of either rights or culture—as if these are clear categories with fixed content—than to the conclusion that “for those interested in the process of cultural dynamism and cultural change, neither the language of rights nor that of culture is likely to prove adequate” (p. 4). Readers convinced, for example, that culture is the site of resistance to ‘Western’ hegemony, and readers who locate injustice in the gap between recalcitrant cultural practices and abstract moral principles, will, no doubt, object to this conclusion. Indeed, like a lively argument still in session, it is clear that even some of the authors in the book disagree with Mamdani and with each other. Yet, it is precisely the extent and contours of this disagreement that sustain Mamdani’s argument for the primacy of politics as both a site and instrument by which the mutual implication of power, rights, and culture may be contested and transformed.

While Beyond Rights Talk and Culture Talk charts, in a variety of contexts, the diffusion, fluidity and cross-pollination of what are often presumed to be stable and discrete categories, Political Theory and Feminist Social Criticism takes the opposite tack: it looks to practices in ‘non-Western’ settings to restore, fortify, and anchor the promise of deliberative democratic theory. This entails an argument that proceeds along two ultimately intersecting tracks. There is, first, an attempt to document and correct the ways in which recourse to standards of “reasonableness” can immunize deliberative models against genuinely inclusive exchange and to what the book identifies more generally as the philosophical and practical failures of “contemporary deliberative liberal democratic theory” to critically scrutinize its own presumptions about the rules and terms under which purportedly inclusive deliberation proceeds. Second, Ackerly advances what she calls “Third World Feminist Social Criticism” as both a method and a means of attending closely to the inequalities that constrain participation in deliberation, criticizing “existing values, practices, and norms that perpetuate inequalities” (p. 32) and improving “both the quality and equality of public participation” (p. 38) by expanding the “range of familiar perspectives and understandings making deliberation more inclusive while making it better informed” (p. 67). Ackerly has a good grasp of the range of arguments that travel under “contemporary deliberative liberal democratic theory,” and her analysis is surest when assessing its prominent proponents, assessing explicit attempts to articulate a philosophy of social criticism such as those of Michael Walzer and Martha Nussbaum, and advancing an argument about multisited critics able to move among “multiple publics” (p. 195).

The book overreaches, however, in its attempt to bring the originality and significance of “Third World Feminist Social Criticism” into sharp relief. The argument begins with a rebuke to a very particular group of political and
social theorists for failing to attend adequately to what Ackerly repetitively calls “the real world,” and in one passage, the purpose of the book is described in terms of the promising attempt to seek the “political theory in political action” (p. 159). Yet over the course of the discussion, the charge expands considerably such that, in the end, “Third World” feminist social criticism is said to succeed where much of deliberative democratic theory, critical theory, feminist theory, and political theory fails because, unlike “ideal political theory” (p. 9), which mostly sidesteps the theoretical and practical problems of inequality (p. 179), it is “practically and experientially grounded” (p. 27), guided by a commitment to genuinely democratic deliberation and wide-ranging scrutiny that renders it “critical where other theories are not” (p. 178) and is, thus, “actionable in the real world” (p. 184). Such arguments produce an unfortunate contrast between a social criticism grounded in the “real world” and political theory as an “ideal” (in)activity abstracted from the messiness of actual politics and lived experience, insufficiently critical of its own foundational premises, and inattentive in particular to the implication of domination and inequality in practices, “norms and values.” This will come as a surprise to those theorists who have, for example, anatomized the play of power in almost every vector of human existence; who evince a radical skepticism toward every foundational premise and inherited shibboleth, including skepticism itself; and who foreground an understanding of theorizing as occasioned not just by intellectual curiosity but lived crisis, an activity that entails making explicit the often unexamined assumptions and commitments that inform daily life and discerning in seemingly disparate everyday events systematic and systemic patterns of power and domination.

Ackerly’s contention that “a question in political philosophy is interesting only if it seems relevant to contemporary political life” (p. 10) is obviously highly debatable, as Quentin Skinner and others make clear. Yet, she is surely right to caution against those moments of intellectual callousness or complacency that obscure the extent and import of radical inequalities and the sheer human suffering they so often entail. Informed by precisely this concern, Political Theory and Feminist Social Criticism contains a persuasive argument for recognizing social criticism and transformative deliberation in places and experiences well beyond the academy walls and the privileges it presupposes and bestows. One of the particular instances of women’s activism on which the book draws is the Self-Employed Women’s Association (SEWA) in India, part of the proliferation of nongovernmental organizations (NGOs) devoted to microenterprise lending projects designed to help and empower poor and self-employed women in particular. SEWA is a good example for all the reasons enumerated in the course of the argument. Given
the book’s express concern with agency and critique, however, Ackerly’s 
admiring account would have been further strengthened had it engaged and 
dressed those critics, feminist and otherwise, worried that SEWA and such 
microcredit programs more generally facilitate the penetration of the ‘new 
international economic order’ into rural areas for the purpose of resource 
 extraction and exploitation of cheap labor, reinforce ‘traditional roles’ by re-
egating women to the informal sector of the market economy, initiate a privat-
ization of welfare in which state responsibility is replaced by “shoeless 
women lifting themselves up by their bootstraps,” and offer women the 
administration of poverty rather than its alleviation."

Less persuasive is the anecdote that opens the book, one in which the 
author “talks” (it is unclear if there is an interpreter) with several Bangladeshi 
women about wife-beating and their group interventions on behalf of other 
women physically abused or otherwise mistreated. Ackerly draws on this 
story throughout the text as an exemplary enactment of the method of “Third 
World” feminist social criticism. Yet the brief anecdote, while evocative, can-
not sustain the weight of the larger argument built upon it. The discussion 
does not provide a detailed account of what the women actually said in con-
versation; nor does it proffer the careful interpretive reading, or “thick 
description,” necessary to illuminate the complex play of resistance, agency, 
discipline, and powerlessness in this particular context. Here the book would 
have benefited greatly by following the example provided by Beyond Rights 
Talk and Culture Talk and the kind of nuanced and hermeneutically informed 
understandings that make up the bulk of it. The author later rebukes Martha 
Nussbaum for failing to listen to the women in the cultures she analyzes 
(pp. 106-7), yet it is hard to find warrant in Ackerly’s account for the claim 
that these women, “animated by self-discovery and sisterhood” (p. 199), are 
social critics deliberating to “influence social decision making” and whose 
method is “to inform themselves through collective dialogue, to challenge 
generally accepted values, practices, and norms, and to advocate for those 
things they believe women should have” (p. 4).

Any attempt to give voice to the voiceless must also contend with the dis-
tinct possibility that those subject to ravaging conditions of inequality, pov-
erty, and powerlessness may be most susceptible to self-misunderstanding. 
Animated by the humane desire to “trust in people to know best their experi-
ence” (p. 27), Ackerly argues that claims of ‘false consciousness’ are due 
either to misinterpretation, inaccurate observation, or something called 
“true consciousness” based on the available information and knowledge of 
the group” (p. 21). Yet, as feminist theorists such as Joan Scott, Judith Grant, 
Gayatri Spivak, and others have argued, “treating testimonials as informa-
tion” about those private interests that must be included in public decision

making (Ackerly, p. 196) secures from critical scrutiny the very category of experience, the authority of those to claim access to it, and the epistemological presumption of a one-to-one correspondence between such evidence and the “real world” on which it rests. Such difficulties are evident in Ackerly’s argument that “individuals are the authors of their own lives and should be able to choose how to identify themselves and which identities will lead to political affiliations” (p. 195). The task at hand is thus characterized as the removal of obstacles—such as institutional barriers, discrimination, fear, isolation, or lack of time—that inhibit the public expression of women’s “unspoken wishes” (p. 23). Third world feminist social criticism is thus designed to make publicly audible the voice of women, for example, who silently wish not to be beaten (p. 22). The fact that power operates most insidiously in the very constitution of desire—in this case, the quite prevalent belief among battered women that they deserve, and are in fact responsible for, the violence they suffer—remains, unfortunately, offstage. Reckoning the public significance of practices and experiences too often rendered invisible or outright ignored is an invaluable but notoriously difficult endeavor, and the author deserves credit for undertaking it. One can only wish that *Political Theory and Feminist Social Criticism* had negotiated as successfully as *Beyond Rights Talk and Culture Talk* what is admittedly very demanding terrain.

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NOTES

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Michael Oakeshott’s was an original voice in twentieth-century thought. His idiosyncratic take on conservatism, history, authority, education, Hobbes, the European state, idealism, human conduct, and the relationship between theory and practice may ultimately require the ears of a future generation to be appreciated fully. It is not surprising, then, that in trying to understand Oakeshott, recent commentators draw on resemblances his voice bears to more familiar thinkers. Much of Gerencser’s The Skeptic’s Oakeshott contributes to a dispute over the degree to which the idealism of Hegel and Bosanquet structures and defines Oakeshott’s work. Unlike Paul Franco, Gerencser argues that Oakeshott abandoned his early idealism (expressed in Experience and Its Modes) for a thoroughgoing Hobbesian skepticism. According to Gerencser, while Oakeshott’s idealist phase possessed skeptical elements, particularly concerning the inability of history, science, or practice to encompass completely the whole of experience, his later skepticism extended this position to philosophy and politics. This move led Oakeshott to reconsider the relationship between philosophy and practice, produce an interpretation of Hobbes that reflected his own skeptical disposition, and devise a view of authority that was compatible with human plurality and freedom. The first of these changes meant that by the 1940s, Oakeshott no longer believed an unbridgeable gulf separated philosophy from the other idioms of human experience. Instead, Gerencser argues that Oakeshott saw philosophy as just another voice in the conversation of mankind: it could not dictate to poets, scientists, historians, or practitioners, but it could be useful if others happen to accept its pronouncements.

Gerencser argues that when Oakeshott abandoned Hegel for Hobbes, he was able to work out his own skeptical thought, particularly with regard to the artificial character of government and the nature of authority. But, as Gerencser makes clear, one cannot simply read Oakeshott through Hobbes, for Oakeshott’s Hobbes was one that reflected Oakeshott’s own perspectives and concerns. In a fine set of chapters, Gerencser persuasively argues that Oakeshott’s work on Hobbes was integral to the development of the argument in On Human Conduct.
Gerencser is not only interested in identifying the changes in Oakeshott’s work, he also argues that Oakeshott failed to complete his skeptical vision of authority. Although Oakeshott offers a conception of authority that is compatible with diversity, he did not apply his skepticism to authority itself—an application that Gerencser believes can and should be done. Very briefly, Oakeshott argued that if one assumes that state power is inescapable and that individuals value the exercise of their individuality, then the only way to reconcile human plurality and freedom with political authority is to see authority in an entirely formal/procedural manner. Authority is maintained not because we share a belief that it does the same desirable things (because we do not) but because we acknowledge a set of offices as authoritative. But, Gerencser asks, if Oakeshott is skeptical of shared purposes as a basis for authority, then why isn’t he skeptical of the shared acknowledgment needed to maintain civil association? Clearly, not everyone will agree with Oakeshott’s vision of individuality or civil association. To be true to his skeptical disposition, Oakeshott should have seen authority itself as subject to political contestation. For Gerencser, only in a fully democratic politics can we simultaneously sustain and politicize authority.

Gerencser offers a convincing defense for stressing Oakeshott’s skepticism. However, did Oakeshott’s earlier work manifest an absolute idealism that was subsequently abandoned? Here, Gerencser is less compelling. The evidence in *Experience and Its Modes* could support an alternative reading, namely that Oakeshott was skeptical of philosophy’s ability to arrive at the whole truth but quite certain of the inability of the various modes of experience to encompass fully the whole. On this view, “the whole” is a criterion or benchmark for judging the adequacy of the modes of experience. In Socratic fashion, he may have been unsure as to his (or anyone’s) ability to reach this “heavenly home,” but he could certainly unmask the pretenders. From this perspective, although Oakeshott revised his thought in significant ways, a great deal more continuity exists between his later and earlier work than Gerencser suggests.

Gerencser is also quite correct to note that Oakeshott’s civil association would not command universal recognition. From a historical point of view, however, Oakeshott would certainly agree, for the basis and meaning of authority in the European state has been disputed since the rise of the state system. In fact, a pure form of civil association may be impossible. In the third section of *On Human Conduct*, Oakeshott argues that each of the two visions of the state (captured in the terms *societas* and *universitas*) “is a historic character and a character on the wing continuously exposed to modification in intercourse with the other. In a modern European state they are not friends, but nor are they exactly foes.”

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To have critical bite, Gerencser’s argument must be theoretical—if a pure conception of civil association existed, then citizens should be able to sustain a politics while still calling into question authority. Yet, this attack may sidestep both avenues of Oakeshott’s argument. On one hand, Oakeshott is asking what vision of authority would cohere with a view of individuals who celebrated their individuality. If Gerencser believes that civil association is not what such individuals would acknowledge, then he needs to point to the incoherence in Oakeshott’s argument. On the other hand, Oakeshott is making a claim about the logic of authority. Even Gerencser’s full democratization of authority rests on the authoritative nature of democracy. True contestation would not be between democrats but between (perhaps) monarchists, aristocrats, democrats, and anarchists. And while adherents to these positions might be able to talk to one another in a seminar, it is unlikely that they could share a political life in which they were obliged to abide by the results of their talk. For Oakeshott, politics requires a fixed point beyond the reach of politics. Whether or not Gerencser can overcome the logic of authority, his book provides a valuable contribution to a Hobbesian, skeptical vision of Oakeshott.

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NOTE


With deliberate and thoughtful provocation, Dumm invites us to evaluate as politics selected ordinary situations that raise questions about what others have regarded as etiquette. Themes in *A Politics of the Ordinary* include the meanings of boredom for the Heaven’s Gate cult, resignation (of a professor after being denied tenure and Nixon after Watergate), the white man in a position of ivory tower privilege, and singing the refrain to *Wild Thing* at a live performance next to a silent Baudrillard at a Montana conference on his
work. Against the Arendtian view that politics is something special, Dumm makes the Foucauldian point that when the discerning reader focuses attention on practices that seem humdrum and banal, politically important insights about power and knowledge will emerge.

Dumm selects the topics and the theorists who will illuminate them through a method of “proof through exemplification” (p. 7), choosing conflicts that allow him to discuss politics as subtle and fragmentary. Pulling the rug out from under a host of social science axioms on method, Dumm declares his examples are “incidental, contingent on observation and intuition” and reflect a “desire to protect [the ordinary’s] strange integrity, an integrity that depends on a kind of impurity” (p. 8). In keeping with this ambition, Dumm’s chapters do not progressively develop a theme but are separate essays branching out from a core concern with the ordinary. The benchmark of success Dumm gives himself is not whether his results allay scientific anxieties about generalization or prediction, but whether his insights “encourage new ways to reflect on how to begin politics” (p. 8). Dumm pursues this ambition in the company of an impressive range of modern and postfoundationalist writers, although his chief theoretical interlocutors are Emerson, Thoreau, and Cavell engaging with them.

Dumm’s intent is to help us negotiate our daily lives in such a way that the ordinary does not become absorbed into mass culture but anchors us in more considered, thoughtful relations to power and to each other. In many places, Dumm’s honest, on-the-ground reporting of his sources, academic and otherwise, gets the job done. The chapter “Toy Stories” is one example of how a pastiche of information from theoretical texts, a short history of anxieties about masculinity in the United States, and a reading of a recent Hollywood film can advance novel, intriguing ideas about what it takes to keep the center together.

In that chapter, Dumm offers a helpful formulation of his larger project:

The trick of developing and deploying . . . epistemological instruments of cultural warfare is in making the everyday enactment of doubt over identity plausible and desirable to those who stand to benefit from either embracing identities of power or, more often, simply remaining silent in the face of attack, letting the attack reinforce the power of their secured identity, even allowing themselves to be wounded in their attachments. (P. 119)

In an effort to reflect the desperation and difficulties of maintaining hegemony, Dumm develops parallels between the efforts of the toys in “Toy Stories” to keep themselves together and the struggles of U.S. America’s white male workers against corporate downsizing. Dumm’s critique shows
us how authority and legitimacy are fraught and unstable. He reinforces the claims of those who would challenge the center from the margins and, more interestingly, provides a self-portrait for those clinging to power, images suggesting that their efforts may be abject and unrewarding.

Of course, Dumm’s project raises some questions. The most pressing ones, in light of his agenda, emerge from his celebratory and aspirational references to “democracy” and “citizenship.” Foucauldian readings of institutional politics have fueled an ongoing debate among Foucauldians (and their critics). In the places where Dumm uses a vocabulary of liberal democracy, readers would benefit from an explanation of how one might reconcile this with Foucauldian sensibilities. What does “democracy” mean when we think and act according to the imperatives of a power/knowledge nexus? What does “citizenship” look like when the state has become an amorphous regime regulating and controlling populations by rote discourse and not deliberation? Perhaps concepts such as “democracy” and “citizenship” are still the right critical wedges in the old-fashioned struggle of humanity or the people against oppressors, but then one wants to know more about this. Precisely because Dumm is not the only one writing via a discourse with both quasi-democratic liberal themes and Foucauldian ones, the conjunction here invites reflection.

The major rift between liberals and Foucauldians provokes questions about Dumm’s opening parry against the Arendtian view of “the political”. As a matter of logic and language, the Arendtians are right. If “politics” has any meaning, then that sense must exclude others. When my students define politics as “everything,” I gesture toward the door and say, “That thing with wings, waddling and quacking—there’s a ‘politics’ coming into the room now!” Dumm needs to concede some particularity to “the political”—if nothing else, what makes this different from a barnyard animal. Yes, the example is simple and gimmicky, but it is necessary to clear space to see the real battle.

Ultimately, the conflict Dumm seeks to stage is not, I think, between Arendtians and Foucauldians but between both groups (and Dumm) against mass society’s practices and habits of thought. Dumm focuses our attention on specific and repeated refrains that dominate our daily lives by means of the dull compulsion of routinization and process-friendly technologies that exclude art and other creative interventions in the polis. But it seems curious not to acknowledge the common ground Dumm shares with those who invoke Arendt. Dumm’s critique has an ally, for instance, in Hanna Pitkin’s engagements with the related problem of Arendt’s “social,” that sphere that encompasses power but that, in Arendt’s vocabulary, is not political:
The problem of the social . . . is that people are power without having it, that even the “powerful,” whose decisions affect hundreds of thousands, are unable to alter the inertial drift as long as everyone keeps doing as we now do.¹

Dumm’s examples of how power uses us and not vice-versa are instructive in themselves. A more detailed working through of the paradoxes implicit in the status quo—citizenship as complacency, democracy as betrayal of the people, power without struggle, knowledge without critical reflection—might have pushed us to an even deeper understanding of the politics of the ordinary.

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